

## ***Agenda***

### **Minnetonka Economic Development Authority**

**Monday, Aug. 27, 2018**

**Following the Regular Meeting**

#### **Council Chambers**

1. Call to Order
2. Roll Call: Ellingson-Schack-Acomb-Happe-Calvert-Bergstedt-Wiersum
3. Approval of Agenda
4. Approval of Minutes: None
5. Business Items:
  - A. Resolutions concerning a multi-family residential development by Dominion at 11001 Bren Road East  
  
Recommendation: Recommend the Economic Development Authority adopt (4votes):  
  
Senior Housing
    - 1) Resolution approving the execution and delivery of documents in connection with a senior housing development  
Workforce Housing
    - 2) Resolution approving the execution and delivery of documents in connection with a workforce housing development
6. Adjourn

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**EDA Agenda Item #5A**  
**Meeting of Aug. 27, 2018**

<b>Brief Description</b>	Resolutions concerning a multi-family residential development by Dominion at 11001 Bren Road East
<b>Recommendation</b>	Adopt the resolutions

Senior Housing

- 1) Resolution approving the execution and delivery of documents in connection with a senior housing development

Workforce Housing

- 2) Resolution approving the execution and delivery of documents in connection with a workforce housing development

**Background**

Dominium submitted a formal application to redevelop the existing commercial property at 11001 Bren Road East. The proposal includes the removal of the existing building and construction of three new apartment buildings containing 482 senior and general occupancy apartments. The plans for the project were approved at the city council meeting on July 23, 2018.

The plan includes a mix of workforce and senior housing units ranging from one to three bedrooms. The developer is proposing that all units would consist entirely of affordable workforce and senior tenants (55+) earning up to 60% AMI (Area Median Income) (approximately \$56,580 for a household of four or \$45,300 for a two person household). The rents are structured to be capped at approximately 30% of the income level and are estimated to range from \$1,062 for a one-bedroom, \$1,273 for a two-bedroom, and \$1,471 for a three-bedroom unit (before utility allowances).

On July 23, 2018, the City Council and EDA also adopted the resolutions approving the projects and establishing the tax increment financing district within Opus Redevelopment for the Dominion project, adopted the resolutions approving the contracts for private development, and authorized a grant application through the Metropolitan Council Livable Communities Transit Oriented Design (TOD) Program.

**Current Financing Request**

Dominium is requesting that the city issue its multifamily revenue bonds to finance the senior and workforce housing projects, TIF notes, and documents related to the contract for private development. Additional information regarding these documents are provided in the attached memos from the city's bond counsel, Julie Eddington, of Kennedy & Graven. A summary of the requested actions is provided below:

### *Workforce Housing Financing*

The developer, Minnetonka Leased Housing Associates II (Dominium Workforce Housing Project), is requesting that the city issue multiple series of multifamily revenue bonds in the amount up to \$55,000,000. A portion of these bonds would be used to repay the note that was issued for short-term financing that was approved by the city council on April 16, 2018. Approximately \$51,430,000 is expected to be funded by U.S. Bank and BMO Harris to fund the construction of the workforce project. Once construction of the workforce component is complete, Freddie Mac will purchase the tax-exempt note and make a supplemental loan to refund the taxable notes.

The remaining obligation of \$3,570,000 will be publicly offered for sale by Dougherty & Company LLC and repayment will be secured through the assignment of the TIF Note issued by the Minnetonka EDA, a guaranty, a pledge of surplus cash, and a mortgage. The attached resolutions for the workforce housing provide the approval of the issuance of the bonds, the housing program, assignment of the TIF Note, and related documents.

The issuance of the multifamily housing revenue bonds will not count towards the city's bank qualification limit of up to \$10,000,000 for calendar year 2018. In addition, the borrower is required to pay all debt service and any other fees incurred by the city in relation to the bonds. The request complies with city council policies 2.5 and 2.16 related to tax-exempt financing for multi-family housing projects and post-issuance compliance.

### *Senior Housing Financing*

The developer, Minnetonka Leased Housing Associates III (Dominium Senior Housing Project), is requesting that the city issue multiple series of multifamily revenue bonds in the amount up to \$67,500,000. Approximately \$63,410,000 is expected to be funded by U.S. Bank and BMO Harris to fund the construction of the senior project. The attached resolutions for the workforce housing provide the approval of the issuance of the bonds, the housing program, and related documents. Once construction of the workforce component is complete, Freddie Mac will purchase the tax-exempt note and make a supplemental loan to refund the taxable notes.

The remaining obligation of \$4,090,000 will be publicly offered for sale by Dougherty & Company LLC and repayment will be secured through the assignment of the TIF Note issued by the Minnetonka EDA, a guaranty, a pledge of surplus cash, and a mortgage. The attached resolutions for the senior housing provide the approval of the issuance of the bonds, the housing program, assignment of the TIF Note, and related documents.

The issuance of the multifamily housing revenue bonds will not count towards the city's bank qualification limit of up to \$10,000,000 for calendar year 2018. In addition, the borrower is required to pay all debt service and any other fees incurred by the city in relation to the bonds. The request complies with city council policies 2.5 and 2.16 related to tax-exempt financing for multi-family housing projects and post-issuance compliance.

### *Housing Program*

A Housing Program is required by Minnesota Statutes, Chapter 462C, for projects utilizing multifamily housing revenue bonds, and sets forth the proposed plan for the acquisition,

construction and equipping of the project and the issuance of conduit revenue obligations to finance the project. The program also explains what the proceeds of the conduit obligations will be used for, the amount and general terms of the conduit revenue obligations, and the affordability requirements relating to the project. The senior and workforce project each have housing programs.

#### *TIF and Development Documents*

In conjunction with the contract for private development, which was approved by the city council on July 23, 2018, the council and EDA will be asked to approve a construction addendum and four subordination agreements for the workforce and senior housing projects. The construction addendum outlines the city's expectations for public improvements, project performance, fees and securities, responsibility for costs, and expectations for city acceptance. The subordination agreement secures the city's interests and rights under the contract to for private development. The subordination agreements subordinate the city and EDA's interest in the contract for private development, the declarations of restrictive covenants, and the minimum assessment agreements.

The attached memorandums from Julie Eddington of Kennedy & Graven explain the financing actions in greater detail. Both Ms. Eddington and Mr. Lehnhoff (Ehlers) will be available at the city council meeting on Aug. 27, 2018 to answer any questions regarding the Contracts for Private Development, TIF Documents, Bond Financing, and to answer any additional questions related to the financial request.

#### **Next Steps**

The tentative timeline for financing the two developments is as follows:

- Closing on senior housing bonds on or before Sept. 15, 2018
- Closing on workforce housing bonds on or before Oct. 31, 2018

#### **Staff Recommendation**

Staff recommends that the EDA adopt the following resolutions related to the Bren Road Development, a multi-family residential development by Dominium, at 11001 Bren Road East; and authorize the EDA president and Executive Director of the EDA to approve non-substantive changes to the documents:

##### Senior Housing

- 1) Resolution approving the execution and delivery of documents in connection with a senior housing development

##### Workforce Housing

- 2) Resolution approving the execution and delivery of documents in connection with a workforce housing development

Submitted through:

Julie Wischnack, AICP, Community Development Director  
Joel Merry, Assistant Finance Director

Originated by:

Alisha Gray, EDFP, Economic Development and Housing Manager

**Supplemental Information:**

Location Map

List of Senior Housing and Workforce Housing Project Documents

Memos from Julie Eddington – Kennedy & Graven

Memo from James Lehnhoff – Ehlers

Tax Exempt Financing Policy 2.5

Post Issuance Compliance Policy 2.16

TIF Policy 2.18

Opus Area Housing Map

Affordability Chart

[City Council Meeting – July 23, 2018](#)

[EDAC Meeting- April 19, 2018](#)

[City Council Meeting – April 16, 2018](#)

[City Council Meeting – December 18, 2017](#)

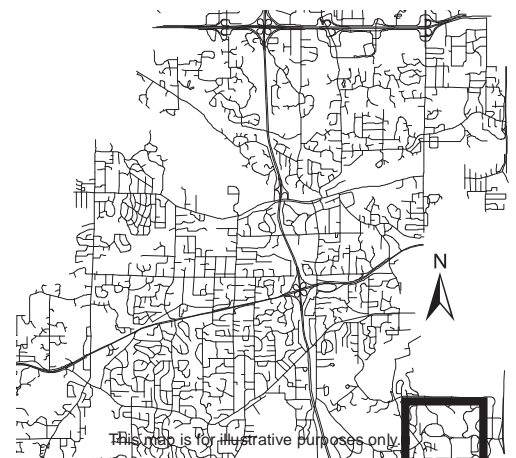
[City Council Meeting– December 4, 2017](#)

[EDAC Meeting – November 27, 2017](#)



### Location Map

Project: Dominion  
Address: 11001 Bren Rd E



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## Minnetonka Dominion

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37. Construction Addendum to Contract for Private Development
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## **SENIOR HOUSING AND WORK FORCE HOUSING PROJECT DOCUMENTS**

### **Summary of Financing (two series of tax-exempt notes and two series of taxable notes)**

Under Project Loan Agreement, Borrower provides the Project Notes. Construction Lenders (U.S. Bank and BMO Harris) fund the Project Notes and the proceeds of the Project Notes are given to the City to fund the Tax-Exempt Funding Loan and Taxable Funding Loan. The proceeds of the Funding Loans pay for the costs of constructing both projects. Once the projects are completed, the “conversion date” occurs and if all conditions of conversion are met, Freddie Mac buys and becomes the lender for the tax-exempt notes and Freddie Mac makes a supplemental loan to take the place of the taxable notes.

### **Documents relating to Tax-Exempt Notes and Taxable Notes (one set of documents for each of the workforce housing project and the senior housing project)**

- Multifamily Notes each with designation as Multifamily Housing Revenue Note, Series A-1, Series A-2, Series B-1 and Series B-2
  - Sets forth the terms of the Notes, including repayment requirements, interest rates, and redemption provisions
- Project Notes
  - Evidences the Borrower’s obligations under the Notes
- Allonge Endorsement of Project Notes
  - Each allonge assigns all the City’s right, title, and interest in the Project Notes to the Fiscal Agent for the benefit of the purchasers of the Project Notes
- Funding Loan Agreement
  - Provides for the issuance of the Notes by the City and creates the various funds and accounts relating to the use of the proceeds of the Notes and assigns all the City’s rights under the Project Loan Agreement, the Notes, and certain other moneys and securities to the Fiscal Agent on behalf of the Lender
- Project Loan Agreement
  - Provides the terms for the loan of proceeds of the Notes to the Borrower, sets forth the City’s administrative fees, and indemnifies the City for any costs, fees, expenses and liability of the Notes
- Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement (one for Taxable and Tax-Exempt Notes)
  - Grants a mortgage, security and assignment of leases and rents in the project to the City as security for the Notes
- Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement
  - Assigns all the City’s right, title and interest in the Mortgage to the Fiscal Agent, to the Lenders
- Regulatory Agreement
  - Sets forth the certain rental and occupancy restrictions that the project must meet to comply with state law and federal tax law applicable to tax-exempt bonds
- Housing Program
  - Required by Minnesota Statutes, Chapter 462C and sets forth the proposed plan for the acquisition, construction and equipping of the project and the issuance of conduit revenue obligations to finance the project. The program also explains what the proceeds of the conduit obligations will be used for, the amount and general terms of the conduit revenue obligations, and the affordability requirements relating to the project
- Resolutions
  - The resolution approving each bond transaction also provides authorization for the Minnetonka EDA and the City to sign various closing certificates and other documents

necessary to carry out the purposes of the documents approved and the resolutions adopted.

### **Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds, Series 2018C Documents**

- Subordinate Indenture of Trust
  - Issues the Subordinate Bonds and creates the various funds and accounts relating to the use of the proceeds of the Subordinate and for the repayment of the Subordinate Bonds
- Subordinate Loan Agreement
  - Provides for the terms for the loan of proceeds of the Subordinate Bonds to the Borrower, sets forth the City's administrative fees, and indemnifies the City for any costs, expenses and liability of the Subordinate Bonds
- Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents
  - Provides the Trustee on behalf of bondholders with a subordinate mortgage, assignment of leases and rents relating to the project
- Assignment of Mortgage
  - Assigns all the City's right, title and interest in the Subordinate Mortgage to the Trustee
- Assignment, Pledge, and Security Agreement
  - Pursuant to this document, the Borrower will pledge and assign its interest in the TIF Note issued by the Minnetonka EDA to the Trustee in order to secure its repayment obligations under the Subordinate Loan Agreement
- Subordinate Guaranty Agreement of Dominium Holdings II, LLC
  - A subordinate guaranty of payments of debt service by an affiliate of the Borrower relating to the Subordinate Bonds
- Subordination Agreement (for Mortgage and Pledge of Surplus Cash)
  - Subordinates the Subordinate Mortgage, Subordinate Guaranty, and the use of surplus cash for repayment of debt service on the Subordinate Bonds to the senior financing
- Bond Purchase Agreement
  - Sets forth the terms of the sale and purchase of the Subordinate Bonds
- Resolutions
  - The resolution approving each bond transaction also provides authorization for the Minnetonka EDA and the City to sign various closing certificates and other documents necessary to carry out the purposes of the documents approved and the resolutions adopted.

### **TIF and Development Documents**

- Construction Addendum to Contract for Private Development (one for each project)
  - Sets forth, among other items, certain construction obligations under the Contract for Private Development including timelines, the payment of certain fees and charges, design and construction of various site improvements, landscaping, the submission of engineering reports, the installation of utilities, erosion and grading requirements, and the ownership of various site improvements and utilities.
- Subordination Agreements related to the Tax-Exempt Notes and Taxable Notes (for Contract for Private Development, Declaration of Restrictive Covenants and Minimum Assessment Agreement) (two agreements for each project – one for tax-exempt notes and one for taxable notes)
  - Subordinates the EDA's rights in the Minimum Assessment Agreement setting forth a minimum market value for the project, Declaration of Restrictive Covenants relating to

the affordability of the project and the Contract for Private Development setting forth terms of providing tax increment financing assistance to the borrower to the rights of the Fiscal Agent on behalf of the Lenders under the financing documents relating to the Tax-Exempt Notes and the Taxable Notes. The subordination agreement subordinates the right of the City to require replacement of the property manager. The City and EDA may exercise the remedies of specific performance or injunctive relief to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Agreements. The EDA has the right to exercise its remedies under the Contract for Private Development upon default by the developer.

**BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS NOTE AGREES (A) THAT (I) IF APPLICABLE, IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT AND (II) THAT IT WILL NOT SELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.**

**UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
CITY OF MINNETONKA**

**MULTIFAMILY NOTE  
with designation as  
Multifamily Housing Revenue Note  
(Legends of Minnetonka Project)  
Series 2018A[-1] [-2]**

US \$ \_\_\_\_\_

September \_\_\_\_, 2018

FOR VALUE RECEIVED, the undersigned, the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of [U.S. Bank National Association, a national banking association] [BMO Harris Bank N.A., a national banking association], or its registered assigns (the “**Funding Lender**”), the maximum principal sum of \_\_\_\_\_ and \_\_\_/100 Dollars (US \$ \_\_\_\_\_), plus Prepayment Premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A[-1] [-2] (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement, dated as of September 1, 2018 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for the Funding Lender, the Obligor, and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent under the Funding Loan Agreement (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$ \_\_\_\_\_ (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”) pursuant to a Project Loan Agreement, dated as of September 1, 2018 (the “**Project Loan Agreement**”), between the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to the proceeds of this Note advanced by Administrative Agent, on behalf of the Funding Lender, according to the Funding Loan Agreement and not otherwise repaid.

In addition to this Note, the Tax-Exempt Funding Loan is also evidenced by the Governmental Lender's Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A[-1] [-2].

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the registered holder of this Note, and (ii) the term "Indebtedness" means the principal of, Prepayment Premium, if any, and interest on or any other amounts due at any time under the Tax-Exempt Notes, the Taxable Governmental Notes, or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing October 1, 2018 interest on this Note at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an "**Interest Payment Date**"). Interest shall accrue on the principal amount of this Note which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on \_\_\_\_\_ 1, 20\_\_ (the "**Maturity Date**") and in monthly installments on each date set forth on the Governmental Note Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 may be replaced by a new Governmental Note Amortization Schedule provided by the Freddie Mac Seller/Servicer on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender's discretion. Neither the Funding Lender's acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan

Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for herein or in any other Financing Document evidencing or securing the Funding Loan, whether considered separately or together with other charges provided for in any such other Financing Document, violates that law, and the Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Minnesota (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date or on the date of any mandatory prepayment or acceleration, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date or such other date at the Default Rate.

15. **Limited Obligation.** This Note is a special, limited obligation of the Obligor payable solely from the Pledged Security and any other revenues, funds and assets pledged under the Funding Loan Agreement and not from any other revenues, funds or assets of the Obligor. This Note is not a general obligation, debt or bonded indebtedness of the Obligor, the State or any political subdivision thereof (other than of the Obligor to the limited extent set forth in the Funding Loan Agreement) and the holder of this Note does not have the right to have any excises or taxes levied by the Obligor, the State or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on this Note. None of the Obligor, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on this Note or other costs incident thereto except from the Pledged Security pledged under the Funding Loan Agreement. No provision, covenant, or agreement contained in this Note or the Funding Loan Agreement, or any obligation herein or therein imposed upon the Obligor, or the breach thereof, shall constitute or give rise to or impose a liability upon the Obligor (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Obligor's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Obligor as provided herein and in the Act. Any recourse for a cause of action under this Note or the Funding Loan Agreement shall be payable solely from the Pledged Security, and the agreement of the Obligor to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Project Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed in its name by the manual or facsimile signatures of the Mayor and City Manager, the seal of the Obligor having been intentionally omitted as permitted by law, and has caused this Note to be dated as of the date first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

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**CERTIFICATE OF AUTHENTICATION**

This Multifamily Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION**, as Fiscal Agent

By: \_\_\_\_\_  
Authorized Signer

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**SCHEDULE I**  
**GOVERNMENTAL NOTE AMORTIZATION SCHEDULE**



**MULTIFAMILY NOTE  
(SERIES A)**

\$\_[\_\_\_\_\_]

Minnetonka, Minnesota  
September \_\_, 2018

**FOR VALUE RECEIVED**, MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (“**Borrower**”), promises to pay to the order of the CITY OF MINNETONKA, MINNESOTA, a municipal corporation organized and existing under the laws of the State of Minnesota (together with any subsequent holder of this Note, “**Governmental Lender**”), whose address is 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, on or before the Mandatory Prepayment Date (as defined in the Construction Loan Agreement referred to below), the sum of [\_\_\_\_\_] Dollars (\$\_\_\_\_\_) or such lesser sum as may actually be owing under borrowings made pursuant to the Project Loan Agreement and the Construction Loan Agreement referred to below, together with interest on the unpaid principal balance from the date hereof as hereinafter provided.

Advances under this Note shall be made in accordance with the terms and conditions set forth in: (i) that certain Project Loan Agreement dated as of even date herewith (as the same may be amended, modified or restated from time to time hereafter, the “**Project Loan Agreement**”) by and among Borrower, Governmental Lender and U.S. Bank National Association, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Saint Paul, Minnesota, in its capacity as Fiscal Agent (in such capacity, “**Fiscal Agent**”); and (ii) that certain Construction Loan Agreement dated as of even date herewith (as the same may be amended, modified or restated from time to time hereafter, the “**Construction Loan Agreement**”), by and among Borrower, U.S. Bank National Association, a national banking association (“**U.S. Bank**”) and BMO Harris Bank N.A., a national banking association (“**BMO Harris**” and, together with U.S. Bank, the “**Initial Funding Lender**”). This Note is the “Series A Project Note” and is one of the “Project Notes” referenced in the Construction Loan Agreement. Capitalized terms herein shall have the meanings set forth in the Construction Loan Agreement.

From the date hereof and through the Mandatory Prepayment Date, interest on each advance hereunder shall accrue and be calculated in accordance with Section 2.2 of the Construction Loan Agreement. This Note is issued, is to be repaid, and may be accelerated under the terms and provisions of the Project Loan Agreement and the Construction Loan Agreement. The holders hereof are entitled to all the benefits provided for in the Project Loan Agreement and the Construction Loan Agreement, or referred to therein. The provisions of the Project Loan Agreement and the Construction Loan Agreement are incorporated by reference herein with the same force and effect as if fully set forth herein. The maximum principal balance of this Note which may be outstanding from time to time is equal to \$[\_\_\_\_\_].

At the option of Borrower, this Note may be prepaid in accordance with Section 2.4 of the Construction Loan Agreement. **This Note is subject to mandatory prepayment as set forth in Section 2.1(b) of the Construction Loan Agreement.** All payments on this Note shall be applied in the order set forth in Section 2.3 of the Construction Loan Agreement. No partial payment shall change any due date or the amount of any regularly scheduled installment of principal due.

All payments due under this Note shall be made to the Initial Funding Lender in accordance with Section 3.02(c) of the Project Loan Agreement and Section 2.3 of the Construction Loan Agreement.

Presentment and demand for payment, notice of dishonor, protest and notice of protest are hereby waived. Borrower agrees to pay all costs of collection, including reasonable attorneys' fees, whether or not suit is commenced.

This Note is secured by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, executed by Borrower in favor of Governmental Lender, as assigned by Governmental Lender to Fiscal Agent (as so assigned and together with any amendment, restatement or other modification thereto, the "*Mortgage*") and encumbering the Project, plus the other Security Documents, all of even date herewith. The terms of the Mortgage are incorporated herein and made a part hereof by reference. Disbursements under this Note shall be made pursuant to the terms of the Construction Loan Agreement and the Disbursing Agreement.

Except as herein provided, Borrower and all others who may become liable for all or part of the principal balance hereof or for any obligations of Borrower to Governmental Lender or the holder hereof (a) jointly and severally, forever waive presentment, protest and demand, notice of protest, demand and dishonor and non-payment of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, (b) agree that the time of payment of the debt or any part thereof may be extended from time to time without modifying or releasing the lien of the Mortgage or other Loan Documents or the liability of Borrower or any other such parties, the right of recourse against Borrower and such parties being hereby reserved by Governmental Lender; and (c) agree that time is of the essence. Borrower agrees to pay all costs of collection when incurred, whether suit be brought or not, including reasonable attorneys' fees and costs of suit and preparation therefor, and to perform and comply with each of the covenants, conditions, provisions and agreements of Borrower contained in this Note, Mortgage and the Loan Documents. It is expressly agreed by Borrower that no extensions of time for the payment of this Note, nor the failure on the part of Governmental Lender to exercise any of its rights hereunder, shall operate to release, discharge, modify, change or affect the original liability under this Note, Mortgage or any of the Loan Documents, either in whole or in part.

**WAIVER OF JURY TRIAL: BORROWER AND GOVERNMENTAL LENDER HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS INSTRUMENT AND TO ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS HEREUNDER OR THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. BORROWER AND GOVERNMENTAL LENDER EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.**

Borrower agrees that (1) this instrument and the rights and obligations of all parties hereunder shall be governed by and construed under the laws of the State of Minnesota, and (2) the obligations evidenced by this Note is an exempted transaction under the Truth-In-Lending Act, 15

U.S.C. Section 1601, et. seq. If any provision of this Note shall be illegal or unenforceable, such provision shall be deemed canceled to the same extent as though it never had appeared therein, but the remaining provisions shall not be affected thereby. Borrower consents to the personal jurisdiction of the federal and state courts located in the State of Minnesota, waives any argument that such a forum is not convenient, and agrees that any litigation relating to this Note initiated by it or on its behalf shall be venued in Minnesota.

Whenever Governmental Lender or Borrower desires to give any notice to the other, it shall be sufficient for all purposes if such notice is personally delivered or sent by registered or certified United States mail, postage prepaid, addressed to the intended recipient at the address listed on the signature page of this Note for Borrower, or such other address as hereafter specified in writing, and for Governmental Lender at the address listed at the beginning of this Note, or such other address as hereafter specified in writing.

If from any circumstances whatsoever, by reason of acceleration or otherwise, the fulfillment of any provision of this Note involves transcending the limit of validity prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then the obligations to be fulfilled will be reduced to the limit of such validity as provided in such statute or law, so that in no event shall any exaction be possible under this Note in excess of the limit of such validity.

All rights, powers, privileges and immunities herein granted to Governmental Lender shall extend to its successors and assigns and any other legal holder of this Note, with full right by Governmental Lender to assign and/or sell same.

This Note is a recourse obligation of Borrower.

As provided in Section 3.04 of the Project Loan Agreement, on the date hereof the Governmental Lender will, in an allonge endorsement to this Note, assign all its right, title and interest in this Note to the Fiscal Agent as security for payment of the Funding Loan.

[signature page follows]

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first written above.

**BORROWER:**

**MINNETONKA LEASED HOUSING  
ASSOCIATES III, LLLP**

By: MINNETONKA LEASED HOUSING  
ASSOCIATES III, LLC, its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Series A Project Note]

**ALLONGE ASSIGNMENT AND ENDORSEMENT**

This Allonge Assignment and Endorsement is attached to that certain Multifamily Note, (Series A), dated as of \_\_\_\_\_, 2018, made and executed by Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, to the City of Minnetonka, Minnesota, a municipal corporation organized and existing under the laws of the State of Minnesota (“Payee”), in the principal amount of \$\_\_\_\_\_ (the “Series A Project Note”), with the same force and effect as if endorsed directly upon the Series A Project Note. By execution hereof, Payee represents and warrants that it is the owner and holder of the Series A Project Note, free and clear of any prior assignment, transfer, pledge, lien, endorsement, charge or hypothecation; that Payee has lawful right, power and authority to execute this instrument; and that the Series A Project Note has not been modified, amended, paid or terminated.

Pay to the order of U. S. Bank National Association.

Dated: \_\_\_\_\_, 2018

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

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**FUNDING LOAN AGREEMENT**

**between**

**U.S. BANK NATIONAL ASSOCIATION,  
as Administrative Agent for the Initial Funding Lender**

**CITY OF MINNETONKA, MINNESOTA,  
as Governmental Lender**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent**

**Relating to:**

**Legends of Minnetonka  
11001 Bren Road East  
Minnetonka, Minnesota**

**Maximum Funding Loan Principal Amount: \$\_\_\_\_\_**

**Dated as of September 1, 2018**

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This instrument was drafted by:

Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402  
(612) 337-9300

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## FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT is made and entered into as of September 1, 2018 (the “**Funding Loan Agreement**”), between U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “**Administrative Agent**”), as administrative agent for the Initial Funding Lender (hereinafter defined), the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as fiscal agent (the “**Fiscal Agent**”). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

### RECITALS

**A.** Pursuant to Minnesota Statutes, Chapter 462C, as amended (the “**Act**”), and the Project Loan Agreement, dated as of September 1, 2018 (the “**Project Loan Agreement**”), between the Governmental Lender, the Fiscal Agent, and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”), the Governmental Lender is agreeing to make two mortgage loans to the Borrower corresponding in principal amount to the Tax-Exempt Funding Loan and the Taxable Funding Loan described below (individually, the “**Tax-Exempt Project Loan**” and the “**Taxable Project Loan,**” and collectively, the “**Project Loan**”) to provide for the financing of a 262-unit senior housing rental development located at 11001 Bren Road East, Minnetonka, Minnesota to be known as Legends of Minnetonka (the “**Project**”).

**B.** The Governmental Lender is making the Tax-Exempt Project Loan to the Borrower with the proceeds received from the separate tax-exempt loan made to the Governmental Lender pursuant to this Funding Loan Agreement in the maximum aggregate principal amount of \$\_\_\_\_\_ (the “**Tax-Exempt Funding Loan**”). The Tax-Exempt Funding Loan is evidenced by the Governmental Lender’s (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series A-1 Governmental Note**”); and (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series A-2 Governmental Note,**” and together with the Series A-1 Governmental Note, the “**Tax-Exempt Governmental Note**”). The Governmental Lender is making the Taxable Project Loan to the Borrower with the proceeds received from the separate taxable loan made to the Governmental Lender pursuant to this Funding Loan Agreement in the maximum aggregate principal amount of \$\_\_\_\_\_ (the “**Taxable Funding Loan,**” together with the Tax-Exempt Funding Loan, the “**Funding Loan,**” and further together with the Project Loan, the “**Loans**”). The Taxable Funding Loan is evidenced by the Governmental Lender’s (1) the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series B-1 Governmental Note**”); and (2) the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series B-2 Governmental Note,**” and together with the Series B-1 Governmental Note, the “**Taxable Governmental Note**”). The Tax-Exempt Governmental Note and the Taxable Governmental Note are referred to herein as the “**Governmental Notes.**” The Governmental Notes are each dated September \_\_\_\_, 2018. The Governmental Lender shall deliver the Governmental Notes to the Administrative Agent, which shall deliver the Governmental Notes to U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the “**Initial Funding Lender**”).

**C.** The Administrative Agent and the Initial Funding Lender, pursuant to the terms and subject to the conditions of this Funding Loan Agreement, the Construction Phase Financing Agreement,

and the Construction Continuing Covenant Agreement, have agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower in corresponding installments pursuant to the Project Loan Agreement. The Administrative Agent, on behalf of the Initial Funding Lender, will administer the Loans during the Construction Phase in accordance with the Construction Phase Financing Agreement (as it relates to the Tax-Exempt Funding Loan and Tax-Exempt Project Loan), the Construction Continuing Covenant Agreement, and the other Financing Documents.

**D.** The Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to the Loans.

**E.** The Borrower's repayment obligations in respect of the Tax-Exempt Project Loan will be evidenced by the Multifamily Note (Series A) (the "**Tax-Exempt Project Note**"). The Borrower's repayment obligations in respect of the Taxable Project Loan will be evidenced by the Multifamily Note (Series B) (the "**Taxable Project Note**," and collectively with the Tax-Exempt Project Note and all riders and modifications thereto, the "**Project Notes**"), each dated September \_\_, 2018, delivered to the Governmental Lender, which Project Notes will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**F.** To secure the Borrower's obligations under the Tax-Exempt Project Note, the Borrower will execute and deliver to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated September \_\_, 2018 (the "**Tax-Exempt Security Instrument**"), with respect to the Project, which Tax-Exempt Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Tax-Exempt Funding Loan.

**G.** To secure the Borrower's obligations under the Taxable Project Note, the Borrower will execute and deliver to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated September \_\_, 2018 (the "**Taxable Security Instrument**," and together with the Tax-Exempt Security Instrument, the "**Security Instrument**"), with respect to the Project, which Taxable Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Taxable Funding Loan.

**H.** The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise ("**Tax-Exempt Freddie Mac**"), has entered into a commitment with KeyBank National Association, a national banking association (the "**Freddie Mac Seller/Servicer**"), dated \_\_\_\_\_, 2018 (the "**Freddie Mac Commitment**"), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Tax-Exempt Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date.

**I.** If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Tax-Exempt Freddie Mac Commitment and the Construction Phase Financing Agreement, the Tax-Exempt Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Administrative Agent, on behalf of the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Tax-Exempt Funding Loan, as evidenced by the Tax-Exempt Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Tax-Exempt Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the

Tax-Exempt Funding Loan and the Initial Funding Lender will remain the owner of the Tax-Exempt Funding Loan.

**J.** Freddie Mac has entered into a separate commitment with the Freddie Mac Seller/Servicer, dated \_\_\_\_\_, 2018 (the “**Taxable Freddie Mac Commitment**”), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the commitment, to facilitate the financing of the Project in the Permanent Phase by making a conventional supplemental loan to purchase and amend and restate the Taxable Funding Loan made hereunder.

**K.** If the Conditions to Conversion associated with the Taxable Freddie Mac Commitment are satisfied on or before the Forward Commitment Maturity Date as provided for in the Taxable Freddie Mac Commitment, the Freddie Mac Seller/Servicer will make a conventional loan to purchase and amend and restate the Taxable Funding Loan and the Taxable Funding Loan will no longer be outstanding under this Funding Loan Agreement. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Taxable Project Loan will remain outstanding, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to amending and restating the Taxable Funding Loan and the Initial Funding Lender will remain the owner of the Taxable Funding Loan as the holder of the Taxable Governmental Note.

**L.** As a Condition to Conversion, the Tax-Exempt Project Note and the Tax-Exempt Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the “**Freddie Mac Continuing Covenant Agreement**”), in each case pursuant to the forms attached to the Construction Phase Financing Agreement. As additional Conditions to Conversion, (i) the Taxable Governmental Note and the Taxable Project Note will be exchanged for a single Amended and Restated Taxable Project Note and the Taxable Governmental Note and will no longer be outstanding under this Funding Loan Agreement, and the single Amended and Restated Taxable Project Note will be assigned to the Freddie Mac Seller/Servicer; (ii) the Tax-Exempt Governmental Note will be consolidated into a single Governmental Note with a single Governmental Note Amortization Schedule; and (iii) the Taxable Security Instrument will be amended and restated and the Borrower will be required to enter into a Multifamily Loan Agreement with the Freddie Mac Seller/Servicer, in each case pursuant to the forms attached to the Taxable Freddie Mac Commitment and the Taxable Funding Loan will no longer be governed by the Funding Loan Agreement. After Conversion, all references herein to “Funding Loan” shall mean the Tax-Exempt Funding Loan, all references herein to the “Project Loan” shall mean the Tax-Exempt Project Loan and the term “Security Instrument” shall mean the Tax-Exempt Security Instrument, as amended and restated.

**M.** If the Conditions to Conversion are satisfied and the Tax-Exempt Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/ Servicer shall deliver the Tax-Exempt Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the “**Freddie Mac Purchase Date**”).

**N.** Upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Tax-Exempt Funding Loan, the Tax-Exempt Governmental Note, this Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. KeyBank National Association will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date.

**O.** The Governmental Lender has determined that all things necessary to incur the Funding Loan and to make the Governmental Notes, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid,

binding and legal obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, premium, if any, and interest on, the Governmental Notes, have been duly taken, and the creation, execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Notes, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender.

**P.** The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

**Q.** To provide additional financing for the Project, the Governmental Lender is issuing its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “**Subordinate Bonds**”), dated September \_\_, 2018, in the original aggregate principal amount of \$4,090,000, pursuant to a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “**Subordinate Indenture**”), between the Governmental Lender and U.S. Bank National Association, a national banking association, as trustee for the Subordinate Bonds (the “**Trustee**”). The proceeds of the Subordinate Bonds are being loaned to the Borrower (the “**Subordinate Loan**”) pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “**Subordinate Loan Agreement**”), between the Governmental Lender and the Borrower, and the Borrower will apply such proceeds to finance a portion of the acquisition, construction, and equipping of the Project and to pay certain closing costs with respect to the Subordinate Loan. The Subordinate Indenture, the Subordinate Loan Agreement, and the Subordinate Bonds and all related documents and any renewals or extensions thereof and all indebtedness owed thereunder, including the Subordinate Loan, shall be and are subordinated, inferior and subject to the Financing Documents, as the Financing Documents may be revised, modified, extended or amended from time to time, and all indebtedness owed thereunder pursuant to a Subordination Agreement, dated September \_\_, 2018, between the Governmental Lender, the Borrower, the Fiscal Agent, the Trustee, and the Administrative Agent, and its successors and assigns.

**NOW, THEREFORE**, in consideration of the premises and of the origination and funding of the Funding Loan by the Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

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

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Funding Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Project Loan Agreement.

“*Act*” means Minnesota Statutes, Chapter 462C, as amended.

“*Actual Project Loan Amount*” has the meaning set forth in the Construction Phase Financing Agreement.

“*Administration Fund*” means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Administrative Agent*” means U.S. Bank, as administrative agent for the Initial Funding Lender, its successors and assigns.

“*Advance Request*” means a request by the Borrower to the Administrative Agent that the Administrative Agent disburse proceeds of the Funding Loan to the Fiscal Agent as provided hereunder, which request shall be in the form prescribed by the Construction Continuing Covenant Agreement.

“*Advance Termination Date*” means the earliest to occur of (i) the date when the sum of the aggregate advances of the Funding Loan made by the Administrative Agent equals the Authorized Amount, (ii) the date that is three (3) years after the Delivery Date, (iii) the Conversion Date, (iv) the date of a Determination of Taxability or (v) the occurrence of an Event of Default hereunder.

“*Assignment*” means the respective Assignment of Mortgage, dated the Delivery Date, by the Governmental Lender assigning its interest in the Taxable Security Instrument and the Tax-Exempt Security Instrument to the Fiscal Agent.

“*Authorized Amount*” shall mean \$\_\_\_\_\_, the maximum principal amount of the Funding Loan authorized under this Funding Loan Agreement.

“*Authorized Officer*” means (a) when used with respect to the Governmental Lender, the Mayor, City Manager, and Finance Director and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its behalf, (b) when used with respect to the Borrower, any general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

“*Bankruptcy Code*” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

“*BMO Harris Bank*” means BMO Harris Bank N.A., a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

“*Bond Counsel*” means (a) on the Delivery Date, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Notes, or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace and is acceptable to the Funding Lender Representative.

“*Borrower*” means Minnetonka Leased Housing Associates III, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State of Minnesota, or any of its permitted successors or assigns, as owner of the Project.

“*Borrower Equity Account*” means the Borrower Equity Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Borrower Equity Deposit*” means \$0.00, which shall be comprised of sources other than the proceeds of the Project Loan.

“*Business Day*” means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

“*Certificate of the Governmental Lender*” and “*Request of the Governmental Lender*” mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender or such other Person as may be designated and authorized to sign for the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“*Code*” means the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder.

“*Conditions to Conversion*” has the meaning given to that term in the Construction Phase Financing Agreement and the Taxable Freddie Mac Commitment.

“*Construction Continuing Covenant Agreement*” means the Construction Loan Agreement, dated the Delivery Date, between the Borrower, the Administrative Agent, and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

“*Construction Loan Documents*” means, collectively, the Construction Continuing Covenant Agreement, the Construction Phase Financing Agreement, and all other documents to be executed and delivered by the Borrower to the Administrative Agent or the Initial Funding Lender in connection with the Project.



“*Construction Phase*” means the construction phase of the Project Loan, which time period shall commence on the Closing Date and remain in effect to, but not including, the Conversion Date.

“*Construction Phase Financing Agreement*” means the Construction Phase Financing Agreement, dated as of September 1, 2018, between the Administrative Agent, Freddie Mac, and the Freddie Mac Seller/Servicer, and acknowledged and agreed to by the Borrower, as the same may be amended, modified or supplemented from time to time.

“*Construction Phase Interest Rate*” has the meaning set forth on *Exhibit F*; provided during the continuation of any Event of Default hereunder, the Construction Phase Interest Rate shall be the Default Rate.

“*Continuing Covenant Agreement*” means (i) prior to the Conversion Date, the Construction Continuing Covenant Agreement, and (ii) from and after the Conversion Date, the Freddie Mac Continuing Covenant Agreement.

“*Conversion*” means conversion of the Project Loan from the Construction Phase to the Permanent Phase on the Conversion Date.

“*Conversion Date*” means (i) the date the Freddie Mac Seller/Servicer purchases the Tax-Exempt Funding Loan from the Administrative Agent upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by the Freddie Mac Seller/Servicer in the Notice of Conversion, which date shall be at least ten (10) days following the date on which the Notice of Conversion is delivered; and (ii) the date the Freddie Mac Seller/Servicer makes a conventional loan in accordance with the Taxable Freddie Mac Commitment.

“*Cost,*” “*Costs*” or “*Costs of the Project*” means, with respect to the proceeds of the Tax-Exempt Governmental Note, costs paid with respect to the Project that (i) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Treasury Regulations, (ii) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of (A) sixty (60) days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (B) the Delivery Date, and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Loans such costs were (A) Costs of Issuance of the Governmental Notes, (B) preliminary capital expenditures (within the meaning of Section 1.150-2(f)(2) of the Treasury Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Project that do not exceed twenty percent (20%) of the issue price (as defined in Section 1.148-1 of the Treasury Regulations) of the Tax-Exempt Governmental Note, or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid); provided however, that if any portion of the Project is being constructed or developed by the Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), “*Cost,*” “*Costs*” or “*Costs of the Project*” shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower or such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of

Section 1504 of the Code) participating in the acquisition, construction or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

“*Cost of Issuance Fund*” means the Cost of Issuance Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Costs of Issuance*” means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Governmental Lender, the Governmental Lender’s counsel and the Governmental Lender’s municipal advisor, (b) Bond Counsel, (c) the Fiscal Agent and the Fiscal Agent’s counsel, (d) the Administrative Agent and the Initial Funding Lender’s counsel, (e) the Freddie Mac Seller/Service and the Freddie Mac Seller/Service’s counsel, (f) Freddie Mac and Freddie Mac’s counsel, and (g) the Borrower’s counsel attributable to the funding of the Loans and the Borrower’s financial advisor, if any; and (ii) all other fees, costs and expenses directly associated with the Funding Loan and the Project Loan, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

“*Costs of Issuance Deposit*” means the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date, which deposit shall equal \$0.00.

“*Default Rate*” means (a) during the Construction Phase, an interest rate equal to the lower of (i) \_\_\_\_\_ percent (\_\_\_\_%) per annum in excess of the Construction Phase Interest Rate or (ii) the Maximum Interest Rate; and (b) during the Permanent Phase, an interest rate equal to the lower of (i) \_\_\_\_\_ percent (\_\_\_\_%) per annum above the Permanent Phase Interest Rate or (ii) the Maximum Interest Rate.

“*Delivery Date*” means September \_\_\_\_, 2018, the date of funding of the initial advance of the Funding Loan and the delivery of the Governmental Notes by the Governmental Lender to the Administrative Agent.

“*Determination of Taxability*” means, with respect to the Tax-Exempt Governmental Note, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation or (e) receipt by Fiscal Agent or Funding Lender Representative, at the request of Governmental Lender, Borrower, Fiscal Agent or Funding Lender Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Tax-Exempt Governmental Note is includable in gross income for federal income tax purposes of the Funding Lender or any former Funding Lender other than a Funding Lender who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination.

“*Disbursing Agreement*” means the \_\_\_\_\_ Agreement, dated as of September 1, 2018, between the Borrower, the Fiscal Agent, the Administrative Agent, the Trustee, and the Title Company, as the same may be amended, modified or supplemented from time to time.

“*Electronic Notice*” means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04 hereof.

“*Event of Default*” or “*event of default*” means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

“*Extraordinary Services*” means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of or to prevent default under this Funding Loan Agreement or the Project Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Project Loan Agreement, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

“*Fair Market Value*” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security–State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

“*Fee Component*” has the meaning set forth in the Project Loan Agreement.

“*Financing Documents*” means, collectively, this Funding Loan Agreement, the Governmental Notes, the Tax Certificate, the Project Loan Documents, the Construction Loan Documents (during the Construction Phase) and all other documents or instruments evidencing, securing or relating to the Loans.

“*Fiscal Agent*” means U.S. Bank National Association, a national banking association, and its successors hereunder, in its capacity as fiscal agent hereunder.

“*Fiscal Agent’s Extraordinary Fees and Expenses*” means all those fees, expenses and disbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

“*Fiscal Agent’s Ordinary Fees and Expenses*” means the annual administration fee for the Fiscal Agent’s ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve (12) month period, which fee is equal to (and shall not exceed) \$\_\_\_\_\_ and shall be payable annually in advance on the Delivery Date and each anniversary thereof.

“*Forward Commitment Maturity Date*” means \_\_\_\_\_, 20\_\_\_, subject to extension by Freddie Mac.

“*Freddie Mac*” means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

“*Freddie Mac Commitments*” means, together, the Tax-Exempt Freddie Mac Commitment and the Taxable Freddie Mac Commitment.

“*Freddie Mac Continuing Covenant Agreement*” means the Continuing Covenant Agreement to be delivered on the Conversion Date in the form attached to the Construction Phase Financing Agreement by and between the Borrower and the Freddie Mac Seller/Servicer, as the same may be amended, modified or supplemented from time to time.

“*Freddie Mac Purchase Date*” means the date on which Freddie Mac purchases the Tax-Exempt Funding Loan from the Freddie Mac Seller/Servicer upon satisfaction of the conditions set forth in the Construction Phase Financing Agreement and the Tax-Exempt Freddie Mac Commitment.

“*Freddie Mac Seller/Servicer*” means KeyBank National Association, a national banking association, as Freddie Mac’s seller/servicer under the Freddie Mac Commitment, or any of its successors or assigns under the Freddie Mac Commitment.

“*Funding Lender*” means any Person who is the holder of the Governmental Notes.

“*Funding Lender Representative*” means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05 hereof, or an assignee of such Person as provided in Section 11.05 hereof. The initial Funding Lender Representative shall be the Administrative Agent, acting on behalf of the Initial Funding Lender. The Freddie Mac Seller/Servicer shall become the Funding Lender Representative upon the occurrence of the Conversion Date and Freddie Mac shall become the Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.

“*Funding Loan*” means the loan in the maximum aggregate principal amount of \$\_\_\_\_\_ made to the Governmental Lender pursuant to this Funding Loan Agreement by the Administrative Agent and on and after the Conversion Date shall mean exclusively the Tax-Exempt Funding Loan.

“*Funding Loan Agreement*” means this Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent, the Governmental Lender, and the Fiscal Agent, as amended, supplemented or restated from time to time.

“*Government Obligations*” means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.

“*Governmental Lender*” means the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State.

“*Governmental Lender Fee*” means the financing fee in the amount of one-eighth of one percent (0.125%) of the principal amount of the Governmental Notes to be paid on or before the Delivery Date.

“*Governmental Note Amortization Schedule*” means the Governmental Note Amortization Schedule attached as Schedule 1 to each of the Series A-1 Governmental Note, the Series A-2 Governmental Note, the Series B-1 Governmental Note, and the Series B-2 Governmental Note, as shall

be consolidated or eliminated at Conversion subject to the terms of the Construction Phase Financing Agreement.

“*Governmental Note(s)*” means, collectively, the Series A-1 Governmental Note, the Series A-2 Governmental Note, the Series B-1 Governmental Note, and the Series B-2 Governmental Note. On and after the Conversion Date, the Series B-1 Governmental Note and the Series B-2 Governmental Note shall be exchanged in consideration for the delivery by the Borrower of its Amended and Restated Taxable Project Note to the Freddie Mac Seller/Servicer as the originator of a supplemental conventional loan and said Series B-1 Governmental Note and Series B-2 Governmental Note shall no longer be outstanding hereunder. On or after the Conversion Date, “*Governmental Note(s)*” shall mean the consolidated single Governmental Note representing the Tax-Exempt Governmental Note in the Construction Phase and all references herein to the Governmental Note after the Conversion Date means only the consolidated Governmental Note as then outstanding.

“*Guide*” means the Freddie Mac Multifamily Seller/Servicer Guide, as the same may be amended, modified or supplemented from time to time.

“*Initial Debt Service Deposit*” means \$0.00.

“*Initial Funding Lender*” means, together, U.S. Bank and BMO Harris Bank, as initial holders of the Governmental Notes.

“*Interest Payment Date*” means (i) the first day of each calendar month, commencing \_\_\_\_\_ 1, 20\_\_\_\_; (ii) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment; and (iii) the Maturity Date.

“*Investment Income*” means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

“*Loans*” means, together, the Project Loan and the Funding Loan.

“*Loan Payment Fund*” means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Loan Prepayment Fund*” means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Maturity Date*” means the maturity date of the Funding Loan set forth in Section 2.01(d) hereof.

“*Maximum Interest Rate*” means the rate of interest which results in the maximum amount of interest allowed by applicable law.

“*Moody’s*” means Moody’s Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Net Proceeds*,” when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

“*Note Proceeds Subaccount*” means the Note Proceeds Subaccount of the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Notes*” means, together, the Project Notes and the Governmental Notes.

“*Notice of Conversion*” means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Freddie Mac Seller/Service to the Governmental Lender, the Fiscal Agent, the Borrower, the Administrative Agent and Freddie Mac (i) stating that the Conditions to Conversion have been satisfied on or before the Forward Commitment Maturity Date or, if any Condition to Conversion has not been satisfied on or before the Forward Commitment Maturity Date, stating that such Condition to Conversion has been waived in writing by Freddie Mac (if a waiver is permitted and is granted by Freddie Mac, in its sole and absolute discretion) on or before the Forward Commitment Maturity Date, (ii) confirming the Conversion Date and (iii) providing for an updated amortization schedule for the Project Note and the Governmental Note in the event the Borrower makes a Pre-Conversion Loan Equalization Payment at Conversion.

“*Permanent Phase*” means the permanent phase of the Project Loan, which time period shall commence on the Conversion Date and remain in effect through the remaining term of the Project Loan.

“*Permanent Phase Interest Rate*” means, during the Permanent Phase, the fixed interest rate of \_\_\_\_\_% per annum; provided that during the continuance of any Event of Default hereunder, the Permanent Phase Interest Rate shall be the Default Rate, in each case computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30) day months.

“*Person*” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

“*Pledged Security*” shall have the meaning given to that term in Section 2.02 hereof.

“*Pre-Conversion Loan Equalization Payment*” means a prepayment of the Project Loan by the Borrower (and corresponding prepayment of the Funding Loan hereunder) prior to the Forward Commitment Maturity Date in order to equalize the principal amount of the Project Loan and the Funding Loan to the Actual Project Loan Amount.

“*Prepayment Premium*” means any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to (i) during the Construction Phase, the amount of premium, if any, payable by the Borrower under the Construction Continuing Covenant Agreement, and (ii) during the Permanent Phase, the amount of premium payable by the Borrower under the Tax-Exempt Project Note, in each case in connection with a prepayment of the Project Loan.

“*Principal Office of the Fiscal Agent*” means the office of the Fiscal Agent referenced in Section 11.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures pursuant to which municipal or governmental obligations are issued.

“*Project*” means, collectively, the land and the 262-unit senior residential apartment units, and related fixtures, equipment, furnishings and site improvements to be known as Legends of Minnetonka

located at 11001 Bren Road East, in Minnetonka, Hennepin County, Minnesota, including the real estate described in the Security Instrument.

“*Project Account*” means the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Project Loan*” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the maximum aggregate principal amount of \$\_\_\_\_\_, as evidenced by the Project Notes; and on and after the Conversion Date, “Project Loan,” as used herein, shall mean the Tax-Exempt Project Loan.

“*Project Loan Agreement*” means the Project Loan Agreement, dated as of September 1, 2018, between the Borrower, the Governmental Lender, and the Fiscal Agent, as amended, supplemented or restated from time to time.

“*Project Loan Documents*” means, collectively, the Security Instrument, the Project Notes, the Project Loan Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, and any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

“*Project Loan Fund*” means the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Project Note(s)*” means, together, the Tax-Exempt Project Note and the Taxable Project Note. On and after the Conversion Date only the Tax-Exempt Project Note shall be outstanding, and all references herein to the “Project Note” shall, after the Conversion Date, mean only the Tax-Exempt Project Note then outstanding.

“*Qualified Investments*” means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at the time of investment at least “VMIG-1”/“A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody’s or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s or S&P, and which are approved by the Funding Lender Representative; (g) shares or units in any money market mutual fund rated at the time of investment “Aaa”/“AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax-exempt obligations; (h) (i) tax-exempt obligations rated in the highest short term rating category by Moody’s or S&P, or (ii) shares of a tax-exempt municipal money market mutual

fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating at the time of investment of “Aaa”/“AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least ninety-five percent (95%) of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Funding Lender Representative. For purposes of this definition, the “highest rating” shall mean a rating at the time of investment of at least “VMIG-1”/“A-1+” for obligations with less than one (1) year maturity; at least “Aaa”/“VMIG-1”/“AAA”/“A-1+” for obligations with a maturity of one (1) year or greater but less than three years; and at least “Aaa”/“AAA” for obligations with a maturity of three (3) years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

“*Rating Agency*” means Moody’s or S&P, as applicable, or any successor rating service thereof.

“*Rebate Analyst*” means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Project Loan Agreement.

“*Rebate Fund*” means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Rebate Year*” means, with respect to the Tax-Exempt Governmental Note, each one (1) year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate. The first and last Rebate Years may be short periods. If no day is selected by Borrower before the earlier of the Maturity Date or the date that is five (5) years after the Delivery Date, each Rebate Year ends on each anniversary of the Delivery Date and on the Maturity Date or date of earlier payment in full of the Tax-Exempt Governmental Note.

“*Requisition*” means, with respect to the Project Loan Fund, the requisition in the form of **Exhibit E** to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Project Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of **Exhibit D** to this Funding Loan Agreement required to be submitted in connection with disbursements from the Cost of Issuance Fund.

“*Resolution*” means the resolution adopted by the Governmental Lender on August 27, 2018, authorizing the Funding Loan, the Project Loan and the execution and delivery of the Financing Documents to which it is a party.

“*Responsible Officer*” means, when used with respect to the Fiscal Agent, any officer within the corporate trust department of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Fiscal Agent who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s



knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Funding Loan Agreement.

“*Revenue Fund*” means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Revenues*” means (a) all payments made with respect to the Project Loan pursuant to the Project Loan Agreement, the Project Notes or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents; and (b) all money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund, the Administration Fund, and the Rebate Fund), together with all investment earnings thereon.

“*Security Instrument*” means, together, the Taxable Security Instrument and the Tax-Exempt Security Instrument. On and after the Conversion Date, all references to “*Security Instrument*” shall be to the Tax-Exempt Security Instrument.

“*Series A-1 Governmental Note*” means the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of U.S. Bank, in the form attached hereto as *Exhibit A-1*, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series A-2 Governmental Note*” means Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of BMO Harris Bank, in the form attached hereto as *Exhibit A-1*, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series B-1 Governmental Note*” means the Taxable Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of U.S. Bank, in the form attached hereto as *Exhibit A-2*, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series B-2 Governmental Note*” means the Taxable Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of BMO Harris Bank, in the form attached hereto as *Exhibit A-2*, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*S&P*” means S&P Global Ratings, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Servicer*” means any entity appointed by the Funding Lender Representative to service the Loans and any successor in such capacity as appointed by the Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. During the Construction Phase, the Servicer shall be the Administrative Agent. During the Permanent Phase, the Servicer shall be the Freddie Mac Seller/Servicer.

“*State*” means the State of Minnesota.

“*Subordinate Bonds*” means the Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), issued by the Governmental Lender on the Delivery Date in the original aggregate principal amount of \$4,090,000.

“*Subordinate Indenture*” means the Subordinate Indenture of Trust, dated as of September 1, 2018, between the Governmental Lender and the Trustee, as it may be supplemented and amended from time to time.

“*Subordinate Loan*” means the Governmental Lender’s loan of the proceeds of the Subordinate Bonds to the Borrower pursuant to the Subordinate Loan Agreement.

“*Subordinate Loan Agreement*” means the Subordinate Loan Agreement, dated as of September 1, 2018, between the Governmental Lender and the Borrower, as it may be amended from time to time.

“*Subordinate Loan Documents*” means, collectively, the Subordinate Indenture, the Subordinate Bonds, and all other documents or instruments evidencing, securing, or relating to the Subordinate Bonds.

“*Subordination Agreement*” means any subordination or intercreditor agreement(s) entered into with respect to any subordinate financing related to the Project, as the same may be amended, supplemented or restated.

“*Taxable Freddie Mac Commitment*” means the commitment from Freddie Mac to the Freddie Mac Seller/Servicer pursuant to which Freddie Mac has agreed to make a conventional loan to amend and restate the Taxable Funding Loan, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

“*Taxable Governmental Note*” means, together, the Series B-1 Governmental Note and the Series B-2 Governmental Note.

“*Taxable Note Proceeds Subaccount*” means the Taxable Note Proceeds Subaccount within the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Taxable Project Note*” means the Multifamily Note (Series B), dated the Delivery Date, from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the portion of the Project Loan corresponding to the Taxable Governmental Note, which Taxable Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Taxable Funding Loan, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Taxable Security Instrument*” means, with respect to the Taxable Funding Loan, the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated the Delivery Date, from the Borrower in favor of the Governmental Lender and assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment, as the same may be amended from time to time. The Taxable Security Instrument shall be amended and restated into the form attached to the Taxable Freddie Mac Commitment upon the occurrence of the Conversion Date.

“*Tax Certificate*” means the Borrower Tax Certificate executed by the Borrower on the Delivery Date with the endorsement of the Governmental Lender.

“*Tax-Exempt Freddie Mac Commitment*” means the commitment from Freddie Mac to the Freddie Mac Seller/Servicer pursuant to which Freddie Mac has agreed to purchase the Tax-Exempt Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

“*Tax-Exempt Governmental Note*” means, together, the Series A-1 Governmental Note and the Series A-2 Governmental Note.

“*Tax-Exempt Note Proceeds Subaccount*” means the Tax-Exempt Note Proceeds Subaccount within the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Tax-Exempt Project Note*” means the Multifamily Note (Series A), dated the Delivery Date, from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the portion of the Project Loan corresponding to the Tax-Exempt Governmental Note, which Tax-Exempt Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Tax-Exempt Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Tax-Exempt Security Instrument*” means, with respect to the Tax-Exempt Funding Loan, the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated the Delivery Date, from the Borrower in favor of the Governmental Lender and assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment, as the same may be amended from time to time. The Tax-Exempt Security Instrument shall be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date.

“*Tax Regulatory Agreement*” means the Regulatory Agreement, dated the Delivery Date, among the Governmental Lender, the Fiscal Agent, the Borrower, and the Trustee, as it may be amended and supplemented from time to time.

“*Title Company*” means Commercial Partners Title, LLC, a Minnesota limited liability company, its successors and assigns.

“*Transferee Representations Letter*” has the meaning set forth in Section 2.08 hereof.

“*Treasury Regulations*” means the regulations promulgated under the Code.

“*Trustee*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as trustee for the Subordinate Bonds under the Subordinate Indenture.

“*Unassigned Rights*” means all of the rights of the Governmental Lender and its directors, officers, members, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or withhold consent to amendments, changes, modifications and alterations, to receive notices and the right to enforce such rights.

“*U.S. Bank*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

“*Window Period*” means the three (3) consecutive month period prior to the Maturity Date.

**Section 1.02 Interpretation.** The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding Loan Agreement as originally executed. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

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## ARTICLE II

### THE FUNDING LOAN

#### Section 2.01 *Terms.*

(a) The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount. The Funding Loan shall be originated and funded by the Administrative Agent to the Governmental Lender in accordance with subsection (b) below. The proceeds of the Funding Loan shall be deposited with the Fiscal Agent and disbursed in accordance with this Funding Loan Agreement, the Construction Continuing Covenant Agreement, and the Disbursing Agreement. The Funding Loan shall be evidenced by the Governmental Notes and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Notes and this Funding Loan Agreement.

(b) On the terms and conditions set forth in the Construction Continuing Covenant Agreement, the Funding Loan shall be originated by the Administrative Agent on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Administrative Agent in installments directly to the Fiscal Agent for deposit to the Tax-Exempt Note Proceeds Account of the Project Account and the Taxable Note Proceeds Account of the Project Account upon receipt of an Advance Request and the satisfaction of the conditions to such advance set forth in the Construction Continuing Covenant Agreement and the form of requisition attached as *Exhibit E* hereto. Upon the advancement of the proceeds of the Funding Loan in accordance with the terms hereof, the principal amount of the applicable Governmental Note (to be designated by the Administrative Agent) in a principal amount equal to the amount so advanced shall be deemed to be increased automatically and without further acts on the part of the Governmental Lender or the Fiscal Agent. The initial installment of the Tax-Exempt Funding Loan shall be in the amount of \$\_\_\_\_\_ representing the initial advance of the Tax-Exempt Funding Loan (consisting of \$\_\_\_\_\_ of the Tax-Exempt Funding Loan evidenced by the Series A-1 Governmental Note and \$\_\_\_\_\_ of the Tax-Exempt Funding Loan evidenced by the Series A-2 Governmental Note), which amount shall be advanced by the Administrative Agent and deposited into the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund in accordance with Sections 2.12 and 4.02 hereof. Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Funding Loan may be drawn down and funded hereunder after the Advance Termination Date. Any extension of the Advance Termination Date shall be subject to the receipt by the Fiscal Agent of (i) the prior written consent of the Administrative Agent and Freddie Mac and (ii) an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that such extension will not adversely affect the tax-exempt status of the Tax-Exempt Governmental Note. The proceeds of the Governmental Notes shall be advanced in the following order: (1) first, proceeds of the Tax-Exempt Governmental Note; and (2) second, proceeds of the Taxable Governmental Note.

(c) The Fiscal Agent shall maintain in its books a log which shall reflect the principal amount of each of the Governmental Notes advanced by the Administrative Agent from time to time (i) in accordance with the provisions of subsection (b) above, or (ii) during the Construction Phase, with respect to interest due on the Funding Loan and other amounts due to the Administrative Agent, in accordance with the immediately following sentence (the “**Record of Advances**”). The Administrative Agent shall give the Fiscal Agent notice of any advances made directly to the Administrative Agent or the Initial Funding Lender under Section \_\_\_\_\_ of the Construction Continuing Covenant Agreement, and the Fiscal Agent shall enter the amounts of such advances in the Record of Advances. The principal amount due on each of the Governmental Notes shall be only such amount as has been advanced by the

Administrative Agent as reflected in the Record of Advances and not otherwise prepaid pursuant to the terms of this Funding Loan Agreement. The records maintained by the Fiscal Agent in such regard will be conclusive evidence of the principal amount of the Governmental Notes (absent manifest error). The Fiscal Agent shall notify the Governmental Lender, the Freddie Mac Seller/Servicer, Freddie Mac, and the Borrower if any advance of the proceeds of the Funding Loan is not made by the Administrative Agent when due hereunder.

(d) The Funding Loan shall bear interest payable on each Interest Payment Date at (i) the applicable Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase. Interest shall accrue on the principal amount of the Funding Loan which has been advanced hereunder and is outstanding as reflected on the Record of Advances.

(e) The Funding Loan shall mature on \_\_\_\_\_ 1, 20\_\_\_, subject to scheduled monthly principal payments, and to optional and mandatory prepayment prior to maturity as provided in Article III hereof. The unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the initial Governmental Note Amortization Schedule. If the Forward Commitment Maturity Date is extended by Freddie Mac in accordance with the Freddie Mac Commitment and the Construction Phase Financing Agreement, the first principal payment date under each of the Governmental Note Amortization Schedules shall automatically be extended to the first day of the month immediately succeeding the Conversion Date (with the succeeding principal installments remaining consistent with the original schedule, but occurring on later dates). Additionally, in the event the outstanding principal amount of the Funding Loan on the Conversion Date is less than the starting principal amount set forth in the initial Governmental Note Amortization Schedules, new Governmental Note Amortization Schedules will be generated on the Conversion Date at such lesser outstanding principal amount based on the parameters set forth in the Freddie Mac Commitment. In the event any of the initial Governmental Note Amortization Schedules are modified in accordance with this subsection (e), a replacement Governmental Note Amortization Schedule will be provided by the Freddie Mac Seller/Servicer which will be attached to the Governmental Note on the Conversion Date. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date.

(f) Payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by the Funding Lender (unless otherwise directed by the Funding Lender).

(g) Subject to Section 2.13 hereof, on or before the date fixed for payment, money shall be deposited by the Borrower with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

(h) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents and such rate shall automatically be reduced to the maximum rate permitted by such law.

(i) On or prior to the Conversion Date, the Governmental Lender shall execute and deliver to the Fiscal Agent a consolidated Tax-Exempt Governmental Note, which consolidates the Series A-1 Governmental Note and the Series A-2 Governmental Note, with a single Governmental Note

Amortization Schedule in substantially the form set forth in *Exhibit A-1*. On or prior to the Conversion Date, the Taxable Governmental Note and the Taxable Project Note shall be consolidated into an Amended and Restated Taxable Project Note, which the Governmental Lender shall endorse if required by the Freddie Mac Seller/Service, and the Taxable Governmental Note shall no longer be outstanding hereunder.

**Section 2.02 Pledged Security.** To secure the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan according to its tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Notes, and the payment and performance of all amounts and obligations under the Continuing Covenant Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its and their assigns in and to the following (said property being herein referred to as the “**Pledged Security**”) for the benefit of the Funding Lender:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Project Loan Agreement, the Project Notes, the Security Instrument and the other Project Loan Documents (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loan by the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest, and Prepayment Premium, if any, to become due with respect to the Funding Loan at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Notes; otherwise, this Funding Loan Agreement to be and shall remain in full force and effect.

**Section 2.03 Limited Obligations.** The Governmental Notes are special, limited obligations of the Governmental Lender payable solely from the Pledged Security and any other revenues, funds, and assets pledged under this Funding Loan Agreement and not from any other revenues, funds, or assets of the Governmental Lender. The Governmental Notes are not a general obligation, debt, or bonded indebtedness of the Governmental Lender, the State, or any political subdivision thereof (other than of the Governmental Lender to the limited extent set forth in this Funding Loan Agreement) and the holders of the Governmental Notes do not have the right to have any excises or taxes levied by the Governmental Lender, the State, or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on the Governmental Notes. None of the Governmental Lender, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on the Governmental Notes or other costs incident thereto except from the Pledged Security pledged under this Funding Loan Agreement. No provision, covenant, or agreement contained in this Funding Loan Agreement or the Governmental Notes, or any obligation herein or therein imposed upon the Governmental Lender, or the breach thereof, shall constitute or give rise to or impose a liability upon the Governmental Lender (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Governmental Lender's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Governmental Notes as provided herein and in the Act. Any recourse for a cause of action under this Funding Loan Agreement or the Governmental Notes shall be payable solely from the Pledged Security.

**Section 2.04 Funding Loan Agreement Constitutes Contract.** In consideration of the origination and funding of the Funding Loan by the Administrative Agent, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Administrative Agent and any successors or assigns thereof in such capacity from time to time.

**Section 2.05 Form and Execution.** The Series A-1 Governmental Note and the Series A-2 Governmental Note shall be in substantially the form attached as Exhibit A-1 hereto, and the Series B-1 Governmental Note and the Series B-2 Governmental Note shall be in substantially the format attached as Exhibit A-2 hereto. The Series A-1 Governmental Note and the Series B-1 Governmental Note shall be issued in favor of U.S. Bank, and the Series B-1 Governmental Note and the Series B-2 Governmental Note shall be issued in favor of BMO Harris Bank. The Governmental Notes shall be executed on behalf of the Governmental Lender by the manual or facsimile signatures of the Mayor and City Manager of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Notes. In case said officers of the Governmental Lender whose manual or facsimile signatures shall appear on any of the Governmental Notes shall cease to be said officer of the Governmental Lender before the delivery of the Governmental Notes, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if said officer of the Governmental Lender had remained in office until delivery. The Governmental Notes may be signed on behalf of the Governmental Lender by said officers as are at the time of execution of the Governmental Notes proper officers of the Governmental Lender, even though at the date of the Governmental Notes, said officers were not such officers. Any reproduction of the official seal of the Governmental Lender on the Governmental Notes shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Notes.

**Section 2.06 Authentication.** The Governmental Notes shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Notes, substantially in the forms set forth in Exhibit A-1 and Exhibit A-2, as applicable, shall have been duly executed by an Responsible Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Notes shall be conclusive evidence



that the Governmental Notes have been duly executed, registered, authenticated, and delivered under this Funding Loan Agreement.

**Section 2.07 *Mutilated, Lost, Stolen or Destroyed Governmental Note.*** In the event a Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in *Exhibit A-1* and *Exhibit A-2*, as the case may be, in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Administrative Agent of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where a Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that such Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event a Governmental Note shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

**Section 2.08 *Registration; Transfer of Funding Loan; Transferee Representations Letter.***

(a) The Funding Loan shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Funding Loan shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Funding Loan and any transfers of the Funding Loan as provided herein. The **Funding Loan shall initially be registered to the Initial Funding Lender**, upon the Conversion Date shall be registered to the Freddie Mac Seller/Servicer, and upon the Freddie Mac Purchase Date, shall be registered to Freddie Mac.

(b) The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan or to grant a participation interest in the Funding Loan in a percentage of not less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan (except during the Construction Phase there shall be no such limit on participation in the Funding Loan); provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act or a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities Act (such “accredited investor” or “qualified institutional buyer” a “**Qualified Transferee**”) that delivers a letter to the Fiscal Agent substantially in the form attached hereto as *Exhibit C* setting forth certain representations with respect to such Qualified Transferee (the “**Transferee Representations Letter**”). Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required for the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold or transferred except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better. In connection with any sale, assignment or transfer of the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Funding Loan.

**Section 2.09 Restrictions on Transfer.** Subject to the exception set forth in Section 2.08 hereof, the Governmental Notes and any participation interest therein may be transferred, in accordance with Section 2.08 hereof and this Section 2.09. The Fiscal Agent shall not register any transfer or exchange of the Governmental Notes unless the prospective transferee delivers to the Governmental Lender and the Fiscal Agent the required Transferee Representations Letter substantially in the form set forth in Exhibit C to this Funding Loan Agreement. The Fiscal Agent shall be entitled to rely, without any further inquiry, on any Transferee Representations Letter delivered to it and shall be fully protected in registering any transfer or exchange of the Governmental Notes or any interest therein in reliance on any such transferee representations which appear on their face to be correct and of which the Fiscal Agent has no actual knowledge otherwise. Any such holder desiring to effect such transfer shall agree to indemnify the Governmental Lender and the Fiscal Agent from and against any and all liability, cost, or expense (including attorneys' fees) that may result if the transfer is not so exempt or is not made in accordance with such federal and state laws. Following the initial sale of the Tax-Exempt Governmental Note to the Funding Lender, the Borrower and any "related party" (as defined in Section 144(a)(3) of the Code) shall be prohibited from purchasing the Tax-Exempt Governmental Note in an amount related to the outstanding principal amount of the Tax-Exempt Project Note without the prior written consent of the Governmental Lender.

**Section 2.10 Funding Loan Closing Conditions; Delivery of Governmental Notes.** Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Notes and deliver the Governmental Notes to the Administrative Agent upon, receipt by the Fiscal Agent of the following:

(a) executed counterparts of this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement, and the Tax Certificate;

(b) an opinion of Bond Counsel or counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Notes and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) the initial advance of the proceeds of the Funding Loan by the Administrative Agent in the amount set forth in Section 2.01(b) hereof;

(d) the executed Project Notes and an endorsement of the Project Notes by the Governmental Lender in favor of the Fiscal Agent;

(e) the executed counterparts of the Security Instrument, the Assignment, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement;

(f) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(g) a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the interest on the Tax-Exempt Governmental Note, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(h) a certified copy of the Resolution;

(i) the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Notes to the Administrative Agent upon funding to the Fiscal Agent of the initial advance of the Funding Loan; and

(j) receipt by the Fiscal Agent of the amounts specified in Section 2.12 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement.

**Section 2.11 *Conditions of Second and Subsequent Advances of Funding Loan Proceeds.***  
Following the initial advance of the proceeds of the Funding Loan described in Section 2.01 (b) made in the amount of \$50,001, additional advances of the proceeds of the Funding Loan shall be conditioned on the delivery by the Borrower to the Fiscal Agent of evidence that the Tax Regulatory Agreement has been recorded in the property records of Hennepin County, Minnesota and the items required under the Construction Continuing Covenant Agreement.

**Section 2.12 *Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money.***

(a) The Fiscal Agent shall establish, maintain, and hold in trust, and there is hereby established with the Fiscal Agent a Project Loan Fund and therein a Borrower Equity Account and a Project Account (and within the Project Account a Taxable Note Proceeds Subaccount, and a Tax-Exempt Note Proceeds Subaccount). No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.12 and Section 4.02 hereof.

(b) Upon compliance by the Borrower with all applicable conditions in the Construction Continuing Covenant Agreement, the initial advance of proceeds of the Funding Loan shall be delivered by the Administrative Agent to the Fiscal Agent on behalf of the Governmental Lender on the Delivery Date and thereafter, subject to the provisions of Section 2.11, on a draw-down basis as provided for in Section 2.01(b) hereof. Upon receipt, the Fiscal Agent shall deposit such proceeds evidenced by the Tax-Exempt Governmental Note to the credit of the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund and such proceeds evidenced by the Taxable Governmental Note to the credit of the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund. Amounts in the Project Loan Fund shall be disbursed as provided in subsection (d) below, subject to the conditions set forth in Section 3.01 of the Project Loan Agreement. Upon the disbursement of all amounts to be disbursed from the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) The Borrower shall deliver or cause to be delivered from sources other than the Loans, (i) to the Fiscal Agent, on or prior to the Delivery Date, any Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account of the Project Loan Fund or the Cost of Issuance Fund, and (ii) to the Servicer any Initial Debt Service Deposit. The Fiscal Agent shall also deposit in the Borrower Equity Account any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein, excluding any proceeds of the Loans.

(d) Upon the making of the initial deposits described above in this Section 2.12, the Governmental Lender shall originate the Project Loan pursuant to the Project Loan Agreement and the

Fiscal Agent shall make the initial disbursement of amounts in the Project Loan Fund to (i) the Title Company for further disbursement in accordance with the Disbursing Agreement, or (ii) otherwise as provided in Section 4.02 hereof. A portion of the initial disbursement may be used to pay Costs of Issuance.

**Section 2.13** *Direct Loan Payments to Servicer; Servicer Disbursement of Fees.*

(a) Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans (during the Construction Phase the Administrative Agent will serve as the Servicer), the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Project Loan Agreement shall be paid by the Borrower to the Servicer. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee (if any) collected from the Borrower and shall remit the Governmental Lender Fee (if any) to the Governmental Lender and shall remit the Fiscal Agent's Ordinary Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative, and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Project Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(b) If the Funding Loan is sold or transferred as provided in Section 2.08 hereof, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

(c) So long as payments of principal of, Prepayment Premium, if any, and interest on the Governmental Notes and all fees due hereunder and under the Project Loan Agreement are being made to the Administrative Agent or the Servicer in accordance with this Section 2.13 and no Event of Default has occurred of which the Fiscal Agent has been given, or been deemed to have, notice thereof pursuant to this Funding Loan Agreement, the Fiscal Agent shall have no obligations to collect loan payments with respect to the Funding Loan, nor shall it be obligated to collect loan payments or fee payments pursuant to the Project Loan Agreement, except at the express written direction of the Funding Lender Representative. Notwithstanding the foregoing, the Funding Lender Representative may elect to have the Fiscal Agent collect and remit loan payments and fee payments hereunder and under the Project Loan Agreement upon written notice of such election to the Fiscal Agent, the Borrower and the Governmental Lender.

**Section 2.14** *Conversion.* If the Notice of Conversion is issued in the timeframe required under the Construction Phase Financing Agreement, Conversion will occur on the Conversion Date indicated in such Notice of Conversion. If the Notice of Conversion is not so issued, Conversion will not occur and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligations with respect to the purchase of the Tax-Exempt Funding Loan or otherwise with respect to the Loans or the Project.

## ARTICLE III

### PREPAYMENT OF THE FUNDING LOAN

#### **Section 3.01** *Prepayment of the Funding Loan Prior to Maturity.*

(a) **Optional Prepayment.** The Funding Loan, together with accrued interest thereon, is subject to optional prepayment in whole upon optional prepayment of the Project Loan in accordance with the notice and other prepayment provisions set forth in (i) the Project Notes; or (ii) during the Construction Phase, the Construction Continuing Covenant Agreement.

(b) **Mandatory Prepayment.** The Funding Loan, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Project Notes), is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

(i) in whole or in part, upon the occurrence of a mandatory prepayment of the Project Loan pursuant to a Project Note and receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loan shall be subject to mandatory prepayment as a result thereof;

(ii) in part, on the Interest Payment Date next following the completion of the acquisition, construction, and equipping of the Project, to the extent amounts remaining in the Taxable Note Proceeds Account of the Project Account of the Project Loan Fund or in the Tax-Exempt Note Proceeds Account of the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof;

(iii) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment;

(iv) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Administrative Agent, if the Notice of Conversion is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date; or

(v) in whole, as provided in the Construction Continuing Covenant Agreement.

**Section 3.02** *Notice of Prepayment.* Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent by first class mail, postage prepaid, or by overnight delivery service, to the Funding Lender. All such prepayment notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional prepayment occurring after Conversion) nor more than sixty (60) days prior to the date fixed for prepayment. Notices of prepayment shall state (i) the prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by overnight delivery service, to the Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loan.

Notwithstanding the foregoing, in the event the Fiscal Agent is not collecting and remitting loan payments hereunder, the Fiscal Agent shall have no obligation to send prepayment notices pursuant to this Section 3.02.

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## ARTICLE IV

### REVENUES AND FUNDS

**Section 4.01 *Pledge of Revenues and Assets; Establishment of Funds.*** The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loan and delivery of the Governmental Notes by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Notes. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

In addition to the Project Loan Fund established pursuant to Section 2.12 hereof, the Fiscal Agent shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Loan Payment Fund;
- (c) Loan Prepayment Fund;
- (d) Administration Fund;
- (e) Cost of Issuance Fund; and
- (f) Rebate Fund.

The funds and accounts established pursuant to Section 2.12 hereof and this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

#### **Section 4.02 *Project Loan Fund.***

(a) The Fiscal Agent shall deposit proceeds of the Tax-Exempt Funding Loan into the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund upon receipt of each advance thereof as provided in Section 2.12(b) hereof. The Fiscal Agent shall deposit the proceeds of the Taxable Funding Loan into the Taxable Note Proceeds Subaccount of the Project Account of the

Project Loan Fund upon receipt of each advance thereof as provided in Section 2.12(b) hereof. The Fiscal Agent shall deposit \$0.00 of the Borrower Equity Deposit into the Borrower Equity Account of the Project Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Notes), as provided in Section 2.12(c) hereof.

(b) Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by the Fiscal Agent to the Title Company in accordance with this Funding Loan Agreement and the Construction Continuing Covenant Agreement, and thereafter by the Title Company pursuant to the Disbursing Agreement, for the purpose of paying: (i) Costs of the Project from the Taxable Note Proceeds Subaccount of the Project Account and from the Tax-Exempt Note Proceeds Subaccount of the Project Account; (ii) other costs of the Project from the Tax-Exempt Note Proceeds Subaccount of the Project Account, subject to the ninety-five percent (95%) “qualified residential rental project” use requirement in Section 142(a) of the Code, the two percent (2%) costs of issuance limitation in Section 147(g) of the Code, the reimbursement limitation in Section 1.150-2 of the Treasury Regulations, and the working capital limitations in Section 1.148-6(d) of the Treasury Regulations (with respect solely to the Tax-Exempt Note Proceeds Subaccount of the Project Account); and (iii) other costs of the Project from the Borrower Equity Account and Taxable Note Proceeds Subaccount of the Project Account. In addition, amounts in the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) below.

Amounts in the Tax-Exempt Note Proceeds Subaccount and Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) below.

(c) The Fiscal Agent shall make disbursements from the respective accounts and subaccounts of the Project Loan Fund for purposes described in subsection (b) above only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (which shall be the Administrative Agent during the Construction Phase) signifying the consent to the Requisition by the Servicer. The Fiscal Agent shall have no right or duty to determine whether any requested disbursement from the Project Loan Fund complies with the terms, conditions, and provisions of the Construction Continuing Covenant Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions, and requirements of the Construction Continuing Covenant Agreement applicable to such disbursement have been fully satisfied or waived. The Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which a default has occurred and is then continuing under the Loans or any Financing Document (notice of which default has been given in writing by the Funding Lender Representative or the Servicer to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer or (as permitted hereunder) solely by an Authorized Officer of the Servicer, is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent to the Title Company, as soon as practicable, but in no event later than three (3) Business Days following



receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts to be deposited in the Project Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Project Loan Fund.

(e) Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project Loan Fund shall, at the written direction of the Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loan, if any. In addition, any amount remaining in the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund or the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement, evidenced by an instrument signed by the Funding Lender Representative or the Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loan in accordance with Section 3.01(b)(ii) hereof, unless the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect the tax-exempt status of the Tax-Exempt Governmental Note; provided, that any amounts in the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loan shall be transferred to the Rebate Fund. In the event there are funds remaining in the Borrower Equity Account following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement and the Conversion Date has occurred, and provided no default by the Borrower exists under this Funding Loan Agreement or any Project Loan Document, such funds shall be paid by the Fiscal Agent to the Borrower at the written direction of the Funding Lender Representative or the Servicer.

(f) Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

#### **Section 4.03    *Application of Revenues.***

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Funding Loan received by the Fiscal Agent pursuant to Section 2.01(b), which shall be applied in accordance with the provisions of Section 2.12 hereof; (ii) as otherwise specifically provided in subsection (c) below with respect to certain deposits into the Loan Prepayment Fund; (iii) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iv) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) Subject to Section 2.13 hereof, on each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, the Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

**FIRST:**        to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loan on such date (including scheduled principal pursuant to each of the Governmental Note Amortization Schedules); and

**SECOND:**      to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loan on such date with respect to a mandatory prepayment of all or a portion of the

Funding Loan pursuant to Section 3.01(b) hereof (other than any extraordinary mandatory prepayment as described in clause (i) or (iii) of subsection (c) below).

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(a) hereof; and (iii) amounts transferred to the Loan Prepayment Fund from the Project Loan Fund pursuant to Section 4.02(e) hereof.

(d) Subject to Section 2.13 hereof, should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

**Section 4.04 *Application of Loan Payment Fund.*** Subject to Section 2.13 hereof, the Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Interest Payment Date as provided in Sections 4.03(a) and 4.03(b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.05 *Application of Loan Prepayment Fund.*** Any money credited to the Loan Prepayment Fund shall be applied as set forth in Section 4.03(b) and (c) hereof; provided, however, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Section 4.03(b) and (c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Interest Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money be used to effect a prepayment for which a conditional notice of prepayment, the conditions of which have been satisfied, or an unconditional notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.06 *Administration Fund.*** Subject to Section 2.13 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the

Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used **FIRST**, to pay to the Fiscal Agent when due the Fiscal Agent's Ordinary Fees and Expenses; **SECOND**, to pay to the Governmental Lender when due the Governmental Lender Fee; **THIRD**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement, the Project Loan Agreement, and the Tax Certificate upon receipt of an invoice from the Rebate Analyst; **FOURTH**, to pay to the Fiscal Agent any Fiscal Agent's Extraordinary Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FIFTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; **SIXTH**, to pay to the Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; **SEVENTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment on such prepayment date; and **EIGHTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency. Upon payment by the Borrower or the Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

**Section 4.07** *[Reserved]*.

**Section 4.08** *Investment of Funds.* The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b) hereof), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six (6) months from the date of investment, and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. The Fiscal Agent shall be entitled to rely on any written direction of the Borrower as to the suitability and legality of the directed investment. In the absence of written direction from the Borrower, the Fiscal Agent shall hold amounts on deposit in the funds and accounts established under this Funding Loan Agreement uninvested. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Fiscal Agent shall be entitled

to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss, fee, tax, or other charge resulting from any investment made in accordance herewith.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

**Section 4.09** *[Reserved].*

**Section 4.10** *Accounting Records.* The Fiscal Agent shall maintain accurate books and records for all funds and accounts established hereunder.

**Section 4.11** *Amounts Remaining in Funds.* After full payment of the Funding Loan (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Servicer and other amounts required to be paid hereunder or under any Project Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Funding Lender Representative or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

**Section 4.12** *Rebate Fund; Compliance with Tax Certificate.* The Rebate Fund shall be established by the Fiscal Agent and held and applied as provided in this Section 4.12. On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Governmental Lender, the Borrower nor the Funding Lender shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.12 and by the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Governmental Lender, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Governmental Lender, Bond Counsel or the Rebate Analyst.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall deliver to the Fiscal Agent and the Governmental Lender a certificate that it

has determined no Rebatale Arbitrage (as defined below) is due or shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the “**Rebatale Arbitrage**”). Pursuant to Section 2.04 of the Project Loan Agreement, the Borrower shall cause the Rebate Analyst to provide any such calculations to the Fiscal Agent and the Governmental Lender. In the event that the Borrower fails to provide such information to the Fiscal Agent and the Governmental Lender within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall select the Rebate Analyst, with the prior written approval of the Governmental Lender, and shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage as required herein.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, upon the written direction of the Governmental Lender, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Fiscal Agent from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatale Arbitrage so calculated in accordance with the preceding paragraph.

The Fiscal Agent shall pay, as directed by the Governmental Lender, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

- (i) Not later than sixty (60) days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least ninety (90%) of the Rebatale Arbitrage calculated as of the end of such Rebate Year; and
- (ii) Not later than sixty (60) days after the payment in whole of the Funding Loan, an amount equal to one hundred percent (100%) of the Rebatale Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatale Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Fiscal Agent.

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebatale Arbitrage to the United States of America and to comply with all other requirements of Sections 2.04 and 4.03 of the Project Loan Agreement and this Section 4.12, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Funding Loan.

Any funds remaining in the Rebate Fund after payment in full of the Funding Loan and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Fiscal Agent, shall be withdrawn and remitted to the Borrower.

The Fiscal Agent shall obtain and keep such records of the computations made pursuant to this Section 4.12 as are required under Section 148(f) of the Code to the extent furnished to the Fiscal Agent. The Borrower shall or shall cause the Rebate Analyst to provide to the Governmental Lender and the Fiscal Agent copies of all rebate computations made pursuant to this Section 4.12. The Fiscal Agent shall keep and make available to the Borrower such records concerning the investments of the gross proceeds

of the Funding Loan and the investments of earnings from those investments made by the Fiscal Agent as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebatable Arbitrage need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Governmental Note, a copy of which shall be provided to the Fiscal Agent and the Funding Lender Representative, at the expense of the Borrower.

**Section 4.13 Cost of Issuance Fund.** The Fiscal Agent shall use money on deposit to the credit of the Cost of Issuance Fund to pay the costs of issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of ***Exhibit D*** to be given to the Fiscal Agent by the Borrower on the Delivery Date, along with appropriate invoices for such expenses. Amounts in the Cost of Issuance Fund funded with proceeds of the Funding Loan, if any, shall be expended prior to the application of any Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Cost of Issuance Fund.

**Section 4.14 Reports from the Fiscal Agent.** The Fiscal Agent shall, on or before the fifteenth day of each month, file with the Funding Lender Representative, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month:

- (i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;
- (ii) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and
- (iv) any other information which the Funding Lender Representative or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Governmental Lender and the Funding Lender Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

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## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

**Section 5.01** *Payment of Principal and Interest.* The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan at the place, on the dates and in the manner provided herein and in the Governmental Notes, according to the true intent and meaning thereof.

**Section 5.02** *Performance of Covenants.* The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Notes and in all proceedings pertaining thereto.

**Section 5.03** *Instruments of Further Assurance.* The Governmental Lender covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such supplements hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning, and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts, and other amounts pledged hereby to the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Governmental Lender under this Section 5.03. The Governmental Lender covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Fiscal Agent, the Funding Lender Representative, and the Servicer in writing of the occurrence of any of the following:

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;
- (ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;
- (iii) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;
- (iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes; or

(v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

**Section 5.04 *Inspection of Project Books.*** The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate.

**Section 5.05 *No Modification of Security; Additional Indebtedness.*** The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or

(ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument.

**Section 5.06 *Damage, Destruction or Condemnation.*** Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

**Section 5.07 *Tax Covenants.***

(a) *Governmental Lender's Covenants.* The Governmental Lender covenants that it will:

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Tax-Exempt Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Tax-Exempt Governmental Note to be "arbitrage bonds" under Section 148 of the Code and the Treasury Regulations issued under Section 148 of the Code or which would otherwise cause the interest payable on the Tax-Exempt Governmental Note to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all material obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Tax Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Tax-Exempt Governmental Note to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary of which it has knowledge in order to assure that interest paid by the Governmental Lender on the Tax-Exempt Funding Loan evidenced by the Tax-Exempt Governmental Note will be excludable from the gross income for federal income tax purposes, of the Funding Lender pursuant to the



Code, except in the event where the Funding Lender is a “substantial user” of the facilities financed with the Loans or a “related person” within the meaning of the Code; and

(v) not take any action or permit or suffer any action within its control and of which it has knowledge to be taken if the result of the same would be to cause the Tax-Exempt Governmental Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Treasury Regulations.

In furtherance of the covenants in this Section 5.07, the Governmental Lender shall execute and deliver an endorsement to the Tax Certificate, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

(b) *Fiscal Agent’s Covenants.* The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement in accordance with the covenants and terms of this Funding Loan Agreement and the Tax Certificate (this covenant shall extend through the term of the Funding Loan, to all funds and accounts created under this Funding Loan Agreement, and all money on deposit to the credit of any such fund or account). The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Tax-Exempt Governmental Note to be classified as “arbitrage bonds” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Tax-Exempt Governmental Note to be includable in gross income for federal income tax purposes; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, Bond Counsel, or the Rebate Analyst. This covenant shall extend, throughout the term of the Funding Loan, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Funding Loan with the requirements of Sections 103(b) and 148 of the Code; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, Bond Counsel, or the Rebate Analyst. The Fiscal Agent further covenants that should the Governmental Lender, the Borrower, or the Funding Lender Representative file with the Fiscal Agent (it being understood that none of the Governmental Lender, the Borrower, or the Funding Lender Representative has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Funding Loan would cause the Tax-Exempt Governmental Note to become “arbitrage bonds,” then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower, the Funding Lender Representative or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Tax-Exempt Governmental Note from becoming “arbitrage bonds,” and the Fiscal Agent will bear no liability to the Governmental Lender, the Borrower, the Funding Lender, or the Funding Lender Representative for investments made in accordance with such instructions.

**Section 5.08 Representations and Warranties of the Governmental Lender.** The Governmental Lender hereby represents and warrants as follows:

(a) The Governmental Lender is a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State.

(b) The Governmental Lender has all necessary power and authority to issue the Governmental Notes and to execute and deliver this Funding Loan Agreement, the Project Loan Agreement and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

(d) The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender.

(e) To the actual knowledge of the Governmental Lender, the execution and delivery of the Governmental Notes and this Funding Loan Agreement, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

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## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

**Section 6.01 *Events of Default.*** Each of the following shall be an event of default with respect to the Funding Loan (an “**Event of Default**”) under this Funding Loan Agreement:

(a) failure to pay the principal of, Prepayment Premium, if any, or interest on the Funding Loan when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Notes and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Governmental Lender from the Fiscal Agent or the Funding Lender Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the occurrence of an “Event of Default” under the Project Loan Agreement or the Continuing Covenant Agreement.

The Fiscal Agent will promptly notify the Governmental Lender, the Servicer and the Funding Lender Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

**Section 6.02 *Acceleration; Other Remedies Upon Event of Default.*** Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender, declare the principal of the Funding Loan and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Governmental Lender, and the Fiscal Agent, rescind and annul such declaration and its consequences if the Governmental Lender or the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loan then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loan then due, with interest at the rate borne by the Funding Loan on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Fiscal Agent (including its counsel)

shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the “**Cure Amount**”) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Funding Lender, may also proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of the Funding Lender Representative (which consent may be given in the sole discretion of the Funding Lender Representative):

(i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, Prepayment Premium, if any, or interest on the Funding Loan and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Project Loan Agreement or the Tax Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;

(ii) by pursuing any available remedies under the Project Loan Agreement, the Tax Regulatory Agreement or any other Financing Document;

(iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Project Loan Agreement, the Tax Regulatory Agreement, the Continuing Covenant Agreement or any other Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Upon the occurrence and during the continuance of an Event of Default under Section 6.01(c) hereof, the Borrower and its partners shall have the same rights to notice and cure as those conferred upon the Governmental Lender pursuant to Section 6.01(c) and this Section 6.02; provided that, the Borrower

and its partners may undertake to cure any such Event of Default only upon the receipt of the prior written consent of the Governmental Lender.

**Section 6.03 *Funding Lender Representative Control of Proceedings.*** If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express direction of the Funding Lender Representative.

**Section 6.04 *Waiver by Governmental Lender.*** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and prepayment to which it may be entitled under the laws of the State and the United States of America.

**Section 6.05 *Application of Money After Default.*** All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund, and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Notes shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement.

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the Continuing Covenant Agreement or the Security Instrument.

(c) Unless the full principal amount of the Funding Loan shall have become or have been declared due and payable:

**FIRST**: to the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

**SECOND:** to the Funding Lender, unpaid principal of and Prepayment Premium, if any, on the Funding Loan which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

(d) If the full principal amount of the Governmental Notes shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, Prepayment Premium, if any, and interest then due and unpaid on the Funding Loan without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest.

(e) Notwithstanding subsections (c) and (d) above, during the Construction Phase, any amounts payable to the Funding Lender pursuant to such subsections will instead be paid to the Administrative Agent for distribution to the Initial Funding Lender as provided in the Construction Continuing Covenant Agreement.

**Section 6.06 Remedies Not Exclusive.** No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

**Section 6.07 Fiscal Agent May Enforce Rights Without Governmental Notes.** All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Notes or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

**Section 6.08 [Reserved].**

**Section 6.09 Termination of Proceedings.** In case the Fiscal Agent (at the direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

**Section 6.10 Waivers of Events of Default.** The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights hereunder,

respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.*** In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 6.12 *Assignment of Project Loan; Remedies Under the Project Loan.***

(a) The Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Project Notes, the Security Instrument and the other Project Loan Documents to the Funding Lender Representative, in which event the Fiscal Agent shall (i) endorse and deliver the Project Notes to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (ii) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents to the Funding Lender Representative and (iii) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (i) and (ii). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Notes, the Security Instrument or any other Project Loan Document, whether or not the Governmental Notes have been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

**Section 6.13 *Substitution.*** Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the Tax Regulatory Agreement, the Fiscal Agent shall exchange the Project Notes and the Security Instrument for new Project Notes and Security Instrument, evidencing and securing a new loan (the "**New Project Loan**"), which may be executed by a person other than the Borrower (the "**New Borrower**"), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Tax Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Tax Regulatory Agreement) and that the Project Loan Documents have been modified as necessary to be applicable to the New Project Loan; and (ii) an opinion of Bond Counsel, to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Tax-Exempt Governmental Note.

## ARTICLE VII

### CONCERNING THE FISCAL AGENT

**Section 7.01** *Standard of Care.* The Fiscal Agent, prior to an Event of Default and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and

(ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and

(ii) the Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Funding Lender Representative relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement.

**Section 7.02** *Reliance Upon Documents.* Except as otherwise provided in Section 7.01 hereof:

(a) the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document of the proper party or parties, including any Electronic Notice as permitted hereunder or under the Project Loan Agreement;



(b) any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys and shall not be responsible for the misconduct or negligence of such agent, receiver, or attorney appointed with due care, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Notes (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent; the Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged

Security, or as to the security of this Funding Loan Agreement, or of the Governmental Notes issued hereunder; and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this subsection (k);

(l) the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof; the Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Responsible Officer shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default; and every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this subsection (l);

(m) the Fiscal Agent shall be under no duty to review or analyze any financial or other statements or reports or certificates furnished pursuant to any provisions hereof and shall not be deemed to have notice of any information contained therein or event of default which may be disclosed in any manner therein, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of its administration of the trusts and other duties under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03, unless the Funding Lender Representative shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Project Loan Agreement and the Tax Regulatory Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the delivery of the Governmental Notes.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement. If the party sending the Electronic Notice elects to give the Fiscal Agent e-mail or facsimile instructions (or instructions by a similar electronic method), the Fiscal Agent's understanding of such instructions shall be deemed controlling. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such instructions notwithstanding that such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower, the Administrative Agent, the Governmental Lender, or any other party sending such Electronic Notice pursuant to this Funding Loan Agreement agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

In no event shall the Fiscal Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including but not limited to lost profits), even if the Fiscal Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

**Section 7.03 Use of Proceeds.** The Fiscal Agent shall not be accountable for the use or application of the Governmental Notes authenticated or delivered hereunder or of the proceeds of the Funding Loan except as provided herein.

**Section 7.04 [Reserved].**

**Section 7.05 Trust Imposed.** All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

**Section 7.06 Compensation of Fiscal Agent.** The Fiscal Agent shall be entitled to the Fiscal Agent's Ordinary Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Fiscal Agent's Extraordinary Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not incur any Fiscal Agent's Extraordinary Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Project Loan Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no

liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Fiscal Agent agrees that it shall continue to perform its duties hereunder and under the Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Fiscal Agent's Ordinary Fees and Expenses or, if applicable, the Fiscal Agent's Extraordinary Fees and Expenses as required by the Project Loan Agreement.

The Borrower shall indemnify and hold harmless the Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Notes or the Loans; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the delivery of the Governmental Notes or the Loans; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the gross negligence, willful misconduct or unlawful acts of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Fiscal Agent, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Funding Loan Agreement.

**Section 7.07 *Qualifications of Fiscal Agent.*** There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.11 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

**Section 7.08 *Merger of Fiscal Agent.*** Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary

notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

**Section 7.09 *Resignation by the Fiscal Agent.*** The Fiscal Agent may at any time resign from the trusts hereby created by giving written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.10 *Removal of the Fiscal Agent.*** The Fiscal Agent may be removed at any time upon thirty (30) days' notice, either with or without cause, with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the trusts hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.11 *Appointment of Successor Fiscal Agent.***

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within ten (10) days following the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

(b) If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) above within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

**Section 7.12 *Concerning Any Successor Fiscal Agent.*** Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor,

including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within thirty (30) days of such appointment, to the Funding Lender.

**Section 7.13 *Successor Fiscal Agent.*** In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Notes, and the successor Fiscal Agent shall become such Fiscal Agent.

**Section 7.14 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.*** It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the Project Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental

Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co-fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) the Governmental Notes shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co-fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co-fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co-fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-fiscal agent or separate fiscal agent;

(d) any co-fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co-fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co-fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal; a successor to any co-fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co-fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co-fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co-fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co-fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

**Section 7.15 *Notice of Certain Events.*** The Fiscal Agent shall give written notice to the Governmental Lender, the Servicer and the Funding Lender Representative of any failure by the Borrower to comply with the terms of the Tax Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

**Section 7.16 *[Reserved].***

**Section 7.17 *Filing of Financing Statements.*** The Fiscal Agent shall not be responsible for filing or for the sufficiency or accuracy of any financing statements initially filed to perfect security interests granted under this Funding Loan Agreement. The Fiscal Agent shall file continuation statements with respect to each UCC financing statement relating to the Pledged Security filed by the Borrower at the time of the issuance of the Governmental Notes; provided that a copy of the filed initial financing statement is timely delivered to the Fiscal Agent. In addition, unless the Fiscal Agent shall have been notified in writing by the Governmental Lender or the Funding Lender Representative that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in (a) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this section and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the customary fees charged by the Fiscal Agent for the preparation and filing of continuation statements and for the reasonable costs incurred by the Fiscal Agent in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "Extraordinary Services" fees.

**Section 7.18 *USA Patriot Act Requirements of the Fiscal Agent.*** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

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## ARTICLE VIII

### AMENDMENTS OF CERTAIN DOCUMENTS

**Section 8.01** *Amendments to This Funding Loan Agreement.* Any of the terms of this Funding Loan Agreement and the Governmental Notes may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

**Section 8.02** *Amendments to Financing Documents Require Consent of Funding Lender Representative.* Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative. The Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed by the Funding Lender Representative, including entering into the amendments and/or amendments and restatements attached as exhibits to the Construction Phase Financing Agreement on the Conversion Date.

**Section 8.03** *Opinion of Bond Counsel Required.* No amendment to this Funding Loan Agreement, the Governmental Notes, the Project Loan Agreement, the Project Notes, the Security Instrument, or the Tax Regulatory Agreement shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion; (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Tax-Exempt Governmental Note to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel acceptable to the Funding Lender Representative to the effect that any such proposed amendment, change, or modification is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations; and (iii) to the extent the Borrower is not in default under the Financing Documents and such amendment would change the essential economic terms of the Project Loan or impose upon the Borrower greater liability under the Financing Documents, the Borrower has consented to the same.

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## ARTICLE IX

### SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

**Section 9.01 *Discharge of Lien.*** If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest, and Prepayment Premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Notes, in any one or more of the following ways:

(a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or

(b) after the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or

(c) by the delivery of the Governmental Notes by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid all amounts due and owing under the other Financing Documents, and shall have paid all fees and expenses of and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Notes and in this Funding Loan Agreement expressed as to be kept, performed, and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by the Fiscal Agent for the payment of principal of, interest, and Prepayment Premium, if any, on the Governmental Notes, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

After the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Fiscal Agent pursuant to subsection (b) above if, under circumstances which do not cause interest on the Tax-Exempt Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (i) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (ii) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the

Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan; (iii) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (iv) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of this Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Tax-Exempt Governmental Note from gross income for federal income tax purposes; and (v) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender and the Servicer under the Financing Documents have been fully paid.

**Section 9.02 *Discharge of Liability on Funding Loan.*** Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 hereof) to pay or prepay the Funding Loan (whether upon or prior to their maturity or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as provided in Article III hereof, or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

**Section 9.03 *Payment of Funding Loan After Discharge of Funding Loan Agreement.*** Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest, or Prepayment Premium, if any, on a Governmental Note remaining unclaimed for three (3) years after the final Maturity Date or earlier payment date: (a) shall be reported and disposed of, at the expense of the Borrower, by the Fiscal Agent in accordance with applicable unclaimed property laws; and (b) to the extent permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

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

**ARTICLE X**  
**INTENTIONALLY OMITTED**

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01 *Servicing of the Loans.*** The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement. During the Construction Phase, the Servicer shall be the Administrative Agent.

**Section 11.02 *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Notes is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

**Section 11.03 *Construction of Conflicts; Severability.*** Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections contained in this Funding Loan Agreement shall not affect the remaining portions of this Funding Loan Agreement or any part thereof.

**Section 11.04 *Notices.***

(a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender

Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender: CITY OF MINNETONKA, MINNESOTA  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502  
Attn: Julie Wischnack, Community Development Director  
Email: jwischnack@eminnetonka.com  
Telephone: 952-939-8282

The Fiscal Agent: U.S. BANK NATIONAL ASSOCIATION  
Corporate Trust Services  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Dan Sheff, Vice President  
Email: dan.sheff@usbank.com  
Telephone: 651-466-6302

The Borrower: MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP  
c/o Dominion Development & Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400  
Attn: Ryan Lunderby  
Email: rlunderby@dominiuminc.com  
Telephone: 763-354-5634

with copies to: WINTHROP & WEINSTINE, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Attn: John M. Stern, Esq.  
Email: jstern@winthrop.com  
Telephone: 612-604-6588  
(which copy shall not constitute notice to Borrower)

CITIBANK, N.A.  
390 Greenwich Street, Second Floor  
New York, NY 10013  
Attn: Mark Sherman, Director  
Email: mark.sherman@citi.com

CITIBANK, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attn: Mark Sherman  
Email: mark.sherman@citi.com

NIXON PEABODY LLP  
799 Ninth Street NW, Suite 500  
Washington, DC 20001-4501  
Attn: Matthew W. Mullen, Esq.  
Email: mmullen@nixonpeabody.com

TCAM  
186 Lincoln Street  
Boston, MA 02111-2408  
Attn: Jenny Netzer

Administrative Agent, Funding  
Lender Representative, and  
Servicer (during Construction  
Phase):

U.S. BANK NATIONAL ASSOCIATION  
Community Lending Division  
800 Nicollet Mall, Third Floor  
BC-MN-H5AD  
Minneapolis, MN 55402  
Attn: Daniel P. Smith  
Email: daniel.smith1@usbank.com  
Telephone: 612-303-3689

U.S. BANK NATIONAL ASSOCIATION  
Community Lending  
1307 Washington Avenue, Suite 300  
St. Louis, MO 63103  
Attn: Alexander J. Silversmith  
Email: alexander.silversmith@usbank.com  
Telephone: 314-335-2661

with a copy to:

STINSON LEONARD STREET LLP  
50 South Sixth Street, Suite 2600  
Minneapolis, MN 55402  
Attn: David Kelley, Esq.  
Email: david.kelley@stinson.com  
Telephone: 612-335-1670

Funding Lender Representative  
(from Conversion Date to Freddie  
Mac Purchase Date) and Servicer  
(as of Freddie Mac Purchase Date):

KEYBANK NATIONAL ASSOCIATION  
11501 Outlook Street, Suite 300  
Mailcode: KS-01-11-0501  
Overland Park, KS 66211  
Attn: Ms. Gina Sullivan  
Email: Gina\_Sullivan@KeyBank.com

Funding Lender Representative (as  
of Freddie Mac Purchase Date):

FEDERAL HOME LOAN MORTGAGE CORPORATION  
8100 Jones Branch Drive, MS B4P  
McLean, VA 22102  
Attn: Multifamily Operations – Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: 703-714-4177

with a copy to:

FEDERAL HOME LOAN MORTGAGE CORPORATION  
8200 Jones Branch Drive, MS 210  
McLean, VA 22102  
Attn: Managing Associate General Counsel – Multifamily Legal  
Division  
Email: joshua\_schonfeld@freddiemac.com  
Telephone: 703-903-2000

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof known to the Fiscal Agent; and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

**Section 11.05 *Funding Lender Representative.***

(a) The Administrative Agent is the initial Funding Lender Representative with respect to the Governmental Notes. Upon the Conversion Date, the Freddie Mac Seller/Servicer shall become the Funding Lender Representative and upon the Freddie Mac Purchase Date, Freddie Mac shall become the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of ***Exhibit B*** hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation, the Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Servicer and the Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.

(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the



other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Notes and the Loans.

**Section 11.06 *Payments Due on Non-Business Days.*** In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

**Section 11.07 *Counterparts.*** This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.08 *Laws Governing Funding Loan Agreement.*** The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

**Section 11.09 *No Recourse.*** No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Notes shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Notes. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Notes.

**Section 11.10 *Successors and Assigns.*** All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

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

**IN WITNESS WHEREOF**, the Governmental Lender, the Administrative Agent, and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

Execution page of the Administrative Agent, on behalf of the Initial Funding Lender, to the Funding Loan Agreement, dated as of the date and year first written above.

**U.S. BANK NATIONAL ASSOCIATION**

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

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

**U. S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

EXHIBIT A-1

FORM OF TAX-EXEMPT GOVERNMENTAL NOTE

BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS NOTE AGREES (A) THAT (I) IF APPLICABLE, IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT AND (II) THAT IT WILL NOT SELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
CITY OF MINNETONKA

MULTIFAMILY NOTE  
with designation as  
Multifamily Housing Revenue Note  
(Legends of Minnetonka Project)  
Series 2018A[-1] [-2]

US \$ \_\_\_\_\_

September \_\_\_, 2018

FOR VALUE RECEIVED, the undersigned, the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of [U.S. Bank National Association, a national banking association] [BMO Harris Bank N.A., a national banking association], or its registered assigns (the “**Funding Lender**”), the maximum principal sum of \_\_\_\_\_ and \_\_\_/100 Dollars (US \$ \_\_\_\_\_), plus Prepayment Premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A[-1] [-2] (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement, dated as of September 1, 2018 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for the Funding Lender, the Obligor, and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent under the Funding Loan Agreement (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$ \_\_\_\_\_ (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”) pursuant to a Project Loan Agreement, dated as of September 1, 2018 (the “**Project Loan Agreement**”), between the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to

the proceeds of this Note advanced by Administrative Agent, on behalf of the Funding Lender, according to the Funding Loan Agreement and not otherwise repaid.

In addition to this Note, the Tax-Exempt Funding Loan is also evidenced by the Governmental Lender's Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A[-1] [-2].

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the registered holder of this Note, and (ii) the term "Indebtedness" means the principal of, Prepayment Premium, if any, and interest on or any other amounts due at any time under the Tax-Exempt Notes, the Taxable Governmental Notes, or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing October 1, 2018 interest on this Note at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an "**Interest Payment Date**"). Interest shall accrue on the principal amount of this Note which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on \_\_\_\_\_ 1, 20\_\_ (the "**Maturity Date**") and in monthly installments on each date set forth on the Governmental Note Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 may be replaced by a new Governmental Note Amortization Schedule provided by the Freddie Mac Seller/Servicer on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender's discretion. Neither the Funding Lender's acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for herein or in any other Financing Document evidencing or securing the Funding Loan, whether considered separately or together with other charges provided for in any such other Financing Document, violates that law, and the Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Minnesota (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date or on the date of any mandatory prepayment or acceleration, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date or such other date at the Default Rate.

15. **Limited Obligation.** This Note is a special, limited obligation of the Obligor payable solely from the Pledged Security and any other revenues, funds and assets pledged under the Funding Loan Agreement and not from any other revenues, funds or assets of the Obligor. This Note is not a general obligation, debt or bonded indebtedness of the Obligor, the State or any political subdivision thereof (other than of the Obligor to the limited extent set forth in the Funding Loan Agreement) and the holder of this Note does not have the right to have any excises or taxes levied by the Obligor, the State or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on this Note. None of the Obligor, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on this Note or other costs incident thereto except from the Pledged Security pledged under the Funding Loan Agreement. No provision, covenant, or agreement contained in this Note or the Funding Loan Agreement, or any obligation herein or therein imposed upon the Obligor, or the breach thereof, shall constitute or give rise to or impose a liability upon the Obligor (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Obligor's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Obligor as provided herein and in the Act. Any recourse for a cause of action under this Note or the Funding Loan Agreement shall be payable solely from the Pledged Security, and the agreement of the Obligor to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Project Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed in its name by the manual or facsimile signatures of the Mayor and City Manager, the seal of the Obligor having been intentionally omitted as permitted by law, and has caused this Note to be dated as of the date first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

\_\_\_\_\_



**CERTIFICATE OF AUTHENTICATION**

This Multifamily Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION**, as Fiscal Agent

By: \_\_\_\_\_  
Authorized Signer

---

**SCHEDULE I**

**GOVERNMENTAL NOTE AMORIZATION SCHEDULE**

EXHIBIT A-2

FORM OF TAXABLE GOVERNMENTAL NOTE

BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS NOTE AGREES (A) THAT (I) IF APPLICABLE, IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT AND (II) THAT IT WILL NOT SELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
CITY OF MINNETONKA

MULTIFAMILY NOTE  
with designation as  
Taxable Multifamily Housing Revenue Note  
(Legends of Minnetonka Project)  
Series 2018B[-1][-2]

US \$ \_\_\_\_\_

September \_\_\_\_, 2018

FOR VALUE RECEIVED, the undersigned, the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of [U.S. Bank National Association, a national banking association] [BMO Harris Bank N.A., a national banking association], or its registered assigns (the “**Funding Lender**”), the maximum principal sum of \_\_\_\_\_ and \_\_\_/100 Dollars (US \$ \_\_\_\_\_), plus Prepayment Premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B[-1][-2] (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement, dated as of September 1, 2018 (together with any and all amendments, modifications, supplements and restatements, the , the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for the Funding Lender, the Obligor, and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent under the Funding Loan Agreement (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$ \_\_\_\_\_ (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”), pursuant to a Project Loan Agreement, dated as of September 1, 2018 (the “**Project Loan Agreement**”), between the Obligor, the Borrower, and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to

the proceeds of this Note advanced by the Administrative Agent, on behalf of the Funding Lender, according to the Funding Loan Agreement and not otherwise repaid.

In addition to this Note, the Taxable Funding Loan is also evidenced by the Governmental Lender's Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B[-1] [-2].

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the registered holder of this Note, and (ii) the term "Indebtedness" means the principal of, Prepayment Premium, if any, and interest on or any other amounts due at any time under the Taxable Governmental Notes, the Tax-Exempt Governmental Notes, or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing October 1, 2018 interest on this Note at (i) the Construction Phase Interest Rate during the Construction Phase, and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an "**Interest Payment Date**"). Interest shall accrue on the principal amount of this Note which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on \_\_\_\_\_ 1, 20\_\_ (the "**Maturity Date**") and in monthly installments on each date set forth on the Governmental Note Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 may be replaced by a new Governmental Note Amortization Schedule provided by the Freddie Mac Seller/Servicer on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender's discretion. Neither the Funding Lender's acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for herein or in any other Financing Document evidencing or securing the Funding Loan, whether considered separately or together with other charges provided for in any such other Financing Document, violates that law, and the Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitutes interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Minnesota (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date or on the date of any mandatory prepayment or acceleration, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date or such other date at the Default Rate.

15. **Limited Obligation.** This Note is a special, limited obligation of the Obligor payable solely from the Pledged Security and any other revenues, funds and assets pledged under the Funding Loan Agreement and not from any other revenues, funds or assets of the Obligor. This Note is not a general obligation, debt or bonded indebtedness of the Obligor, the State or any political subdivision thereof (other than of the Obligor to the limited extent set forth in the Funding Loan Agreement) and the holder of this Note does not have the right to have any excises or taxes levied by the Obligor, the State or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on this Note. None of the Obligor, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on this Note or other costs incident thereto except from the Pledged Security pledged under the Funding Loan Agreement. No provision, covenant, or agreement contained in this Note or the Funding Loan Agreement, or any obligation herein or therein imposed upon the Obligor, or the breach thereof, shall constitute or give rise to or impose a liability upon the Obligor (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Obligor's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Obligor as provided herein and in the Act. Any recourse for a cause of action under this Note or the Funding Loan Agreement shall be payable solely from the Pledged Security, and the agreement of the Obligor to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Project Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed in its name by the manual or facsimile signatures of the Mayor and City Manager, the seal of the Obligor having been intentionally omitted as permitted by law, and has caused this Note to be dated as of the date first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

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**CERTIFICATE OF AUTHENTICATION**

This Multifamily Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION**, as Fiscal Agent

By: \_\_\_\_\_  
Authorized Signer

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**SCHEDULE I**

**GOVERNMENTAL NOTE AMORIZATION SCHEDULE**

**EXHIBIT B**

**FORM OF NOTICE OF APPOINTMENT  
OF FUNDING LENDER REPRESENTATIVE**

U.S. Bank National Association  
Corporate Trust Services  
60 Livingston Avenue, 3rd Floor  
EP-MN-WS3C  
St. Paul, MN 55107-2292

City of Minnetonka, Minnesota  
14600 Minnetonka Boulevard  
Minnetonka, Minnesota 55345

Minnetonka Leased Housing Associates III, LLLP  
c/o Dominion Development & Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400

Re: Legends of Minnetonka Project

Ladies and Gentlemen:

The undersigned, U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the “**Initial Funding Lender**”), as holders of the Governmental Notes (as defined in the Funding Loan Agreement described below) delivered pursuant to the Funding Loan Agreement, dated as of September 1, 2018 (the “**Funding Loan Agreement**”), between the Administrative Agent, the City of Minnetonka, Minnesota (the “**Governmental Lender**”), and U.S. Bank National Association, a national banking association (the “**Fiscal Agent**”). Pursuant to Section 11.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 11.05 of the Funding Loan Agreement shall be the Administrative Agent. [The person or entity previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME	SIGNATURE
_____	_____
_____	_____
_____	_____
_____	_____

Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

This notice is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**[[FUNDING LENDER] [ADMINISTRATIVE  
AGENT] SIGNATURE BLOCK]**

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

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

Title: \_\_\_\_\_



**EXHIBIT C**

**FORM OF TRANSFEREE REPRESENTATIONS LETTER**

[To be prepared on letterhead of transferee]

[Date]

City of Minnetonka, Minnesota  
14600 Minnetonka Boulevard  
Minnetonka, Minnesota 55345

U.S. Bank National Association  
Corporate Trust Services  
60 Livingston Avenue, 3rd Floor  
EP-MN-WS3C  
St. Paul, Minnesota 55107-2292

**Re:** Legends of Minnetonka Project

Ladies and Gentlemen:

The undersigned (the “**Funding Lender**”) hereby acknowledges receipt of the [for U.S. Bank: Governmental Lender’s Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 (the “**Series A-1 Governmental Note**”) and the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 (the “**Series B-1 Governmental Note**,” and together with the Series A-1 Governmental Note, the “**Governmental Notes**”)] [for BMO Harris Bank: the Governmental Lender’s Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 (the “**Series A-2 Governmental Note**”) and the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 (the “**Series B-2 Governmental Note**,” and together with the Series A-2 Governmental Note, the “**Governmental Notes**”)] delivered pursuant to the Funding Loan Agreement, dated as of September 1, 2018 (the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, in its capacity as administrative agent for the Initial Funding Lender described therein, the City of Minnetonka, Minnesota (the “**Governmental Lender**”), and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent under the Funding Loan Agreement (the “**Fiscal Agent**”). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the [origination/purchase] of the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The Funding Lender has authority to [originate/purchase] the Funding Loan evidenced by the Governmental Notes and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the [origination/purchase] of the Funding Loan evidenced by the Governmental Notes.

2. The Funding Lender is an “accredited investor” under Regulation D of the Securities Act of 1933 (the “Act”) or a “qualified institutional buyer” under Rule 144(a) of said Act (such “accredited investor” or “qualified institutional buyer,” a “**Qualified Transferee**”), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan as evidenced by the Governmental Notes.

3. The Funding Lender acknowledges that it is [originating/purchasing] the Funding Loan evidenced by the Governmental Notes for investment for its own account and not with a present view toward resale or the distribution thereof (except as set forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan evidenced by the Governmental Notes (except as set forth below); provided, however, that the Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, (i) grant participation interests in the Loan as provided in Section 2.08 of the Funding Loan Agreement, (ii) transfer the Funding Loan evidenced by the Governmental Notes to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (iii) sell or transfer the Funding Loan evidenced by the Governmental Notes to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan evidenced by the Governmental Notes or securitized interests therein are not expected to be sold except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better [INSERT FOR INITIAL FUNDING LENDER TRANSFEREE REPRESENTATION LETTER; provided, further, however, the Funding Lender has originated and funded the Funding Loan evidenced by the Governmental Notes with the expectation that such Funding Loan will be sold to [NAME OF FREDDIE MAC SELLER/SERVICER] on the Conversion Date and thereafter delivered to the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) pursuant to the forward commitment, dated \_\_\_\_\_, 2018 (the “**Freddie Mac Commitment**”),] [INSERT FOR FREDDIE MAC SELLER/SERVICER TRANSFEREE REPRESENTATION LETTER; provided, further, however, the Funding Lender is purchasing the Funding Loan evidenced by the Governmental Notes with the expectation that such Funding Loan will be sold to the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) pursuant to the forward commitment, dated \_\_\_\_\_, 2018 (the “**Freddie Mac Commitment**”)].

4. In addition to the right to sell or transfer the Funding Loan evidenced by the Governmental Notes as set forth in Paragraph 3 above, the Funding Lender further acknowledges its right to sell or transfer the Funding Loan evidenced by the Governmental Notes, subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from the transferee to substantially the same effect as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

5. The Funding Lender understands that the Governmental Notes are not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Notes (a) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

6. The Funding Lender understands that (a) the Funding Loan evidenced by the Governmental Notes is not secured by any pledge of any moneys received or to be received from taxation by the State of Minnesota or any political subdivision thereof and that the Governmental Lender has not pledged its full faith, credit and taxing powers to the repayment of the Funding Loan evidenced by the

Governmental Notes; (b) the Funding Loan evidenced by the Governmental Notes does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of Minnesota or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan evidenced by the Governmental Notes is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the [origination/purchase] of the Funding Loan evidenced by the Governmental Notes. The Funding Lender has not relied upon the Governmental Lender, its counsel, or its advisors for any information in connection with its purchase of the Funding Loan evidenced by the Governmental Notes.

8. The Funding Lender has made its own inquiry and analysis with respect to the Funding Loan evidenced by the Governmental Notes and the security therefor, and other material factors affecting the security and payment of the Funding Loan evidenced by the Governmental Notes. The Funding Lender is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Funding Loan evidenced by the Governmental Notes.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

**[U.S. BANK NATIONAL ASSOCIATION]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[BMO HARRIS BANK N.A.]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**

**COSTS OF ISSUANCE REQUISITION  
(Cost of Issuance Fund)**

Dated: September \_\_\_\_\_, 2018

TO: U.S. Bank National Association, as Fiscal Agent

Re: Legends of Minnetonka Project

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this Costs of Issuance Requisition (Cost of Issuance Fund) (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement, dated as of September 1, 2018 (the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent for the Initial Funding Lender, the City of Minnetonka, Minnesota, and U.S. Bank National Association, as fiscal agent, securing the Governmental Notes.

REQUISITION NO.:	_____
PAYMENT DUE TO:	See attached schedule
AMOUNT TO BE DISBURSED	\$_____

The undersigned, on behalf of Minnetonka Leased Housing Associates III, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State of Minnesota (the “**Borrower**”), certifies that:

- (a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and
- (b) the money requisitioned is not greater than that necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

Attached to this Requisition is a schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

IN WITNESS WHEREOF, the undersigned has executed this Costs of Issuance Requisition (Cost of Issuance Fund) as of the date and year first above written.

**MINNETONKA LEASED HOUSING  
ASSOCIATES III, LLLP**, a Minnesota limited liability  
limited partnership

By: Minnetonka Leased Housing Associates SPE III,  
LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

**EXHIBIT E**

**PROJECT LOAN FUND REQUISITION  
(Project Loan Fund)**

Dated: September \_\_\_\_\_, 2018

TO: U.S. Bank National Association, as Fiscal Agent

Re: Legends of Minnetonka Project

You are requested to disburse funds from the Project Loan Fund pursuant to Section 4.02 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this Project Loan Fund Requisition (Project Loan Fund) (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement, dated as of September 1, 2018 (the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association (the “**Administrative Agent**”), as administrative agent for the Initial Funding Lender, the City of Minnetonka, Minnesota (the “**Governmental Lender**”), and U.S. Bank National Association, a national banking association (the “**Fiscal Agent**”), securing the Governmental Notes.

REQUISITION NO.:	_____
PAYMENT DUE TO:	See attached schedule
AMOUNT TO BE DISBURSED	\$_____ from the Tax-Exempt Note Proceeds Subaccount of the Project Account; \$_____ from the Taxable Note Proceeds Subaccount of the Project Account; and \$_____ from the Borrower Equity Account

The undersigned, the duly chosen, qualified, and acting representative of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”), on behalf of the Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Servicer (which, during the Construction Phase, is the Administrative Agent) to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached schedule**.
2. Party or parties to whom the disbursements shall be made are specified in the **attached schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to February 15, 2018 (which is the date that is sixty (60) days prior to the date that the Governmental Lender declared its official intent to reimburse expenditures related to the Project as permitted under Section 1.150-2(d) of the Treasury Regulations).
3. The undersigned certifies that:
  - a. the conditions precedent to disbursement set forth in the Construction Continuing Covenant Agreement have been satisfied;

- b. the disbursement requested pursuant to this Requisition will be used solely to pay a cost or costs allowable under the Funding Loan Agreement, the Subordinate Indenture and the Construction Continuing Covenant Agreement, as applicable;
- c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Project Loan Fund and all such items have been properly recorded in Borrower's books and are set forth on the schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;
- d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Continuing Covenant Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project;
- e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;
- f. all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Subordinate Indenture, the Subordinate Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate, including that none of the proceeds of the Funding Loan evidenced by the Tax-Exempt Governmental Note (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling, health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
- g. with respect to amounts from the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund and the Subordinate Bonds Proceeds Subaccount of the Project Account of the Project Loan Fund, not less than ninety-five percent (95%) of the sum of:
  - (A) the amounts requisitioned by this Requisition; plus
  - (B) all amounts previously requisitioned and disbursed from the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund and the Subordinate Bonds Proceeds Subaccount of the Project Account of the Project Loan Fund;
 have been or will be applied by Borrower to pay the Costs of the Project (as defined in the Funding Loan Agreement) and Project Costs (as defined in the Subordinate Indenture);
- h. the Borrower is not in default under the Project Loan Agreement, the Construction Continuing Covenant Agreement or any other Project Loan Document, or Subordinate Loan Documents to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;
- i. no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the Governmental Notes or Issuance

Expenses incurred in connection with the delivery of the Subordinate Bonds or pay debt service with respect to the Loans or the Subordinate Bonds; and

- j. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five Business Days of such deposit.

[Following items may not be required for Initial Disbursement]

4. Estimated costs of completing the uncompleted construction as of the date of this Requisition: \_\_\_\_\_.

5. Percent of construction completed as of the date this request: \_\_\_\_\_%

IN WITNESS WHEREOF, the undersigned has executed this Project Loan Fund Requisition (Project Loan Fund) as of the date and year first above written.

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE III, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

**APPROVED\*:**

**U.S. BANK NATIONAL ASSOCIATION**, as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## EXHIBIT F

### CONSTRUCTION PHASE INTEREST RATE

The Construction Phase Interest Rate on the Tax-Exempt Governmental Note shall be \_\_\_\_\_%, which is a rate of interest per annum equal to the sum of (i) the LIBOR Rate in effect on such day, plus (ii) \_\_\_\_\_ basis points over LIBOR, as calculated in the Tax-Exempt Project Note.

The Construction Phase Interest Rate on the Taxable Governmental Note shall be \_\_\_\_\_%, which is a rate of interest per annum equal to the sum of (i) the LIBOR Rate in effect on such day, plus (ii) \_\_\_\_\_ basis points over LIBOR, as calculated in the Taxable Project Note.

For purposes hereof, the following terms have the following definitions:

“**Advance**” has the meaning given such term in the Funding Loan Agreement.

“**Construction Loan Agreement**” means that certain Construction Loan Agreement, dated September \_\_\_\_, 2018, between Borrower and Initial Funding Lender, as amended, restated or otherwise modified from time to time.

“**Construction Phase**” has the meaning given to that term in the Funding Loan Agreement.

“**LIBOR Rate**” means for each calendar month during the Construction Phase, the one (1) month LIBOR Rate quoted by Initial Funding Lender from Reuters Screen LIBOR01 Page or any successor thereto designated by Initial Funding Lender, which shall be that one (1) month LIBOR Rate in effect two (2) New York Banking Days prior to the Reprice Date adjusted for any reserve requirement and any subsequent costs arising from a change in government regulations, such rate rounded up to the nearest one-sixteenth of one percent (0.0625%) and such rate to be reset monthly on each Reprice Date. If the initial Advance occurs other than on the Reprice Date, then the initial one-month LIBOR Rate shall be that one-month LIBOR Rate quoted by Initial Funding Lender two (2) New York Banking Days prior to the date of the initial Advance, which rate (as rounded as described above) shall be in effect until the next Reprice Date. Initial Funding Lender’s internal records of applicable interest rates shall be determinative in the absence of manifest error.

“**New York Banking Day**” means any day (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York.

“**Reprice Date**” means the first day of each calendar month.

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**PROJECT LOAN AGREEMENT**

**between**

**CITY OF MINNETONKA, MINNESOTA,  
as Governmental Lender**

**U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent**

**and**

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,  
as Borrower**

**Relating to:**

**Legends of Minnetonka  
11001 Bren Road East  
Minnetonka, Minnesota**

**Maximum Project Loan Principal Amount: \$ \_\_\_\_\_**

**Dated as of September 1, 2018**

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**All of the right, title and interest of the City of Minnetonka, Minnesota (the “Governmental Lender”) (except for its Unassigned Rights) in and to this Project Loan Agreement are being assigned to U.S. Bank National Association, as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, U.S. Bank National Association, as Administrative Agent for the Initial Funding Lender named therein, and the Fiscal Agent.**

This instrument was drafted by:

Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402  
(612) 337-9300

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## PROJECT LOAN AGREEMENT

THIS PROJECT LOAN AGREEMENT is made and entered into as of September 1, 2018 (the “**Project Loan Agreement**”), between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the “**Fiscal Agent**”), and MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (together with its successors and assigns permitted hereunder, the “**Borrower**”). Capitalized terms are defined in Section 1.01 of this Project Loan Agreement or in the Funding Loan Agreement (hereinafter defined).

### RECITALS

**A.** Pursuant to Minnesota Statutes, Chapter 462C, as amended (the “**Act**”), and this Project Loan Agreement, at the Borrower’s request, the Governmental Lender is agreeing to make two mortgage loans to the Borrower corresponding in principal amount to the Tax-Exempt Funding Loan and the Taxable Funding Loan described below (individually, the “**Tax-Exempt Project Loan**” and the “**Taxable Project Loan**,” and collectively, the “**Project Loan**”) to provide for the financing of a 262-unit senior housing rental development located at 11001 Bren Road East, Minnetonka, Minnesota to be known as Legends of Minnetonka (the “**Project**”).

**B.** The Governmental Lender is making the Tax-Exempt Project Loan to the Borrower with the proceeds received from the separate tax-exempt loan made to the Governmental Lender pursuant to the Funding Loan Agreement, dated as of September 1, 2018 (the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent for the Initial Funding Lender (the “**Administrative Agent**”), the Governmental Lender, and the Fiscal Agent, in the maximum aggregate principal amount of \$\_\_\_\_\_ (the “**Tax-Exempt Funding Loan**”). The Tax-Exempt Funding Loan is evidenced by the Governmental Lender’s (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series A-1 Governmental Note**”); and (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series A-2 Governmental Note**,” and together with the Series A-1 Governmental Note, the “**Tax-Exempt Governmental Note**”). The Governmental Lender is making the Taxable Project Loan to the Borrower with the proceeds received from the separate taxable loan made to the Governmental Lender pursuant to the Funding Loan Agreement in the maximum aggregate principal amount of \$\_\_\_\_\_ (the “**Taxable Funding Loan**,” together with the Tax-Exempt Funding Loan, the “**Funding Loan**,” and further together with the Project Loan, the “**Loans**”). The Taxable Funding Loan is evidenced by the Governmental Lender’s (1) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series B-1 Governmental Note**”); and (2) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series B-2 Governmental Note**,” and together with the Series B-1 Governmental Note, the “**Taxable Governmental Note**”). The Tax-Exempt Governmental Note and the Taxable Governmental Note are referred to herein as the “**Governmental Notes**.” The Governmental Notes are each dated September \_\_\_\_, 2018. The Governmental Lender shall deliver the Governmental Notes to the Administrative Agent, which shall deliver the Governmental Notes to U.S. Bank National

Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the “**Initial Funding Lender**”).

**C.** The Administrative Agent, pursuant to the terms and subject to the conditions of the Funding Loan Agreement, the Construction Phase Financing Agreement, and the Construction Continuing Covenant Agreement, has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower in corresponding installments pursuant to this Project Loan Agreement. The Administrative Agent will administer the Loans during the Construction Phase in accordance with the Construction Phase Financing Agreement (as it relates to the Tax-Exempt Funding Loan and Tax-Exempt Project Loan), the Construction Continuing Covenant Agreement, and the other Financing Documents.

**D.** The Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to the Loans.

**E.** The Borrower’s repayment obligations in respect of the Tax-Exempt Project Loan will be evidenced by the Multifamily Note (Series A) (the “**Tax-Exempt Project Note**”). The Borrower’s repayment obligations in respect of the Taxable Project Loan will be evidenced by the Multifamily Note (Series B) (the “**Taxable Project Note**,” and collectively with the Tax-Exempt Project Note and all riders and modifications thereto, the “**Project Notes**”), each dated September \_\_, 2018, delivered to the Governmental Lender, which Project Notes will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**F.** To secure the Borrower’s obligations under the Tax-Exempt Project Note, the Borrower will execute and deliver to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated September \_\_, 2018 (the “**Tax-Exempt Security Instrument**”), with respect to the Project, which Tax-Exempt Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Tax-Exempt Funding Loan.

**G.** To secure the Borrower’s obligations under the Taxable Project Note, the Borrower will execute and deliver to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated September \_\_, 2018 (the “**Taxable Security Instrument**,” and together with the Tax-Exempt Security Instrument, the “**Security Instrument**”), with respect to the Project, which Taxable Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Taxable Funding Loan.

**H.** The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”), has entered into a commitment with KeyBank National Association, a national banking association (the “**Freddie Mac Seller/Servicer**”), dated \_\_\_\_\_, 2018 (the “**Tax-Exempt Freddie Mac Commitment**”), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Tax-Exempt Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date.

**I.** If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Tax-Exempt Freddie Mac Commitment and the Construction Phase Financing Agreement, the Tax-Exempt Project Loan will convert from the Construction Phase to the

Permanent Phase on the Conversion Date and, on such Conversion Date, the Administrative Agent shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Tax-Exempt Funding Loan, as evidenced by the Tax-Exempt Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Tax-Exempt Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Tax-Exempt Funding Loan and the Administrative Agent will remain the owner of the Tax-Exempt Funding Loan as the holder of the Tax-Exempt Governmental Note.

**J.** Freddie Mac has entered into a separate commitment with the Freddie Mac Seller/Servicer, dated \_\_\_\_\_, 2018 (the “**Taxable Freddie Mac Commitment**”), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the commitment, to facilitate the financing of the Project in the Permanent Phase by making a conventional supplemental loan to amend and restate the Taxable Funding Loan made under the Funding Loan Agreement.

**K.** If the Conditions to Conversion associated with the Taxable Freddie Mac Commitment are satisfied on or before the Forward Commitment Maturity Date as provided for in the Taxable Freddie Mac Commitment, the Freddie Mac Seller/Servicer will make a conventional loan to purchase and amend and restate the Taxable Funding Loan and the Taxable Funding Loan will no longer be outstanding under the Funding Loan Agreement. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Taxable Project Loan will remain outstanding, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to amending and restating the Taxable Funding Loan and the Initial Funding Lender will remain the owner of the Taxable Funding Loan as the holder of the Taxable Governmental Note.

**L.** As a Condition to Conversion, the Tax-Exempt Project Note and the Tax-Exempt Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the “**Freddie Mac Continuing Covenant Agreement**”), in each case pursuant to the forms attached to the Construction Phase Financing Agreement. As additional Conditions to Conversion, (i) the Taxable Governmental Note and the Taxable Project Note will be exchanged for a single Amended and Restated Taxable Project Note and the Taxable Governmental Note will no longer be outstanding under the Funding Loan Agreement, and the single Amended and Restated Taxable Project Note will be assigned to the Freddie Mac Seller/Servicer; (ii) the Tax-Exempt Governmental Note will be consolidated into a single Governmental Note with a single Governmental Note Amortization Schedule; and (iii) the Taxable Security Instrument will be amended and restated and the Borrower will be required to enter into a Multifamily Loan Agreement with the Freddie Mac Seller/Servicer, in each case pursuant to the forms attached to the Taxable Freddie Mac Commitment and the Taxable Funding Loan will no longer be governed by the Funding Loan Agreement. After Conversion, all references herein to “Funding Loan” shall mean the Tax-Exempt Funding Loan, all references herein to the “Project Loan” shall mean the Tax-Exempt Project Loan and the term “Security Instrument” shall mean the Tax-Exempt Security Instrument, as amended and restated.

**M.** If the Conditions to Conversion are satisfied and the Tax-Exempt Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/ Servicer shall deliver the Tax-Exempt Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the “**Freddie Mac Purchase Date**”).

**N.** Upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Tax-Exempt Funding Loan, the Tax-Exempt Governmental Note, the Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. KeyBank National Association will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date.

**O.** To provide additional financing for the Project, the Governmental Lender is issuing its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “**Subordinate Bonds**”), dated September \_\_\_, 2018, in the original aggregate principal amount of \$4,090,000, pursuant to a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “**Subordinate Indenture**”), between the Governmental Lender and U.S. Bank National Association, a national banking association, as trustee for the Subordinate Bonds (the “**Trustee**”). The proceeds of the Subordinate Bonds are being loaned to the Borrower (the “**Subordinate Loan**”) pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “**Subordinate Loan Agreement**”), between the Governmental Lender and the Borrower, and the Borrower will apply such proceeds to finance a portion of the acquisition, construction, and equipping of the Project and to pay certain closing costs with respect to the Subordinate Loan. The Subordinate Indenture, the Subordinate Loan Agreement, and the Subordinate Bonds and all related documents and any renewals or extensions thereof and all indebtedness owed thereunder, including the Subordinate Loan, shall be and are subordinated, inferior and subject to the Financing Documents, as the Financing Documents may be revised, modified, extended or amended from time to time, and all indebtedness owed thereunder pursuant to a Subordination Agreement, dated September \_\_\_, 2018, between the Governmental Lender, the Borrower, the Fiscal Agent, the Trustee, and the Administrative Agent, and its successors and assigns.

**NOW, THEREFORE,** for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

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



**ARTICLE I**  
**DEFINITIONS**

**Section 1.01 Definitions.** All words and phrases (except for Event of Default) defined in the Funding Loan Agreement and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Project Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement, the Continuing Covenant Agreement, and elsewhere herein, the following words and phrases shall have the following meanings:

“*Event of Default*” means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

“*Fee Component*” means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis.

“*Funding Loan Agreement*” means the Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent, the Governmental Lender, and the Fiscal Agent, as amended, supplemented or restated from time to time.

“*Project Loan Agreement*” means this Project Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, the Fiscal Agent, and the Borrower, together with any amendments hereto.

“*Project Loan Payment*” means each payment of the Project Loan on each Project Loan Payment Date pursuant to the Project Notes and this Project Loan Agreement.

“*Project Loan Payment Date*” means (A) the first day of each calendar month, commencing October 1, 2018, or (B) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date.

“*Project Note Amortization Schedule*” means the Project Note Amortization Schedule attached as Schedule 1 to each of the Project Notes (as such Schedule 1 may be replaced by a new amortization schedule provided by the Freddie Mac Seller/Servicer as provided in the Funding Loan Agreement).

“*Servicing Fee*” means, during the Permanent Phase, the ordinary fee payable to the Servicer in connection with the servicing of the Project Loan and the Funding Loan payable monthly in an amount equal to one-twelfth of \_\_\_% of the outstanding principal balance of the Project Loan, computed on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months.

“*Taxes*” means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

**Section 1.02 Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Project Loan Agreement are the Articles, sections and other subdivisions of this Project Loan Agreement as originally executed.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Project Loan Agreement; the term “heretofore” means before the date of execution of this Project Loan Agreement; and the term “hereafter” means after the date of execution of this Project Loan Agreement.

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

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.01** *Representations, Warranties and Covenants of the Governmental Lender.* The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Servicer:

(a) The Governmental Lender is a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State.

(b) The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Notes and to make the Project Loan from the proceeds thereof, and to execute, and deliver this Project Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Governmental Lender has taken all action on its part to incur the Funding Loan evidenced by the Governmental Notes and make the Project Loan from the proceeds thereof and for the sale, execution and delivery thereof.

(d) Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender.

(e) Based on the advice of Bond Counsel, the Governmental Lender has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Governmental Lender described or contemplated in the Financing Documents. To the actual knowledge of the Governmental Lender, the execution and delivery of the Governmental Notes and the Financing Documents to which the Governmental Lender is a party, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

(f) Based on the advice of Bond Counsel, no authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental

Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents or the issuance, sale, execution or delivery of the Governmental Notes; (iii) affects or questions the validity or enforceability of the Governmental Notes or any Financing Document; (iv) questions the tax-exempt status of the Tax-Exempt Governmental Note; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Notes or any Financing Document, or to carry out the transactions contemplated by the Governmental Notes and the Financing Documents.

(h) No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Project Loan Agreement.

(i) Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Project Loan Agreement, the Tax Certificate or the Tax Regulatory Agreement, the Governmental Lender will promptly notify the Fiscal Agent, the Servicer and the Funding Lender Representative of such noncompliance.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Governmental Notes, or as to the correctness, completeness or accuracy of such statements.

**Section 2.02 *Representations, Warranties and Covenants of the Borrower.*** The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Servicer and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Servicer and the Fiscal Agent contained in this Project Loan Agreement:

(a) The Borrower is a limited liability limited partnership duly organized, validly existing and in good standing under the laws of the state in which it has been organized and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Project Loan Agreement and the other Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Project Loan Agreement and the other Financing Documents. All corporate general partners and all general partners which are limited liability companies, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations or limited liability companies, as applicable. All partnership general partners, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project; (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project; and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of construction of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.

(e) None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower; (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license; (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree; or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents; (ii) adversely affect the financial condition of the Borrower; (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan or the execution and delivery of any of the Financing Documents; (iv) adversely affect the validity or enforceability of any of the Financing Documents; or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Governmental Note.

(g) The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and, following completion of the construction and equipping of the Project, will continue to conform in all material respects with the requirements of the Act as

well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(h) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(i) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(j) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(k) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests except as may be permitted by the Borrower's partnership agreement [**or a separate purchase option agreement,**] which shall be subordinate to the Security Instrument. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Project Loan Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(l) The representations and warranties of the Borrower contained in the Tax Certificate and Tax Regulatory Agreement are true and accurate in all material respects.

(m) The information, statements or reports furnished in writing to the Governmental Lender, the Servicer and the Funding Lender Representative by the Borrower in connection with this Project Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(n) To the knowledge of the Borrower, no member, commissioner, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(o) The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project.

(p) The Project is located wholly within the boundaries of the City of Minnetonka, Hennepin County, Minnesota.

(q) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Tax-Exempt Governmental Note. The Borrower shall operate the Project as required by the Tax Regulatory Agreement.

(r) The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(s) The Borrower has entered into a purchase agreement to purchase the land upon which the Project will be built and plans to use the proceeds of the Governmental Notes to purchase the land. Upon closing on the land, the Borrower shall have a fee simple interest in the land and improvements on the land, subject only to liens permitted under the Security Instrument.

(t) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer in any manner.

**Section 2.03 *Representations and Warranties of the Fiscal Agent.*** The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender and the Servicer:

(a) The Fiscal Agent is a national banking association, duly organized and existing under the laws of the United States. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(c) The Fiscal Agent has duly authorized (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(d) Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent, enforceable against the Fiscal Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Notes, (iii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party. The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.

**Section 2.04 *Arbitrage and Rebate Fund Calculations.*** The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.12 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.12 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.12 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide any such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set



forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

**Section 2.05 Tax Covenants of the Borrower.** The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate and the Tax Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Tax-Exempt Governmental Note to be included in gross income of the Funding Lender, for federal income tax purposes (excluding any action that causes such interest to be includable in gross income for federal income tax purposes as a result of the application of Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation), and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including without limitation the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Tax Regulatory Agreement);

(c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Tax-Exempt Governmental Note (except for any changes, actions, or omissions that adversely affect the tax-exempt status of the Tax-Exempt Governmental Note as a result of the application of Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation);

(d) It will comply with the requirements of Section 148 of the Code and the Treasury Regulations issued thereunder throughout the term of the Funding Loan and the Project Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Tax-Exempt Governmental Note under the Code and the related regulations of the United States Treasury, which would cause the Tax-Exempt Governmental Note to be an “arbitrage bond” within the meaning of Section 148 of the Code;

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Tax-Exempt Governmental Note becoming includable in gross income of the Funding Lender for purposes of federal income tax purposes (except to the extent such interest is includable in gross income for federal income tax purposes as a result of the application of Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation), it will promptly give written notice of such circumstance, event or condition to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer;

(f) The full amount of each disbursement from the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least ninety-five percent (95%) of the net proceeds (as defined in Section 150 of the Code) of the Tax-Exempt Governmental Note will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code); (ii) less than twenty-five (25%) of the net proceeds of the Tax-Exempt Governmental Note will have been

disbursed to pay or to reimburse the Borrower for the cost of acquiring land; and (iii) no more than five percent (5%) of the proceeds (as defined for purposes of Section 147(g) of the Code) of the Tax-Exempt Governmental Note will be disbursed to provide working capital;

(g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code, the Tax Certificate, and the Tax Regulatory Agreement;

(h) All leases will comply with all applicable laws and the Tax Regulatory Agreement;

(i) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Project Loan Agreement, the Tax Certificate, or the Tax Regulatory Agreement;

(j) No proceeds of the Tax-Exempt Funding Loan shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed fifteen percent (15%) of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed one hundred percent (100%) of the portion of the cost of acquiring such structure financed with the proceeds;

(k) From the proceeds of the Tax-Exempt Funding Loan and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Tax-Exempt Governmental Note, will be used for Costs of Issuance of the Governmental Notes, all within the meaning of Section 147(g)(1) of the Code; and

(l) No proceeds of the Tax-Exempt Funding Loan shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

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## ARTICLE III

### THE PROJECT LOAN

**Section 3.01** *Conditions to Funding the Project Loan.* On the Delivery Date and thereafter, the Governmental Lender shall cause the proceeds of the first advance of the Funding Loan to be deposited with the Fiscal Agent in accordance with Sections 2.01 and 2.12 of the Funding Loan Agreement and Section 3.03 hereof. The Fiscal Agent shall use such proceeds as provided in Article II of the Funding Loan Agreement to make the Project Loan, provided that no initial disbursements of proceeds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Project Notes and the Governmental Lender shall have endorsed the Project Notes to the Fiscal Agent;

(b) The Security Instrument and the Assignment, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to the Title Company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “**Recorder’s Office**”);

(c) The Tax Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the Title Company for recording in the Recorder’s Office, and the Fiscal Agent shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent;

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Servicer a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, Freddie Mac and the Freddie Mac Seller/Servicer; and

(f) The Borrower shall have satisfied all conditions to the first advance set forth in the Construction Continuing Covenant Agreement.

Pursuant to Section 2.11 of the Funding Loan Agreement, the second and subsequent advances of the Funding Loan are conditioned on the delivery by the Borrower to the Fiscal Agent of the items listed in Section 2.11 of the Funding Loan Agreement.

**Section 3.02** *Terms of the Project Loan; Servicing.*

(a) The Project Loan shall (i) be evidenced by the Project Notes; (ii) be secured by the Security Instrument; (iii) be in the maximum aggregate principal amount of \$\_\_\_\_\_ ; (iv) bear interest as provided in the Project Notes; (v) provide for principal and interest payments in accordance with the Project Notes; and (vi) be subject to optional and mandatory prepayment

at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Project Notes. The outstanding principal balance of the Project Loan at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender, minus any amounts prepaid with respect to the principal in accordance with the terms hereof and the Project Notes. The outstanding principal balance of the Project Notes at any time shall be an amount equal to the proceeds of the corresponding Governmental Notes (Tax-Exempt or Taxable) advanced by the Funding Lender (as designated by the Funding Lender), minus any amounts prepaid with respect to the principal in accordance with the terms hereof and such Project Note.

(b) The Funding Lender Representative may appoint a Servicer to service the Loans for all or a portion of the term of the Loans. The Administrative Agent shall be the Servicer of the Loans during the Construction Phase. On the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer shall become the Servicer and shall service the Loans as required by the Freddie Mac Commitment and the Guide. The Funding Lender Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(c) Notwithstanding any provision in this Project Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Funding Loan Agreement shall be paid by the Borrower to the Servicer. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee (if any) collected from the Borrower and shall remit the Fee Component with respect to the Governmental Lender to the Governmental Lender and shall remit the Fiscal Agent's Ordinary Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative, and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Funding Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(d) The Governmental Lender, the Fiscal Agent, and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Servicer (which during the Construction Phase shall be the Administrative Agent) to service and administer the Project Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative; and (iii) neither the Governmental Lender, nor the Fiscal Agent shall terminate or attempt to terminate any Servicer as the servicer for the Project Loan or appoint or attempt to appoint a substitute servicer for the Project Loan.

The Governmental Lender, the Fiscal Agent, and the Borrower further hereby acknowledge and agree with respect to the Servicer during the Permanent Phase that: (i) the Guide is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and (ii) none of the Fiscal Agent, the Governmental Lender or the Borrower shall have any rights under, or be a third party beneficiary of, the Guide.

**Section 3.03 Deposits.** On the Delivery Date, (i) \$\_\_\_\_\_ of the initial advance of the Tax-Exempt Funding Loan pursuant to the Funding Loan Agreement shall be deposited with the Fiscal Agent into the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund in accordance with Section 2.12 and Section 4.02 of the Funding Loan Agreement; and (ii) \$0.00 of the initial advance of the Taxable Funding Loan pursuant to the Funding Loan Agreement shall be deposited with the Fiscal Agent into the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund, in accordance with Sections 2.12 and 4.02 of the Funding Loan Agreement. On each date of an advance of the proceeds of the Funding Loan (except for an advance to pay interest and other amounts due to the Administrative Agent or the Initial Funding Lender as provided in Section \_\_\_\_\_ of the Construction Continuing Covenant Agreement), such proceeds shall be deposited into either the Tax-Exempt Note Proceeds Subaccount or the Taxable Note Proceeds Subaccount in the Project Account of the Project Loan Fund. On the Delivery Date, from the Borrower Equity Deposit, the Borrower will deposit with the Fiscal Agent the sum of (a) \$0.00 for credit to the Cost of Issuance Fund, and (b) \$0.00 for credit to the Borrower Equity Account of the Project Loan Fund. The Borrower will deposit with the Servicer the sum of \$0.00 as the Initial Debt Service Deposit. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Project Loan Fund are to be disbursed by the Fiscal Agent to the Title Company for further disbursement in accordance with the Construction Continuing Covenant Agreement and the Disbursing Agreement, or otherwise as provided in Section 2.12(d) of the Funding Loan Agreement.

To the extent that amounts in the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all costs of closing the Loans, the Borrower shall cause the payment of such additional costs of closing the Loans to be made on its behalf as such amounts become due.

**Section 3.04 Assignment to Fiscal Agent.** The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title, and interest in this Project Loan Agreement (excluding the Unassigned Rights), the Project Loan, the Project Notes, the Security Instrument, and the Revenues as security for the payment of the principal of, Prepayment Premium, if any, and interest on the Governmental Notes and the payment of any other amounts due under the Financing Documents.

**Section 3.05 Investment of Funds.** Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent as directed by the Borrower in Qualified Investments in accordance with Section 4.08 of the Funding Loan Agreement.

The Borrower acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Borrower the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Borrower specifically waives compliance with 12 C.F.R. Part 12 and hereby notifies the Fiscal Agent hereunder that no brokerage confirmations need be sent relating to the security transactions as they occur.

**Section 3.06 *Damage; Destruction and Eminent Domain.*** If, prior to payment in full of the Project Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

**Section 3.07 *Enforcement of Financing Documents.*** The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

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## ARTICLE IV

### LOAN PAYMENTS

#### **Section 4.01** *Payments Under the Project Notes; Independent Obligation of Borrower.*

(a) **Payment Obligations.** The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Project Notes, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Servicer, to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with the Prepayment Premium, if applicable), acceleration or otherwise. To ensure such timely payment during the Permanent Phase, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than two (2) Business Days prior to each respective Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Project Notes, provided that in all events payments made by the Borrower under and pursuant to the Project Notes shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason a Project Note or any provision of a Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, such Project Note or such provision of such Project Note shall be deemed to be the obligation of the Borrower pursuant to this Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Project Notes.

(b) **Obligations Unconditional; No Set-Off.** The obligations of the Borrower to repay the Project Loan, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Project Loan Agreement.

(c) **Payments from Borrower to Fiscal Agent or Servicer.** Each payment by the Borrower hereunder or under the Project Notes shall be made in immediately available funds to the

Servicer (which, during the Construction Phase, shall be the Administrative Agent) on each Project Loan Payment Date or such other date when such payment is due; provided, however, that during the Permanent Phase such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Project Loan Agreement or under the Project Notes shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

**Section 4.02 *Additional Payments Under the Project Notes and This Project Loan Agreement.***

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Project Notes include certain money to be paid in respect of, among others, the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) below. To the extent that any portion of the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) below.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03 hereof, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount, as applicable)), in consideration of the funding of the Project Loan, the following fees, expenses and other money payable in connection with the Loans:

(i) On the Delivery Date, from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Administrative Agent, the origination fees of the Initial Funding Lender, together with all third party and out-of-pocket expenses of the Administrative Agent and the Initial Funding Lender (including but not limited to the fees and expenses of counsel to the Administrative Agent and the Initial Funding Lender) in connection with the Loans.

(ii) On the Delivery Date, from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third party and out-of-pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Loans.

(iii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Governmental Lender, the Governmental Lender Fee, together with all third party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and



expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the issuance of the Governmental Notes.

(iv) [On the Delivery Date, from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Freddie Mac Seller/Servicer, its commitment fees and application fees, together with all third party and out-of-pocket expenses of the Freddie Mac Seller/Servicer (including but not limited to the fees and expenses of counsel to the Freddie Mac Seller/Servicer, if any) in connection with the Loans.]

(v) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to \$\_\_\_\_\_, together with all third party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Loans and the issuance of the Governmental Notes.

(vi) To the Fiscal Agent, the Fiscal Agent's Ordinary Fees and Expenses and the Fiscal Agent's Extraordinary Fees and Expenses when due from time to time.

(vii) To the Governmental Lender, any extraordinary expenses not covered by the Governmental Lender Fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time, including any expenses (including accountant or attorneys' fees) incurred in connection with any audit, inquiry, document request or other investigation by the Internal Revenue Service, the Minnesota Department of Revenue, the State Auditor, or any other federal or State agency.

(viii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Project Loan Agreement when due from time to time.

(ix) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(x) To the Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(xi) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Project Loan Documents.

(xii) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

**Section 4.03 *Payments to Rebate Fund.*** The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

#### **Section 4.04 *Prepayment.***

(a) **Optional Prepayment of the Project Loan.** The Borrower shall have the option to prepay the Project Loan in whole, together with all accrued and unpaid interest thereon, as provided in the Project Notes.

(b) **Mandatory Prepayment of the Project Loan.** The Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the applicable Project Note, as provided therein. Additionally, the Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the applicable Project Note, in connection with the following:

(i) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment;

(ii) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Administrative Agent, if the Notice of Conversion is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date; and

(iii) in whole, as required under the Construction Continuing Covenant Agreement.

(c) **Defeasance of the Funding Loan.** In addition, after the Conversion Date and prior to the Window Period, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a “**Defeasance Notice**”) to the Funding Lender Representative, the Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the “**Defeasance Date**”). The Defeasance Date may not be more than sixty (60) calendar days, nor less than thirty (30) calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement. In addition to, and not in limitation of any other provisions of this Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

**Section 4.05 *Borrower’s Obligations Upon Prepayment.*** In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and Prepayment Premium, if any. In addition, the Borrower will timely pay all fees, costs, and expenses associated with any prepayment of the Funding Loan.

#### **Section 4.06 *Limits on Personal Liability.***

(a) During the Construction Phase, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents shall be full-recourse liabilities of the Borrower.

(b) During the Permanent Phase, except as otherwise set forth in the Project Notes and subsection (c) below, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents shall be non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any partner of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Funding Lender Representative may have to enforce the Project Notes, the Security Instrument, or any other Financing Document in accordance with their terms.

(c) During the Permanent Phase, notwithstanding anything contained in any other provision of this Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and the Borrower's general partner: (i) the Borrower's obligations to the Governmental Lender and the Fiscal Agent under Section 4.02(b)(iii), (v), (vi), and (vii) hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 hereof; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 hereof and in the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

**Section 4.07 *Compliance with Issuer's Private Activity Bond Policy.*** The Borrower agrees to comply with the Governmental Lender's Policy Number 2.5 related to Tax Exempt Financing.

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## ARTICLE V

### SPECIAL COVENANTS OF BORROWER

**Section 5.01 *Performance of Obligations.*** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including without limitation its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

**Section 5.02 *Compliance with Applicable Laws.*** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.03 *Funding Loan Agreement Provisions.*** The execution of this Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

**Section 5.04 *Reserved.***

**Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.***

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within thirty (30) days after the end of each calendar year, render to the Fiscal Agent a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

**Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.*** The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

**Section 5.07 *Sale or Other Transfer of Project.*** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative.

**Section 5.08 *Right to Perform Borrower's Obligations.*** In the event the Borrower fails to perform any of its obligations under this Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Servicer, the Borrower's limited partners, and/or the Funding Lender Representative, after

giving requisite notice, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Project Loan Documents.

**Section 5.09 *Notice of Certain Events.*** The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.10 *Survival of Covenants.*** The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

**Section 5.11 *Access to Project; Records.*** Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, such information concerning the Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

**Section 5.12 *Tax Regulatory Agreement.*** The covenants of the Borrower in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement. The Borrower covenants to file of record the Tax Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Tax Regulatory Agreement. Subject to the provisions of Section 7.06 of hereof, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Tax Regulatory Agreement.

**Section 5.13 *Damage, Destruction and Condemnation.*** If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the

Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Project Loan Agreement and in the Project Notes to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project Loan Documents.

**Section 5.14 *Obligation of the Borrower To Construct the Project.*** The Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing Documents) to complete the construction, development and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Project Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of the acquisition, construction, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender Representative or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Project Loan. None of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and none of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer shall be liable to the Borrower, the Funding Lender, or any other person if for any reason the Project is not completed.

**Section 5.15 *Filing of Financing Statements.*** The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Project Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

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## ARTICLE VI

### INDEMNIFICATION

#### Section 6.01 *Indemnification.*

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the “**Indemnified Parties**”) against any and all losses, damages (including but not limited to consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including without limitation reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, “**Losses**”), to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) any breach by the Borrower of its obligations under the Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer, or resale of a Governmental Note;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, construction or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Servicer hereunder, or any Taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Fiscal Agent in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) [Reserved];

(vii) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative related to remedies under this Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(viii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Notes or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Notes or any of the Financing Documents to which the Borrower is a party necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) any declaration of taxability of interest on the Tax-Exempt Governmental Note or allegations (or regulatory inquiry) that interest on the Tax-Exempt Governmental Note is includable in gross income for federal income tax purposes (except to the extent taxable under Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation);

(x) any audit or inquiry by the Internal Revenue Service, the State Auditor, or the Minnesota Department of Revenue with respect to the Project and/or the tax-exempt status of the Tax-Exempt Governmental Note; or

(xi) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Notes to which it is a party;

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys, and agents, to the extent such Losses are caused by the negligence, unlawful acts, or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Funding Lender or the Governmental Lender or any of their respective officers, commissioners, members, directors, officials, employees, attorneys, and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

Notwithstanding the foregoing, during the Permanent Phase, nothing in this subsection (a) shall impose any recourse liability on the Borrower or its partners for the payment of any principal or interest on the Project Loan.

(b) **Procedures.** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Project Loan Agreement, the Security Instrument and the Tax Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party



pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) **Survival.** The provisions of this Section 6.01 shall survive the termination of this Project Loan Agreement.

**Section 6.02 *Limitation With Respect to the Funding Lender.*** Notwithstanding anything in this Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

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## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01** *Events of Default.* The following shall be “**Events of Default**” under this Project Loan Agreement, and the term “Event of Default” shall mean, whenever it is used in this Project Loan Agreement, one or all of the following events:

(a) If any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) If the Borrower fails to pay any amounts due under this Project Loan Agreement, the Project Notes or the Security Instrument at the times and in the amounts required by this Project Loan Agreement, the Project Notes and the Security Instrument, as applicable, subject to any applicable cure or grace period set forth in the Construction Continuing Covenant Agreement;

(c) If the Borrower fails to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Project Loan Agreement, which failure continues for a period of thirty (30) days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within thirty (30) days but can be cured within a reasonable period and will not, in the Funding Lender Representative’s sole discretion, adversely affect the Funding Lender or result in impairment of this Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within thirty (30) days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative’s judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Agreement, result in harm to the Funding Lender, impairment of this Project Loan Agreement or any other Financing Document;

(d) The occurrence of a default under the Continuing Covenant Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Servicer or the

Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents.

**Section 7.02 Remedies on Default.** Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Project Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Notes to be immediately due and payable).

(b) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may, without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any Prepayment Premium on the Funding Loan collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

Notwithstanding the foregoing, if an Event of Default shall arise hereunder, the limited partners of the Borrower or affiliates under common control with the limited partners of the Borrower shall have the right, but not the obligation, to cure such default and the Governmental Lender shall accept such cure as if made on behalf of the Borrower.

**Section 7.03 No Remedy Exclusive.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loan, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Project Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but

any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Project Loan Agreement.

**Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.*** In the event the Borrower shall default under any of the provisions of this Project Loan Agreement and the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Project Loan Agreement or in the Project Notes, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.05 *No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in this Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 *Control of Proceedings.***

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Project Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Project Loan without the express direction of the Funding Lender Representative.

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) prosecute any action with respect to a lien on the Project; or

(ii) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Project Loan; or

(iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loan or the Funding Loan.

(c) Notwithstanding subsections (a) and (b) above, the Governmental Lender or the Fiscal Agent may:

(i) specifically enforce the tax covenants of the Borrower specified in Sections 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof; and

(ii) specifically enforce the Tax Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Tax Regulatory Agreement or are otherwise inconsistent with the operation of the Project in accordance with applicable requirements of the Internal Revenue Code and state law (but in neither the case of clause (i) above or this clause (ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding subsections (a) and (b) above, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any indemnified party related to the Governmental Lender or the Fiscal Agent under Section 6.01 hereof (each a “**Related Indemnified Party**”) to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01, and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent’s right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an event of default with respect to the Funding Loan, which reasonable fees and expenses of the Fiscal Agent shall be payable as provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

**Section 7.07 Assumption of Obligations.** At the Funding Lender’s discretion, in the event that the Fiscal Agent or the Funding Lender or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Project Loan Agreement, the Project Notes, the Tax Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

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## ARTICLE VIII

### MISCELLANEOUS

#### **Section 8.01** *Notices.*

(a) Whenever in this Project Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the investor limited partner of the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Project Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and a duplicate copy of each notice or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Project Loan Agreement. If the party sending the Electronic Notice elects to give the Fiscal Agent e-mail or facsimile instructions (or instructions by a similar electronic method), the Fiscal Agent's understanding of such instructions shall be deemed controlling. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such instructions notwithstanding that such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower, the Administrative Agent, the Governmental Lender, or any other party sending such Electronic Notice pursuant to the Project Loan Agreement agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Fiscal Agent, including, without limitation, the risk of the Fiscal Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder known to the Fiscal Agent and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

**Section 8.02** *Concerning Successors and Assigns.* All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive

the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Project Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

**Section 8.03 *Governing Law.*** This Project Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America.

**Section 8.04 *Modifications in Writing.*** Modification or the waiver of any provisions of this Project Loan Agreement or consent to any departure by the parties therefrom shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.05 *Further Assurances and Corrective Instruments.*** The Governmental Lender, the Fiscal Agent and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Project Loan Agreement.

**Section 8.06 *Captions.*** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Project Loan Agreement.

**Section 8.07 *Severability.*** The invalidity or unenforceability of any provision of this Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.08 *Counterparts.*** This Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09 *Amounts Remaining in Loan Payment Fund or Other Funds.*** It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents) shall be paid in accordance with the Funding Loan Agreement.

**Section 8.10 *Effective Date and Term.*** This Project Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Funding Loan Agreement shall terminate.

**Section 8.11 *Cross-References.*** Any reference in this Project Loan Agreement to an "Exhibit," an "Article," a "Section," a "subsection" or a "paragraph" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Project Loan Agreement,

an article of this Project Loan Agreement, a section of this Project Loan Agreement, a subsection of the section of this Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Project Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Project Loan Agreement are incorporated by reference into this Project Loan Agreement.

**Section 8.12 *Funding Lender Representative and Servicer as Third-Party Beneficiaries.***

The parties hereto agree and acknowledge that the Funding Lender Representative and the Servicer are third party beneficiaries of this Project Loan Agreement.

**Section 8.13 *Reserved.***

**Section 8.14 *Non-Liability of Governmental Lender.*** The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Project Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (or Prepayment Premium) or interest on the Funding Loan. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Project Loan Agreement, the Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Project Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Project Loan Agreement, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or Prepayment Premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent or the Funding Lender, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or Prepayment Premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

**Section 8.15 *No Liability of Officers.*** No recourse under or upon any obligation, covenant, or agreement or in the Governmental Notes, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of



and consideration for the execution of this Project Loan Agreement and the issuance of the Governmental Notes.

**Section 8.16 Capacity of the Fiscal Agent.** The Fiscal Agent is entering into this Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Fiscal Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

**Section 8.17 Reliance.** The representations, covenants, agreements and warranties set forth in this Project Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Project Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent under this Project Loan Agreement and under the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Project Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of Funding Loan issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Project Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

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IN WITNESS WHEREOF, the Governmental Lender, the Fiscal Agent, and the Borrower have executed this Project Loan Agreement, all as of the date and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

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

**U. S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

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

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE III, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

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**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,**  
a Minnesota limited liability limited partnership, as mortgagor  
**(Borrower)**

to

**CITY OF MINNETONKA, MINNESOTA**  
a municipal corporation, as mortgagee  
**(Governmental Lender)**

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING (SERIES A)**

Dated: September \_\_, 2018

**PREPARED BY AND UPON  
RECORDATION RETURN TO:**

Stinson Leonard Street LLP  
50 South Sixth Street, Suite 2600  
Minneapolis, Minnesota 55402  
Attention: David W. Kelley

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING (SERIES A)**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (SERIES A) (this "**Security Instrument**") is made as of this \_\_\_\_ day of September, 2018, by MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership, as mortgagor, having its principal place of business at 2905 Northwest Boulevard, Suite 150, Plymouth, MN 55441-7400, as mortgagor ("**Borrower**") for the benefit of the CITY OF MINNETONKA, MINNESOTA, a municipal corporation organized and existing under the laws of the State of Minnesota, having an address at 14600 Minnetonka Boulevard, Minnetonka, MN 55345-1502, together with its successors and assigns, as mortgagee ("**Governmental Lender**").

W I T N E S S E T H:

A. Pursuant to Minnesota Statutes Chapter 462C and the Project Loan Agreement dated as of the date hereof (the "**Project Loan Agreement**") by and among Governmental Lender, U.S. Bank National Association, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Saint Paul, Minnesota, as Fiscal Agent (in such capacity, "**Fiscal Agent**") and Borrower, Governmental Lender is agreeing to make a mortgage loan to Borrower in the maximum aggregate principal amount of \$[\_\_\_\_\_] (the "**Project Loan**") to provide for the financing of a multifamily rental housing development located at 11001 Bren Road East in Minnetonka, Minnesota to be known as "Legends of Minnetonka".

B. Borrower's repayment obligations in respect of the Project Loan will be evidenced by a Multifamily Note (Series A) (the "**Tax Exempt Project Note**") and a Multifamily Note (Series B) (the "**Taxable Project Note**," together with the Tax Exempt Project Note, the "**Project Notes**"), each dated as of the date hereof, delivered to Governmental Lender, which Project Notes will be endorsed by Governmental Lender to the Fiscal Agent as security for the Funding Loan.

C. Governmental Lender is making the Project Loan to Borrower with the proceeds received from the separate loan made to Governmental Lender pursuant to the Funding Loan Agreement dated as of the date hereof by and among U.S. Bank National Association, a national banking association, in its capacity as administrative agent for the "Lenders" under the Loan Agreement referred to below ("**Administrative Agent**"), Governmental Lender and Fiscal Agent (the "**Funding Loan Agreement**") in the maximum aggregate principal amount of \$[\_\_\_\_\_] (the "**Funding Loan**").

D. Lenders, pursuant to the terms and subject to the conditions of (i) the Funding Loan Agreement, (ii) that certain Construction Loan Agreement dated as of even date herewith, by and among Administrative Agent, Lenders and Borrower (together with any amendment, restatement or modification thereto, the "**Loan Agreement**") and (iii) the Construction Phase Financing Agreement dated as of the date hereof by and among Administrative Agent, on behalf

of the Lenders, Borrower, Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise, and KeyBank National Association (the “**Construction Phase Financing Agreement**”), have agreed to originate and fund the Funding Loan to Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by Governmental Lender to fund the Project Loan to Borrower in corresponding installments pursuant to the Project Loan Agreement.

E. Administration Agent will administer the Project Loan and the Funding Loan during the construction phase in accordance with the Loan Agreement, the Construction Phase Financing Agreement and the other Loan Documents (as defined in the Loan Agreement).

F. Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to such financing.

G. In order to secure Borrower's obligations under the Tax Exempt Project Note and pursuant to the Project Loan Agreement, the Loan Agreement and the Construction Phase Financing Agreement, Borrower is executing and delivering this Security Instrument to Governmental Lender.

H. The Project Loan will be made under an affordable housing program and Governmental Lender is a political subdivision of the State of Minnesota. Therefore, this Security Instrument is exempt from mortgage registry tax under Minn. Stat. Section 287.04(f).

NOW THEREFORE, in consideration of the foregoing Recitals (which are by this reference incorporated into this Security Instrument and made a part hereof), and the covenants, agreements, representations and warranties set forth in this Security Instrument:

#### Article 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Governmental Lender, and grant a security interest to Governmental Lender in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the “**Property**”):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the “**Land**”);

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the “**Improvements**”);



(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All “equipment,” as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “*Equipment*”);

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the “*Fixtures*”);

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof

(collectively, the “**Personal Property**”), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state, states, commonwealth or commonwealths where any of the Property is located (as amended from time to time, the “**Uniform Commercial Code**”), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the “**Bankruptcy Code**”) (collectively, the “**Leases**”) and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including all cash, letters of credit or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or Property Manager and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Obligations (as hereinafter defined);

(i) Condemnation Awards. All awards or payments (including any administrative fees or attorneys’ fees), including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property, and including but not limited to any Compensation;

(j) Insurance Proceeds. All proceeds (including any administrative fees or attorneys’ fees) in respect of the Property under any insurance policies covering the Property (including but not limited to the Proceeds), together with the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(l) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Governmental Lender in the Property;

(m) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(n) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including all accounts established or maintained pursuant to the Loan Documents; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(p) Swap Contract. All of Borrower's present and future rights, titles and interests, but not its obligations, duties or liabilities for any breach, in, under and to all Swap Contracts and all Swap Transactions, any and all amounts received by Borrower in connection therewith or to which Borrower is entitled thereunder, and all proceeds of the foregoing including all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing;

(q) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise; and

(r) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (q) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Governmental Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures are collectively referred to as the "**Real Property**")

appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, will for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

Section 1.2 ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Governmental Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of Section 7.1(h) of this Security Instrument, Governmental Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents. Borrower will hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Obligations (as hereinafter defined), for use in the payment of such sums.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Governmental Lender, as security for the Obligations (as hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "*Collateral*"). If an Event of Default occurs, Governmental Lender, in addition to any other rights and remedies which it may have, will have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Governmental Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Governmental Lender after the occurrence of an Event of Default, Borrower will, at its expense, assemble the Collateral and make it available to Governmental Lender at a convenient place (at the Land if tangible property) acceptable to Governmental Lender. Borrower will pay to Governmental Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Governmental Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence of an Event of Default. Any notice of sale, disposition or other intended action by Governmental Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least 10 Business Days prior to such action, will, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Governmental Lender to the payment of the Obligations (as hereinafter defined) in such priority and proportions as Governmental Lender in its discretion deems proper. The principal place of business of Borrower (Debtor) is as set forth on page one hereof and the address of Governmental Lender (Secured Party) is as set forth on page one hereof.

Section 1.4 FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in

this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, will operate also as a financing statement naming Borrower as Debtor and Governmental Lender as Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 PLEDGES OF MONIES HELD. Borrower hereby pledges to Governmental Lender any and all monies now or hereafter held by Governmental Lender or on behalf of Governmental Lender in connection with the Project Loan, including any sums deposited in the Required Accounts and any and all Proceeds and Compensation, as additional security for the Obligations (as hereinafter defined) until expended or applied as provided in this Security Instrument or the Loan Agreement.

### CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Governmental Lender and its successors and assigns, forever;

PROVIDED, HOWEVER, this grant is made upon the express condition that, if Borrower pays to Governmental Lender the Obligations (as hereinafter defined) at the time and in the manner provided in the Loan Documents, and performs the Obligations (as hereinafter defined) in the time and manner set forth in the Loan Documents and complies with each and every covenant and condition set forth herein and in the other Loan Documents, the estate hereby granted will cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Governmental Lender pursuant to the provisions hereof will survive any such payment or release.

### Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the payment of the Project Loan, including but not limited to the obligations of Borrower to pay to Governmental Lender the principal and interest owing pursuant to the terms and conditions of the Tax Exempt Project Note, the Project Loan Agreement, and the Loan Agreement, together with the payment of all breakage costs, swap obligations, fees, costs, expenses, interest and other charges relating to the Project Loan, and any other obligations of Borrower under the Loan Documents, including but not limited to all LIBOR Breakage Costs, Swap Obligations and Fees (collectively, the "**Debt**"):

Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "**Other Obligations**"):

(a) the performance of all other obligations of Borrower contained herein, including all fees and charges payable by Borrower;

(b) the performance of each obligation of Borrower contained in the Loan Agreement and each other Loan Document; and

(c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Tax Exempt Project Note, the Project Loan Agreement, the Loan Agreement or any other Loan Document.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations will be referred to collectively herein as the "*Obligations*."

### Article 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF OBLIGATIONS. Borrower will pay and perform the Obligations at the time and in the manner provided in the Loan Agreement, the Project Loan Agreement, the Tax Exempt Project Note and this Security Instrument.

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Tax Exempt Project Note, (c) the Project Loan Agreement and (d) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 INSURANCE. Borrower will obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement. In the event Borrower fails to obtain, maintain, keep in force or deliver to Governmental Lender the policies of insurance required by the Loan Agreement in accordance with the terms thereof, Governmental Lender may (but has no obligation to) procure such insurance or single-interest insurance for such risks covering Governmental Lender's interests, and Borrower will pay all premiums thereon promptly upon demand by Governmental Lender, and until such payment is made by Borrower, the amount advanced by Governmental Lender with respect to all such premiums will, at Governmental Lender's option, bear interest at the Default Rate.

Section 3.4 MAINTENANCE OF PROPERTY. Borrower will cause the Property to be maintained in a good and safe condition and repair and otherwise in accordance with the Loan Agreement. The Improvements, the Fixtures, the Equipment and the Personal Property will not be removed, demolished or altered without the consent of Governmental Lender other than in accordance with the terms and conditions of the Loan Agreement. Borrower will promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty or become damaged, worn or dilapidated or which may be affected by any condemnation, and will complete and pay for any structure at any time in the process of construction or repair on the Land.

Section 3.5 WASTE. Borrower will not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any insurance policy which Borrower is obligated to

maintain pursuant to the Loan Agreement, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Governmental Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 PAYMENT FOR LABOR AND MATERIALS.

(a) Borrower will promptly pay when due all bills and costs for labor and materials (“*Labor and Material Costs*”) incurred in connection with the Property and not permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event not permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or Security Interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(b) After prior written notice to Governmental Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Default or Event of Default has occurred, (ii) either (A) such proceeding will suspend the collection of the Labor and Material Costs from Borrower and from the Property, or (B) Borrower has paid all of the Labor and Material Costs under protest, (iii) such proceeding is permitted and conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and will not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (v) Borrower has furnished such security as may be required in the proceeding, or as may be requested by Governmental Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon. Governmental Lender may pay over any such security or part thereof held by Governmental Lender to the claimant entitled thereto at any time when, in the judgment of Governmental Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) is in danger of being sold, forfeited, terminated, cancelled or lost or there is any danger of any Lien related to the contested Labor and Material Costs becoming senior in priority, in whole or in part, to the Lien of the Security Instrument.

Section 3.7 PAYMENT OF TAXES AND IMPOSITIONS.

(a) Borrower will pay, or cause to be paid prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments, duties, levies, imposts, deductions, charges or withholdings, of any kind or nature whatsoever, including nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property, or become due and payable, and which create or may create a lien upon the Property (all the foregoing, collectively, “*Impositions*”).

(b) After prior notice to Governmental Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Impositions, provided that (i) no Default or Event of Default has occurred, (ii) either (A) such proceeding will suspend the collection of the Impositions from Borrower and from the Property, or (B) Borrower has paid all of the Impositions under protest, (iii) such proceeding is permitted and conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and will not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (v) Borrower will promptly upon final determination thereof pay the amount of any such Impositions, together with all costs, interest and penalties which may be payable in connection therewith, and (vi) Borrower has furnished such security as may be required in the proceeding, or as may be reasonably requested by Governmental Lender to insure the payment of any contested Impositions, together with all interest and penalties thereon. Governmental Lender may pay over any such security or part thereof held by Governmental Lender to the claimant entitled thereto at any time when, in the judgment of Governmental Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) is in danger of being sold, forfeited, terminated, cancelled or lost or there is any danger of any Lien related to the contested Impositions becoming senior in priority, in whole or in part, to the Lien of the Security Instrument.

Section 3.8 CHANGE OF NAME, JURISDICTION. In addition to the restrictions contained in the Loan Agreement and the Project Loan Agreement, Borrower will not change Borrower's name, identity (including its trade name or names) or jurisdiction of formation or organization unless Borrower has first obtained the prior written consent of Governmental Lender to such change, and has taken all actions necessary or required by Governmental Lender to file or amend any financing statements or continuation statements to assure perfection and continuation of perfection of security interests under the Loan Documents. Borrower will notify Governmental Lender in writing of any change in its organizational identification number at least thirty (30) days in advance of such change becoming effective. If Borrower does not now have an organizational identification number and later obtains one, Borrower will promptly notify Governmental Lender in writing of such organizational identification number. At the request of Governmental Lender, Borrower will execute a certificate in form satisfactory to Governmental Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Section 3.9 UTILITIES. Borrower will pay or cause to be paid when due all utility charges that are incurred by Borrower for the benefit of the Property or that may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Property or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

Section 3.10 CASUALTY In the event of any damage, destruction or other casualty to the Property or any part thereof, Borrower shall comply in all respects with the terms, conditions and requirements set forth in Section 6.11 of the Loan Agreement, and, in the event of any casualty



or Condemnation, all Proceeds shall be paid, applied and disbursed in accordance with Section 6.11 of the Loan Agreement, and Borrower hereby authorizes and directs any affected insurance company to make payment of such Proceeds in accordance therewith.

Section 3.11 CONDEMNATION. With respect to any Condemnation, Borrower shall comply in all respects with the requirements set forth in Section 6.11 of the Loan Agreement. All Compensation shall be applied in the manner set forth in the Loan Agreement. In the event of a foreclosure of this Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Obligations, all right, title and interest of Borrower in and to the Compensation will vest in the purchaser at such foreclosure or in Governmental Lender or other transferee in the event of such other transfer of title.

#### Article 4 - OBLIGATIONS AND RELIANCES

Section 4.1 RELATIONSHIP OF BORROWER AND GOVERNMENTAL LENDER. The relationship between Borrower and Governmental Lender is solely that of debtor and creditor, and Governmental Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Tax Exempt Project Note, this Security Instrument or any of the other Loan Documents will be construed so as to deem the relationship between Borrower and Governmental Lender to be other than that of debtor and creditor.

Section 4.2 NO RELIANCE ON GOVERNMENTAL LENDER. The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Governmental Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Governmental Lender's expertise, business acumen or advice in connection with the Property.

#### Section 4.3 NO GOVERNMENTAL LENDER OBLIGATIONS.

(a) Notwithstanding anything to the contrary contained in this Security Instrument, Governmental Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Governmental Lender pursuant to this Security Instrument, the Loan Agreement, the Tax Exempt Project Note or the other Loan Documents, including any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Governmental Lender will not be deemed to have warranted, consented to, or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof will not constitute any warranty or affirmation with respect thereto by Governmental Lender.

Section 4.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Project Loan Agreement, the Tax Exempt Project Note, this Security Instrument and the other Loan Documents, Governmental Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in the Project

Loan Agreement and in Article 5 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Governmental Lender; that such reliance existed on the part of Governmental Lender prior to the date hereof; that the warranties and representations are a material inducement to Governmental Lender in making the Project Loan; and that Governmental Lender would not be willing to make the Project Loan and accept this Security Instrument in the absence of the warranties and representations set forth in the Project Loan Agreement and in Article 5 of the Loan Agreement.

#### Article 5 - FURTHER ASSURANCES

Section 5.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Governmental Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Tax Exempt Project Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 FURTHER ACTS, ETC. Borrower will, at Borrower's sole cost and expense, and without expense to Governmental Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Governmental Lender may, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Governmental Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Governmental Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all applicable Laws and Requirements of Law. Borrower, on demand, will execute and deliver, and in the event it fails to so execute and deliver, hereby authorizes Governmental Lender to execute in the name of Borrower or file or record without the signature of Borrower to the extent Governmental Lender may lawfully do so, one or more financing statements (including initial financing statements and amendments thereto and continuation statements), to evidence more effectively the security interest of Governmental Lender in the Property. Borrower also ratifies its authorization for Governmental Lender to have filed or recorded any like initial financing statements, amendments thereto and continuation statements, if filed or recorded prior to the date of this Security Instrument. Borrower grants to

Governmental Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Governmental Lender at law and in equity, including such rights and remedies available to Governmental Lender pursuant to this Section. To the extent not prohibited by applicable law, Borrower hereby ratifies all acts Governmental Lender has lawfully done in the past or will lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 5.3 CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Governmental Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any, in accordance with the applicable provisions of the Loan Agreement. If Governmental Lender is advised by counsel chosen by it that the payment of any such tax by Borrower would be unlawful or taxable to Governmental Lender or unenforceable or provide the basis for a defense of usury then Governmental Lender will have the option by written notice of not less than 120 days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the Property, or any part thereof, and no deduction will otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction is required by law, Governmental Lender will have the option, by written notice of not less than 120 days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State will require revenue or other stamps to be affixed to the Tax Exempt Project Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Article 6 - DUE ON SALE/ENCUMBRANCE

Section 6.1 GOVERNMENTAL LENDER RELIANCE. Borrower acknowledges that Governmental Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Project Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment and performance of the Obligations. Borrower acknowledges that Governmental Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Obligations or the performance of the Obligations, Governmental Lender can recover the Obligations by a sale of the Property.

Section 6.2 NO TRANSFER. Borrower will comply in all respects with the provisions of the Loan Agreement regarding (a) selling, transferring, leasing, conveying or encumbering the Land, the Equipment or the Improvements or the direct or indirect interests in Borrower, and (b) changing control of Borrower.

## Article 7 - RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 REMEDIES. Upon the occurrence of any Event of Default, unless such Event of Default is subsequently waived in writing by Governmental Lender (provided that Governmental Lender has no obligation whatsoever to grant any such waiver and any such waiver, if granted, will be considered a one-time waiver), Governmental Lender may exercise any or all of the following rights and remedies, consecutively or simultaneously, and in any order:

(a) Exercise any and all rights and remedies specified in the Loan Agreement, including declaring that the Commitment is terminated and/or declaring that the entire unpaid principal balance of the Obligations are immediately due and payment, together with accrued and unpaid interest thereon;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Obligations not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Tax Exempt Project Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Obligations either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Borrower, any guarantor or any indemnitor with respect to the Project Loan or of any Person liable for the payment of the Obligations;

(h) the license granted to Borrower under Section 1.2 hereof will automatically be revoked and Governmental Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records

and accounts to Governmental Lender upon demand, and thereupon Governmental Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Governmental Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Governmental Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Governmental Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Obligations, in such order, priority and proportions as Governmental Lender deems appropriate in its sole discretion after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Governmental Lender, its in-house and outside counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and the Personal Property, or any part thereof, and to take such other measures as Governmental Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) require Borrower at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Governmental Lender at a convenient place acceptable to Governmental Lender. Any notice of sale, disposition or other intended action by Governmental Lender with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least 5 days prior to such action, will constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Governmental Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole and absolute discretion:

- (i) Taxes;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Tax Exempt Project Note;
- (iv) The unpaid principal balance of the Tax Exempt Project Note;

(v) All other sums payable pursuant to the Tax Exempt Project Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including advances made by Governmental Lender pursuant to the terms of this Security Instrument;

(k) pursue such other remedies as Governmental Lender may have under the other Loan Documents and/or applicable law; or

(l) apply the undisbursed balance of any Proceeds and/or Shortfall Funds, together with interest thereon, to the payment of the Obligations in such order, priority and proportions as Governmental Lender will deem to be appropriate in its discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument will continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Governmental Lender pursuant to the Loan Agreement, this Security Instrument or the other Loan Documents, may be applied by Governmental Lender to the payment of the Obligations in such priority and proportions as Governmental Lender in its discretion will deem proper, to the extent consistent with applicable Laws.

Section 7.3 ACTIONS AND PROCEEDINGS. Borrower will give Governmental Lender prompt written notice of the assertion of any claim with respect to, or the filing of any action or proceeding purporting to affect the Property, the security hereof or the rights or powers of Governmental Lender. Governmental Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Governmental Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.4 RECOVERY OF SUMS REQUIRED TO BE PAID. Governmental Lender will have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations is due, and without prejudice to the right of Governmental Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 7.5 OTHER RIGHTS, ETC.

(a) The failure of Governmental Lender to insist upon strict performance of any term hereof will not be deemed to be a waiver of any term of this Security Instrument. Borrower will not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Governmental Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Project Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Tax Exempt Project Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Governmental Lender extending the time of payment or otherwise modifying or supplementing

the terms of the Tax Exempt Project Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Governmental Lender will have no liability whatsoever for decline in value of the Property, for failure to maintain any insurance policies, or for failure to determine whether insurance in force is adequate as to the amount or nature of risks insured. Possession by Governmental Lender will not be deemed an election of judicial relief if any such possession is requested or obtained with respect to all or any portion of the Property or collateral not in Governmental Lender's possession.

(c) Governmental Lender may resort for the payment of the Obligations to any other security held by Governmental Lender in such order and manner as Governmental Lender, in its discretion, may elect. Governmental Lender may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Governmental Lender thereafter to foreclose this Security Instrument. The rights of Governmental Lender under this Security Instrument will be separate, distinct and cumulative and none will be given effect to the exclusion of the others. No act of Governmental Lender will be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Governmental Lender will not be limited exclusively to the rights and remedies herein stated but will be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.6 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Governmental Lender may release any portion of the Property for such consideration as Governmental Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder are reduced by the actual monetary consideration, if any, received by Governmental Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Governmental Lender may require without being accountable for so doing to any other lienholder. This Security Instrument will continue as a lien on, and security interest in, the remaining portion of the Property.

Section 7.7 VIOLATION OF LAWS. If the Property is not in compliance in all material respects with any Requirements of Law, Governmental Lender may impose additional requirements upon Borrower in connection herewith including monetary reserves or financial equivalents.

Section 7.8 RIGHT OF ENTRY. Upon reasonable notice to Borrower, Governmental Lender and its agents will have the right to enter and inspect the Property at all reasonable times.

Section 7.9 BANKRUPTCY.

(a) After the occurrence of an Event of Default, Governmental Lender will have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and

other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there is filed by or against Borrower a petition under the Bankruptcy Code and Borrower, as lessor under any Lease, determines to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower will give Governmental Lender not less than 10 days' prior notice of the date on which Borrower will apply to the bankruptcy court for authority to reject the Lease. Governmental Lender will have the right, but not the obligation, to serve upon Borrower within such 10 day period a notice stating that (i) Governmental Lender demands that Borrower assume and assign the Lease to Governmental Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Governmental Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Governmental Lender serves upon Borrower the notice described in the preceding sentence, Borrower will not seek to reject the Lease and will comply with the demand provided for in clause (i) of the preceding sentence within 30 days after the notice is given, subject to the performance by Governmental Lender of the covenant provided for in clause (ii) of the preceding sentence.

Section 7.10 ACCEPTANCE OF CURE. Governmental Lender may, in its discretion, but without any obligation whatsoever to do so, accept a cure of an Event of Default from time to time. Borrower will only be entitled to rely on such an acceptance if Governmental Lender expressly states, in writing, that it has accepted such a cure. If Governmental Lender accepts a cure of an Event of Default, and no other uncured Event of Default is then continuing, then Governmental Lender may agree, in its discretion, but without any obligation to do so, to treat any provision in this Security Instrument or in any other Loan Document as if no Event of Default had ever occurred.

Section 7.11 ACCEPTANCE OF PAYMENTS. Borrower agrees that if Borrower makes a tender of a payment but does not simultaneously tender payment of any late charge, Default Rate interest, LIBOR Breakage Costs, Swap Obligations or other amount then due and owing by Borrower under this Security Instrument or the other Loan Documents, and such payment is accepted by Governmental Lender, with or without protest, such acceptance will not constitute any waiver of Governmental Lender's rights to receive such amounts. Furthermore, if Governmental Lender accepts any payment from Borrower or any Guarantor after a Default or Event of Default, such acceptance will not constitute a waiver or satisfaction of any such Default or Event of Default. Any waiver or satisfaction of a Default or Event of Default must be evidenced by an express writing of Governmental Lender.

## Article 8 - ENVIRONMENTAL HAZARDS

Section 8.1 ENVIRONMENTAL COVENANTS. Borrower has provided representations, warranties and covenants regarding environmental matters set forth in the Indemnity and Borrower will comply with the aforesaid covenants regarding environmental matters.

## Article 9 - INDEMNIFICATION



Section 9.1 INDEMNIFICATION. The provisions of Section 10.1 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

#### Article 10 - CERTAIN WAIVERS

Section 10.1 WAIVER OF OFFSETS; DEFENSES; COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Governmental Lender to offset any obligations to make the payments required by the Loan Documents. No failure by Governmental Lender to perform any of its obligations hereunder will be a valid defense to, or result in any offset against, any payments which Borrower is obligated to make under any of the Loan Documents.

Section 10.2 MARSHALLING AND OTHER MATTERS. To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption Laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all other Persons to the extent permitted by applicable law.

Section 10.3 WAIVER OF NOTICE. To the extent permitted by applicable law, Borrower will not be entitled to any notices of any nature whatsoever from Governmental Lender except with respect to matters for which this Security Instrument or any of the other Loan Documents specifically and expressly provides for the giving of notice by Governmental Lender to Borrower and except with respect to matters for which Governmental Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Governmental Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Governmental Lender to Borrower. All sums payable by Borrower pursuant to this Security Instrument must be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder will in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (b) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Governmental Lender, or any action taken with respect to this Security Instrument by any trustee or receiver of Governmental Lender, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Governmental Lender; (f) any default or failure on the part of Governmental Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Borrower has notice or knowledge of any of the foregoing.

Section 10.4 WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable law, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment or performance of the Obligations.

#### Article 11 - NOTICES

Section 11.1 NOTICES. All notices or other written communications hereunder will be delivered in accordance with the notice provisions of the Loan Agreement.

#### Article 12 - APPLICABLE LAW

Section 12.1 ***GOVERNING LAW; WAIVER OF JURY TRIAL; JURISDICTION***. IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MINNESOTA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT AND THE NOTE, AND THIS SECURITY INSTRUMENT AND THE NOTE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA, AND ANY LAWS OF THE UNITED STATES OF AMERICA APPLICABLE TO NATIONAL BANKS.

TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND GOVERNMENTAL LENDER HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION RELATING TO THE LOAN AND/OR THE LOAN DOCUMENTS. BORROWER, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF MINNESOTA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS SECURITY INSTRUMENT, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF MINNESOTA, (C) SUBMITS TO THE JURISDICTION AND VENUE OF SUCH COURTS AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT, AND (D) AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN WILL AFFECT THE RIGHT OF GOVERNMENTAL LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESSES FOR NOTICES

DESCRIBED IN THIS SECURITY INSTRUMENT, AND CONSENTS AND AGREES THAT SUCH SERVICE WILL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN WILL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

Section 12.2 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof will be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term will not be affected thereby.

#### Article 13 - DEFINITIONS

Section 13.1 DEFINITIONS. All capitalized terms not defined herein will have the respective meanings set forth in the Loan Agreement. If a capitalized term is defined herein and the same capitalized term is defined in the Loan Agreement, then the capitalized term that is defined herein shall be utilized for the purposes of this Security Instrument, *provided* that the foregoing shall not impact provisions that are incorporated herein by reference. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Borrower**" will mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the words "**Governmental Lender**" will mean "Governmental Lender and any subsequent holder of the Tax Exempt Project Note," the words "**Tax Exempt Project Note**" and "**Note**" will mean "the Tax Exempt Project Note and any other evidence of indebtedness secured by this Security Instrument," the word "**Property**" will include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" will include any and all in-house and outside attorneys', paralegals' and law clerks' fees and disbursements, including fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Governmental Lender in protecting its interest in the Property, the Leases and the Rents, and enforcing its rights hereunder.

#### Article 14 - MISCELLANEOUS PROVISIONS

Section 14.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Governmental Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.2 SUCCESSORS AND ASSIGNS. This Security Instrument will be binding upon and inure to the benefit of Borrower and Governmental Lender and their respective successors and assigns forever.

Section 14.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Loan Agreement, the Tax Exempt Project Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Tax Exempt Project Note and this Security Instrument will be construed without such provision.

Section 14.4 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 14.5 SUBROGATION. If any or all of the proceeds of the Loan have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Governmental Lender will be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Governmental Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Obligations, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Project Loan Agreement, the Tax Exempt Project Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 14.6 ENTIRE AGREEMENT. The Tax Exempt Project Note, the Loan Agreement, the Project Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Governmental Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Borrower and Governmental Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Tax Exempt Project Note, the Loan Agreement, the Project Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Governmental Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Tax Exempt Project Note, the Project Loan Agreement, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 14.7 LIMITATION ON GOVERNMENTAL LENDER'S RESPONSIBILITY. No provision of this Security Instrument will operate to place any obligation or liability for the control, care, management or repair of the Property upon Governmental Lender, nor will it operate to make Governmental Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained will be construed as constituting Governmental Lender a "mortgagee in possession."

Section 14.8 JOINT AND SEVERAL. If more than one Person has executed this Security Instrument as "Borrower," the representations, covenants, warranties and obligations of all such Persons hereunder will be joint and several.

Section 14.9 GOVERNMENTAL LENDER'S DISCRETION. Whenever, pursuant to this Security Instrument or any of the other Loan Documents, Governmental Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory or acceptable to Governmental Lender, or Governmental Lender exercises any right to grant or withhold consent, or Governmental Lender exercises its discretion in making any decision, the decision of Governmental Lender will, except as is otherwise specifically herein provided, be in the sole and absolute discretion of Governmental Lender and will be final and conclusive.

Section 14.10 NO MERGER. So long as the Obligations remain unpaid and undischarged and unless Governmental Lender otherwise consents in writing, the fee, leasehold, subleasehold and sub-subleasehold estates in and to the Property will not merge but will always remain separate and distinct, notwithstanding the union of estates (without implying Borrower's consent to such union) either in Borrower, Governmental Lender, any tenant or any third party by purchase or otherwise. In the event this Security Instrument is originally placed on a leasehold estate and Borrower later obtains fee title to the Property, such fee title will be subject and subordinate to this Security Instrument.

#### Article 15 - STATE-SPECIFIC PROVISIONS

Section 15.1 PRINCIPLES OF CONSTRUCTION. In the event of any inconsistencies between the terms and conditions of this Article 15 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 15 will control and be binding.

Section 15.2 REMEDIES OF GOVERNMENTAL LENDER; MORTGAGE FORECLOSURE. Borrower does hereby grant and confer upon Governmental Lender the fullest rights and remedies available for foreclosure of this Security Instrument by action or by advertisement pursuant to Minnesota Statutes Chapters 580, 581 and 582, as said statutes may be amended from time to time, and pursuant to other applicable Minnesota laws and statutes, as amended, governing and authorizing mortgage foreclosures by action and by advertisement including, but not limited to, a grant to Governmental Lender of the power of sale; and the power of sale granted Governmental Lender in this Security Instrument shall include, without limitation, the power of sale required to permit, at Governmental Lender's option, lawful foreclosure of this Security Instrument by advertisement in accordance with the statutes then made and provided. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is waived, Governmental Lender may, at its option, exercise any or all of the following rights and remedies:

(a) Foreclose this Security Instrument by judicial action or advertisement, and Borrower hereby authorizes Governmental Lender to do so, power being herein expressly granted to sell any or all of the Property at public auction and to convey the same to the purchaser, in fee simple, pursuant to the statutes of the State of Minnesota; or

(b) proceed under the UCC and exercising such rights and remedies as may be provided to a secured party by the UCC with respect to all or any portion of the Property which are fixtures or personal property.

Section 15.3 ASSIGNMENT OF RENTS AND LEASES; RECEIVER. This Security Instrument constitutes an assignment of leases and rents within the meaning of Minnesota Statutes §§ 559.17 and 576.25, and is intended to comply fully with the provisions thereof, and to afford Governmental Lender, the fullest rights and remedies of a secured lender under those statutes. The exercise by Governmental Lender of the statutory remedies referenced in this Section 15.3 shall not constitute Governmental Lender a “lender-in-possession” under Minnesota law. Notwithstanding anything apparently to the contrary in the Loan Documents, all Rents collected by Governmental Lender or any receiver of the Property subsequent to the occurrence of an Event of Default will be held and applied in the following order:

(a) First as provided in Minnesota Statutes § 576.25, Subd. 5.

(b) Thereafter, prior to any non-judicial foreclosure sale of the Property, or prior to the entry of a decree of foreclosure in an action to foreclose this Security Instrument, to Governmental Lender for the payment of the Debt, but no such payment made after the acceleration of all or any of the Debt will affect such acceleration unless such payment is sufficient to reinstate this Security Instrument under Minnesota Statutes § 580.30.

(c) Thereafter as follows:

(i) If the purchaser at the foreclosure sale is not Governmental Lender, first to Governmental Lender to the extent of any deficiency remaining after application of the net sale proceeds to repay the Debt, second to the purchaser as a credit to the redemption price, but if the Property is not redeemed, then to the purchaser of the Property.

(ii) If the purchaser at the foreclosure sale is Governmental Lender, to Governmental Lender to the extent of any deficiency remaining after application of the net sale proceeds to repay the Debt and the balance to be retained by Governmental Lender as a credit to the redemption price, but if the Property is not redeemed, then to Governmental Lender, whether or not such deficiency exists.

(d) The rights and powers of Governmental Lender and receivers under this Security Instrument and the application of Rents under this Section 15.3 shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

(e) If Governmental Lender makes any advances to a receiver, or otherwise for the benefit of the Property, such advances shall become Debt secured by this Security Instrument.

Section 15.4 INTENTIONALLY OMITTED.

Section 15.5 NON-AGRICULTURAL USE. Borrower represents and warrants that as of the date of this Security Instrument the Property is not in agricultural use as defined in Minnesota Statutes § 40A.02, Subd. 3, and is not used for agricultural purposes.

Section 15.6 MAXIMUM INDEBTEDNESS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECURITY INSTRUMENT, THE MAXIMUM PRINCIPAL AMOUNT OF INDEBTEDNESS SECURED BY THIS SECURITY INSTRUMENT, EXCLUDING ADVANCES MADE BY THE MORTGAGEE IN PROTECTION OF THE PROPERTY OR THIS MORTGAGE, IS \$[\_\_\_\_\_].

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the day and year first written above.

**BORROWER:**

**MINNETONKA LEASED HOUSING  
ASSOCIATES III, LLLP**

By: MINNETONKA LEASED HOUSING  
ASSOCIATES III, LLC, its general  
partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MINNESOTA   )  
                                                  )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of Minnetonka Leased Housing Associates III, LLC, a Minnesota limited liability company, as General Partner of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, on behalf of said company and said partnership.

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



***EXHIBIT A***  
**LEGAL DESCRIPTION**

[to be inserted]

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**Assignment of Mortgage,  
Assignment of Leases and Rents, Security  
Agreement and Fixture Filing**

(reserved for recording data)

Date: September \_\_, 2018

FOR VALUABLE CONSIDERATION, the City of Minnetonka, a municipal corporation organized and existing under the laws of the State of Minnesota, Assignor, hereby sells, assigns and transfers to U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as Fiscal Agent, Assignee, Assignor's interest as mortgagee in the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of even date herewith, executed by Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, as mortgagor, in favor of Assignor, as mortgagee, and filed for record on September \_\_, 2018, as Document Number \_\_\_\_\_, in the Office of the County Recorder of Hennepin County, Minnesota and encumbering the real property legally described on Exhibit A attached hereto and the other property described therein, together with all right and interest in the obligations therein specified and the debt thereby secured.

[Signature page follows.]

IN WITNESS WHEREOF, Assignor has caused this instrument to be executed and delivered by duly authorized officers of Assignor, as of the day and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

STATE OF MINNESOTA        )  
                                          ) ss.  
COUNTY OF HENNEPIN     )

On this \_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared \_\_\_\_\_, personally known to me (or provided on the basis of satisfactory evidence) to be the person who executed this instrument as the Mayor of the City of Minnetonka, Minnesota, on behalf of the City.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2018.

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

STATE OF MINNESOTA        )  
                                          ) ss.  
COUNTY OF HENNEPIN     )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared \_\_\_\_\_, personally known to me (or provided on the basis of satisfactory evidence) to be the person who executed this instrument as the City Manager of the City of Minnetonka, Minnesota, on behalf of the City.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2018.

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

**DRAFTED BY AND UPON RECORDING**  
**RETURN TO:**  
Stinson Leonard Street LLP  
50 South Sixth Street, Suite 2600  
Minneapolis, MN 55402  
Attn: David W. Kelley

[Signature Page to Assignment of Mortgage]

Exhibit A

[to be inserted]

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**REGULATORY AGREEMENT**

**between**

**CITY OF MINNETONKA, MINNESOTA,  
as Governmental Lender**

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,  
as Borrower**

**U.S. BANK NATIONAL ASSOCIATION,  
as Note Fiscal Agent**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Bond Trustee**

**Relating to**

**Legends of Minnetonka  
11001 Bren Road East  
Minnetonka, Minnesota**

**Dated September \_\_\_\_, 2018**

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This Instrument Drafted by:

Kennedy & Graven, Chartered (JAE)  
470 US Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402

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## REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated September \_\_\_\_, 2018 (the “**Regulatory Agreement**”), is made and entered into between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership, as the owner of the property described in EXHIBIT A hereto (the “**Borrower**”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “**Note Fiscal Agent**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “**Bond Trustee**”).

### RECITALS

The Governmental Lender is authorized to issue tax-exempt and taxable obligations to provide financing for multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapter 462C, as amended (the “**Act**”).

The Borrower has proposed to undertake the acquisition, construction, and equipping of a 262-unit senior housing rental development to be located at 11001 Bren Road East, Minnetonka, Minnesota, on the real property described on EXHIBIT A attached hereto and to be known as Legends of Minnetonka (the “**Project**”).

In order to finance a portion of the costs of the Project, the Governmental Lender will issue its (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 in the maximum principal amount of \$\_\_\_\_ (the “**Series A-1 Governmental Note**”); (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 in the maximum principal amount of \$\_\_\_\_ (the “**Series A-2 Governmental Note**”); (iii) the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 in the maximum principal amount of \$\_\_\_\_ (the “**Series B-1 Governmental Note**”); and (iv) the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 in the maximum principal amount of \$\_\_\_\_ (the “**Series B-2 Governmental Note**,” and together with the Series A-1 Governmental Note, the Series A-2 Governmental Note, and the Series B-1 Governmental Note, the “**Governmental Notes**”), each dated September \_\_\_\_, 2018. The Governmental Lender shall deliver the Governmental Notes to U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the “**Initial Note Funding Lender**”), pursuant to the terms of a Funding Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, the Administrative Agent, and the Note Fiscal Agent.

The Governmental Lender will loan the proceeds derived from the sale of the Governmental Notes to the Borrower pursuant to the terms of a Project Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, the Note Fiscal Agent, and the Borrower, and the Borrower will apply such proceeds to finance a portion of the Project.

In order to finance a portion of the costs of the Project, the Governmental Lender will issue its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “**Bonds**”), in the original aggregate principal amount of \$4,090,000, pursuant

to a Subordinate Indenture of Trust, dated as of September 1, 2018, between the Governmental Lender and the Bond Trustee.

The Governmental Lender will loan the proceeds of the Bonds to the Borrower pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018, between the Governmental Lender and the Borrower, and the Borrower will apply such proceeds to finance a portion of the Project.

For good and valuable consideration, the Borrower, the Note Fiscal Agent, the Bond Trustee, and the Governmental Lender have determined to enter into this Regulatory Agreement in order to assure compliance with certain requirements of the Code (hereinafter defined) and of the Act applicable to the Project.

NOW, THEREFORE, the Borrower, the Note Fiscal Agent, the Bond Trustee, and the Governmental Lender do hereby impose upon the Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Project and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein, for the length of time that this Regulatory Agreement shall be in full force and effect:

**Section 1. Definitions.** Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Note Funding Loan Agreement.

“*Act*” means Minnesota Statutes, Chapter 462C, as amended.

“*Adjusted Income*” means the adjusted income of a person (together with the adjusted income of all persons eighteen (18) years or older who intend to reside with such person in one Dwelling Unit), as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.

“*Administrative Agent*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as administrative agent for the Initial Funding Lender.

“*BMO Harris Bank*” means BMO Harris Bank N.A., a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

“*Bond Counsel*” means Kennedy & Graven, Chartered, or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds and other obligations issued by states and political subdivisions thereof, duly admitted to practice law before the highest court of any state of the United States of America.

“*Bond Indenture*” means the Subordinate Indenture of Trust, dated as of September 1, 2018, between the Governmental Lender and the Bond Trustee, as it may be supplemented and amended from time to time.

“*Bond Loan Agreement*” means the Subordinate Loan Agreement, dated as of September 1, 2018, between the Governmental Lender and the Borrower, as it may be amended and supplemented from time to time.



“*Bonds*” means the Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C, issued by the Governmental Lender on the Issue Date, in the original aggregate principal amount of \$4,090,000.

“*Bond Trustee*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as trustee under the Bond Indenture.

“*Borrower*” means Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, and its lawful successors and assigns to the extent permitted by the Note Project Loan Agreement and the Bond Loan Agreement.

“*Code*” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Tax-Exempt Obligations.

“*County*” means Hennepin County, Minnesota.

“*Dwelling Units*” means the units of multifamily residential rental housing comprising the Project.

“*Event of Default*” has the meaning specified in Section 13 hereof.

“*Functionally Related and Subordinate*” shall mean and include facilities for use by tenants, for example, laundry facilities, parking areas, and recreational facilities, provided that the same is of a character and size commensurate with the character and size of the Project.

“*Governmental Lender*” means the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State, and its successors.

“*Governmental Notes*” means, collectively, the Series A-1 Governmental Note, the Series A-2 Governmental Note, the Series B-1 Governmental Note, and the Series B-2 Governmental Note.

“*Housing Act*” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“*Initial Note Funding Lender*” means, together, U.S. Bank and BMO Harris Bank, their successors and assigns, each in its capacity as an initial holder of the Governmental Notes.

“*Issue Date*” means September \_\_\_\_\_, 2018, which is the date that the Governmental Notes and the Bonds are issued and delivered to their respective purchasers.

“*Loans*” means the loans provided by the Governmental Lender to the Borrower pursuant to the Note Project Loan Agreement and the Bond Loan Agreement to provide financing for the Project.

“*Low Income Tenants*” means Qualifying Tenants with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 152(f)(2) of the Code), unless the unit is occupied:

(i) by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State, or local laws; or

(ii) entirely by full-time students if such students are (A) single parents and their children and such parents are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual other than a parent of such children, or (B) married and entitled to file a joint return.

“*Low Income Units*” means the Dwelling Units in the Project designated for occupancy by Low Income Tenants pursuant to Section 4(a) of this Regulatory Agreement.

“*Median Income for the Area*” means the median yearly income for households of an applicable size in the applicable Primary Metropolitan Statistical Area as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the Housing Act, or, if such figures are no longer available, the method of calculation is substantially altered, or the programs under Section 8(f) are terminated, the Governmental Lender shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“*Note Fiscal Agent*” means U.S. Bank National Association, a national banking association, or any successor or assign, in its capacity as fiscal agent under the Note Funding Loan Agreement.

“*Note Funding Lender*” means the Administrative Agent and any subsequent holder of the Governmental Notes.

“*Note Funding Loan Agreement*” means the Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent, the Governmental Lender, and the Note Fiscal Agent.

“*Note Project Loan Agreement*” means the Project Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, the Note Fiscal Agent, and the Borrower, as amended from time to time.

“*Project*” has the meaning assigned to such term in the recitals to this Regulatory Agreement.

“*Qualified Project Period*” means the period beginning on the later of the date of issuance of the Governmental Notes and the first day on which ten percent (10%) of the Dwelling Units in the Project are occupied and ending on the latest of:

(i) the date which is fifteen (15) years after the date on which fifty percent (50%) of the Dwelling Units in the Project are occupied;

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding; or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

“*Qualifying Tenants*” means one or more occupants of a unit within the Project, so long as at least one of the occupants of the unit, at the time of initial occupancy of such unit, is 55 years of age or older; provided, however, if one or more of the occupants that qualifies as a Qualifying Tenant dies, the then current tenant of the unit shall be deemed a Qualifying Tenant.

“*Regulatory Agreement*” means this Regulatory Agreement, dated the Issue Date, between the Governmental Lender, the Borrower, the Note Fiscal Agent, and the Bond Trustee, together with any amendments or supplements hereto.

“*Section 474A Penalty*” means the penalty described in Minnesota Statutes, Section 474A.047, subdivision 3, as applied to the Project.

“*Series A-1 Governmental Note*” means the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Issue Date, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of U.S. Bank, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series A-2 Governmental Note*” means Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Issue Date, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of BMO Harris Bank, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series B-1 Governmental Note*” means the Taxable Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Issue Date, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of U.S. Bank, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series B-2 Governmental Note*” means the Taxable Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Issue Date, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of BMO Harris Bank, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*State*” means the State of Minnesota.

“*Tax-Exempt Governmental Note*” means, together, the Series A-1 Governmental Note and the Series A-2 Governmental Note.

“*Tax-Exempt Obligations*” means, together, the Tax-Exempt Governmental Note and the Bonds.

“*Treasury Regulations*” means the regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

“*U.S. Bank*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

**Section 2. Representations by the Borrower.** The Borrower covenants, represents, and warrants that:

(a) The Borrower is a limited liability limited partnership organized and existing under the laws of the State. The Borrower is in good standing in the State and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement. The Borrower is duly authorized by the laws of the State to transact business in the State and to perform all of its duties hereunder.

(b) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the Project, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(c) The execution, delivery, and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, commitment, agreement, or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order, or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(d) There is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or to the best of the Borrower’s knowledge, threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

(i) affects or seeks to enjoin, prohibit, or restrain the issuance, sale, or delivery of the Governmental Notes or the Bonds or the use of the proceeds of the Governmental Notes or the Bonds to finance the acquisition or construction of the Project or the execution and delivery of this Regulatory Agreement,

(ii) affects or questions the validity or enforceability of the Governmental Notes, the Bonds, or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Tax-Exempt Obligations (except for any loss of tax-exempt status that results from the application of Section 147(a) of the Code or any successor provisions of the Code and applicable Treasury Regulations or any successor law or regulation), or

(iv) questions the power or authority of the Borrower to own, acquire, construct, equip, or operate the Project or to execute, deliver, or perform the Borrower's obligations under this Regulatory Agreement.

(e) The Project will be located wholly within the boundaries of the City of Minnetonka in the County.

(f) On and after the date on which the Bonds are executed and delivered to the Bond Trustee and the Governmental Notes are executed and delivered to the Administrative Agent, the Borrower will have title to the Project sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.

(g) The Project consists and will consist of those facilities described herein, which generally are described as a residential apartment building and related facilities situated on the real property described in EXHIBIT A hereto. The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exemption from federal income taxation of the interest on the Tax-Exempt Obligations. The Borrower will utilize and operate the Project as a multifamily rental housing project so long as the Tax-Exempt Obligations are outstanding, in accordance with all applicable federal, State, and local laws, rules, and regulations applicable to the Project.

(h) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits, and authorizations with respect to the operation of the Project.

(i) The Borrower acknowledges that if the Borrower or a "substantial user" of the Project financed with the proceeds of the Tax-Exempt Obligations or a "related person," as those terms are employed in Section 147(a) of the Code, owns the Tax-Exempt Obligations, or any portion thereof, interest on the Tax-Exempt Obligations during such period of ownership will not be excludable from gross income for federal income tax purposes.

(j) The Borrower does not own any buildings or structures which are proximate to the Project other than those buildings or structures which comprise the Project, which are being financed pursuant to a common plan under which the Project is also being financed. An affiliate of the Borrower will own a multifamily residential rental project adjacent to the Project.

(k) The statements made in the various certificates delivered by the Borrower to the Governmental Lender and the Note Fiscal Agent on the date of issuance of the Governmental Notes are true and correct.

(l) The statements made in the various certificates delivered by the Borrower to the Governmental Lender and the Bond Trustee on the date of issuance of the Bonds are true and correct.

**Section 3. Qualified Residential Rental Project.** The Borrower shall acquire, construct, own, manage, and operate the Project as a "qualified residential rental project," as such phrase is utilized in

Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Borrower hereby represents, warrants, and covenants as follows:

(a) that a qualified residential rental project will be constructed on the property described in EXHIBIT A hereto, and the Borrower shall own, manage and operate the Project as a qualified residential rental project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with Section 142(a)(7) and Section 142(d) of the Code and all applicable Treasury Regulations promulgated thereunder, as the same may be amended from time to time;

(b) that all of the Dwelling Units of the Project will be similarly constructed and each Dwelling Unit in the Project will contain complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family;

(c) that:

(i) none of the Dwelling Units in the Project shall at any time in the future be utilized on a transient basis;

(ii) that none of the Dwelling Units in the Project shall at any time in the future be leased or rented for a period of less than thirty (30) days; and

(iii) that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or trailer court for use on a transient basis, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that once available for occupancy:

(i) each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public, in compliance with this Regulatory Agreement, during the Qualified Project Period, except for any Dwelling Unit for a resident manager or maintenance personnel; and

(ii) other than Low Income Tenants as provided herein or as otherwise permitted by law, the Borrower shall not give preference in renting Dwelling Units in the Project to any particular class or group of persons,

(e) that the Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more parcels of land which are contiguous except for being separated only by a road, street, stream, or a similar property and (iii) financed by the Loans or otherwise pursuant to a common plan of financing, and which consists entirely of:

(i) units which are similar in quality and type of construction and amenities; and

(ii) property Functionally Related and Subordinate in purpose and size to the Project, *e.g.*, parking areas, laundries, swimming pools, tennis courts, and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for the Project, *e.g.*, heating and cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel;

(f) that no portion of the Project shall be used to provide any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(g) that the Project shall not include a Dwelling Unit in a building where all Dwelling Units in such building are not also included in the Project;

(h) that the Borrower shall not convert the Project to condominium or cooperative ownership;

(i) that no Dwelling Unit in the Project shall be occupied by the Borrower (or any person related to the Borrower within the meaning of Section 147(a)(2) of the Code) at any time unless such person resides in a Dwelling Unit in a building or structure which contains at least five (5) Dwelling Units and unless the resident of such Dwelling Unit is a resident manager or other necessary employee (e.g., maintenance and security personnel);

(j) that the Tax-Exempt Obligations will not be “federally guaranteed,” as defined in Section 149(b) of the Code;

(k) that the Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and

(l) that the Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g., AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

**Section 4. Low Income Tenants.** Pursuant to the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, warrants, and covenants as follows:

(a) Upon completion of the Project, not less than forty percent (40%) of the completed units in the Project shall be continuously occupied or held for occupancy by Low Income Tenants. The Borrower will designate the Low Income Units and will make any revisions to such designations as necessary to comply with the applicable provisions of the Code and the Treasury Regulations. As set forth in paragraph (e) below, the Borrower shall advise the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee by delivery of a certificate in writing of the status of the occupancy of the Project with respect to Low Income Tenants on an annual basis for the term of this Regulatory Agreement. An Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, shall be prepared annually by the Borrower and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code (currently with the Internal Revenue Service Center, Ogden, Utah 84201), with a copy to be filed by the Borrower with the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee. The percentage of units is measured by number of units, and not square footage of units.

For purposes of satisfying the occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant until such time as any recertification of such tenant’s income in accordance with subsections (c) and (h) below demonstrates that such tenant’s income exceeds one hundred forty percent (140%) of the income limitation applicable to Low Income Tenants.

A unit occupied by a Low Income Tenant shall be deemed, upon the termination of such tenant's occupancy, to be continuously occupied by a Low Income Tenant until reoccupied, other than for a temporary period (not to exceed sixty (60) days), at which time the character of the unit shall be redetermined.

(b) The Borrower will notify the Governmental Lender on an annual basis of any vacancy of any Low Income Units.

(c) The Borrower will obtain, complete, and maintain on file income certifications from each Low Income Tenant, obtained immediately prior to the initial occupancy of such tenant in the Project and at least annually thereafter. Such income certifications (based upon their then current income) from each Low Income Tenant shall be provided in the form of income certification set forth in EXHIBIT B hereto or another form approved by Bond Counsel (the "Tenant Income Certification"). The preceding sentence shall not apply for any year if, during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants. The Borrower will also provide such additional information as may be required by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Treasury Regulations now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service applicable to the Tax-Exempt Obligations. Such Tenant Income Certification shall be obtained prior to initial occupancy. If requested by the Governmental Lender, a copy of such Tenant Income Certification shall be filed with the Governmental Lender prior to occupancy by the tenant whenever possible but in no event more than one month after initial occupancy by the tenant. A copy of each re-certification of income shall be attached to each report filed with the Governmental Lender, the Bond Trustee, and the Note Fiscal Agent pursuant to subsection (a) above. The Borrower shall make a good faith effort to verify that the income reported by an applicant in an income certification is accurate by taking at least one of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency; or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. If the Low Income Tenant is a Section 8 Certificate Holder, the Borrower shall retain a copy of the certificate or voucher for verification of income in lieu of an income verification.

The Borrower understands that failure to file the Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, as required by Section 142(d)(7) of the Code at the times stated therein may subject it to the penalty described in Section 6652(j) of the Code.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, upon reasonable prior notice, any duly authorized representative of the Governmental Lender, the Note Funding Lender, the Note Fiscal Agent, the Bond Trustee, the Department of the Treasury, or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. This section is not intended to create any additional duties to inspect records.

(e) The Borrower will prepare and submit to the Governmental Lender, the Note Fiscal Agent, the Bond Trustee, and if requested, the Administrative Agent (during the Construction Phase only) and the Note Funding Lender, on or before August 1 of each year during the Qualified Project Period, beginning the first August 1 following commencement of the Qualified Project Period, a Continuing Program Compliance Certificate in the form attached hereto as EXHIBIT C and executed by the Borrower, and, if requested by the Governmental Lender, the Bond Trustee, the Administrative Agent



(during the Construction Phase only) or the Note Funding Lender, the Tenant Income Certification described in subsection (c) above. The Note Fiscal Agent and the Bond Trustee may solely rely on the Continuing Program Compliance Certificate as evidence of compliance with this Section 4.

(f) The Borrower, upon becoming aware of an Event of Default, will notify the Governmental Lender, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, the Note Fiscal Agent, and the Bond Trustee, in writing, of the occurrence of any such Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly and in no event longer than ten (10) Business Days after the Borrower receives notice or gains knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Governmental Lender, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, the Note Fiscal Agent, and the Bond Trustee if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.

(i) Except as provided in clause (ii) below, the Borrower shall accept as tenants on the same basis as all other prospective Low Income Tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act or its successor and shall not apply selection criteria to Section 8 certificate/voucher holders that are more burdensome than the criteria applied to all other prospective tenants.

(ii) The Borrower agrees to modify the leases for units in the Project as necessary to allow the rental of Low Income Units to Section 8 certificate/voucher holders.

(g) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

(h) Throughout the Qualified Project Period, the Borrower shall re-certify each Low Income Tenant's income on or before the anniversary of the Low Income Tenant's tenancy by obtaining a completed Income Certification. The preceding sentence shall not apply for any year if, during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants. In the event the recertification demonstrates that any such tenant's household income exceeds one hundred forty percent (140%) of the applicable income limit, the Borrower shall hold the next available unit or units of comparable or smaller size in the Project available for rental by new Low Income Tenants.

The Borrower in its sole discretion may notify, in writing, each tenant who is no longer a Low Income Tenant of such fact, and that the rent of such tenant(s) is subject to increase thirty (30) days after receipt of such notice. The Borrower shall be entitled to so increase any such tenant's rent only if Borrower complies with any law applicable thereto and only after the Borrower has rented the next available unit or units in the Project on a one-for-one basis to a Low Income Tenant, or holds units vacant and available for occupancy by Low Income Tenants.

The Borrower agrees to inform all prospective Low Income Tenants of the requirements for recertification of income and of the provisions of the preceding paragraph.

**Section 5. Restrictions Imposed by Chapter 474A.** Because the Tax-Exempt Obligations are issued by the Governmental Lender as “residential rental project bonds,” as defined in Minnesota Statutes, Chapter 474A, as amended (“Chapter 474A”), and have received an allocation of tax-exempt bonding authority pursuant to applicable provisions of Chapter 474A, the restrictions imposed by Chapter 474A apply to the Project as described below.

(a) In addition to any other restrictions on rent or the income of tenants set forth in this Regulatory Agreement, during the Qualified Project Period, the Borrower shall restrict rents on at least twenty percent (20%) of the units in the Project (which shall consist of the same units as meet the requirements of Section 4) to an amount not exceeding the lesser of the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time, which units shall be occupied, or held for occupancy, by Low Income Tenants.

(b) The annual certifications required to be made by the Borrower hereunder shall conform to the requirements of Section 474A.047, subdivision 3, and the Governmental Lender shall have the authority to impose upon the Borrower any and all penalties described in Section 474A.047, subdivision 3, from time to time, in addition to any remedies otherwise available under this Regulatory Agreement.

(c) The Borrower must satisfy the requirements of Section 474A.047, subdivision 1(a), during the Qualified Project Period. The Borrower must annually certify to the Governmental Lender over the term of this Regulatory Agreement that the rental rates for the rent-restricted units are within the limitations under Section 474A.047, subdivision 1(a). The Governmental Lender may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management and Budget may request from the Governmental Lender a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management and Budget may require the Governmental Lender to request individual certification of all residents of the income-restricted units.

**Section 6. Covenants Run with the Land.** The Borrower hereby declares its express intent that, upon filing this Regulatory Agreement in the appropriate property records of the County, the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the land and shall, except as otherwise provided in, or the Freddie Mac Rider to, this Regulatory Agreement, pass to and be binding upon the Borrower’s successors in title including any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein. Except as otherwise provided in, or the Freddie Mac Rider to, this Regulatory Agreement, each and every contract, deed, or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

**Section 7. Indemnification.** The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Governmental Lender and its officers, agents, and employees (the “**Indemnified Parties**”), the Note Fiscal Agent, the Bond Trustee, the Administrative Agent, the Note Funding Lender, and their respective officers, members, directors, officials, and employees as provided in the Note Project Loan Agreement and the Bond Loan Agreement, respectively. All provisions of the Note Project Loan

Agreement and the Bond Loan Agreement relating to indemnification are incorporated by reference herein and are considered provisions of this Regulatory Agreement, as if expressly set out herein.

**Section 8. Consideration.** The Governmental Lender has issued the Governmental Notes and the Bonds in part to provide funds to make the Loans to finance the acquisition, construction, and equipping of the Project all for the purpose, among others, of inducing the Borrower to acquire, construct, equip, and operate the Project. In consideration of the issuance of the Governmental Notes and the Bonds by the Governmental Lender, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.

**Section 9. Reliance.** The Governmental Lender and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Governmental Notes and the Bonds and in the exemption from federal income taxation of the interest on the Tax-Exempt Obligations. In performing their duties and obligations hereunder, under the Note Funding Loan Agreement, and under the Bond Indenture, the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee, as the case may be, may rely upon statements and certificates of the Borrower and the tenants and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Governmental Lender, the Note Fiscal Agent, the Administrative Agent (during the Construction Phase only), or the Bond Trustee to the Borrower or Note Funding Lender upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee by the Borrower with respect to the occurrence or absence of a default unless it knows, or in the exercise of reasonable care should have known, that the notice or certificate is erroneous or misleading.

Neither the Note Fiscal Agent nor the Bond Trustee shall be under any duty or obligation to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents or any instruments delivered to it in accordance with this Regulatory Agreement, but the Note Fiscal Agent and the Bond Trustee may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.

**Section 10. Sale or Transfer of the Project.** The Borrower hereby covenants and agrees not to sell, transfer, or otherwise dispose of the Project, or any portion thereof, except as permitted under the terms of the Note Project Loan Agreement. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of the covenants herein, provisions, reservations, restrictions, charges, or easements shall be null and void ab initio and of no force and effect. Nothing herein shall prohibit the transfer, sale or assignment of the interests in the Borrower or any direct or indirect ownership interests in Borrower's partners. In the event of sale, transfer, or disposition of the Project, the Borrower shall provide notice to the Governmental Lender of such event.

**Section 11. Term.** This Regulatory Agreement and the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Governmental Notes and the Bonds and termination of the Note Project Loan Agreement and the Bond Loan Agreement and the Loans if the Qualified Project Period has not

expired at the time of such retirement and expiration. Notwithstanding anything in this Regulatory Agreement to the contrary:

(a) The Project may be transferred pursuant to a foreclosure, exercise of power of sale, or deed in lieu of foreclosure, or comparable proceedings without the consent of or fee of any kind payable to the Governmental Lender or compliance with the provisions of this Regulatory Agreement. In connection with any such foreclosure, deed in lieu of foreclosure, or other proceedings, this Regulatory Agreement shall be terminated upon completion of the foreclosure and expiration of the applicable redemption period, or recording of a deed in lieu of foreclosure.

(b) The requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law, or an action of a federal agency after the date of this Regulatory Agreement, which prevents the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Tax-Exempt Obligations are retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof (provided that this shall be deemed met if the Tax-Exempt Obligations have been previously retired); provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, or the delivery of a deed in lieu of foreclosure, or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Borrower hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure, or similar event, if the Borrower or any such related person as described above obtains an ownership interest in the Project for federal tax purposes during the Qualified Project Period, the limitations imposed by Section 4 hereof shall apply to the Project for the remainder of the Qualified Project Period.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Governmental Lender, the Borrower, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, and the Bond Trustee upon receipt by the Governmental Lender, the Borrower, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, and the Bond Trustee of an opinion of Bond Counsel to the effect that such termination will not cause interest on the Tax-Exempt Obligations to become included in gross income for federal income tax purposes or cause interest on the Tax-Exempt Obligations to become included in the net taxable income of individuals, trusts, and estates for State income tax purposes.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver, and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

**Section 12. Burden and Benefit.** The Governmental Lender and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower's legal interest in the Project is rendered less valuable thereby. The Governmental Lender and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Governmental Notes and the Bonds were issued.

Notwithstanding the foregoing, the Low Income Tenants are not intended to be third-party beneficiaries of this Regulatory Agreement and shall have no rights to enforce any provision herein.

**Section 13. Enforcement.** If the Borrower defaults in the performance or observance of any covenant, agreement, or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee to the Borrower, then the Governmental Lender or the Note Fiscal Agent, acting upon the direction of the Administrative Agent (during the Construction Phase only) or the Note Funding Lender pursuant to the Note Funding Loan Agreement, or the Governmental Lender or the Bond Trustee, pursuant to the Bond Loan Agreement, may declare an “Event of Default” to have occurred hereunder and, at their respective option, may take any one or more of the following steps:

(a) by mandamus or other suit, action, or proceeding at law or in equity require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Governmental Lender, the Note Fiscal Agent, the Bond Trustee, or the Note Funding Lender hereunder;

(b) have access to and inspect, examine, and make copies of all the books and records of the Borrower pertaining to the Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Borrower hereunder;

(d) with the Note Fiscal Agent’s consent (acting upon the direction of the Administrative Agent (during the Construction Phase only) or the Note Funding Lender), declare a default under its respective Loan, accelerate the indebtedness evidenced by the respective Loan, and proceed to redeem the Tax-Exempt Notes in accordance with their terms; or

(e) with the Bond Trustee’s consent (acting upon the direction of the holders of the Bonds), declare a default under the Loan related to the Bonds, accelerate the indebtedness evidenced by the Loan related to the Bonds, and proceed to redeem the Bonds in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee hereby agree that any cure of any default made or tendered by one or more of the Borrower’s partners or by the Administrative Agent (during the Construction Phase only) or the Note Funding Lender shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

All fees, costs, and expenses of the Note Fiscal Agent, the Bond Trustee, or the Governmental Lender incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Note Fiscal Agent, the Bond Trustee, or the Governmental Lender, as the case may be, on demand.

After the Tax-Exempt Obligations have been discharged, the Governmental Lender may act on its own behalf to declare an “Event of Default” to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Note Fiscal Agent at the direction of the holders of the Tax-Exempt Obligations or by the Bond Trustee at the direction of the holders of the Bonds.

**Section 14. The Note Fiscal Agent, the Bond Trustee, and the Governmental Lender.** The Note Fiscal Agent is entering into this Regulatory Agreement in its capacity as the Note Fiscal Agent under the terms of the Governmental Notes and the Note Funding Loan Agreement. The Bond Trustee is entering into this Regulatory Agreement in its capacity as the Bond Trustee under the terms of the Bonds and the Bond Indenture. The Governmental Lender may, at all times, assume the Borrower's compliance with this Regulatory Agreement unless otherwise notified in writing by the Note Fiscal Agent and the Bond Trustee (but the Note Fiscal Agent and the Bond Trustee shall have no obligation to so notify the Governmental Lender), or unless the Governmental Lender has actual knowledge of noncompliance. The Note Fiscal Agent and the Bond Trustee can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to them by the Borrower. It is expected that the Governmental Notes will be discharged and the Note Funding Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Tax-Exempt Obligations and the termination of the Note Funding Loan Agreement and the Bond Indenture: (i) all obligations, rights, and duties of the Note Fiscal Agent and the Bond Trustee, as applicable, under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Note Fiscal Agent and the Bond Trustee, as applicable, will instead be undertaken by the Governmental Lender; (iii) all notices to be delivered to the Note Funding Lender, the Note Fiscal Agent, or the Bond Trustee will instead be delivered to the Governmental Lender; and (iv) the Note Fiscal Agent and the Bond Trustee, as applicable, shall no longer be a party to this Regulatory Agreement and shall be considered released from all obligations hereunder.

**Section 15. Amendment.** The provisions hereof shall not be amended or revised prior to the stated term hereof except by an instrument in writing duly executed by the Governmental Lender and the Borrower, and consented to by the Note Fiscal Agent and the Bond Trustee as may be required by the Note Project Loan Agreement, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, and the Bond Indenture, and duly recorded. The consent of the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee to any such amendment or revision (whether or not the Tax-Exempt Obligations shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Governmental Lender, the Note Fiscal Agent, the Note Funding Lender, and the Bond Trustee that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Tax-Exempt Obligations. The Governmental Lender, the Note Fiscal Agent, and the Bond Trustee shall have no duty to prepare any such consent, amendment, or revision.

**Section 16. Right of Access to the Project and Records.** The Borrower agrees that during the term of this Regulatory Agreement, the Governmental Lender, the Note Fiscal Agent, the Note Funding Lender, the Bond Trustee, and the duly authorized agents of any of them shall have the right at all reasonable times, and upon reasonable notice of at least twenty-four (24) hours, to enter upon the site of the Project during normal business hours to examine and inspect the Project and to have access to the books and records of the Borrower with respect to the Project, a copy of which shall be maintained at the site of the Project.

**Section 17. No Conflict with Other Documents.** The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

**Section 18. Severability.** The invalidity of any clause, part, or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

**Section 19. Notices.** All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods or when mailed by certified or registered mail, return receipt requested, to

the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

To the Governmental Lender: CITY OF MINNETONKA, MINNESOTA  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502  
Attn: Julie Wischnack, Community Development Director  
Email: jwischnack@eminnetonka.com  
Telephone: 952-939-8282

To the Note Fiscal Agent: U.S. BANK NATIONAL ASSOCIATION  
Corporate Trust Services  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Dan Sheff, Vice President  
Email: dan.sheff@usbank.com  
Telephone: 651-466-6302

To the Administrative Agent for the Note Funding Lender (for the Construction Phase only): U.S. BANK NATIONAL ASSOCIATION  
Community Lending Division  
800 Nicollet Mall, Third Floor  
BC-MN-H5AD  
Minneapolis, MN 55402  
Attn: Daniel P. Smith  
Email: daniel.smith1@usbank.com  
Telephone: 612-303-3689

U.S. BANK NATIONAL ASSOCIATION  
Community Lending  
1307 Washington Avenue, Suite 300  
St. Louis, MO 63103  
Attn: Alexander J. Silversmith  
Email: alexander.silversmith@usbank.com  
Telephone: 314-335-2661

To the Borrower: MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP  
c/o Dominion Development & Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400  
Attn: Ryan Lunderby  
Email: rlunderby@dominiuminc.com  
Telephone: 763-354-5634

with a copies to:

WINTHROP & WEINSTINE, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Attn: John M. Stern, Esq.  
Email: jstern@winthrop.com  
Telephone: 612-604-6588  
(which copy shall not constitute notice to Borrower)

CITIBANK, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attn: Mark Sherman  
Email: mark.sherman@citi.com

NIXON PEABODY LLP  
799 Ninth Street, NW, Suite 500  
Washington, DC 20001-4501  
Attn: Matthew W. Mullen, Esq.  
Email: mmullen@nixonpeabody.com

TCAM  
186 Lincoln Street  
Boston, MA 02111-2408  
Attn: Jenny Netzer

To the Bond Trustee:

U.S. BANK NATIONAL ASSOCIATION  
Corporate Trust Services  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Dan Sheff, Vice President  
Email: dan.sheff@usbank.com  
Telephone: 651-466-6302

**Section 20. Governing Law.** This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws.

**Section 21. Payment of Fees.** Notwithstanding payment of the Loans, the termination of the Note Project Loan Agreement, the termination of the Bond Indenture, and the defeasance or discharge of the Tax-Exempt Obligations, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:

(a) to the Governmental Lender, reimbursement for all reasonable fees and expenses, including, but not limited to, financial advisory and legal fees and expenses necessary for the Governmental Lender's reviewing and, if necessary, enforcing compliance by the Borrower with the terms of this Regulatory Agreement; and

(b) the fees and expenses of any entity or person designated by the Governmental Lender to perform the review of the Borrower's compliance with this Regulatory Agreement; provided that such fees and expenses are not duplicative of any fees and expenses paid under clause (a) above.



**Section 22. Limited Liability.** All obligations of the Governmental Lender hereunder shall be special, limited obligations of the Governmental Lender, payable solely and only from proceeds of the Governmental Notes and Bonds and amounts derived by the Governmental Lender from the Loans, the Note Project Loan Agreement, and the Bond Loan Agreement.

**Section 23. Actions of Governmental Lender.** The Governmental Lender shall be entitled to rely conclusively on an opinion of counsel in the exercise or non-exercise of any of the rights or powers vested in the Governmental Lender by virtue of this Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Governmental Notes and the Bonds; it being the intent of the parties hereto that the Governmental Lender, and any and all present and future trustees, members, commissioners, officers, employees, attorneys, and agents of the Governmental Lender shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Governmental Lender by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Governmental Notes; or for the performance or nonperformance of any obligation under, or the failure to assert any right, power, or privilege under this Regulatory Agreement, the Governmental Notes, the Note Project Loan Agreement, the Note Funding Loan Agreement, the Bonds, the Bond Indenture, the Bond Loan Agreement, or any other instrument or agreement executed in connection with the issuance of the Governmental Notes. If the Governmental Lender's consent or approval is required under this Regulatory Agreement, or any other agreement or instrument executed in connection with the issuance of the Governmental Notes or the Bonds, the Governmental Lender shall be entitled to rely conclusively on an opinion of counsel and shall not be responsible for any loss or damage resulting from any action or inaction in reliance upon such opinion.

**Section 24. Counterparts.** This Regulatory Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Regulatory Agreement, and, in making proof of this Regulatory Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 25. Recording and Filing.** Upon obtaining fee title to the Property, the Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Governmental Lender may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

**Section 26. Third-Party Beneficiary.** The parties to this Regulatory Agreement recognize and agree that the terms of this Regulatory Agreement and the enforcement of those terms are essential to the security of the Administrative Agent (during the Construction Phase only) and the Note Funding Lender and are entered into for the benefit of various parties, including the Administrative Agent (during the Construction Phase only) and the Note Funding Lender. The Administrative Agent (during the Construction Phase only) and the Note Funding Lender shall accordingly have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender, the Note Fiscal Agent, and/or the Bond Trustee or to cause the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee to enforce, the terms of this Regulatory Agreement. In addition, the Administrative Agent (during the Construction Phase only) and the Note Funding Lender are intended to be and shall be third-party beneficiaries of this Regulatory Agreement.

**Section 27. Freddie Mac Rider.** The Freddie Mac Rider to Regulatory Agreement (the "Freddie Mac Rider") attached to this Regulatory Agreement forms an integral part of this Regulatory Agreement and the terms thereof are hereby incorporated in this Regulatory Agreement, provided that the

Freddie Mac Rider shall not be effective unless and until Conversion (as defined in the Note Funding Loan Agreement) occurs, and shall be terminated automatically and without further action required of any party hereto or Freddie Mac following the Freddie Mac Purchase Date (as defined in the Note Funding Loan Agreement) upon the earlier of (a) the date the Governmental Notes are paid, retired, or otherwise discharged and (b) the date Freddie Mac ceases to be the Note Funding Lender.

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

**IN WITNESS WHEREOF**, the Governmental Lender, the Borrower, the Note Fiscal Agent, and the Bond Trustee have caused this Regulatory Agreement to be signed by their respective duly authorized representatives as of the day and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the Governmental Lender.

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

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the Governmental Lender.

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

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

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE III, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates SPE III, LLC, a Delaware limited liability company, the general partner of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, on behalf of the Borrower.

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

Execution page of the Note Fiscal Agent to the Regulatory Agreement, dated the date and year first written above.

**U.S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Dan Sheff, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Note Fiscal Agent.

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

Execution page of the Bond Trustee to the Regulatory Agreement, dated the date and year first written above.

**U.S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Dan Sheff, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Bond Trustee.

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Lot 1, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota

**EXHIBIT B**

**FORM OF INCOME CERTIFICATION**

**FORM OF TENANT INCOME CERTIFICATION**

TENANT INCOME CERTIFICATION  <input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification <input type="checkbox"/> Other _____	Effective Date: _____ Move-in Date: _____ (MM/DD/YY): _____
--------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------

**PART I. DEVELOPMENT DATA**

Property Name: Preserve at Shady Oak  Address: 11001 Bren Road East, Minnetonka, Minnesota	County: _____  Unit Number: _____	BIN #: _____  # Bedrooms: _____
--------------------------------------------------------------------------------------------------	-----------------------------------------	---------------------------------------

**PART II. HOUSEHOLD COMPOSITION**

HH Br #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/Y Y)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						

**PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)**

HH Br #	(A) Employment or Wages	(B) Soc. Security / Pensions	(C) Public Assistance	(D) Other Income
<b>TOTAL</b>	\$ _____	\$ _____	\$ _____	\$ _____
Add totals from (A) through (D) above			<b>TOTAL INCOME (E):</b>	\$ _____

**PART IV. INCOME FROM ASSETS**

HH Mbr#	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset



TOTALS:			\$	\$
Enter Column (H) Total		Passbook Rate		
if over \$5,000	\$ _____	x 2.00 %	=	(J) Imputed Income
Enter the greater of the total column I, or J: imputed income			TOTAL INCOME FROM	\$
ASSETS (K)				
(L) Total Annual Household Income from all sources [Add (E) + (K)]				\$

**HOUSEHOLD CERTIFICATION & SIGNATURES**

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full-time student.

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

_____	_____	_____	_____
Signature	(Date)	Signature	(Date)
_____	_____	_____	_____
Signature	(Date)	Signature	(Date)

**PART V. DETERMINATION OF INCOME ELIGIBILITY**

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES From Item (L) on page 1	\$ <input type="text"/>	Household Meets Income Restriction	RECERTIFICATION ONLY:
		at:	Current Income Limit x 140%
		<input type="checkbox"/> 60% <input type="checkbox"/>	\$ _____
Current Income Limit per Family Size: \$ _____		50% <input type="checkbox"/> 40% <input type="checkbox"/>	Household income exceeds 140% at recertification:
		30% <input type="checkbox"/> ___%	<input type="checkbox"/> Yes <input type="checkbox"/> No
Household Income at Move-in \$ _____			Household Size at Move-in: _____

**PART VI. RENT**

Tenant Paid Rent \$ Rent Assistance: \$

Utility Allowance \$ Other non-optional charges: \$

**GROSS RENT FOR UNIT:**

Tenant paid rent plus Utility Allowance and other non-optional charges \$

Unit Meets Rent Restriction at:

60%  50%  40%  30%  \_\_\_%

Maximum Rent Limit for this unit: \$

**PART VII. STUDENT STATUS**

ARE ALL OCCUPANTS FULL-TIME STUDENTS?

yes     no

If yes, enter student explanation\*\* (also attach documentation)

Enter 1-4
--------------

Student explanation:

1. TANF assistance
2. Job training program
3. Single parent/dependent child
4. Married/joint return\*

**\*Exception for married/joint return is the only exception available for units necessary to qualify tax-exempt bonds.**

**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

a. Tax Credit     b. HOME     c. Tax Exempt     d. AHDP     e. \_\_\_\_\_   
(Name of Program)

See Part V above.

*Income Status*

- ≤ 50% AMGI  
 ≤ 60% AMGI  
 ≤ 80% AMGI  
 ≤ OI \*\*

*Income Status*

- 50% AMGI  
 60% AMGI  
 80% AMGI  
 OI \*\*

*Income Status*

- ≤ 50% AMGI  
 ≤ 80% AMGI  
 ≤ OI \*\*

*Income Status*

- \_\_\_\_\_  
 \_\_\_\_\_  
 ≤ 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 Regulatory Agreement (if applicable), to live in a unit in this Project.

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

\_\_\_\_\_  
DATE

## INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

*This form is to be completed by the owner or an authorized representative.*

### Part I – Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

- Move-in Date                      Enter the date the tenant has or will take occupancy of the unit.
- Effective Date                    Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.
- Property Name                    Enter the name of the development.
- County                              Enter the county (or equivalent) in which the building is located.
- BIN #                                Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
- Address                            Enter the unit number.
- Unit Number                      Enter the unit number.
- # Bedrooms                        Enter the number of bedrooms in the unit.

### Part II – Household Composition

List all occupants of the unit. State each household member's relationship to the head of the household by using one of the following coded definitions:

- |   |                   |   |                     |
|---|-------------------|---|---------------------|
| H | Head of household | S | Spouse              |
| A | Adult co-tenant   | O | Other family member |
| C | Child             | F | Foster child        |
| L | Live-in caretaker | N | None of the above   |

Enter the date of birth, student status, and Social Security number or alien registration number for each occupant.

*If there are more than seven occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.*

### Part III – Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the 12 months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

- Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
- Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
- Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.)
- Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
- Row (E) Add the totals from columns (A) through (D) above. Enter this amount.

**Part IV – Income from Assets**

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the 12 months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

- Column (F) List the type of asset (i.e., checking account, savings account, etc.)
- Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
- Column (H) Enter the cash value of the respective asset.
- Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
- TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

- Row (K) Enter the Greater of the total in Column (I) or (J)
- Row (L) Total Annual Household Income from All Sources Add (E) and (K) and enter the total

## HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than five days prior to the effective date of the certification.

### Part V – Determination of Income Eligibility

Total Annual Household Income from all sources	Enter the number from item (L).
Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in Household size at move-in	For recertifications only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household Meets Income Restriction	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
Current Income Limit x 140%	For recertification only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

### Part VI – Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at ___%	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

## Part VII – Student Status

If all household members are full-time\* students, check “yes.” If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

\* *Full time is determined by the school the student attends.*

## Part VIII – Program Type

Mark the program(s) for which this 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. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit                      See Part V above.

HOME                              If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.

Tax Exempt                      If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.

AHDP                              If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.

Other                                If the property participates in any other affordable housing program, complete the information as appropriate.

### **SIGNATURE OF OWNER / REPRESENTATIVE**

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well-trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

**EXHIBIT C**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

The undersigned, an authorized representative of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the "Owner"), hereby certifies, represents, and warrants that:

1. The Owner owns the senior housing development located at 11001 Bren Road East in the City of Minnetonka, Minnesota commonly known as Legends of Minnetonka (the "Project").

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement, dated September \_\_, 2018 (the "Regulatory Agreement"), between the Owner, the City of Minnetonka, Minnesota (the "Governmental Lender"), U.S. Bank National Association, a national banking association, in its capacity as fiscal agent (the "Note Fiscal Agent"), and U.S. Bank National Association, a national banking association, in its capacity as trustee (the "Bond Trustee"); (2) the Project Loan Agreement, dated as of September 1, 2018 (the "Note Project Loan Agreement"), between the Borrower, the Governmental Lender, and the Fiscal Agent with respect to the Governmental Notes; and (3) the Subordinate Loan Agreement, dated as of September 1, 2018 (the "Bond Loan Agreement"), between the Governmental Lender and the Borrower. The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Governmental Notes and the Bonds. Capitalized terms used herein that are otherwise not defined shall have the meanings provided in the Regulatory Agreement.

3. A review of the activities of the Owner and of the Owner's performance under the Regulatory Agreement during the year ending \_\_\_\_ has been made under the supervision of the undersigned.

4. The Project's Qualified Project Period commenced on \_\_\_\_\_, 20\_\_ (the date on which 10% of the residential units in the Project were occupied), and will end on the latest of:

(i) \_\_\_\_\_, 20\_\_ (the date which is 15 years after the date on which 50% of the residential units in the Project were occupied);

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

5. As of the date of this Certificate, the following percentages of completed residential units in the Project are (i) occupied by Low Income Tenants or (ii) currently vacant and being held available for occupancy by Low Income Tenants and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

Occupied by Low Income Tenants	_____ % Units	Nos. _____
Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low Income Tenants	_____ % Units	Nos. _____



6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Governmental Notes and the Bonds, if this is the first such certificate) have fewer than forty percent (40%) of the completed units in the Project been occupied by, last occupied, or held for occupation by Low Income Tenants.

7. As of the date of this Certificate, all of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size; or (ii) held vacant for occupancy for persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size. Project Units occupied or held vacant for persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size include Unit numbers \_\_\_\_\_.

8. At all times since the date of filing of the last Continuing Program Compliance Certificate the rent on at least 20% of the units in the Project has not exceeded the lesser of: (1) 30% of the adjusted income of a household whose gross income equals 60% of the median family income as most recently established by the United States Department of Housing and Urban Development for the Minneapolis/St. Paul standard metropolitan statistical area, as adjusted for household size; or (2) the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the United States Department of Housing and Urban Development.

9. To the knowledge of the undersigned, after due inquiry, all units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the Regulatory Agreement, the Note Project Loan Agreement, or the Bond Loan Agreement and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Governmental Notes or the Bonds.

10. **[CHOOSE ONE:** None/One or more] of the Tenants in the Project are currently receiving assistance under Section 8 of the United States Housing Act of 1937.

11. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee with respect to the Project. **(If the Owner has transferred any interest in the Project, such transfer should be detailed here.)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_.

**MINNETONKA LEASED HOUSING  
ASSOCIATES III, LLLP**, a Minnesota limited liability  
limited partnership

By: Minnetonka Leased Housing Associates SPE III,  
LLC, a Delaware limited liability company  
Its: General Partner

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

## FREDDIE MAC RIDER

This Freddie Mac Rider (the “**Rider**”) is attached to and forms a part of the Regulatory Agreement (the “**Regulatory Agreement**”), dated September \_\_\_\_, 2018, between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the “**Borrower**”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (together with any successor in such capacity, the “**Fiscal Agent**”), and U.S. Bank National Association, a national banking association, as Bond Trustee (as defined in the Regulatory Agreement).

1. Definitions. Terms used in this Rider as defined terms shall have the meanings given those terms in the Regulatory Agreement and the Funding Loan Agreement. In addition, the following terms shall have the following meanings:

“Freddie Mac” means the Federal Home Loan Mortgage Corporation, a shareholder owned government sponsored enterprise organized and existing under the laws of the United States.

“Funding Lender” means the holder of the Governmental Note, initially on the Conversion Date, KeyBank National Association, and on the Freddie Mac Purchase Date, Freddie Mac, and any successors or assigns thereof.

“Funding Loan Agreement” means the Funding Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, the Administrative Agent set forth therein and the Note Fiscal Agent, as such Funding Loan Agreement may from time to time be amended or supplemented.

“Governmental Note” means, together, the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 and the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 (which have been consolidated at Conversion), dated September \_\_\_\_, 2018, in the maximum principal amount of \$\_\_\_\_\_ and delivered by the Governmental Lender pursuant to the Funding Loan Agreement.

“Project Loan” means the loan to the Borrower pursuant to the Project Loan Documents, which Project Loan is to be assigned to the Note Fiscal Agent.

“Project Loan Agreement” means the Project Loan Agreement dated as September 1, 2018, between the Borrower, the Governmental Lender and the Fiscal Agent, as such Project Loan Agreement may from time to time be amended or supplemented.

“Project Loan Documents” means the Security Instrument, Project Note, the Project Loan Agreement, the Regulatory Agreement, the Continuing Covenant Agreement, any Subordination Agreement(s), and any and all other instruments and other documents, evidencing, securing or otherwise relating to the Project Loan or any portion thereof.

“Project Note” means the Amended and Restated Project Note, including applicable addenda, to be executed by the Borrower in favor of the Fiscal Agent, as assignee of the

Governmental Lender, evidencing the Borrower's financial obligations under the Project Loan, as the same may be amended, modified, supplemented or restated from time to time.

“Security Instrument” means the Amended and Restated Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement, together with all riders thereto, by the Borrower granting a first priority mortgage lien and security interest in the Project to the Fiscal Agent, and its successors and assigns, securing the Project Note, to be executed by the Borrower with respect to the Project, as it may be amended, modified, supplemented or restated from time to time.

“Servicer” means KeyBank National Association, or any successor Servicer selected by Freddie Mac.

2. Applicability. The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of, the Regulatory Agreement.

3. Indemnification. Inasmuch as the covenants, reservations and restrictions of the Regulatory Agreement run with the land, the indemnification obligations of the Borrower contained in the Regulatory Agreement will be deemed applicable to any successor in interest to the Borrower, but, it is acknowledged and agreed, notwithstanding any other provision of the Regulatory Agreement to the contrary, that neither the Funding Lender nor any successor in interest to the Funding Lender will assume or take subject to any liability for the indemnification obligations of the Borrower for acts or omissions of the Borrower prior to any transfer of title to Freddie Mac, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan. The Borrower shall remain liable under the indemnification provisions for its acts and omissions prior to any transfer of title to the Funding Lender. The Funding Lender shall indemnify the Governmental Lender following acquisition of the Project by the Funding Lender, by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan, during, and only during, any ensuing period that the Funding Lender owns and operates the Project, provided that the Funding Lender's liability shall be strictly limited to acts and omissions of the Funding Lender occurring during the period of ownership and operation of the Project by the Funding Lender. The Funding Lender shall have no indemnification obligations with respect to the Governmental Note or the Project Loan Documents. The Borrower shall remain liable under the Regulatory Agreement for its actions and omissions prior to any transfer of title to the Funding Lender.

4. Sale or Transfer. Restrictions on sale or transfer of the Project or of any interest in the Borrower, Governmental Lender, Fiscal Agent, and/or Bond Trustee consents, transferee agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to the Funding Lender or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan. No transfer of the Project shall operate to release the Borrower from its obligations under the Regulatory Agreement. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Project Loan Documents that requires the Borrower to obtain the consent of the Funding Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall have any applicability to a transfer to the Funding Lender upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan by the Funding Lender, or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

5. Enforcement. Notwithstanding anything contained in the Regulatory Agreement to the contrary: (i) the occurrence of an event of default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Project Loan Documents, except as may be otherwise specified in the Project Loan Documents; and (ii) the occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument. No person other than the Funding Lender shall have the right to (a) declare the principal balance of the Project Note to be immediately due and payable or (b) commence foreclosure or other like action with respect to the Security Instrument. The Governmental Lender and the Fiscal Agent acknowledge and agree that the exercise of any rights and remedies under the Regulatory Agreement is subject to the provisions of the Project Loan Documents.

6. Notice of Violations. Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Governmental Lender or the Fiscal Agent shall, by notice in writing to the Borrower, the Servicer and the Funding Lender, inform the Borrower, the Servicer and the Funding Lender that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such violation, neither the Governmental Lender nor the Fiscal Agent shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Project Loan, to enforce the Project Note or to foreclose on the Security Instrument.

7. Amendments. The Regulatory Agreement shall not be amended without the prior written consent of the Funding Lender.

8. Fees; Penalties. The Funding Lender shall not be liable for the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by the Borrower or any subsequent owner of the Project prior to the date of acquisition of the Project by the Funding Lender, whether such acquisition is by foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

9. Subordination. The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3 through 5, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Project Loan Documents.

10. Third-Party Beneficiary. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Funding Lender and are entered into for the benefit of various parties, including the Funding Lender. The Funding Lender shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender and/or the Fiscal Agent, or to cause the Governmental Lender or the Fiscal Agent to enforce, the terms of the Regulatory Agreement. In addition, the Funding Lender is intended to be and shall be a third-party beneficiary of the Regulatory Agreement.

11. Notices. Copies of all notices under the Regulatory Agreement shall be sent to the Servicer at the address set forth below or to such other address as the Servicer may from time to time designate:

KEYBANK NATIONAL ASSOCIATION  
11501 Outlook Street, Suite 300  
Mailcode: KS-01-11-0501  
Overland Park, KS 66211  
Attention: Ms. Gina Sullivan  
Email: Gina\_Sullivan@KeyBank.com

Any notice to be given to Freddie Mac shall be sent to Freddie Mac at the address set forth below or to such other address as Freddie Mac may from time to time designate:

FEDERAL HOME LOAN MORTGAGE CORPORATION  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

with a copy to:

FEDERAL HOME LOAN MORTGAGE CORPORATION  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: joshua\_schonfeld@freddiemac.com  
Telephone: (703) 903-2000

## CITY OF MINNETONKA, MINNESOTA

### HOUSING PROGRAM FOR A MULTIFAMILY HOUSING DEVELOPMENT

Pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Housing Act”), the City of Minnetonka, Minnesota (the “City”) is authorized to develop and administer programs to finance the acquisition, construction, and equipping of multifamily housing developments under the circumstances and within the limitations set forth in the Housing Act. Section 462C.07 of the Housing Act provides that such programs for multifamily housing developments may be financed by revenue bonds issued by the City.

The City has received a proposal that it approve a program providing for the acquisition, construction, and equipping of approximately 262 units of affordable senior housing to be located at or about 11001 Bren Road East in the City (the “Project”). The acquisition, construction, and equipping of the Project is to be funded in part through the issuance by the City of one or more series of revenue bonds, as taxable and tax-exempt obligations, in the approximate aggregate principal amount not to exceed \$67,500,000 (the “Obligations”), the proceeds of which will be loaned to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”). All or a portion of the dwelling units of the Project will be subject to occupancy limits imposed by federal income tax law and regulations such that only persons and families within designated income limits will be permitted to occupy such units.

The City, in establishing this multifamily housing program (the “Program”), has considered the information contained in the City’s comprehensive plan. The Project will be constructed in accordance with the requirements of Section 462C.05, subdivisions 1 and 2 of the Housing Act.

Section A. Definitions. The following terms used in this Program shall have the following meanings, respectively:

“Borrower” shall mean Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership.

“City” shall mean the City of Minnetonka, Minnesota.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the treasury regulations promulgated thereunder.

“Housing Act” shall mean Minnesota Statutes, Chapter 462C, as currently in effect and as the same may be from time to time amended.

“Housing Unit” shall mean any one of the dwelling units financed with the Obligations, each located in the Project, occupied by one person or family, and containing complete living facilities.

“Land” shall mean the real property upon which the Project is situated.

“Obligations” shall mean the revenue bonds to be issued by the City to finance the Project.

“Program” shall mean this housing program for the financing of the Project pursuant to the Housing Act.

“Project” shall mean the approximately 262 units of affordable senior housing to be located at or about 11001 Bren Road East in the City to be acquired, constructed, and equipped by the Borrower.

Section B. Program for Financing the Project. It is proposed that the City establish this Program to provide financing for the acquisition, construction, and equipping of the Project at a cost and upon such other terms and conditions as are set forth herein and as may be agreed upon in writing between the City, the initial purchasers of the Obligations, and the Borrower. The City expects to issue the Obligations in one or more series as soon as the terms of the Obligations have been agreed upon by the City, the Borrower, and the initial purchasers of the Obligations. The proceeds of the Obligations will be loaned to the Borrower to finance the acquisition, construction, and equipping of the Project, to fund required reserves, if any, to pay interest on the Obligations during construction of the Project, if needed, and to pay the costs of issuing the Obligations.

It is anticipated that all series of Obligations will have a maturity of approximately forty (40) years or less. It is expected that the Obligations will bear interest at fixed rates, consistent with the market at the time of issuance, or at variable rates.

The City will hire no additional staff for the administration of the Program. Insofar as the City will be contracting with underwriters, legal counsel, bond counsel, trustees, purchasers, and others, all of whom will be reimbursed from bond proceeds and revenues generated by the Program, no administrative costs will be paid from the City’s budget with respect to this Program. The Obligations will not be general obligations of the City but will be issued as conduit revenue obligations of the City to be paid only from loan repayments by the Borrower and revenues generated by the property pledged to the payment thereof, which may include additional security such as additional collateral, insurance or a letter of credit.

Section C. Standards and Requirements Relating to the Financing of the Project Pursuant to the Program. The following standards and requirements shall apply with respect to the operation of the Project by the Borrower pursuant to this Program:

(1) Substantially all of the proceeds of the sale of the Obligations will be applied to the acquisition, construction, and equipping of the Project, the payment of the costs of issuing the Obligations, the financing of interest on the Obligations during the construction of the Project, if needed, and the funding of any required reserves. The proceeds of the Obligations will be made available to the Borrower pursuant to the terms of one or more loan agreements (or other revenue agreements) which will include certain covenants to be made by the Borrower to the City regarding the use of proceeds and the character and use of the Project.

(2) The Project qualifies as a “multifamily housing development” within the meaning of the Housing Act, since it is comprised of an apartment facility, of which the Housing Units are to be rented to seniors for use as residences.

(3) The Borrower, and any subsequent owner of the Project, will not arbitrarily reject an application from a proposed tenant because of race, color, creed, religion, national origin, sex, marital status, or status with regard to public assistance or disability.



(4) Pursuant to the Regulatory Agreement between the City and the Borrower, forty percent (40%) of the Housing Units will be held for occupancy by seniors with adjusted gross income not in excess of sixty percent (60%) of median family income, adjusted for family size. This set aside will satisfy the low-income occupancy requirements of Section 462C.05, subdivision 2 of the Housing Act.

(5) The Economic Development Authority in and for the City of Minnetonka will also enter into a Declaration of Restrictive Covenants with the Borrower, which requires one hundred percent (100%) of the Housing Units to be held for occupancy by seniors with adjusted gross income not in excess of sixty percent (60%) of median family income, adjusted for family size.

Section D. Evidence of Compliance. The City may require from the Borrower at or before the issuance of the Obligations evidence satisfactory to the City of compliance with the standards and requirements for the financing established by the City, as set forth herein. In connection therewith, the City or its representatives may inspect the relevant books and records of the Borrower in order to confirm such ability, intention and compliance. In addition, the City may periodically require certification from either the Borrower or such other person deemed necessary concerning compliance with various aspects of this Program.

Section E. Issuance of Obligations. To finance the Project the City will by resolution authorize, issue and sell the Obligations, in one or more series, as taxable and tax-exempt obligations, in the approximate aggregate principal amount not to exceed \$67,500,000. The Obligations will be issued pursuant to Section 462C.07, subdivision 1 of the Housing Act, and will be payable primarily from the revenues of the Project and a pledge of the tax increment revenue received by the Borrower pursuant to a pay-as-you-go tax increment revenue note issued by the Economic Development Authority in and for the City of Minnetonka, Minnesota. If the costs of the Project, including capitalized interest, if needed, costs of issuance of the Obligations, and required reserve funds, if any, exceed the principal amount of the Obligations, the Borrower will contribute to or obtain additional financing for the Project the difference between the total costs of the Project and the principal amount of the Obligations available to finance the Project. The costs of the Project may change between the date of preparation of this Program and the date of issuance of the Obligations. The Obligations are expected to be issued in September 2018.

Section F. Severability. The provisions of this Program are severable and if any of its provisions, sentences, clauses or paragraphs shall be held unconstitutional, contrary to statute, exceeding the authority of the City or otherwise illegal or inoperative by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section G. Amendment. The City shall not amend this Program, while Obligations authorized hereby are outstanding, to the detriment of the holders of such Obligations.

Section H. State Ceiling.

(1) An application for an allocation of a portion of the annual volume cap for private activity bonds to be issued to provide “qualified residential rental projects,” within the meaning of Sections 142(a)(7) and 142(d) of the Code, has been made to the office of Minnesota Management & Budget, pursuant to Section 146 of the Code and Minnesota Statutes, Chapter 474A, as amended (the “Allocation Act”).

(2) Pursuant to the terms and requirements of the Allocation Act: (i) the Project will meet the requirements of Section 142(d) of the Code regarding the incomes of the occupants of

the Project; and (ii) the maximum rent for at least twenty percent (20%) of the Housing Units will not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the United States Department of Housing and Urban Development.

(3) Prior to the issuance of the Obligations, the Borrower will enter into an agreement with the City (the “Regulatory Agreement”) that specifies the maximum rental rates of twenty percent (20%) of the Housing Units and the income levels of the residents of the Project occupying the income-restricted units. Such rental rates and income levels must be within the limitations established in accordance with the preceding paragraph (2). The Borrower will be required to annually certify to the City over the term of the agreement that the rental rates for the rent-restricted units are within the limitations under the preceding paragraph (2). The City may request individual certification of the income of residents of the income-restricted units of the Project. The office of Minnesota Management & Budget may request from the City a copy of the annual certification prepared by the Borrower. The office of Minnesota Management & Budget may require the City to request individual certification of all residents of the income-restricted units of the Project.

(4) The City will monitor Project compliance with the rental rate and income level requirements established under the preceding paragraph (2). The City may issue an order of noncompliance if the Project is found by the City to be out of compliance with the rental-rate or income-level requirements established under the preceding paragraph (2). The Borrower shall pay a penalty to the City equal to one-half of one percent (0.5%) of the total amount of the tax-exempt Obligations issued under the Housing Act for the Project if the City issues an order of noncompliance. For each additional year the Project is out of compliance, the annual penalty must be increased by one-half of one percent (0.5%) of the principal amount of the tax-exempt Obligations issued under the Housing Act for the Project. The City may waive insubstantial violations.

(5) The City will enter into the Regulatory Agreement with the Borrower with a term of at least fifteen (15) years in order to ensure that the Project satisfies the requirements of this Program, Section 142(d) of the Code, the Housing Act, and the Allocation Act.

**BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS NOTE AGREES (A) THAT (I) IF APPLICABLE, IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT AND (II) THAT IT WILL NOT SELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.**

**UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
CITY OF MINNETONKA**

**MULTIFAMILY NOTE  
with designation as  
Multifamily Housing Revenue Refunding Note  
(Preserve at Shady Oak Project)  
Series 2018A[-1] [-2]**

US \$ \_\_\_\_\_

September \_\_\_\_, 2018

FOR VALUE RECEIVED, the undersigned, the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of [U.S. Bank National Association, a national banking association] [BMO Harris Bank N.A., a national banking association], or its registered assigns (the “**Funding Lender**”), the maximum principal sum of \_\_\_\_\_ and \_\_\_/100 Dollars (US \$ \_\_\_\_\_), plus Prepayment Premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A[-1] [-2] (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement, dated as of September 1, 2018 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for the Funding Lender, the Obligor, and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent under the Funding Loan Agreement (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$ \_\_\_\_\_ (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”) pursuant to a Project Loan Agreement, dated as of September 1, 2018 (the “**Project Loan Agreement**”), between the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to the proceeds of this Note advanced by Administrative Agent, on behalf of the Funding Lender, according to the Funding Loan Agreement and not otherwise repaid.

In addition to this Note, the Tax-Exempt Funding Loan is also evidenced by the Governmental Lender's Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A[-1] [-2].

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the registered holder of this Note, and (ii) the term "Indebtedness" means the principal of, Prepayment Premium, if any, and interest on or any other amounts due at any time under the Tax-Exempt Notes, the Taxable Governmental Notes, or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing October 1, 2018 interest on this Note at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an "**Interest Payment Date**"). Interest shall accrue on the principal amount of this Note which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on \_\_\_\_\_ 1, 20\_\_ (the "**Maturity Date**") and in monthly installments on each date set forth on the Governmental Note Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 may be replaced by a new Governmental Note Amortization Schedule provided by the Freddie Mac Seller/Servicer on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender's discretion. Neither the Funding Lender's acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan

Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for herein or in any other Financing Document evidencing or securing the Funding Loan, whether considered separately or together with other charges provided for in any such other Financing Document, violates that law, and the Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Minnesota (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date or on the date of any mandatory prepayment or acceleration, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date or such other date at the Default Rate.

15. **Limited Obligation.** This Note is a special, limited obligation of the Obligor payable solely from the Pledged Security and any other revenues, funds and assets pledged under the Funding Loan Agreement and not from any other revenues, funds or assets of the Obligor. This Note is not a general obligation, debt or bonded indebtedness of the Obligor, the State or any political subdivision thereof (other than of the Obligor to the limited extent set forth in the Funding Loan Agreement) and the holder of this Note does not have the right to have any excises or taxes levied by the Obligor, the State or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on this Note. None of the Obligor, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on this Note or other costs incident thereto except from the Pledged Security pledged under the Funding Loan Agreement. No provision, covenant, or agreement contained in this Note or the Funding Loan Agreement, or any obligation herein or therein imposed upon the Obligor, or the breach thereof, shall constitute or give rise to or impose a liability upon the Obligor (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Obligor's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Obligor as provided herein and in the Act. Any recourse for a cause of action under this Note or the Funding Loan Agreement shall be payable solely from the Pledged Security, and the agreement of the Obligor to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Project Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed in its name by the manual or facsimile signatures of the Mayor and City Manager, the seal of the Obligor having been intentionally omitted as permitted by law, and has caused this Note to be dated as of the date first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

\_\_\_\_\_  
**CERTIFICATE OF AUTHENTICATION**

This Multifamily Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION**, as Fiscal Agent

By: \_\_\_\_\_  
Authorized Signer

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**SCHEDULE I**  
**GOVERNMENTAL NOTE AMORTIZATION SCHEDULE**

**MULTIFAMILY NOTE  
(SERIES A)**

\$\_[\_\_\_\_\_]

Minnetonka, Minnesota  
September \_\_, 2018

**FOR VALUE RECEIVED**, MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (“**Borrower**”), promises to pay to the order of the CITY OF MINNETONKA, MINNESOTA, a municipal corporation organized and existing under the laws of the State of Minnesota (together with any subsequent holder of this Note, “**Governmental Lender**”), whose address is 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, on or before the Mandatory Prepayment Date (as defined in the Construction Loan Agreement referred to below), the sum of [\_\_\_\_\_] Dollars (\$\_\_\_\_\_) or such lesser sum as may actually be owing under borrowings made pursuant to the Project Loan Agreement and the Construction Loan Agreement referred to below, together with interest on the unpaid principal balance from the date hereof as hereinafter provided.

Advances under this Note shall be made in accordance with the terms and conditions set forth in: (i) that certain Project Loan Agreement dated as of even date herewith (as the same may be amended, modified or restated from time to time hereafter, the “**Project Loan Agreement**”) by and among Borrower, Governmental Lender and U.S. Bank National Association, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Saint Paul, Minnesota, in its capacity as Fiscal Agent (in such capacity, “**Fiscal Agent**”); and (ii) that certain Construction Loan Agreement dated as of even date herewith (as the same may be amended, modified or restated from time to time hereafter, the “**Construction Loan Agreement**”), by and among Borrower, U.S. Bank National Association, a national banking association (“**U.S. Bank**”) and BMO Harris Bank N.A., a national banking association (“**BMO Harris**” and, together with U.S. Bank, the “**Initial Funding Lender**”). This Note is the “Series A Project Note” and is one of the “Project Notes” referenced in the Construction Loan Agreement. Capitalized terms herein shall have the meanings set forth in the Construction Loan Agreement.

From the date hereof and through the Mandatory Prepayment Date, interest on each advance hereunder shall accrue and be calculated in accordance with Section 2.2 of the Construction Loan Agreement. This Note is issued, is to be repaid, and may be accelerated under the terms and provisions of the Project Loan Agreement and the Construction Loan Agreement. The holders hereof are entitled to all the benefits provided for in the Project Loan Agreement and the Construction Loan Agreement, or referred to therein. The provisions of the Project Loan Agreement and the Construction Loan Agreement are incorporated by reference herein with the same force and effect as if fully set forth herein. The maximum principal balance of this Note which may be outstanding from time to time is equal to \$[\_\_\_\_\_].

At the option of Borrower, this Note may be prepaid in accordance with Section 2.4 of the Construction Loan Agreement. **This Note is subject to mandatory prepayment as set forth in Section 2.1(b) of the Construction Loan Agreement.** All payments on this Note shall be applied in the order set forth in Section 2.3 of the Construction Loan Agreement. No partial payment shall change any due date or the amount of any regularly scheduled installment of principal due.



All payments due under this Note shall be made to the Initial Funding Lender in accordance with Section 3.02(c) of the Project Loan Agreement and Section 2.3 of the Construction Loan Agreement.

Presentment and demand for payment, notice of dishonor, protest and notice of protest are hereby waived. Borrower agrees to pay all costs of collection, including reasonable attorneys' fees, whether or not suit is commenced.

This Note is secured by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, executed by Borrower in favor of Governmental Lender, as assigned by Governmental Lender to Fiscal Agent (as so assigned and together with any amendment, restatement or other modification thereto, the "*Mortgage*") and encumbering the Project, plus the other Security Documents, all of even date herewith. The terms of the Mortgage are incorporated herein and made a part hereof by reference. Disbursements under this Note shall be made pursuant to the terms of the Construction Loan Agreement and the Disbursing Agreement.

Except as herein provided, Borrower and all others who may become liable for all or part of the principal balance hereof or for any obligations of Borrower to Governmental Lender or the holder hereof (a) jointly and severally, forever waive presentment, protest and demand, notice of protest, demand and dishonor and non-payment of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, (b) agree that the time of payment of the debt or any part thereof may be extended from time to time without modifying or releasing the lien of the Mortgage or other Loan Documents or the liability of Borrower or any other such parties, the right of recourse against Borrower and such parties being hereby reserved by Governmental Lender; and (c) agree that time is of the essence. Borrower agrees to pay all costs of collection when incurred, whether suit be brought or not, including reasonable attorneys' fees and costs of suit and preparation therefor, and to perform and comply with each of the covenants, conditions, provisions and agreements of Borrower contained in this Note, Mortgage and the Loan Documents. It is expressly agreed by Borrower that no extensions of time for the payment of this Note, nor the failure on the part of Governmental Lender to exercise any of its rights hereunder, shall operate to release, discharge, modify, change or affect the original liability under this Note, Mortgage or any of the Loan Documents, either in whole or in part.

**WAIVER OF JURY TRIAL: BORROWER AND GOVERNMENTAL LENDER HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS INSTRUMENT AND TO ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS HEREUNDER OR THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. BORROWER AND GOVERNMENTAL LENDER EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.**

Borrower agrees that (1) this instrument and the rights and obligations of all parties hereunder shall be governed by and construed under the laws of the State of Minnesota, and (2) the obligations evidenced by this Note is an exempted transaction under the Truth-In-Lending Act, 15

U.S.C. Section 1601, et. seq. If any provision of this Note shall be illegal or unenforceable, such provision shall be deemed canceled to the same extent as though it never had appeared therein, but the remaining provisions shall not be affected thereby. Borrower consents to the personal jurisdiction of the federal and state courts located in the State of Minnesota, waives any argument that such a forum is not convenient, and agrees that any litigation relating to this Note initiated by it or on its behalf shall be venued in Minnesota.

Whenever Governmental Lender or Borrower desires to give any notice to the other, it shall be sufficient for all purposes if such notice is personally delivered or sent by registered or certified United States mail, postage prepaid, addressed to the intended recipient at the address listed on the signature page of this Note for Borrower, or such other address as hereafter specified in writing, and for Governmental Lender at the address listed at the beginning of this Note, or such other address as hereafter specified in writing.

If from any circumstances whatsoever, by reason of acceleration or otherwise, the fulfillment of any provision of this Note involves transcending the limit of validity prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then the obligations to be fulfilled will be reduced to the limit of such validity as provided in such statute or law, so that in no event shall any exaction be possible under this Note in excess of the limit of such validity.

All rights, powers, privileges and immunities herein granted to Governmental Lender shall extend to its successors and assigns and any other legal holder of this Note, with full right by Governmental Lender to assign and/or sell same.

This Note is a recourse obligation of Borrower.

As provided in Section 3.04 of the Project Loan Agreement, on the date hereof the Governmental Lender will, in an allonge endorsement to this Note, assign all its right, title and interest in this Note to the Fiscal Agent as security for payment of the Funding Loan.

[signature page follows]

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first written above.

**BORROWER:**

**MINNETONKA LEASED HOUSING  
ASSOCIATES II, LLLP**

By: MINNETONKA LEASED HOUSING  
ASSOCIATES II, LLC, its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Series A Project Note]

**ALLONGE ASSIGNMENT AND ENDORSEMENT**

This Allonge Assignment and Endorsement is attached to that certain Multifamily Note, (Series A), dated as of \_\_\_\_\_, 2018, made and executed by Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, to the City of Minnetonka, Minnesota, a municipal corporation organized and existing under the laws of the State of Minnesota (“Payee”), in the principal amount of \$\_\_\_\_\_ (the “Series A Project Note”), with the same force and effect as if endorsed directly upon the Series A Project Note. By execution hereof, Payee represents and warrants that it is the owner and holder of the Series A Project Note, free and clear of any prior assignment, transfer, pledge, lien, endorsement, charge or hypothecation; that Payee has lawful right, power and authority to execute this instrument; and that the Series A Project Note has not been modified, amended, paid or terminated.

Pay to the order of U. S. Bank National Association.

Dated: \_\_\_\_\_, 2018

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

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**FUNDING LOAN AGREEMENT**

**between**

**U.S. BANK NATIONAL ASSOCIATION,  
as Administrative Agent for the Initial Funding Lender**

**CITY OF MINNETONKA, MINNESOTA,  
as Governmental Lender**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent**

**Relating to:**

**Preserve at Shady Oak  
10987 and 11015 Bren Road East  
Minnetonka, Minnesota**

**Maximum Funding Loan Principal Amount: \$\_\_\_\_\_**

**Dated as of September 1, 2018**

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This instrument was drafted by:

Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402  
(612) 337-9300

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## FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT is made and entered into as of September 1, 2018 (the “**Funding Loan Agreement**”), between U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “**Administrative Agent**”), as administrative agent for the Initial Funding Lender (hereinafter defined), the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as fiscal agent (the “**Fiscal Agent**”). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

### RECITALS

**A.** On May 7, 2018, pursuant to Minnesota Statutes, Chapter 462C, as amended (the “**Act**”), the Governmental Lender issued its Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018 (the “**Prior Note**”), in the original aggregate principal amount of \$30,500,000, and loaned the proceeds thereof to Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”), for the purpose of providing short-term financing for the acquisition, construction, and equipping of a 220-unit workforce housing rental development located at 10987 and 11015 Bren Road East, Minnetonka, Minnesota to be known as Preserve at Shady Oak (the “**Project**”).

**B.** Pursuant to the Act and the Project Loan Agreement, dated as of September 1, 2018 (the “**Project Loan Agreement**”), between the Governmental Lender, the Fiscal Agent, and the Borrower, the Governmental Lender is agreeing to make two mortgage loans to the Borrower corresponding in principal amount to the Tax-Exempt Funding Loan and the Taxable Funding Loan described below (individually, the “**Tax-Exempt Project Loan**” and the “**Taxable Project Loan**,” and collectively, the “**Project Loan**”) to (i) refund a portion of the Prior Note; and (ii) provide for the financing of the Project.

**C.** The Governmental Lender is making the Tax-Exempt Project Loan to the Borrower with the proceeds received from the separate tax-exempt loan made to the Governmental Lender pursuant to this Funding Loan Agreement in the maximum aggregate principal amount of \$\_\_\_\_\_ (the “**Tax-Exempt Funding Loan**”). The Tax-Exempt Funding Loan is evidenced by the Governmental Lender’s (i) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series A-1 Governmental Note**”); and (ii) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series A-2 Governmental Note**,” and together with the Series A-1 Governmental Note, the “**Tax-Exempt Governmental Note**”). The Governmental Lender is making the Taxable Project Loan to the Borrower with the proceeds received from the separate taxable loan made to the Governmental Lender pursuant to this Funding Loan Agreement in the maximum aggregate principal amount of \$\_\_\_\_\_ (the “**Taxable Funding Loan**,” together with the Tax-Exempt Funding Loan, the “**Funding Loan**,” and further together with the Project Loan, the “**Loans**”). The Taxable Funding Loan is evidenced by the Governmental Lender’s (1) the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-1 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series B-1 Governmental Note**”); and (2) the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-2 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series B-2 Governmental Note**,” and together with the Series B-1 Governmental Note, the “**Taxable Governmental Note**”). The Tax-Exempt Governmental Note and the Taxable Governmental Note are referred to herein as the “**Governmental Notes**.” The Governmental Notes are each dated September

\_\_\_\_, 2018. The Governmental Lender shall deliver the Governmental Notes to the Administrative Agent, which shall deliver the Governmental Notes to U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the “**Initial Funding Lender**”).

**D.** The Administrative Agent and the Initial Funding Lender, pursuant to the terms and subject to the conditions of this Funding Loan Agreement, the Construction Phase Financing Agreement, and the Construction Continuing Covenant Agreement, have agreed to originate and fund the Tax-Exempt Funding Loan to the Governmental Lender on the Delivery Date, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Tax-Exempt Project Loan to the Borrower pursuant to the Project Loan Agreement. The Administrative Agent and the Initial Funding Lender, pursuant to the terms and subject to the conditions of this Funding Loan Agreement, the Construction Phase Financing Agreement, and the Construction Continuing Covenant Agreement, have agreed to originate and fund the Taxable Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Taxable Project Loan to the Borrower in corresponding installments pursuant to the Project Loan Agreement. The Administrative Agent, on behalf of the Initial Funding Lender, will administer the Loans during the Construction Phase in accordance with the Construction Phase Financing Agreement (as it relates to the Tax-Exempt Funding Loan and Tax-Exempt Project Loan), the Construction Continuing Covenant Agreement, and the other Financing Documents.

**E.** The Borrower has agreed to use a portion of the proceeds of the Tax-Exempt Project Loan to refund a portion of the Prior Note and to use the remaining proceeds of the Prior Note (which will be treated as proceeds of the Tax-Exempt Project Loan) and the proceeds of the Taxable Project Loan to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to the Loans.

**F.** The Borrower’s repayment obligations in respect of the Tax-Exempt Project Loan will be evidenced by the Multifamily Note (Series A) (the “**Tax-Exempt Project Note**”). The Borrower’s repayment obligations in respect of the Taxable Project Loan will be evidenced by the Multifamily Note (Series B) (the “**Taxable Project Note**,” and collectively with the Tax-Exempt Project Note and all riders and modifications thereto, the “**Project Notes**”), each dated September \_\_, 2018, delivered to the Governmental Lender, which Project Notes will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**G.** To secure the Borrower’s obligations under the Tax-Exempt Project Note, the Borrower will execute and deliver to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated September \_\_, 2018 (the “**Tax-Exempt Security Instrument**”), with respect to the Project, which Tax-Exempt Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Tax-Exempt Funding Loan.

**H.** To secure the Borrower’s obligations under the Taxable Project Note, the Borrower will execute and deliver to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated September \_\_, 2018 (the “**Taxable Security Instrument**,” and together with the Tax-Exempt Security Instrument, the “**Security Instrument**”), with respect to the Project, which Taxable Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Taxable Funding Loan.

**I.** The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Tax-Exempt Freddie Mac**”), has entered into a commitment with KeyBank National Association, a national banking association (the “**Freddie Mac Seller/Servicer**”),

dated \_\_\_\_\_, 2018 (the “**Freddie Mac Commitment**”), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Tax-Exempt Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date.

**J.** If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Tax-Exempt Freddie Mac Commitment and the Construction Phase Financing Agreement, the Tax-Exempt Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Administrative Agent, on behalf of the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Tax-Exempt Funding Loan, as evidenced by the Tax-Exempt Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Tax-Exempt Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Tax-Exempt Funding Loan and the Initial Funding Lender will remain the owner of the Tax-Exempt Funding Loan.

**K.** Freddie Mac has entered into a separate commitment with the Freddie Mac Seller/Servicer, dated \_\_\_\_\_, 2018 (the “**Taxable Freddie Mac Commitment**”), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the commitment, to facilitate the financing of the Project in the Permanent Phase by making a conventional supplemental loan to purchase and amend and restate the Taxable Funding Loan made hereunder.

**L.** If the Conditions to Conversion associated with the Taxable Freddie Mac Commitment are satisfied on or before the Forward Commitment Maturity Date as provided for in the Taxable Freddie Mac Commitment, the Freddie Mac Seller/Servicer will make a conventional loan to purchase and amend and restate the Taxable Funding Loan and the Taxable Funding Loan will no longer be outstanding under this Funding Loan Agreement. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Taxable Project Loan will remain outstanding, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to amending and restating the Taxable Funding Loan and the Initial Funding Lender will remain the owner of the Taxable Funding Loan as the holder of the Taxable Governmental Note.

**M.** As a Condition to Conversion, the Tax-Exempt Project Note and the Tax-Exempt Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the “**Freddie Mac Continuing Covenant Agreement**”), in each case pursuant to the forms attached to the Construction Phase Financing Agreement. As additional Conditions to Conversion, (i) the Taxable Governmental Note and the Taxable Project Note will be exchanged for a single Amended and Restated Taxable Project Note and the Taxable Governmental Note and will no longer be outstanding under this Funding Loan Agreement, and the single Amended and Restated Taxable Project Note will be assigned to the Freddie Mac Seller/Servicer; (ii) the Tax-Exempt Governmental Note will be consolidated into a single Governmental Note with a single Governmental Note Amortization Schedule; and (iii) the Taxable Security Instrument will be amended and restated and the Borrower will be required to enter into a Multifamily Loan Agreement with the Freddie Mac Seller/Servicer, in each case pursuant to the forms attached to the Taxable Freddie Mac Commitment and the Taxable Funding Loan will no longer be governed by the Funding Loan Agreement. After Conversion, all references herein to “Funding Loan” shall mean the Tax-Exempt Funding Loan, all references herein to the “Project Loan” shall mean the Tax-Exempt Project Loan and the term “Security Instrument” shall mean the Tax-Exempt Security Instrument, as amended and restated.

N. If the Conditions to Conversion are satisfied and the Tax-Exempt Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/ Servicer shall deliver the Tax-Exempt Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the “**Freddie Mac Purchase Date**”).

O. Upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Tax-Exempt Funding Loan, the Tax-Exempt Governmental Note, this Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. KeyBank National Association will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date.

P. The Governmental Lender has determined that all things necessary to incur the Funding Loan and to make the Governmental Notes, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and legal obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, premium, if any, and interest on, the Governmental Notes, have been duly taken, and the creation, execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Notes, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender.

Q. The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

R. To provide additional financing for the Project and to refund a portion of the Prior Note, the Governmental Lender is issuing its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C (the “**Subordinate Bonds**”), dated September \_\_, 2018, in the original aggregate principal amount of \$3,570,000, pursuant to a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “**Subordinate Indenture**”), between the Governmental Lender and U.S. Bank National Association, a national banking association, as trustee for the Subordinate Bonds (the “**Trustee**”). The proceeds of the Subordinate Bonds are being loaned to the Borrower (the “**Subordinate Loan**”) pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “**Subordinate Loan Agreement**”), between the Governmental Lender and the Borrower, and the Borrower will apply such proceeds to refund a portion of the Prior Note and finance a portion of the acquisition, construction, and equipping of the Project and to pay certain closing costs with respect to the Subordinate Loan. The Subordinate Indenture, the Subordinate Loan Agreement, and the Subordinate Bonds and all related documents and any renewals or extensions thereof and all indebtedness owed thereunder, including the Subordinate Loan, shall be and are subordinated, inferior and subject to the Financing Documents, as the Financing Documents may be revised, modified, extended or amended from time to time, and all indebtedness owed thereunder pursuant to a Subordination Agreement, dated September \_\_, 2018, between the Governmental Lender, the Borrower, the Fiscal Agent, the Trustee, and the Administrative Agent, and its successors and assigns.

**NOW, THEREFORE**, in consideration of the premises and of the origination and funding of the Funding Loan by the Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Funding Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Project Loan Agreement.

“*Act*” means Minnesota Statutes, Chapter 462C, as amended.

“*Actual Project Loan Amount*” has the meaning set forth in the Construction Phase Financing Agreement.

“*Administration Fund*” means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Administrative Agent*” means U.S. Bank, as administrative agent for the Initial Funding Lender, its successors and assigns.

“*Advance Request*” means a request by the Borrower to the Administrative Agent that the Administrative Agent disburse proceeds of the Funding Loan to the Fiscal Agent as provided hereunder, which request shall be in the form prescribed by the Construction Continuing Covenant Agreement.

“*Advance Termination Date*” means the earliest to occur of (i) the date when the sum of the aggregate advances of the Funding Loan made by the Administrative Agent equals the Authorized Amount, (ii) the date that is three (3) years after the Delivery Date, (iii) the Conversion Date, (iv) the date of a Determination of Taxability or (v) the occurrence of an Event of Default hereunder.

“*Assignment*” means the respective Assignment of Mortgage, dated the Delivery Date, by the Governmental Lender assigning its interest in the Taxable Security Instrument and the Tax-Exempt Security Instrument to the Fiscal Agent.

“*Authorized Amount*” shall mean \$\_\_\_\_\_, the maximum principal amount of the Funding Loan authorized under this Funding Loan Agreement.

“*Authorized Officer*” means (a) when used with respect to the Governmental Lender, the Mayor, City Manager, and Finance Director and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its behalf, (b) when used with respect to the Borrower, any general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

“*Bankruptcy Code*” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

“*BMO Harris Bank*” means BMO Harris Bank N.A., a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

“*Bond Counsel*” means (a) on the Delivery Date, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Notes, or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace and is acceptable to the Funding Lender Representative.

“*Borrower*” means Minnetonka Leased Housing Associates II, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State of Minnesota, or any of its permitted successors or assigns, as owner of the Project.

“*Borrower Equity Account*” means the Borrower Equity Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Borrower Equity Deposit*” means \$0.00, which shall be comprised of sources other than the proceeds of the Project Loan.

“*Business Day*” means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

“*Certificate of the Governmental Lender*” and “*Request of the Governmental Lender*” mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender or such other Person as may be designated and authorized to sign for the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“*Code*” means the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder.

“*Conditions to Conversion*” has the meaning given to that term in the Construction Phase Financing Agreement and the Taxable Freddie Mac Commitment.

“*Construction Continuing Covenant Agreement*” means the Construction Loan Agreement, dated the Delivery Date, between the Borrower, the Administrative Agent, and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

“*Construction Loan Documents*” means, collectively, the Construction Continuing Covenant Agreement, the Construction Phase Financing Agreement, and all other documents to be executed and delivered by the Borrower to the Administrative Agent or the Initial Funding Lender in connection with the Project.

“*Construction Phase*” means the construction phase of the Project Loan, which time period shall commence on the Closing Date and remain in effect to, but not including, the Conversion Date.

“*Construction Phase Financing Agreement*” means the Construction Phase Financing Agreement, dated as of September 1, 2018, between the Administrative Agent, Freddie Mac, and the Freddie Mac Seller/Servicer, and acknowledged and agreed to by the Borrower, as the same may be amended, modified or supplemented from time to time.

“*Construction Phase Interest Rate*” has the meaning set forth on *Exhibit F*; provided during the continuation of any Event of Default hereunder, the Construction Phase Interest Rate shall be the Default Rate.

“*Continuing Covenant Agreement*” means (i) prior to the Conversion Date, the Construction Continuing Covenant Agreement, and (ii) from and after the Conversion Date, the Freddie Mac Continuing Covenant Agreement.

“*Conversion*” means conversion of the Project Loan from the Construction Phase to the Permanent Phase on the Conversion Date.

“*Conversion Date*” means (i) the date the Freddie Mac Seller/Servicer purchases the Tax-Exempt Funding Loan from the Administrative Agent upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by the Freddie Mac Seller/Servicer in the Notice of Conversion, which date shall be at least ten (10) days following the date on which the Notice of Conversion is delivered; and (ii) the date the Freddie Mac Seller/Servicer makes a conventional loan in accordance with the Taxable Freddie Mac Commitment.

“*Cost,*” “*Costs*” or “*Costs of the Project*” means, with respect to the proceeds of the Tax-Exempt Governmental Note, costs paid with respect to the Project that (i) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Treasury Regulations, (ii) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of (A) sixty (60) days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (B) the Delivery Date, and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Loans such costs were (A) Costs of Issuance of the Governmental Notes, (B) preliminary capital expenditures (within the meaning of Section 1.150-2(f)(2) of the Treasury Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Project that do not exceed twenty percent (20%) of the issue price (as defined in Section 1.148-1 of the Treasury Regulations) of the Tax-Exempt Governmental Note, or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid); provided however, that if any portion of the Project is being constructed or developed by the Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), “*Cost,*” “*Costs*” or “*Costs of the Project*” shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower or such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of



Section 1504 of the Code) participating in the acquisition, construction or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

“*Cost of Issuance Fund*” means the Cost of Issuance Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Costs of Issuance*” means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Governmental Lender, the Governmental Lender’s counsel and the Governmental Lender’s municipal advisor, (b) Bond Counsel, (c) the Fiscal Agent and the Fiscal Agent’s counsel, (d) the Administrative Agent and the Initial Funding Lender’s counsel, (e) the Freddie Mac Seller/Service and the Freddie Mac Seller/Service’s counsel, (f) Freddie Mac and Freddie Mac’s counsel, and (g) the Borrower’s counsel attributable to the funding of the Loans and the Borrower’s financial advisor, if any; and (ii) all other fees, costs and expenses directly associated with the Funding Loan and the Project Loan, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

“*Costs of Issuance Deposit*” means the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date, which deposit shall equal \$0.00.

“*Default Rate*” means (a) during the Construction Phase, an interest rate equal to the lower of (i) \_\_\_\_\_ percent (\_\_\_%) per annum in excess of the Construction Phase Interest Rate or (ii) the Maximum Interest Rate; and (b) during the Permanent Phase, an interest rate equal to the lower of (i) \_\_\_\_\_ percent (\_\_\_%) per annum above the Permanent Phase Interest Rate or (ii) the Maximum Interest Rate.

“*Delivery Date*” means September \_\_\_\_, 2018, the date of funding of the initial advance of the Funding Loan and the delivery of the Governmental Notes by the Governmental Lender to the Administrative Agent.

“*Determination of Taxability*” means, with respect to the Tax-Exempt Governmental Note, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation or (e) receipt by Fiscal Agent or Funding Lender Representative, at the request of Governmental Lender, Borrower, Fiscal Agent or Funding Lender Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Tax-Exempt Governmental Note is includable in gross income for federal income tax purposes of the Funding Lender or any former Funding Lender other than a Funding Lender who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination.

“*Disbursing Agreement*” means the \_\_\_\_\_ Agreement, dated as of September 1, 2018, between the Borrower, the Fiscal Agent, the Administrative Agent, the Trustee, and the Title Company, as the same may be amended, modified or supplemented from time to time.

“*Electronic Notice*” means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04 hereof.

“*Event of Default*” or “*event of default*” means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

“*Extraordinary Services*” means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of or to prevent default under this Funding Loan Agreement or the Project Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Project Loan Agreement, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

“*Fair Market Value*” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security–State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

“*Fee Component*” has the meaning set forth in the Project Loan Agreement.

“*Financing Documents*” means, collectively, this Funding Loan Agreement, the Governmental Notes, the Tax Certificate, the Project Loan Documents, the Construction Loan Documents (during the Construction Phase) and all other documents or instruments evidencing, securing or relating to the Loans.

“*Fiscal Agent*” means U.S. Bank National Association, a national banking association, and its successors hereunder, in its capacity as fiscal agent hereunder.

“*Fiscal Agent’s Extraordinary Fees and Expenses*” means all those fees, expenses and disbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

“*Fiscal Agent’s Ordinary Fees and Expenses*” means the annual administration fee for the Fiscal Agent’s ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve (12) month period, which fee is equal to (and shall not exceed) \$ \_\_\_\_\_ and shall be payable annually in advance on the Delivery Date and each anniversary thereof.

“*Forward Commitment Maturity Date*” means \_\_\_\_\_, 20\_\_\_\_, subject to extension by Freddie Mac.

“*Freddie Mac*” means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

“*Freddie Mac Commitments*” means, together, the Tax-Exempt Freddie Mac Commitment and the Taxable Freddie Mac Commitment.

“*Freddie Mac Continuing Covenant Agreement*” means the Continuing Covenant Agreement to be delivered on the Conversion Date in the form attached to the Construction Phase Financing Agreement by and between the Borrower and the Freddie Mac Seller/Servicer, as the same may be amended, modified or supplemented from time to time.

“*Freddie Mac Purchase Date*” means the date on which Freddie Mac purchases the Tax-Exempt Funding Loan from the Freddie Mac Seller/Servicer upon satisfaction of the conditions set forth in the Construction Phase Financing Agreement and the Tax-Exempt Freddie Mac Commitment.

“*Freddie Mac Seller/Servicer*” means KeyBank National Association, a national banking association, as Freddie Mac’s seller/servicer under the Freddie Mac Commitment, or any of its successors or assigns under the Freddie Mac Commitment.

“*Funding Lender*” means any Person who is the holder of the Governmental Notes.

“*Funding Lender Representative*” means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05 hereof, or an assignee of such Person as provided in Section 11.05 hereof. The initial Funding Lender Representative shall be the Administrative Agent, acting on behalf of the Initial Funding Lender. The Freddie Mac Seller/Servicer shall become the Funding Lender Representative upon the occurrence of the Conversion Date and Freddie Mac shall become the Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.

“*Funding Loan*” means together, the Tax-Exempt Funding Loan and the Taxable Funding Loan. On and after the Conversion Date only the Tax-Exempt Funding Loan shall be outstanding, and all references to “Funding Loan” shall mean the Tax-Exempt Funding Loan.

“*Funding Loan Agreement*” means this Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent, the Governmental Lender, and the Fiscal Agent, as amended, supplemented or restated from time to time.

“*Government Obligations*” means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.

“*Governmental Lender*” means the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State.

“*Governmental Lender Fee*” means the financing fee in the amount of one-eighth of one percent (0.125%) of the principal amount of the Governmental Notes to be paid on or before the Delivery Date.

“*Governmental Note Amortization Schedule*” means the Governmental Note Amortization Schedule attached as Schedule 1 to each of the Series A-1 Governmental Note, the Series A-2 Governmental Note, the Series B-1 Governmental Note, and the Series B-2 Governmental Note, as shall

be consolidated or eliminated at Conversion subject to the terms of the Construction Phase Financing Agreement.

“*Governmental Note(s)*” means, collectively, the Series A-1 Governmental Note, the Series A-2 Governmental Note, the Series B-1 Governmental Note, and the Series B-2 Governmental Note. On and after the Conversion Date, the Series B-1 Governmental Note and the Series B-2 Governmental Note shall be exchanged in consideration for the delivery by the Borrower of its Amended and Restated Taxable Project Note to the Freddie Mac Seller/Servicer as the originator of a supplemental conventional loan and said Series B-1 Governmental Note and Series B-2 Governmental Note shall no longer be outstanding hereunder. On or after the Conversion Date, “*Governmental Note(s)*” shall mean the consolidated single Governmental Note representing the Tax-Exempt Governmental Note in the Construction Phase and all references herein to the Governmental Note after the Conversion Date means only the consolidated Governmental Note as then outstanding.

“*Guide*” means the Freddie Mac Multifamily Seller/Servicer Guide, as the same may be amended, modified or supplemented from time to time.

“*Initial Debt Service Deposit*” means \$0.00.

“*Initial Funding Lender*” means, together, U.S. Bank and BMO Harris Bank, as initial holders of the Governmental Notes.

“*Interest Payment Date*” means (i) the first day of each calendar month, commencing \_\_\_\_\_ 1, 20\_\_\_\_; (ii) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment; and (iii) the Maturity Date.

“*Investment Income*” means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

“*Loans*” means, together, the Project Loan and the Funding Loan.

“*Loan Payment Fund*” means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Loan Prepayment Fund*” means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Maturity Date*” means the maturity date of the Funding Loan set forth in Section 2.01(d) hereof.

“*Maximum Interest Rate*” means the rate of interest which results in the maximum amount of interest allowed by applicable law.

“*Moody’s*” means Moody’s Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Net Proceeds*,” when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

“*Note Proceeds Subaccount*” means the Note Proceeds Subaccount of the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Notes*” means, together, the Project Notes and the Governmental Notes.

“*Notice of Conversion*” means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Freddie Mac Seller/Service to the Governmental Lender, the Fiscal Agent, the Borrower, the Administrative Agent and Freddie Mac (i) stating that the Conditions to Conversion have been satisfied on or before the Forward Commitment Maturity Date or, if any Condition to Conversion has not been satisfied on or before the Forward Commitment Maturity Date, stating that such Condition to Conversion has been waived in writing by Freddie Mac (if a waiver is permitted and is granted by Freddie Mac, in its sole and absolute discretion) on or before the Forward Commitment Maturity Date, (ii) confirming the Conversion Date and (iii) providing for an updated amortization schedule for the Project Note and the Governmental Note in the event the Borrower makes a Pre-Conversion Loan Equalization Payment at Conversion.

“*Permanent Phase*” means the permanent phase of the Project Loan, which time period shall commence on the Conversion Date and remain in effect through the remaining term of the Project Loan.

“*Permanent Phase Interest Rate*” means, during the Permanent Phase, the fixed interest rate of \_\_\_\_\_% per annum; provided that during the continuance of any Event of Default hereunder, the Permanent Phase Interest Rate shall be the Default Rate, in each case computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30) day months.

“*Person*” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

“*Pledged Security*” shall have the meaning given to that term in Section 2.02 hereof.

“*Pre-Conversion Loan Equalization Payment*” means a prepayment of the Project Loan by the Borrower (and corresponding prepayment of the Funding Loan hereunder) prior to the Forward Commitment Maturity Date in order to equalize the principal amount of the Project Loan and the Funding Loan to the Actual Project Loan Amount.

“*Prepayment Premium*” means any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to (i) during the Construction Phase, the amount of premium, if any, payable by the Borrower under the Construction Continuing Covenant Agreement, and (ii) during the Permanent Phase, the amount of premium payable by the Borrower under the Tax-Exempt Project Note, in each case in connection with a prepayment of the Project Loan.

“*Principal Office of the Fiscal Agent*” means the office of the Fiscal Agent referenced in Section 11.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures pursuant to which municipal or governmental obligations are issued.

“*Prior Note*” means the Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018, issued by the Governmental Lender on May 7, 2018, in the original aggregate principal amount of \$30,500,000.

“*Project*” means, collectively, the land and the 220-unit workforce residential apartment units, and related fixtures, equipment, furnishings and site improvements to be known as Preserve at Shady Oak located at 10987 and 11015 Bren Road East, in Minnetonka, Hennepin County, Minnesota, including the real estate described in the Security Instrument.

“*Project Account*” means the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Project Loan*” means, together, the Tax-Exempt Project Loan and the Taxable Project Loan. On and after the Conversion Date only the Tax-Exempt Project Loan shall be outstanding, and all references herein to “Project Loan” shall mean the Tax-Exempt Project Loan.

“*Project Loan Agreement*” means the Project Loan Agreement, dated as of September 1, 2018, between the Borrower, the Governmental Lender, and the Fiscal Agent, as amended, supplemented or restated from time to time.

“*Project Loan Documents*” means, collectively, the Security Instrument, the Project Notes, the Project Loan Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, and any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

“*Project Loan Fund*” means the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Project Note(s)*” means, together, the Tax-Exempt Project Note and the Taxable Project Note. On and after the Conversion Date only the Tax-Exempt Project Note shall be outstanding, and all references herein to the “Project Note” shall, after the Conversion Date, mean only the Tax-Exempt Project Note then outstanding.

“*Qualified Investments*” means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at the time of investment at least “VMIG-1”/“A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody’s or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s or S&P, and which are approved by the Funding Lender Representative; (g) shares or units in any money market mutual fund rated at the time of investment “Aaa”/“AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax-exempt obligations; (h) (i) tax-exempt obligations rated in the highest short

term rating category by Moody's or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating at the time of investment of "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least ninety-five percent (95%) of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Funding Lender Representative. For purposes of this definition, the "highest rating" shall mean a rating at the time of investment of at least "VMIG-1"/"A-1+" for obligations with less than one (1) year maturity; at least "Aaa"/"VMIG-1"/"AAA"/"A-1+" for obligations with a maturity of one (1) year or greater but less than three years; and at least "Aaa"/"AAA" for obligations with a maturity of three (3) years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

"*Rating Agency*" means Moody's or S&P, as applicable, or any successor rating service thereof.

"*Rebate Analyst*" means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Project Loan Agreement.

"*Rebate Fund*" means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

"*Rebate Year*" means, with respect to the Tax-Exempt Governmental Note, each one (1) year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate. The first and last Rebate Years may be short periods. If no day is selected by Borrower before the earlier of the Maturity Date or the date that is five (5) years after the Delivery Date, each Rebate Year ends on each anniversary of the Delivery Date and on the Maturity Date or date of earlier payment in full of the Tax-Exempt Governmental Note.

"*Refunding Fund*" means the Refunding Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

"*Requisition*" means, with respect to the Project Loan Fund, the requisition in the form of *Exhibit E* to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Project Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of *Exhibit D* to this Funding Loan Agreement required to be submitted in connection with disbursements from the Cost of Issuance Fund.

"*Resolution*" means the resolution adopted by the Governmental Lender on August 27, 2018, authorizing the Funding Loan, the Project Loan and the execution and delivery of the Financing Documents to which it is a party.

“*Responsible Officer*” means, when used with respect to the Fiscal Agent, any officer within the corporate trust department of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Fiscal Agent who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Funding Loan Agreement.

“*Revenue Fund*” means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Revenues*” means (a) all payments made with respect to the Project Loan pursuant to the Project Loan Agreement, the Project Notes or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents; and (b) all money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund, the Administration Fund, and the Rebate Fund), together with all investment earnings thereon.

“*Security Instrument*” means, together, the Taxable Security Instrument and the Tax-Exempt Security Instrument. On and after the Conversion Date, all references to “Security Instrument” shall be to the Tax-Exempt Security Instrument.

“*Series A-1 Governmental Note*” means the Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of U.S. Bank, in the form attached hereto as *Exhibit A-1*, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series A-2 Governmental Note*” means Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of BMO Harris Bank, in the form attached hereto as *Exhibit A-1*, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series B-1 Governmental Note*” means the Taxable Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-1, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of U.S. Bank, in the form attached hereto as *Exhibit A-2*, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series B-2 Governmental Note*” means the Taxable Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-2, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of BMO Harris Bank, in the form



attached hereto as *Exhibit A-2*, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*S&P*” means S&P Global Ratings, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Servicer*” means any entity appointed by the Funding Lender Representative to service the Loans and any successor in such capacity as appointed by the Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. During the Construction Phase, the Servicer shall be the Administrative Agent. During the Permanent Phase, the Servicer shall be the Freddie Mac Seller/Servicer.

“*State*” means the State of Minnesota.

“*Subordinate Bonds*” means the Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), issued by the Governmental Lender on the Delivery Date in the original aggregate principal amount of \$3,570,000.

“*Subordinate Indenture*” means the Subordinate Indenture of Trust, dated as of September 1, 2018, between the Governmental Lender and the Trustee, as it may be supplemented and amended from time to time.

“*Subordinate Loan*” means the Governmental Lender’s loan of the proceeds of the Subordinate Bonds to the Borrower pursuant to the Subordinate Loan Agreement.

“*Subordinate Loan Agreement*” means the Subordinate Loan Agreement, dated as of September 1, 2018, between the Governmental Lender and the Borrower, as it may be amended from time to time.

“*Subordinate Loan Documents*” means, collectively, the Subordinate Indenture, the Subordinate Bonds, and all other documents or instruments evidencing, securing, or relating to the Subordinate Bonds.

“*Subordination Agreement*” means any subordination or intercreditor agreement(s) entered into with respect to any subordinate financing related to the Project, as the same may be amended, supplemented or restated.

“*Taxable Freddie Mac Commitment*” means the commitment from Freddie Mac to the Freddie Mac Seller/Servicer pursuant to which Freddie Mac has agreed to make a conventional loan to amend and restate the Taxable Funding Loan, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

“*Taxable Funding Loan*” means the taxable loan in the maximum aggregate principal amount of \$\_\_\_\_\_ made to the Governmental Lender pursuant to this Funding Loan Agreement by the Administrative Agent.

“*Taxable Governmental Note*” means, together, the Series B-1 Governmental Note and the Series B-2 Governmental Note.

“*Taxable Note Proceeds Subaccount*” means the Taxable Note Proceeds Subaccount within the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Taxable Project Loan*” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the maximum aggregate principal amount of \$\_\_\_\_\_, as evidenced by the Taxable Project Note.

“*Taxable Project Note*” means the Multifamily Note (Series B), dated the Delivery Date, from the Borrower, including all riders and addenda thereto, evidencing the Borrower's obligation to repay the portion of the Project Loan corresponding to the Taxable Governmental Note, which Taxable Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Taxable Funding Loan, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Taxable Security Instrument*” means, with respect to the Taxable Funding Loan, the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated the Delivery Date, from the Borrower in favor of the Governmental Lender and assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment, as the same may be amended from time to time. The Taxable Security Instrument shall be amended and restated into the form attached to the Taxable Freddie Mac Commitment upon the occurrence of the Conversion Date.

“*Tax Certificate*” means the Borrower Tax Certificate executed by the Borrower on the Delivery Date with the endorsement of the Governmental Lender.

“*Tax-Exempt Funding Loan*” means the tax-exempt loan in the maximum aggregate principal amount of \$\_\_\_\_\_ made to the Governmental Lender pursuant to this Funding Loan Agreement by the Administrative Agent.

“*Tax-Exempt Freddie Mac Commitment*” means the commitment from Freddie Mac to the Freddie Mac Seller/Servicer pursuant to which Freddie Mac has agreed to purchase the Tax-Exempt Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

“*Tax-Exempt Governmental Note*” means, together, the Series A-1 Governmental Note and the Series A-2 Governmental Note.

“*Tax-Exempt Note Proceeds Subaccount*” means the Tax-Exempt Note Proceeds Subaccount within the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Tax-Exempt Project Loan*” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the maximum aggregate principal amount of \$\_\_\_\_\_, as evidenced by the Tax-Exempt Project Note.

“*Tax-Exempt Project Note*” means the Multifamily Note (Series A), dated the Delivery Date, from the Borrower, including all riders and addenda thereto, evidencing the Borrower's obligation to repay the portion of the Project Loan corresponding to the Tax-Exempt Governmental Note, which Tax-Exempt Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Tax-Exempt Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Tax-Exempt Security Instrument*” means, with respect to the Tax-Exempt Funding Loan, the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated the Delivery Date, from the Borrower in favor of the Governmental Lender and assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment, as the same may be amended from time to time. The Tax-Exempt Security Instrument shall be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date.

“*Tax Regulatory Agreement*” means the Regulatory Agreement, dated the Delivery Date, among the Governmental Lender, the Fiscal Agent, the Borrower, and the Trustee, as it may be amended and supplemented from time to time.

“*Title Company*” means Commercial Partners Title, LLC, a Minnesota limited liability company, its successors and assigns.

“*Transferee Representations Letter*” has the meaning set forth in Section 2.08 hereof.

“*Treasury Regulations*” means the regulations promulgated under the Code.

“*Trustee*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as trustee for the Subordinate Bonds under the Subordinate Indenture.

“*Unassigned Rights*” means all of the rights of the Governmental Lender and its directors, officers, members, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or withhold consent to amendments, changes, modifications and alterations, to receive notices and the right to enforce such rights.

“*U.S. Bank*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

“*Window Period*” means the three (3) consecutive month period prior to the Maturity Date.

**Section 1.02 Interpretation.** The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding Loan Agreement as originally executed. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

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## ARTICLE II

### THE FUNDING LOAN

#### Section 2.01 *Terms.*

(a) The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount. The Funding Loan shall be originated and funded by the Administrative Agent to the Governmental Lender in accordance with subsection (b) below. The proceeds of the Funding Loan shall be deposited with the Fiscal Agent and disbursed in accordance with this Funding Loan Agreement, the Construction Continuing Covenant Agreement, and the Disbursing Agreement. The Funding Loan shall be evidenced by the Governmental Notes and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Notes and this Funding Loan Agreement.

(b) On the terms and conditions set forth in the Construction Continuing Covenant Agreement, the Tax-Exempt Funding Loan shall be originated and funded on the Delivery Date by the Administrative Agent and disbursed to the Fiscal Agent for deposit in the Tax-exempt Note proceeds Account of the Project Account in the amount of \$\_\_\_\_\_ and the Refunding Fund in the amount of \$\_\_\_\_\_. On the terms and conditions set forth in the Construction Continuing Covenant Agreement, the Taxable Funding Loan shall be originated by the Administrative Agent on a draw-down basis. The proceeds of the Taxable Funding Loan shall be advanced by the Administrative Agent in installments directly to the Fiscal Agent for deposit to the Taxable Note Proceeds Account of the Project Account upon receipt of an Advance Request and the satisfaction of the conditions to such advance set forth in the Construction Continuing Covenant Agreement and the form of requisition attached as *Exhibit E* hereto. Upon the advancement of the proceeds of the Funding Loan in accordance with the terms hereof, the principal amount of the applicable Governmental Note (to be designated by the Administrative Agent) in a principal amount equal to the amount so advanced shall be deemed to be increased automatically and without further acts on the part of the Governmental Lender or the Fiscal Agent. Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Funding Loan may be drawn down and funded hereunder after the Advance Termination Date. Any extension of the Advance Termination Date shall be subject to the receipt by the Fiscal Agent of (i) the prior written consent of the Administrative Agent and Freddie Mac and (ii) an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that such extension will not adversely affect the tax-exempt status of the Tax-Exempt Governmental Note. The proceeds of the Governmental Notes shall be advanced in the following order: (1) first, proceeds of the Tax-Exempt Governmental Note; and (2) second, proceeds of the Taxable Governmental Note.

(c) The Fiscal Agent shall maintain in its books a log which shall reflect the principal amount of each of the Governmental Notes advanced by the Administrative Agent from time to time (i) in accordance with the provisions of subsection (b) above, or (ii) during the Construction Phase, with respect to interest due on the Funding Loan and other amounts due to the Administrative Agent, in accordance with the immediately following sentence (the “**Record of Advances**”). The Administrative Agent shall give the Fiscal Agent notice of any advances made directly to the Administrative Agent or the Initial Funding Lender under Section \_\_\_\_\_ of the Construction Continuing Covenant Agreement, and the Fiscal Agent shall enter the amounts of such advances in the Record of Advances. The principal amount due on each of the Governmental Notes shall be only such amount as has been advanced by the Administrative Agent as reflected in the Record of Advances and not otherwise prepaid pursuant to the terms of this Funding Loan Agreement. The records maintained by the Fiscal Agent in such regard will be conclusive evidence of the principal amount of the Governmental Notes (absent manifest error). The

Fiscal Agent shall notify the Governmental Lender, the Freddie Mac Seller/Servicer, Freddie Mac, and the Borrower if any advance of the proceeds of the Funding Loan is not made by the Administrative Agent when due hereunder.

(d) The Funding Loan shall bear interest payable on each Interest Payment Date at (i) the applicable Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase. Interest shall accrue on the principal amount of the Funding Loan which has been advanced hereunder and is outstanding as reflected on the Record of Advances.

(e) The Funding Loan shall mature on \_\_\_\_\_ 1, 20\_\_\_\_, subject to scheduled monthly principal payments, and to optional and mandatory prepayment prior to maturity as provided in Article III hereof. The unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the initial Governmental Note Amortization Schedule. If the Forward Commitment Maturity Date is extended by Freddie Mac in accordance with the Freddie Mac Commitment and the Construction Phase Financing Agreement, the first principal payment date under each of the Governmental Note Amortization Schedules shall automatically be extended to the first day of the month immediately succeeding the Conversion Date (with the succeeding principal installments remaining consistent with the original schedule, but occurring on later dates). Additionally, in the event the outstanding principal amount of the Funding Loan on the Conversion Date is less than the starting principal amount set forth in the initial Governmental Note Amortization Schedules, new Governmental Note Amortization Schedules will be generated on the Conversion Date at such lesser outstanding principal amount based on the parameters set forth in the Freddie Mac Commitment. In the event any of the initial Governmental Note Amortization Schedules are modified in accordance with this subsection (e), a replacement Governmental Note Amortization Schedule will be provided by the Freddie Mac Seller/Servicer which will be attached to the Governmental Note on the Conversion Date. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date.

(f) Payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by the Funding Lender (unless otherwise directed by the Funding Lender).

(g) Subject to Section 2.13 hereof, on or before the date fixed for payment, money shall be deposited by the Borrower with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

(h) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents and such rate shall automatically be reduced to the maximum rate permitted by such law.

(i) On or prior to the Conversion Date, the Governmental Lender shall execute and deliver to the Fiscal Agent a consolidated Tax-Exempt Governmental Note, which consolidates the Series A-1 Governmental Note and the Series A-2 Governmental Note, with a single Governmental Note Amortization Schedule in substantially the form set forth in *Exhibit A-1*. On or prior to the Conversion Date, the Taxable Governmental Note and the Taxable Project Note shall be consolidated into an Amended and Restated Taxable Project Note, which the Governmental Lender shall endorse if required

by the Freddie Mac Seller/Servicer, and the Taxable Governmental Note shall no longer be outstanding hereunder.

**Section 2.02 Pledged Security.** To secure the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan according to its tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Notes, and the payment and performance of all amounts and obligations under the Continuing Covenant Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its assigns in and to the following (said property being herein referred to as the “**Pledged Security**”) for the benefit of the Funding Lender:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Project Loan Agreement, the Project Notes, the Security Instrument and the other Project Loan Documents (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loan by the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest, and Prepayment Premium, if any, to become due with respect to the Funding Loan at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Notes; otherwise, this Funding Loan Agreement to be and shall remain in full force and effect.

**Section 2.03 Limited Obligations.** The Governmental Notes are special, limited obligations of the Governmental Lender payable solely from the Pledged Security and any other revenues, funds, and assets pledged under this Funding Loan Agreement and not from any other revenues, funds, or assets of the Governmental Lender. The Governmental Notes are not a general obligation, debt, or bonded

indebtedness of the Governmental Lender, the State, or any political subdivision thereof (other than of the Governmental Lender to the limited extent set forth in this Funding Loan Agreement) and the holders of the Governmental Notes do not have the right to have any excises or taxes levied by the Governmental Lender, the State, or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on the Governmental Notes. None of the Governmental Lender, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on the Governmental Notes or other costs incident thereto except from the Pledged Security pledged under this Funding Loan Agreement. No provision, covenant, or agreement contained in this Funding Loan Agreement or the Governmental Notes, or any obligation herein or therein imposed upon the Governmental Lender, or the breach thereof, shall constitute or give rise to or impose a liability upon the Governmental Lender (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Governmental Lender's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Governmental Notes as provided herein and in the Act. Any recourse for a cause of action under this Funding Loan Agreement or the Governmental Notes shall be payable solely from the Pledged Security.

**Section 2.04 *Funding Loan Agreement Constitutes Contract.*** In consideration of the origination and funding of the Funding Loan by the Administrative Agent, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Administrative Agent and any successors or assigns thereof in such capacity from time to time.

**Section 2.05 *Form and Execution.*** The Series A-1 Governmental Note and the Series A-2 Governmental Note shall be in substantially the form attached as *Exhibit A-1* hereto, and the Series B-1 Governmental Note and the Series B-2 Governmental Note shall be in substantially the format attached as *Exhibit A-2* hereto. The Series A-1 Governmental Note and the Series B-1 Governmental Note shall be issued in favor of U.S. Bank, and the Series B-1 Governmental Note and the Series B-2 Governmental Note shall be issued in favor of BMO Harris Bank. The Governmental Notes shall be executed on behalf of the Governmental Lender by the manual or facsimile signatures of the Mayor and City Manager of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Notes. In case said officers of the Governmental Lender whose manual or facsimile signatures shall appear on any of the Governmental Notes shall cease to be said officer of the Governmental Lender before the delivery of the Governmental Notes, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if said officer of the Governmental Lender had remained in office until delivery. The Governmental Notes may be signed on behalf of the Governmental Lender by said officers as are at the time of execution of the Governmental Notes proper officers of the Governmental Lender, even though at the date of the Governmental Notes, said officers were not such officers. Any reproduction of the official seal of the Governmental Lender on the Governmental Notes shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Notes.

**Section 2.06 *Authentication.*** The Governmental Notes shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Notes, substantially in the forms set forth in *Exhibit A-1* and *Exhibit A-2*, as applicable, shall have been duly executed by an Responsible Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Notes shall be conclusive evidence that the Governmental Notes have been duly executed, registered, authenticated, and delivered under this Funding Loan Agreement.

**Section 2.07 *Mutilated, Lost, Stolen or Destroyed Governmental Note.*** In the event a Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the

Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in *Exhibit A-1* and *Exhibit A-2*, as the case may be, in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Administrative Agent of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where a Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that such Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event a Governmental Note shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

**Section 2.08 *Registration; Transfer of Funding Loan; Transferee Representations Letter.***

(a) The Funding Loan shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Funding Loan shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Funding Loan and any transfers of the Funding Loan as provided herein. The Funding Loan shall initially be registered to the Initial Funding Lender, upon the Conversion Date shall be registered to the Freddie Mac Seller/Servicer, and upon the Freddie Mac Purchase Date, shall be registered to Freddie Mac.

(b) The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan or to grant a participation interest in the Funding Loan in a percentage of not less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan (except during the Construction Phase there shall be no such limit on participation in the Funding Loan); provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act or a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities Act (such “accredited investor” or “qualified institutional buyer” a “**Qualified Transferee**”) that delivers a letter to the Fiscal Agent substantially in the form attached hereto as *Exhibit C* setting forth certain representations with respect to such Qualified Transferee (the “**Transferee Representations Letter**”). Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required for the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold or transferred except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better. In connection with any sale, assignment or transfer of the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Funding Loan.

**Section 2.09 *Restrictions on Transfer.*** Subject to the exception set forth in Section 2.08 hereof, the Governmental Notes and any participation interest therein may be transferred, in accordance with Section 2.08 hereof and this Section 2.09. The Fiscal Agent shall not register any transfer or exchange of the Governmental Notes unless the prospective transferee delivers to the Governmental Lender and the Fiscal Agent the required Transferee Representations Letter substantially in the form set forth in *Exhibit C* to this Funding Loan Agreement. The Fiscal Agent shall be entitled to rely, without



any further inquiry, on any Transferee Representations Letter delivered to it and shall be fully protected in registering any transfer or exchange of the Governmental Notes or any interest therein in reliance on any such transferee representations which appear on their face to be correct and of which the Fiscal Agent has no actual knowledge otherwise. Any such holder desiring to effect such transfer shall agree to indemnify the Governmental Lender and the Fiscal Agent from and against any and all liability, cost, or expense (including attorneys' fees) that may result if the transfer is not so exempt or is not made in accordance with such federal and state laws. Following the initial sale of the Tax-Exempt Governmental Note to the Funding Lender, the Borrower and any "related party" (as defined in Section 144(a)(3) of the Code) shall be prohibited from purchasing the Tax-Exempt Governmental Note in an amount related to the outstanding principal amount of the Tax-Exempt Project Note without the prior written consent of the Governmental Lender.

**Section 2.10 *Funding Loan Closing Conditions; Delivery of Governmental Notes.*** Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Notes and deliver the Governmental Notes to the Administrative Agent upon, receipt by the Fiscal Agent of the following:

(a) executed counterparts of this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement, and the Tax Certificate;

(b) an opinion of Bond Counsel or counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Notes and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) the initial advance of the proceeds of the Funding Loan by the Administrative Agent in the amount set forth in Section 2.01(b) hereof;

(d) the executed Project Notes and an endorsement of the Project Notes by the Governmental Lender in favor of the Fiscal Agent;

(e) the executed counterparts of the Security Instrument, the Assignment, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement;

(f) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(g) a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the interest on the Tax-Exempt Governmental Note, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

- (h) a certified copy of the Resolution;
- (i) the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Notes to the Administrative Agent upon funding to the Fiscal Agent of the initial advance of the Funding Loan;
- (j) receipt by the Fiscal Agent of the amounts specified in Section 2.12 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement; and
- (k) evidence of a notice of redemption delivered to the Governmental Lender and Bond Counsel regarding the refunding in full of the Prior Note.

**Section 2.11 *Conditions of Second and Subsequent Advances of Funding Loan Proceeds.***  
Following the initial advance of the proceeds of the Funding Loan described in Section 2.01(b) made in the amount of \$\_\_\_\_\_, additional advances of the proceeds of the Funding Loan shall be conditioned on the delivery by the Borrower to the Fiscal Agent of evidence that the Tax Regulatory Agreement has been recorded in the property records of Hennepin County, Minnesota and the items required under the Construction Continuing Covenant Agreement.

**Section 2.12 *Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money.***

(a) The Fiscal Agent shall establish, maintain, and hold in trust, and there is hereby established with the Fiscal Agent a Project Loan Fund and therein a Borrower Equity Account and a Project Account (and within the Project Account a Taxable Note Proceeds Subaccount and a Tax-Exempt Note Proceeds Subaccount). No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.12 and Section 4.02 hereof.

(b) Upon compliance by the Borrower with all applicable conditions in the Construction Continuing Covenant Agreement, the full advance of proceeds of the Tax-Exempt Funding Loan and the initial advance of proceeds of the Taxable Funding Loan shall be delivered by the Administrative Agent to the Fiscal Agent on behalf of the Governmental Lender on the Delivery Date and thereafter, subject to the provisions of Section 2.11, the Taxable Funding Loan will be advanced on a draw-down basis as provided for in Section 2.01(b) hereof. Upon receipt, the Fiscal Agent shall deposit (i) such proceeds evidenced by the Tax-Exempt Governmental Note to the credit of the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund in the amount of \$\_\_\_\_\_, (ii) such proceeds evidenced by the Taxable Governmental Note to the credit of the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund, and (iii) such proceeds evidenced by the Tax-Exempt Governmental Note to the credit of the Refunding Fund in the amount of \$\_\_\_\_\_. Amounts in the Project Loan Fund shall be disbursed as provided in subsection (d) below, subject to the conditions set forth in Section 3.01 of the Project Loan Agreement. Upon the disbursement of all amounts to be disbursed from the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) The Borrower shall deliver or cause to be delivered from sources other than the Loans, (i) to the Fiscal Agent, on or prior to the Delivery Date, any Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account of the Project Loan Fund or the Cost of Issuance Fund, and (ii) to the Servicer any Initial Debt Service Deposit. The Fiscal Agent shall also deposit in the Borrower Equity Account any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein, excluding any proceeds of the Loans. Notwithstanding the foregoing, the proceeds of the Subordinate Bonds will not be deposited with the Fiscal Agent. The proceeds of the Subordinate Bonds will be disbursed pursuant to the provisions of the Construction

Continuing Covenant Agreement (as defined in the Funding Loan Agreement) and the Disbursing Agreement (except the disbursement of Issuance Expenses of the Subordinate Bonds shall not be subject to the provisions of the Disbursing Agreement).

(d) Upon the making of the initial deposits described above in this Section 2.12, the Governmental Lender shall originate the Project Loan pursuant to the Project Loan Agreement and the Fiscal Agent shall make the initial disbursement of amounts in the Project Loan Fund to (i) the Title Company for further disbursement in accordance with the Disbursing Agreement, or (ii) otherwise as provided in Section 4.02 hereof. A portion of the initial disbursement may be used to pay Costs of Issuance.

**Section 2.13 *Direct Loan Payments to Servicer; Servicer Disbursement of Fees.***

(a) Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans (during the Construction Phase the Administrative Agent will serve as the Servicer), the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Project Loan Agreement shall be paid by the Borrower to the Servicer. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee (if any) collected from the Borrower and shall remit the Governmental Lender Fee (if any) to the Governmental Lender and shall remit the Fiscal Agent's Ordinary Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative, and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Project Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(b) If the Funding Loan is sold or transferred as provided in Section 2.08 hereof, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

(c) So long as payments of principal of, Prepayment Premium, if any, and interest on the Governmental Notes and all fees due hereunder and under the Project Loan Agreement are being made to the Administrative Agent or the Servicer in accordance with this Section 2.13 and no Event of Default has occurred of which the Fiscal Agent has been given, or been deemed to have, notice thereof pursuant to this Funding Loan Agreement, the Fiscal Agent shall have no obligations to collect loan payments with respect to the Funding Loan, nor shall it be obligated to collect loan payments or fee payments pursuant to the Project Loan Agreement, except at the express written direction of the Funding Lender Representative. Notwithstanding the foregoing, the Funding Lender Representative may elect to have the Fiscal Agent collect and remit loan payments and fee payments hereunder and under the Project Loan Agreement upon written notice of such election to the Fiscal Agent, the Borrower and the Governmental Lender.

**Section 2.14 Conversion.** If the Notice of Conversion is issued in the timeframe required under the Construction Phase Financing Agreement, Conversion will occur on the Conversion Date indicated in such Notice of Conversion. If the Notice of Conversion is not so issued, Conversion will not occur and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligations with respect to the purchase of the Tax-Exempt Funding Loan or otherwise with respect to the Loans or the Project.

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## ARTICLE III

### PREPAYMENT OF THE FUNDING LOAN

#### **Section 3.01** *Prepayment of the Funding Loan Prior to Maturity.*

(a) **Optional Prepayment.** The Funding Loan, together with accrued interest thereon, is subject to optional prepayment in whole upon optional prepayment of the Project Loan in accordance with the notice and other prepayment provisions set forth in (i) the Project Notes; or (ii) during the Construction Phase, the Construction Continuing Covenant Agreement.

(b) **Mandatory Prepayment.** The Funding Loan, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Project Notes), is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

(i) in whole or in part, upon the occurrence of a mandatory prepayment of the Project Loan pursuant to a Project Note and receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loan shall be subject to mandatory prepayment as a result thereof;

(ii) in part, on the Interest Payment Date next following the completion of the acquisition, construction, and equipping of the Project, to the extent amounts remaining in the Taxable Note Proceeds Account of the Project Account of the Project Loan Fund or in the Tax-Exempt Note Proceeds Account of the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof;

(iii) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment;

(iv) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Administrative Agent, if the Notice of Conversion is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date; or

(v) in whole, as provided in the Construction Continuing Covenant Agreement.

**Section 3.02** *Notice of Prepayment.* Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent by first class mail, postage prepaid, or by overnight delivery service, to the Funding Lender. All such prepayment notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional prepayment occurring after Conversion) nor more than sixty (60) days prior to the date fixed for prepayment. Notices of prepayment shall state (i) the prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by overnight delivery service, to the Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loan.

Notwithstanding the foregoing, in the event the Fiscal Agent is not collecting and remitting loan payments hereunder, the Fiscal Agent shall have no obligation to send prepayment notices pursuant to this Section 3.02.

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## ARTICLE IV

### REVENUES AND FUNDS

**Section 4.01** *Pledge of Revenues and Assets; Establishment of Funds.* The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loan and delivery of the Governmental Notes by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Notes. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

In addition to the Project Loan Fund established pursuant to Section 2.12 hereof, the Fiscal Agent shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Refunding Fund;
- (b) Revenue Fund;
- (c) Loan Payment Fund;
- (d) Loan Prepayment Fund;
- (e) Administration Fund;
- (f) Cost of Issuance Fund; and
- (g) Rebate Fund.

The funds and accounts established pursuant to Section 2.12 hereof and this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

**Section 4.02** *Project Loan Fund.*

(a) The Fiscal Agent shall deposit proceeds of the Tax-Exempt Funding Loan into the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund upon receipt of

each advance thereof as provided in Section 2.12(b) hereof. The Fiscal Agent shall deposit the proceeds of the Taxable Funding Loan into the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund upon receipt of each advance thereof as provided in Section 2.12(b) hereof. The Fiscal Agent shall deposit \$0.00 of the Borrower Equity Deposit into the Borrower Equity Account of the Project Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Notes), as provided in Section 2.12(c) hereof.

(b) Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by the Fiscal Agent to the Title Company in accordance with this Funding Loan Agreement and the Construction Continuing Covenant Agreement, and thereafter by the Title Company pursuant to the Disbursing Agreement, for the purpose of: (i) refunding the principal of and interest on the Prior Notes; (ii) paying the Costs of the Project from the Taxable Note Proceeds Subaccount of the Project Account and from the Tax-Exempt Note Proceeds Subaccount of the Project Account; (iii) paying other costs of the Project from the Tax-Exempt Note Proceeds Subaccount of the Project Account, subject to the ninety-five percent (95%) “qualified residential rental project” use requirement in Section 142(a) of the Code, the two percent (2%) costs of issuance limitation in Section 147(g) of the Code, the reimbursement limitation in Section 1.150-2 of the Treasury Regulations, and the working capital limitations in Section 1.148-6(d) of the Treasury Regulations (with respect solely to the Tax-Exempt Note Proceeds Subaccount of the Project Account); and (iv) paying other costs of the Project from the Borrower Equity Account and Taxable Note Proceeds Subaccount of the Project Account.

Amounts in the Tax-Exempt Note Proceeds Subaccount and Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) below.

(c) The Fiscal Agent shall make disbursements from the respective accounts and subaccounts of the Project Loan Fund for purposes of refunding the principal of and interest on the Prior Notes on the Delivery Date and for the other purposes described in subsection (b) above only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (which shall be the Administrative Agent during the Construction Phase) signifying the consent to the Requisition by the Servicer. The Fiscal Agent shall have no right or duty to determine whether any requested disbursement from the Project Loan Fund complies with the terms, conditions, and provisions of the Construction Continuing Covenant Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions, and requirements of the Construction Continuing Covenant Agreement applicable to such disbursement have been fully satisfied or waived. The Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which a default has occurred and is then continuing under the Loans or any Financing Document (notice of which default has been given in writing by the Funding Lender Representative or the Servicer to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer or (as permitted hereunder) solely by an Authorized Officer of the



Servicer, is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent to the Title Company, as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts to be deposited in the Project Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Project Loan Fund.

(e) Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project Loan Fund shall, at the written direction of the Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loan, if any. In addition, any amount remaining in the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund or the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement, evidenced by an instrument signed by the Funding Lender Representative or the Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loan in accordance with Section 3.01(b)(ii) hereof, unless the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect the tax-exempt status of the Tax-Exempt Governmental Note; provided, that any amounts in the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loan shall be transferred to the Rebate Fund. In the event there are funds remaining in the Borrower Equity Account following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement and the Conversion Date has occurred, and provided no default by the Borrower exists under this Funding Loan Agreement or any Project Loan Document, such funds shall be paid by the Fiscal Agent to the Borrower at the written direction of the Funding Lender Representative or the Servicer.

(f) Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

#### **Section 4.03    *Application of Revenues.***

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Funding Loan received by the Fiscal Agent pursuant to Section 2.01(b), which shall be applied in accordance with the provisions of Section 2.12 hereof; (ii) as otherwise specifically provided in subsection (c) below with respect to certain deposits into the Loan Prepayment Fund; (iii) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iv) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) Subject to Section 2.13 hereof, on each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, the Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

**FIRST:**        to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loan on such date (including scheduled principal pursuant to each of the Governmental Note Amortization Schedules); and

**SECOND:** to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loan on such date with respect to a mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b) hereof (other than any extraordinary mandatory prepayment as described in clause (i) or (iii) of subsection (c) below).

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(a) hereof; and (iii) amounts transferred to the Loan Prepayment Fund from the Project Loan Fund pursuant to Section 4.02(e) hereof.

(d) Subject to Section 2.13 hereof, should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

**Section 4.04 *Application of Loan Payment Fund.*** Subject to Section 2.13 hereof, the Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Interest Payment Date as provided in Sections 4.03(a) and 4.03(b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.05 *Application of Loan Prepayment Fund.*** Any money credited to the Loan Prepayment Fund shall be applied as set forth in Section 4.03(b) and (c) hereof; provided, however, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Section 4.03(b) and (c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Interest Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money be used to effect a prepayment for which a conditional notice of prepayment, the conditions of which have been satisfied, or an unconditional notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.06 Administration Fund.** Subject to Section 2.13 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used **FIRST**, to pay to the Fiscal Agent when due the Fiscal Agent's Ordinary Fees and Expenses; **SECOND**, to pay to the Governmental Lender when due the Governmental Lender Fee; **THIRD**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement, the Project Loan Agreement, and the Tax Certificate upon receipt of an invoice from the Rebate Analyst; **FOURTH**, to pay to the Fiscal Agent any Fiscal Agent's Extraordinary Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FIFTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; **SIXTH**, to pay to the Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; **SEVENTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment on such prepayment date; and **EIGHTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency. Upon payment by the Borrower or the Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

**Section 4.07 Refunding Fund.** As authorized by Sections 2.01(b) and 4.02(c) hereof, the Fiscal agent shall deposit proceeds of the Tax-Exempt Funding Loan in the amount of \$\_\_\_\_\_ to the Refunding Fund, which amounts shall be transferred to Bridgewater Bank, as the original purchaser of the Prior Note, to redeem and prepay a portion of the Prior Note on the Delivery Date. The remainder of the outstanding Prior Note will be repaid with proceeds of the Subordinate Bonds in accordance with the terms of the Subordinate Indenture.

**Section 4.08 Investment of Funds.** The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b) hereof), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six (6) months from the date of investment, and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in

accordance with such requirements. The Fiscal Agent shall be entitled to rely on any written direction of the Borrower as to the suitability and legality of the directed investment. In the absence of written direction from the Borrower, the Fiscal Agent shall hold amounts on deposit in the funds and accounts established under this Funding Loan Agreement uninvested. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss, fee, tax, or other charge resulting from any investment made in accordance herewith.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

**Section 4.09** *[Reserved].*

**Section 4.10** *Accounting Records.* The Fiscal Agent shall maintain accurate books and records for all funds and accounts established hereunder.

**Section 4.11** *Amounts Remaining in Funds.* After full payment of the Funding Loan (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Servicer and other amounts required to be paid hereunder or under any Project Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Funding Lender Representative or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

**Section 4.12** *Rebate Fund; Compliance with Tax Certificate.* The Rebate Fund shall be established by the Fiscal Agent and held and applied as provided in this Section 4.12. On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Governmental Lender, the Borrower nor the Funding Lender shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.12 and by the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Governmental Lender, Bond Counsel or the Rebate Analyst, including

supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Governmental Lender, Bond Counsel or the Rebate Analyst.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall deliver to the Fiscal Agent and the Governmental Lender a certificate that it has determined no Rebatable Arbitrage (as defined below) is due or shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the “**Rebatable Arbitrage**”). Pursuant to Section 2.04 of the Project Loan Agreement, the Borrower shall cause the Rebate Analyst to provide any such calculations to the Fiscal Agent and the Governmental Lender. In the event that the Borrower fails to provide such information to the Fiscal Agent and the Governmental Lender within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall select the Rebate Analyst, with the prior written approval of the Governmental Lender, and shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage as required herein.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, upon the written direction of the Governmental Lender, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Fiscal Agent from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

The Fiscal Agent shall pay, as directed by the Governmental Lender, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

- (i) Not later than sixty (60) days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least ninety (90%) of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and
- (ii) Not later than sixty (60) days after the payment in whole of the Funding Loan, an amount equal to one hundred percent (100%) of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Fiscal Agent.

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Sections 2.04 and 4.03 of the Project Loan Agreement and this Section 4.12, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Funding Loan.

Any funds remaining in the Rebate Fund after payment in full of the Funding Loan and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Fiscal Agent, shall be withdrawn and remitted to the Borrower.

The Fiscal Agent shall obtain and keep such records of the computations made pursuant to this Section 4.12 as are required under Section 148(f) of the Code to the extent furnished to the Fiscal Agent. The Borrower shall or shall cause the Rebate Analyst to provide to the Governmental Lender and the Fiscal Agent copies of all rebate computations made pursuant to this Section 4.12. The Fiscal Agent shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Funding Loan and the investments of earnings from those investments made by the Fiscal Agent as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebatable Arbitrage need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Governmental Note, a copy of which shall be provided to the Fiscal Agent and the Funding Lender Representative, at the expense of the Borrower.

**Section 4.13 Cost of Issuance Fund.** The Fiscal Agent shall use money on deposit to the credit of the Cost of Issuance Fund to pay the costs of issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of *Exhibit D* to be given to the Fiscal Agent by the Borrower on the Delivery Date, along with appropriate invoices for such expenses. Amounts in the Cost of Issuance Fund funded with proceeds of the Funding Loan, if any, shall be expended prior to the application of any Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Cost of Issuance Fund.

**Section 4.14 Reports from the Fiscal Agent.** The Fiscal Agent shall, on or before the fifteenth day of each month, file with the Funding Lender Representative, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month:

- (i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;
- (ii) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and
- (iv) any other information which the Funding Lender Representative or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Governmental Lender and the Funding Lender Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

**Section 5.01 *Payment of Principal and Interest.*** The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan at the place, on the dates and in the manner provided herein and in the Governmental Notes, according to the true intent and meaning thereof.

**Section 5.02 *Performance of Covenants.*** The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Notes and in all proceedings pertaining thereto.

**Section 5.03 *Instruments of Further Assurance.*** The Governmental Lender covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such supplements hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning, and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts, and other amounts pledged hereby to the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Governmental Lender under this Section 5.03. The Governmental Lender covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Fiscal Agent, the Funding Lender Representative, and the Servicer in writing of the occurrence of any of the following:

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;
- (ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;
- (iii) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;
- (iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes; or

(v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

**Section 5.04 *Inspection of Project Books.*** The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate.

**Section 5.05 *No Modification of Security; Additional Indebtedness.*** The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or

(ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument.

**Section 5.06 *Damage, Destruction or Condemnation.*** Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

**Section 5.07 *Tax Covenants.***

(a) *Governmental Lender's Covenants.* The Governmental Lender covenants that it will:

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Tax-Exempt Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Tax-Exempt Governmental Note to be "arbitrage bonds" under Section 148 of the Code and the Treasury Regulations issued under Section 148 of the Code or which would otherwise cause the interest payable on the Tax-Exempt Governmental Note to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all material obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Tax Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Tax-Exempt Governmental Note to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary of which it has knowledge in order to assure that interest paid by the Governmental Lender on the Tax-Exempt Funding Loan evidenced by the Tax-Exempt Governmental Note will be excludable from the gross income for federal income tax purposes, of the Funding Lender pursuant to the



Code, except in the event where the Funding Lender is a “substantial user” of the facilities financed with the Loans or a “related person” within the meaning of the Code; and

(v) not take any action or permit or suffer any action within its control and of which it has knowledge to be taken if the result of the same would be to cause the Tax-Exempt Governmental Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Treasury Regulations.

In furtherance of the covenants in this Section 5.07, the Governmental Lender shall execute and deliver an endorsement to the Tax Certificate, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

(b) *Fiscal Agent’s Covenants.* The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement in accordance with the covenants and terms of this Funding Loan Agreement and the Tax Certificate (this covenant shall extend through the term of the Funding Loan, to all funds and accounts created under this Funding Loan Agreement, and all money on deposit to the credit of any such fund or account). The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Tax-Exempt Governmental Note to be classified as “arbitrage bonds” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Tax-Exempt Governmental Note to be includable in gross income for federal income tax purposes; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, Bond Counsel, or the Rebate Analyst. This covenant shall extend, throughout the term of the Funding Loan, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Funding Loan with the requirements of Sections 103(b) and 148 of the Code; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, Bond Counsel, or the Rebate Analyst. The Fiscal Agent further covenants that should the Governmental Lender, the Borrower, or the Funding Lender Representative file with the Fiscal Agent (it being understood that none of the Governmental Lender, the Borrower, or the Funding Lender Representative has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Funding Loan would cause the Tax-Exempt Governmental Note to become “arbitrage bonds,” then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower, the Funding Lender Representative or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Tax-Exempt Governmental Note from becoming “arbitrage bonds,” and the Fiscal Agent will bear no liability to the Governmental Lender, the Borrower, the Funding Lender, or the Funding Lender Representative for investments made in accordance with such instructions.

**Section 5.08 Representations and Warranties of the Governmental Lender.** The Governmental Lender hereby represents and warrants as follows:

(a) The Governmental Lender is a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State.

(b) The Governmental Lender has all necessary power and authority to issue the Governmental Notes and to execute and deliver this Funding Loan Agreement, the Project Loan Agreement and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

(d) The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender.

(e) To the actual knowledge of the Governmental Lender, the execution and delivery of the Governmental Notes and this Funding Loan Agreement, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

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## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

**Section 6.01** *Events of Default.* Each of the following shall be an event of default with respect to the Funding Loan (an “**Event of Default**”) under this Funding Loan Agreement:

(a) failure to pay the principal of, Prepayment Premium, if any, or interest on the Funding Loan when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Notes and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Governmental Lender from the Fiscal Agent or the Funding Lender Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the occurrence of an “Event of Default” under the Project Loan Agreement or the Continuing Covenant Agreement.

The Fiscal Agent will promptly notify the Governmental Lender, the Servicer and the Funding Lender Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

**Section 6.02** *Acceleration; Other Remedies Upon Event of Default.* Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender, declare the principal of the Funding Loan and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Governmental Lender, and the Fiscal Agent, rescind and annul such declaration and its consequences if the Governmental Lender or the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loan then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loan then due, with interest at the rate borne by the Funding Loan on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Fiscal Agent (including its counsel)

shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the “**Cure Amount**”) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Funding Lender, may also proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of the Funding Lender Representative (which consent may be given in the sole discretion of the Funding Lender Representative):

(i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, Prepayment Premium, if any, or interest on the Funding Loan and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Project Loan Agreement or the Tax Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;

(ii) by pursuing any available remedies under the Project Loan Agreement, the Tax Regulatory Agreement or any other Financing Document;

(iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Project Loan Agreement, the Tax Regulatory Agreement, the Continuing Covenant Agreement or any other Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Upon the occurrence and during the continuance of an Event of Default under Section 6.01(c) hereof, the Borrower and its partners shall have the same rights to notice and cure as those conferred upon the Governmental Lender pursuant to Section 6.01(c) and this Section 6.02; provided that, the Borrower

and its partners may undertake to cure any such Event of Default only upon the receipt of the prior written consent of the Governmental Lender.

**Section 6.03 *Funding Lender Representative Control of Proceedings.*** If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express direction of the Funding Lender Representative.

**Section 6.04 *Waiver by Governmental Lender.*** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and prepayment to which it may be entitled under the laws of the State and the United States of America.

**Section 6.05 *Application of Money After Default.*** All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund, and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Notes shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement.

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the Continuing Covenant Agreement or the Security Instrument.

(c) Unless the full principal amount of the Funding Loan shall have become or have been declared due and payable:

**FIRST**: to the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

**SECOND:** to the Funding Lender, unpaid principal of and Prepayment Premium, if any, on the Funding Loan which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

(d) If the full principal amount of the Governmental Notes shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, Prepayment Premium, if any, and interest then due and unpaid on the Funding Loan without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest.

(e) Notwithstanding subsections (c) and (d) above, during the Construction Phase, any amounts payable to the Funding Lender pursuant to such subsections will instead be paid to the Administrative Agent for distribution to the Initial Funding Lender as provided in the Construction Continuing Covenant Agreement.

**Section 6.06 Remedies Not Exclusive.** No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

**Section 6.07 Fiscal Agent May Enforce Rights Without Governmental Notes.** All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Notes or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

**Section 6.08 [Reserved].**

**Section 6.09 Termination of Proceedings.** In case the Fiscal Agent (at the direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

**Section 6.10 Waivers of Events of Default.** The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights hereunder,

respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.*** In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 6.12 *Assignment of Project Loan; Remedies Under the Project Loan.***

(a) The Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Project Notes, the Security Instrument and the other Project Loan Documents to the Funding Lender Representative, in which event the Fiscal Agent shall (i) endorse and deliver the Project Notes to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (ii) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents to the Funding Lender Representative and (iii) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (i) and (ii). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Notes, the Security Instrument or any other Project Loan Document, whether or not the Governmental Notes have been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

**Section 6.13 *Substitution.*** Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the Tax Regulatory Agreement, the Fiscal Agent shall exchange the Project Notes and the Security Instrument for new Project Notes and Security Instrument, evidencing and securing a new loan (the "**New Project Loan**"), which may be executed by a person other than the Borrower (the "**New Borrower**"), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Tax Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Tax Regulatory Agreement) and that the Project Loan Documents have been modified as necessary to be applicable to the New Project Loan; and (ii) an opinion of Bond Counsel, to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Tax-Exempt Governmental Note.

## ARTICLE VII

### CONCERNING THE FISCAL AGENT

**Section 7.01** *Standard of Care.* The Fiscal Agent, prior to an Event of Default and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and

(ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and

(ii) the Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Funding Lender Representative relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement.

**Section 7.02** *Reliance Upon Documents.* Except as otherwise provided in Section 7.01 hereof:

(a) the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document of the proper party or parties, including any Electronic Notice as permitted hereunder or under the Project Loan Agreement;



(b) any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys and shall not be responsible for the misconduct or negligence of such agent, receiver, or attorney appointed with due care, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Notes (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent; the Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged

Security, or as to the security of this Funding Loan Agreement, or of the Governmental Notes issued hereunder; and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this subsection (k);

(l) the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof; the Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Responsible Officer shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default; and every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this subsection (l);

(m) the Fiscal Agent shall be under no duty to review or analyze any financial or other statements or reports or certificates furnished pursuant to any provisions hereof and shall not be deemed to have notice of any information contained therein or event of default which may be disclosed in any manner therein, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of its administration of the trusts and other duties under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03, unless the Funding Lender Representative shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Project Loan Agreement and the Tax Regulatory Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the delivery of the Governmental Notes.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement. If the party sending the Electronic Notice elects to give the Fiscal Agent e-mail or facsimile instructions (or instructions by a similar electronic method), the Fiscal Agent's understanding of such instructions shall be deemed controlling. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such instructions notwithstanding that such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower, the Administrative Agent, the Governmental Lender, or any other party sending such Electronic Notice pursuant to this Funding Loan Agreement agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

In no event shall the Fiscal Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including but not limited to lost profits), even if the Fiscal Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

**Section 7.03 *Use of Proceeds.*** The Fiscal Agent shall not be accountable for the use or application of the Governmental Notes authenticated or delivered hereunder or of the proceeds of the Funding Loan except as provided herein.

**Section 7.04 *[Reserved].***

**Section 7.05 *Trust Imposed.*** All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

**Section 7.06 *Compensation of Fiscal Agent.*** The Fiscal Agent shall be entitled to the Fiscal Agent's Ordinary Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Fiscal Agent's Extraordinary Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not incur any Fiscal Agent's Extraordinary Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Project Loan Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no

liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Fiscal Agent agrees that it shall continue to perform its duties hereunder and under the Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Fiscal Agent's Ordinary Fees and Expenses or, if applicable, the Fiscal Agent's Extraordinary Fees and Expenses as required by the Project Loan Agreement.

The Borrower shall indemnify and hold harmless the Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Notes or the Loans; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the delivery of the Governmental Notes or the Loans; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the gross negligence, willful misconduct or unlawful acts of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Fiscal Agent, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Funding Loan Agreement.

**Section 7.07 *Qualifications of Fiscal Agent.*** There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.11 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

**Section 7.08 *Merger of Fiscal Agent.*** Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary

notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

**Section 7.09 *Resignation by the Fiscal Agent.*** The Fiscal Agent may at any time resign from the trusts hereby created by giving written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.10 *Removal of the Fiscal Agent.*** The Fiscal Agent may be removed at any time upon thirty (30) days' notice, either with or without cause, with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the trusts hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.11 *Appointment of Successor Fiscal Agent.***

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within ten (10) days following the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

(b) If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) above within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

**Section 7.12 *Concerning Any Successor Fiscal Agent.*** Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor,

including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within thirty (30) days of such appointment, to the Funding Lender.

**Section 7.13 *Successor Fiscal Agent.*** In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Notes, and the successor Fiscal Agent shall become such Fiscal Agent.

**Section 7.14 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.*** It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the Project Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental

Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co-fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) the Governmental Notes shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co-fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co-fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co-fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-fiscal agent or separate fiscal agent;

(d) any co-fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co-fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co-fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal; a successor to any co-fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co-fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co-fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co-fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co-fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

**Section 7.15 *Notice of Certain Events.*** The Fiscal Agent shall give written notice to the Governmental Lender, the Servicer and the Funding Lender Representative of any failure by the Borrower to comply with the terms of the Tax Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

**Section 7.16 *[Reserved].***

**Section 7.17 *Filing of Financing Statements.*** The Fiscal Agent shall not be responsible for filing or for the sufficiency or accuracy of any financing statements initially filed to perfect security interests granted under this Funding Loan Agreement. The Fiscal Agent shall file continuation statements with respect to each UCC financing statement relating to the Pledged Security filed by the Borrower at the time of the issuance of the Governmental Notes; provided that a copy of the filed initial financing statement is timely delivered to the Fiscal Agent. In addition, unless the Fiscal Agent shall have been notified in writing by the Governmental Lender or the Funding Lender Representative that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in (a) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this section and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the customary fees charged by the Fiscal Agent for the preparation and filing of continuation statements and for the reasonable costs incurred by the Fiscal Agent in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "Extraordinary Services" fees.

**Section 7.18 *USA Patriot Act Requirements of the Fiscal Agent.*** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

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## ARTICLE VIII

### AMENDMENTS OF CERTAIN DOCUMENTS

**Section 8.01** *Amendments to This Funding Loan Agreement.* Any of the terms of this Funding Loan Agreement and the Governmental Notes may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

**Section 8.02** *Amendments to Financing Documents Require Consent of Funding Lender Representative.* Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative. The Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed by the Funding Lender Representative, including entering into the amendments and/or amendments and restatements attached as exhibits to the Construction Phase Financing Agreement on the Conversion Date.

**Section 8.03** *Opinion of Bond Counsel Required.* No amendment to this Funding Loan Agreement, the Governmental Notes, the Project Loan Agreement, the Project Notes, the Security Instrument, or the Tax Regulatory Agreement shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion; (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Tax-Exempt Governmental Note to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel acceptable to the Funding Lender Representative to the effect that any such proposed amendment, change, or modification is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations; and (iii) to the extent the Borrower is not in default under the Financing Documents and such amendment would change the essential economic terms of the Project Loan or impose upon the Borrower greater liability under the Financing Documents, the Borrower has consented to the same.

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## ARTICLE IX

### SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

**Section 9.01 Discharge of Lien.** If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest, and Prepayment Premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Notes, in any one or more of the following ways:

(a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or

(b) after the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or

(c) by the delivery of the Governmental Notes by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid all amounts due and owing under the other Financing Documents, and shall have paid all fees and expenses of and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Notes and in this Funding Loan Agreement expressed as to be kept, performed, and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by the Fiscal Agent for the payment of principal of, interest, and Prepayment Premium, if any, on the Governmental Notes, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

After the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Fiscal Agent pursuant to subsection (b) above if, under circumstances which do not cause interest on the Tax-Exempt Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (i) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (ii) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the

Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan; (iii) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (iv) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of this Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Tax-Exempt Governmental Note from gross income for federal income tax purposes; and (v) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender and the Servicer under the Financing Documents have been fully paid.

**Section 9.02 *Discharge of Liability on Funding Loan.*** Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 hereof) to pay or prepay the Funding Loan (whether upon or prior to their maturity or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as provided in Article III hereof, or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

**Section 9.03 *Payment of Funding Loan After Discharge of Funding Loan Agreement.*** Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest, or Prepayment Premium, if any, on a Governmental Note remaining unclaimed for three (3) years after the final Maturity Date or earlier payment date: (a) shall be reported and disposed of, at the expense of the Borrower, by the Fiscal Agent in accordance with applicable unclaimed property laws; and (b) to the extent permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

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

**ARTICLE X**  
**INTENTIONALLY OMITTED**

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01 *Servicing of the Loans.*** The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement. During the Construction Phase, the Servicer shall be the Administrative Agent.

**Section 11.02 *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Notes is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

**Section 11.03 *Construction of Conflicts; Severability.*** Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections contained in this Funding Loan Agreement shall not affect the remaining portions of this Funding Loan Agreement or any part thereof.

**Section 11.04 *Notices.***

(a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender

Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender: CITY OF MINNETONKA, MINNESOTA  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502  
Attn: Julie Wischnack, Community Development Director  
Email: jwischnack@eminnetonka.com  
Telephone: 952-939-8282

The Fiscal Agent: U.S. BANK NATIONAL ASSOCIATION  
Corporate Trust Services  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Dan Sheff, Vice President  
Email: dan.sheff@usbank.com  
Telephone: 651-466-6302

The Borrower: MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP  
c/o Dominion Development & Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400  
Attn: Ryan Lunderby  
Email: rlunderby@dominiuminc.com  
Telephone: 763-354-5634

with copies to: WINTHROP & WEINSTINE, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Attn: John M. Stern, Esq.  
Email: jstern@winthrop.com  
Telephone: 612-604-6588  
(which copy shall not constitute notice to Borrower)

CITIBANK, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attn: Mark Sherman  
Email: mark.sherman@citi.com

NIXON PEABODY LLP  
799 Ninth Street, NW, Suite 500  
Washington, DC 20001-4501  
Attn: Matthew W. Mullen, Esq.  
Email: mmullen@nixonpeabody.com

TCAM  
186 Lincoln Street  
Boston, MA 02111-2408  
Attn: Jenny Netzer

Administrative Agent, Funding  
Lender Representative, and  
Servicer (during Construction  
Phase):

U.S. BANK NATIONAL ASSOCIATION  
Community Lending Division  
800 Nicollet Mall, Third Floor  
BC-MN-H5AD  
Minneapolis, MN 55402  
Attn: Daniel P. Smith  
Email: daniel.smith1@usbank.com  
Telephone: 612-303-3689

U.S. BANK NATIONAL ASSOCIATION  
Community Lending  
1307 Washington Avenue, Suite 300  
St. Louis, MO 63103  
Attn: Alexander J. Silversmith  
Email: alexander.silversmith@usbank.com  
Telephone: 314-335-2661

with a copy to:

STINSON LEONARD STREET LLP  
50 South Sixth Street, Suite 2600  
Minneapolis, MN 55402  
Attn: David Kelley, Esq.  
Email: david.kelley@stinson.com  
Telephone: 612-335-1670

Funding Lender Representative  
(from Conversion Date to Freddie  
Mac Purchase Date) and Servicer  
(as of Freddie Mac Purchase Date):

KEYBANK NATIONAL ASSOCIATION  
11501 Outlook Street, Suite 300  
Mailcode: KS-01-11-0501  
Overland Park, KS 66211  
Attn: Ms. Gina Sullivan  
Email: Gina\_Sullivan@KeyBank.com

Funding Lender Representative (as of Freddie Mac Purchase Date): FEDERAL HOME LOAN MORTGAGE CORPORATION  
8100 Jones Branch Drive, MS B4P  
McLean, VA 22102  
Attn: Multifamily Operations – Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: 703-714-4177

with a copy to: FEDERAL HOME LOAN MORTGAGE CORPORATION  
8200 Jones Branch Drive, MS 210  
McLean, VA 22102  
Attn: Managing Associate General Counsel – Multifamily Legal Division  
Email: joshua\_schonfeld@freddiemac.com  
Telephone: 703-903-2000

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof known to the Fiscal Agent; and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

**Section 11.05 *Funding Lender Representative.***

(a) The Administrative Agent is the initial Funding Lender Representative with respect to the Governmental Notes. Upon the Conversion Date, the Freddie Mac Seller/Servicer shall become the Funding Lender Representative and upon the Freddie Mac Purchase Date, Freddie Mac shall become the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of ***Exhibit B*** hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation, the Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Servicer and the Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.



(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Notes and the Loans.

**Section 11.06 *Payments Due on Non-Business Days.*** In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

**Section 11.07 *Counterparts.*** This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.08 *Laws Governing Funding Loan Agreement.*** The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

**Section 11.09 *No Recourse.*** No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Notes shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Notes. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Notes.

**Section 11.10 *Successors and Assigns.*** All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

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

**IN WITNESS WHEREOF**, the Governmental Lender, the Administrative Agent, and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

Execution page of the Administrative Agent, on behalf of the Initial Funding Lender, to the Funding Loan Agreement, dated as of the date and year first written above.

**U.S. BANK NATIONAL ASSOCIATION**

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

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

**U. S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

EXHIBIT A-1

FORM OF TAX-EXEMPT GOVERNMENTAL NOTE

BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS NOTE AGREES (A) THAT (I) IF APPLICABLE, IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT AND (II) THAT IT WILL NOT SELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
CITY OF MINNETONKA

MULTIFAMILY NOTE  
with designation as  
Multifamily Housing Revenue Refunding Note  
(Preserve at Shady Oak Project)  
Series 2018A[-1] [-2]

US \$ \_\_\_\_\_

September \_\_\_, 2018

FOR VALUE RECEIVED, the undersigned, the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of [U.S. Bank National Association, a national banking association] [BMO Harris Bank N.A., a national banking association], or its registered assigns (the “**Funding Lender**”), the maximum principal sum of \_\_\_\_\_ and \_\_\_/100 Dollars (US \$ \_\_\_\_\_), plus Prepayment Premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A[-1] [-2] (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement, dated as of September 1, 2018 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for the Funding Lender, the Obligor, and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent under the Funding Loan Agreement (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$ \_\_\_\_\_ (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”) pursuant to a Project Loan Agreement, dated as of September 1, 2018 (the “**Project Loan Agreement**”), between the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to

the proceeds of this Note advanced by Administrative Agent, on behalf of the Funding Lender, according to the Funding Loan Agreement and not otherwise repaid.

In addition to this Note, the Tax-Exempt Funding Loan is also evidenced by the Governmental Lender's Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A[-1] [-2].

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the registered holder of this Note, and (ii) the term "Indebtedness" means the principal of, Prepayment Premium, if any, and interest on or any other amounts due at any time under the Tax-Exempt Notes, the Taxable Governmental Notes, or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing October 1, 2018 interest on this Note at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an "**Interest Payment Date**"). Interest shall accrue on the principal amount of this Note which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on \_\_\_\_\_ 1, 20\_\_ (the "**Maturity Date**") and in monthly installments on each date set forth on the Governmental Note Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 may be replaced by a new Governmental Note Amortization Schedule provided by the Freddie Mac Seller/Servicer on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender's discretion. Neither the Funding Lender's acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for herein or in any other Financing Document evidencing or securing the Funding Loan, whether considered separately or together with other charges provided for in any such other Financing Document, violates that law, and the Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Minnesota (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date or on the date of any mandatory prepayment or acceleration, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date or such other date at the Default Rate.

15. **Limited Obligation.** This Note is a special, limited obligation of the Obligor payable solely from the Pledged Security and any other revenues, funds and assets pledged under the Funding Loan Agreement and not from any other revenues, funds or assets of the Obligor. This Note is not a general obligation, debt or bonded indebtedness of the Obligor, the State or any political subdivision thereof (other than of the Obligor to the limited extent set forth in the Funding Loan Agreement) and the holder of this Note does not have the right to have any excises or taxes levied by the Obligor, the State or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on this Note. None of the Obligor, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on this Note or other costs incident thereto except from the Pledged Security pledged under the Funding Loan Agreement. No provision, covenant, or agreement contained in this Note or the Funding Loan Agreement, or any obligation herein or therein imposed upon the Obligor, or the breach thereof, shall constitute or give rise to or impose a liability upon the Obligor (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Obligor's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Obligor as provided herein and in the Act. Any recourse for a cause of action under this Note or the Funding Loan Agreement shall be payable solely from the Pledged Security, and the agreement of the Obligor to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Project Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed in its name by the manual or facsimile signatures of the Mayor and City Manager, the seal of the Obligor having been intentionally omitted as permitted by law, and has caused this Note to be dated as of the date first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

\_\_\_\_\_



**CERTIFICATE OF AUTHENTICATION**

This Multifamily Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION**, as Fiscal Agent

By: \_\_\_\_\_  
Authorized Signer

---

**SCHEDULE I**

**GOVERNMENTAL NOTE AMORIZATION SCHEDULE**

EXHIBIT A-2

FORM OF TAXABLE GOVERNMENTAL NOTE

BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS NOTE AGREES (A) THAT (I) IF APPLICABLE, IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT AND (II) THAT IT WILL NOT SELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
CITY OF MINNETONKA

MULTIFAMILY NOTE  
with designation as  
Taxable Multifamily Housing Revenue Refunding Note  
(Preserve at Shady Oak Project)  
Series 2018B[-1][-2]

US \$ \_\_\_\_\_

September \_\_\_\_, 2018

FOR VALUE RECEIVED, the undersigned, the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of [U.S. Bank National Association, a national banking association] [BMO Harris Bank N.A., a national banking association], or its registered assigns (the “**Funding Lender**”), the maximum principal sum of \_\_\_\_\_ and \_\_\_/100 Dollars (US \$ \_\_\_\_\_), plus Prepayment Premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B[-1][-2] (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement, dated as of September 1, 2018 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for the Funding Lender, the Obligor, and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent under the Funding Loan Agreement (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$ \_\_\_\_\_ (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”), pursuant to a Project Loan Agreement, dated as of September 1, 2018 (the “**Project Loan Agreement**”), between the Obligor, the Borrower, and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to

the proceeds of this Note advanced by the Administrative Agent, on behalf of the Funding Lender, according to the Funding Loan Agreement and not otherwise repaid.

In addition to this Note, the Taxable Funding Loan is also evidenced by the Governmental Lender's Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B[-1] [-2].

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the registered holder of this Note, and (ii) the term "Indebtedness" means the principal of, Prepayment Premium, if any, and interest on or any other amounts due at any time under the Taxable Governmental Notes, the Tax-Exempt Governmental Notes, or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing October 1, 2018 interest on this Note at (i) the Construction Phase Interest Rate during the Construction Phase, and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an "**Interest Payment Date**"). Interest shall accrue on the principal amount of this Note which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on \_\_\_\_\_ 1, 20\_\_ (the "**Maturity Date**") and in monthly installments on each date set forth on the Governmental Note Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 may be replaced by a new Governmental Note Amortization Schedule provided by the Freddie Mac Seller/Servicer on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender's discretion. Neither the Funding Lender's acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for herein or in any other Financing Document evidencing or securing the Funding Loan, whether considered separately or together with other charges provided for in any such other Financing Document, violates that law, and the Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitutes interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Minnesota (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date or on the date of any mandatory prepayment or acceleration, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date or such other date at the Default Rate.

15. **Limited Obligation.** This Note is a special, limited obligation of the Obligor payable solely from the Pledged Security and any other revenues, funds and assets pledged under the Funding Loan Agreement and not from any other revenues, funds or assets of the Obligor. This Note is not a general obligation, debt or bonded indebtedness of the Obligor, the State or any political subdivision thereof (other than of the Obligor to the limited extent set forth in the Funding Loan Agreement) and the holder of this Note does not have the right to have any excises or taxes levied by the Obligor, the State or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on this Note. None of the Obligor, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on this Note or other costs incident thereto except from the Pledged Security pledged under the Funding Loan Agreement. No provision, covenant, or agreement contained in this Note or the Funding Loan Agreement, or any obligation herein or therein imposed upon the Obligor, or the breach thereof, shall constitute or give rise to or impose a liability upon the Obligor (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Obligor's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Obligor as provided herein and in the Act. Any recourse for a cause of action under this Note or the Funding Loan Agreement shall be payable solely from the Pledged Security, and the agreement of the Obligor to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Project Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed in its name by the manual or facsimile signatures of the Mayor and City Manager, the seal of the Obligor having been intentionally omitted as permitted by law, and has caused this Note to be dated as of the date first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

---

**CERTIFICATE OF AUTHENTICATION**

This Multifamily Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION**, as Fiscal Agent

By: \_\_\_\_\_  
Authorized Signer

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**SCHEDULE I**

**GOVERNMENTAL NOTE AMORIZATION SCHEDULE**

**EXHIBIT B**

**FORM OF NOTICE OF APPOINTMENT  
OF FUNDING LENDER REPRESENTATIVE**

U.S. Bank National Association  
Corporate Trust Services  
60 Livingston Avenue, 3rd Floor  
EP-MN-WS3C  
St. Paul, MN 55107-2292

City of Minnetonka, Minnesota  
14600 Minnetonka Boulevard  
Minnetonka, Minnesota 55345

Minnetonka Leased Housing Associates II, LLLP  
c/o Dominion Development & Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400

Re: Preserve at Shady Oak Project

Ladies and Gentlemen:

The undersigned, U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the “**Initial Funding Lender**”), as holders of the Governmental Notes (as defined in the Funding Loan Agreement described below) delivered pursuant to the Funding Loan Agreement, dated as of September 1, 2018 (the “**Funding Loan Agreement**”), between the Administrative Agent, the City of Minnetonka, Minnesota (the “**Governmental Lender**”), and U.S. Bank National Association, a national banking association (the “**Fiscal Agent**”). Pursuant to Section 11.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 11.05 of the Funding Loan Agreement shall be the Administrative Agent. [The person or entity previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME	SIGNATURE
_____	_____
_____	_____
_____	_____
_____	_____

Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

This notice is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**[[FUNDING LENDER] [ADMINISTRATIVE  
AGENT] SIGNATURE BLOCK]**

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

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

Title: \_\_\_\_\_



**EXHIBIT C**

**FORM OF TRANSFEREE REPRESENTATIONS LETTER**

[To be prepared on letterhead of transferee]

[Date]

City of Minnetonka, Minnesota  
14600 Minnetonka Boulevard  
Minnetonka, Minnesota 55345

U.S. Bank National Association  
Corporate Trust Services  
60 Livingston Avenue, 3rd Floor  
EP-MN-WS3C  
St. Paul, Minnesota 55107-2292

**Re:** Preserve at Shady Oak Project

Ladies and Gentlemen:

The undersigned (the “**Funding Lender**”) hereby acknowledges receipt of the [for **U.S. Bank:** Governmental Lender’s Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1 (the “**Series A-1 Governmental Note**”) and the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-1 (the “**Series B-1 Governmental Note,**” and together with the Series A-1 Governmental Note, the “**Governmental Notes**”)] [for **BMO Harris Bank:** the Governmental Lender’s Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2 (the “**Series A-2 Governmental Note**”) and the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-2 (the “**Series B-2 Governmental Note,**” and together with the Series A-2 Governmental Note, the “**Governmental Notes**”)] delivered pursuant to the Funding Loan Agreement, dated as of September 1, 2018 (the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, in its capacity as administrative agent for the Initial Funding Lender described therein, the City of Minnetonka, Minnesota (the “**Governmental Lender**”), and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent (the “**Fiscal Agent**”) under the Funding Loan Agreement. Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the [origination/purchase] of the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The Funding Lender has authority to [originate/purchase] the Funding Loan evidenced by the Governmental Notes and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the [origination/purchase] of the Funding Loan evidenced by the Governmental Notes.

2. The Funding Lender is an “accredited investor” under Regulation D of the Securities Act of 1933 (the “Act”) or a “qualified institutional buyer” under Rule 144(a) of said Act (such “accredited investor” or “qualified institutional buyer,” a “**Qualified Transferee**”), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan as evidenced by the Governmental Notes.

3. The Funding Lender acknowledges that it is [originating/purchasing] the Funding Loan evidenced by the Governmental Notes for investment for its own account and not with a present view toward resale or the distribution thereof (except as set forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan evidenced by the Governmental Notes (except as set forth below); provided, however, that the Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, (i) grant participation interests in the Loan as provided in Section 2.08 of the Funding Loan Agreement, (ii) transfer the Funding Loan evidenced by the Governmental Notes to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (iii) sell or transfer the Funding Loan evidenced by the Governmental Notes to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan evidenced by the Governmental Notes or securitized interests therein are not expected to be sold except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better [INSERT FOR INITIAL FUNDING LENDER TRANSFEREE REPRESENTATION LETTER; provided, further, however, the Funding Lender has originated and funded the Funding Loan evidenced by the Governmental Notes with the expectation that such Funding Loan will be sold to [NAME OF FREDDIE MAC SELLER/SERVICER] on the Conversion Date and thereafter delivered to the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) pursuant to the forward commitment, dated \_\_\_\_\_, 2018 (the “**Freddie Mac Commitment**”),] [INSERT FOR FREDDIE MAC SELLER/SERVICER TRANSFEREE REPRESENTATION LETTER; provided, further, however, the Funding Lender is purchasing the Funding Loan evidenced by the Governmental Notes with the expectation that such Funding Loan will be sold to the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) pursuant to the forward commitment, dated \_\_\_\_\_, 2018 (the “**Freddie Mac Commitment**”)].

4. In addition to the right to sell or transfer the Funding Loan evidenced by the Governmental Notes as set forth in Paragraph 3 above, the Funding Lender further acknowledges its right to sell or transfer the Funding Loan evidenced by the Governmental Notes, subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from the transferee to substantially the same effect as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

5. The Funding Lender understands that the Governmental Notes are not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Notes (a) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

6. The Funding Lender understands that (a) the Funding Loan evidenced by the Governmental Notes is not secured by any pledge of any moneys received or to be received from taxation by the State of Minnesota or any political subdivision thereof and that the Governmental Lender has not pledged its full faith, credit and taxing powers to the repayment of the Funding Loan evidenced by the

Governmental Notes; (b) the Funding Loan evidenced by the Governmental Notes does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of Minnesota or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan evidenced by the Governmental Notes is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the [origination/purchase] of the Funding Loan evidenced by the Governmental Notes. The Funding Lender has not relied upon the Governmental Lender, its counsel, or its advisors for any information in connection with its purchase of the Funding Loan evidenced by the Governmental Notes.

8. The Funding Lender has made its own inquiry and analysis with respect to the Funding Loan evidenced by the Governmental Notes and the security therefor, and other material factors affecting the security and payment of the Funding Loan evidenced by the Governmental Notes. The Funding Lender is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Funding Loan evidenced by the Governmental Notes.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

**[U.S. BANK NATIONAL ASSOCIATION]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[BMO HARRIS BANK N.A.]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**

**COSTS OF ISSUANCE REQUISITION  
(Cost of Issuance Fund)**

Dated: September \_\_\_\_\_, 2018

TO: U.S. Bank National Association, as Fiscal Agent

Re: Preserve at Shady Oak Project

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this Costs of Issuance Requisition (Cost of Issuance Fund) (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement, dated as of September 1, 2018 (the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent for the Initial Funding Lender, the City of Minnetonka, Minnesota, and U.S. Bank National Association, as fiscal agent, securing the Governmental Notes.

REQUISITION NO.:	_____
PAYMENT DUE TO:	See attached schedule
AMOUNT TO BE DISBURSED	\$_____

The undersigned, on behalf of Minnetonka Leased Housing Associates II, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State of Minnesota (the “**Borrower**”), certifies that:

- (a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and
- (b) the money requisitioned is not greater than that necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

Attached to this Requisition is a schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

IN WITNESS WHEREOF, the undersigned has executed this Costs of Issuance Requisition (Cost of Issuance Fund) as of the date and year first above written.

**MINNETONKA LEASED HOUSING  
ASSOCIATES II, LLLP**, a Minnesota limited liability  
limited partnership

By: Minnetonka Leased Housing Associates SPE II,  
LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

**EXHIBIT E**

**PROJECT LOAN FUND REQUISITION  
(Project Loan Fund)**

Dated: September \_\_\_\_\_, 2018

TO: U.S. Bank National Association, as Fiscal Agent

Re: Preserve at Shady Oak Project

You are requested to disburse funds from the Project Loan Fund pursuant to Section 4.02 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this Project Loan Fund Requisition (Project Loan Fund) (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement, dated as of September 1, 2018 (the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association (the “**Administrative Agent**”), as administrative agent for the Initial Funding Lender, the City of Minnetonka, Minnesota (the “**Governmental Lender**”), and U.S. Bank National Association, a national banking association (the “**Fiscal Agent**”), securing the Governmental Notes.

REQUISITION NO.:	_____
PAYMENT DUE TO:	See attached schedule
AMOUNT TO BE DISBURSED	\$_____ from the Tax-Exempt Note Proceeds Subaccount of the Project Account; \$_____ from the Taxable Note Proceeds Subaccount of the Project Account; and \$_____ from the Borrower Equity Account

The undersigned, the duly chosen, qualified, and acting representative of Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”), on behalf of the Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Servicer (which, during the Construction Phase, is the Administrative Agent) to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached schedule**.
2. Party or parties to whom the disbursements shall be made are specified in the **attached schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to October 15, 2017 (which is the date that is sixty (60) days prior to the date that the Governmental Lender declared its official intent to reimburse expenditures related to the Project as permitted under Section 1.150-2(d) of the Treasury Regulations).
3. The undersigned certifies that:
  - a. the conditions precedent to disbursement set forth in the Construction Continuing Covenant Agreement have been satisfied;

- b. the disbursement requested pursuant to this Requisition will be used solely to pay a cost or costs allowable under the Funding Loan Agreement, the Subordinate Indenture and the Construction Continuing Covenant Agreement, as applicable;
- c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Project Loan Fund and all such items have been properly recorded in Borrower's books and are set forth on the schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;
- d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Continuing Covenant Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project;
- e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;
- f. all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Subordinate Indenture, the Subordinate Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate, including that none of the proceeds of the Funding Loan evidenced by the Tax-Exempt Governmental Note (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling, health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
- g. with respect to amounts from the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund and the Subordinate Bonds Proceeds Subaccount of the Project Account of the Project Loan Fund, not less than ninety-five percent (95%) of the sum of:
  - (A) the amounts requisitioned by this Requisition; plus
  - (B) all amounts previously requisitioned and disbursed from the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund and the Subordinate Bonds Proceeds Subaccount of the Project Account of the Project Loan Fund;have been or will be applied by Borrower to pay the Costs of the Project (as defined in the Funding Loan Agreement) and Project Costs (as defined in the Subordinate Indenture);
- h. the Borrower is not in default under the Project Loan Agreement, the Construction Continuing Covenant Agreement or any other Project Loan Document, or Subordinate Loan Documents to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;
- i. no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the Governmental Notes or Issuance

Expenses incurred in connection with the delivery of the Subordinate Bonds or pay debt service with respect to the Loans or the Subordinate Bonds; and

- j. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five Business Days of such deposit.

[Following items may not be required for Initial Disbursement]

4. Estimated costs of completing the uncompleted construction as of the date of this Requisition: \_\_\_\_\_.

5. Percent of construction completed as of the date this request: \_\_\_\_\_%

IN WITNESS WHEREOF, the undersigned has executed this Project Loan Fund Requisition (Project Loan Fund) as of the date and year first above written.

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE II, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

**APPROVED\*:**

**U.S. BANK NATIONAL ASSOCIATION**, as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## EXHIBIT F

### CONSTRUCTION PHASE INTEREST RATE

The Construction Phase Interest Rate on the Tax-Exempt Governmental Note shall be \_\_\_\_\_%, which is a rate of interest per annum equal to the sum of (i) the LIBOR Rate in effect on such day, plus (ii) \_\_\_\_\_ basis points over LIBOR, as calculated in the Tax-Exempt Project Note.

The Construction Phase Interest Rate on the Taxable Governmental Note shall be \_\_\_\_\_%, which is a rate of interest per annum equal to the sum of (i) the LIBOR Rate in effect on such day, plus (ii) \_\_\_\_\_ basis points over LIBOR, as calculated in the Taxable Project Note.

For purposes hereof, the following terms have the following definitions:

“**Advance**” has the meaning given such term in the Funding Loan Agreement.

“**Construction Loan Agreement**” means that certain Construction Loan Agreement, dated September \_\_\_\_, 2018, between Borrower and Initial Funding Lender, as amended, restated or otherwise modified from time to time.

“**Construction Phase**” has the meaning given to that term in the Funding Loan Agreement.

“**LIBOR Rate**” means for each calendar month during the Construction Phase, the one (1) month LIBOR Rate quoted by Initial Funding Lender from Reuters Screen LIBOR01 Page or any successor thereto designated by Initial Funding Lender, which shall be that one (1) month LIBOR Rate in effect two (2) New York Banking Days prior to the Reprice Date adjusted for any reserve requirement and any subsequent costs arising from a change in government regulations, such rate rounded up to the nearest one-sixteenth of one percent (0.0625%) and such rate to be reset monthly on each Reprice Date. If the initial Advance occurs other than on the Reprice Date, then the initial one-month LIBOR Rate shall be that one-month LIBOR Rate quoted by Initial Funding Lender two (2) New York Banking Days prior to the date of the initial Advance, which rate (as rounded as described above) shall be in effect until the next Reprice Date. Initial Funding Lender’s internal records of applicable interest rates shall be determinative in the absence of manifest error.

“**New York Banking Day**” means any day (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York.

“**Reprice Date**” means the first day of each calendar month.

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**PROJECT LOAN AGREEMENT**

**between**

**CITY OF MINNETONKA, MINNESOTA,  
as Governmental Lender**

**U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent**

**and**

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,  
as Borrower**

**Relating to:**

**Preserve at Shady Oak  
10987 and 11015 Bren Road East  
Minnetonka, Minnesota**

**Maximum Project Loan Principal Amount: \$ \_\_\_\_\_**

**Dated as of September 1, 2018**

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**All of the right, title and interest of the City of Minnetonka, Minnesota (the “Governmental Lender”) (except for its Unassigned Rights) in and to this Project Loan Agreement are being assigned to U.S. Bank National Association, as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, U.S. Bank National Association, as Administrative Agent for the Initial Funding Lender named therein, and the Fiscal Agent.**

This instrument was drafted by:

Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402  
(612) 337-9300

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## PROJECT LOAN AGREEMENT

THIS PROJECT LOAN AGREEMENT is made and entered into as of September 1, 2018 (the “**Project Loan Agreement**”), between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the “**Fiscal Agent**”), and MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (together with its successors and assigns permitted hereunder, the “**Borrower**”). Capitalized terms are defined in Section 1.01 of this Project Loan Agreement or in the Funding Loan Agreement (hereinafter defined).

### RECITALS

**A.** On May 7, 2018, pursuant to Minnesota Statutes, Chapter 462C, as amended (the “**Act**”), the Governmental Lender issued its Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018 (the “**Prior Note**”), in the original aggregate principal amount of \$30,500,000, and loaned the proceeds thereof to Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”), for the purpose of providing short-term financing for the acquisition, construction, and equipping of a 220-unit workforce housing rental development located at 10987 and 11015 Bren Road East, Minnetonka, Minnesota to be known as Preserve at Shady Oak (the “**Project**”).

**B.** Pursuant to the Act and this Project Loan Agreement, at the Borrower’s request, the Governmental Lender is agreeing to make two mortgage loans to the Borrower corresponding in principal amount to the Tax-Exempt Funding Loan and the Taxable Funding Loan described below (individually, the “**Tax-Exempt Project Loan**” and the “**Taxable Project Loan,**” and collectively, the “**Project Loan**”) to (i) refund a portion of the Prior Note; and (ii) provide for the financing of the Project.

**C.** The Governmental Lender is making the Tax-Exempt Project Loan to the Borrower with the proceeds received from the separate tax-exempt loan made to the Governmental Lender pursuant to the Funding Loan Agreement, dated as of September 1, 2018 (the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent for the Initial Funding Lender (the “**Administrative Agent**”), the Governmental Lender, and the Fiscal Agent, in the maximum aggregate principal amount of \$\_\_\_\_\_ (the “**Tax-Exempt Funding Loan**”). The Tax-Exempt Funding Loan is evidenced by the Governmental Lender’s (i) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series A-1 Governmental Note**”); and (ii) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series A-2 Governmental Note,**” and together with the Series A-1 Governmental Note, the “**Tax-Exempt Governmental Note**”). The Governmental Lender is making the Taxable Project Loan to the Borrower with the proceeds received from the separate taxable loan made to the Governmental Lender pursuant to the Funding Loan Agreement in the maximum aggregate principal amount of \$\_\_\_\_\_ (the “**Taxable Funding Loan,**” together with the Tax-Exempt Funding Loan, the “**Funding Loan,**” and further together with the Project Loan, the “**Loans**”). The Taxable Funding Loan is evidenced by the Governmental Lender’s (1) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-1 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series B-1 Governmental Note**”); and (2) Taxable Multifamily Note with

designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-2 in the maximum principal amount of \$\_\_\_\_\_ (the “**Series B-2 Governmental Note**,” and together with the Series B-1 Governmental Note, the “**Taxable Governmental Note**”). The Tax-Exempt Governmental Note and the Taxable Governmental Note are referred to herein as the “**Governmental Notes**.” The Governmental Notes are each dated September \_\_\_\_, 2018. The Governmental Lender shall deliver the Governmental Notes to the Administrative Agent, which shall deliver the Governmental Notes to U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the “**Initial Funding Lender**”).

**D.** The Administrative Agent, pursuant to the terms and subject to the conditions of the Funding Loan Agreement, the Construction Phase Financing Agreement, and the Construction Continuing Covenant Agreement, has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower in corresponding installments pursuant to this Project Loan Agreement. The Administrative Agent will administer the Loans during the Construction Phase in accordance with the Construction Phase Financing Agreement (as it relates to the Tax-Exempt Funding Loan and Tax-Exempt Project Loan), the Construction Continuing Covenant Agreement, and the other Financing Documents.

**E.** The Borrower has agreed to use a portion of the proceeds of the Tax-Exempt Project Loan to refund a portion of the Prior Note and to use the remaining proceeds of the Prior Note (which will be treated as proceeds of the Tax-Exempt Project Loan) and the proceeds of the Taxable Project Loan to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to the Loans.

**F.** The Borrower’s repayment obligations in respect of the Tax-Exempt Project Loan will be evidenced by the Multifamily Note (Series A) (the “**Tax-Exempt Project Note**”). The Borrower’s repayment obligations in respect of the Taxable Project Loan will be evidenced by the Multifamily Note (Series B) (the “**Taxable Project Note**,” and collectively with the Tax-Exempt Project Note and all riders and modifications thereto, the “**Project Notes**”), each dated September \_\_\_\_, 2018, delivered to the Governmental Lender, which Project Notes will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**G.** To secure the Borrower’s obligations under the Tax-Exempt Project Note, the Borrower will execute and deliver to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated September \_\_\_\_, 2018 (the “**Tax-Exempt Security Instrument**”), with respect to the Project, which Tax-Exempt Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Tax-Exempt Funding Loan.

**H.** To secure the Borrower’s obligations under the Taxable Project Note, the Borrower will execute and deliver to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated September \_\_\_\_, 2018 (the “**Taxable Security Instrument**,” and together with the Tax-Exempt Security Instrument, the “**Security Instrument**”), with respect to the Project, which Taxable Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Taxable Funding Loan.

**I.** The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”), has entered into a commitment with KeyBank National Association, a national banking association (the “**Freddie Mac Seller/Servicer**”), dated \_\_\_\_\_, 2018 (the “**Tax-Exempt Freddie Mac Commitment**”), whereby Freddie Mac has

committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Tax-Exempt Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date.

**J.** If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Tax-Exempt Freddie Mac Commitment and the Construction Phase Financing Agreement, the Tax-Exempt Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Administrative Agent shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Tax-Exempt Funding Loan, as evidenced by the Tax-Exempt Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Tax-Exempt Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Tax-Exempt Funding Loan and the Administrative Agent will remain the owner of the Tax-Exempt Funding Loan as the holder of the Tax-Exempt Governmental Note.

**K.** Freddie Mac has entered into a separate commitment with the Freddie Mac Seller/Servicer, dated \_\_\_\_\_, 2018 (the “**Taxable Freddie Mac Commitment**”), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the commitment, to facilitate the financing of the Project in the Permanent Phase by making a conventional supplemental loan to amend and restate the Taxable Funding Loan made under the Funding Loan Agreement.

**L.** If the Conditions to Conversion associated with the Taxable Freddie Mac Commitment are satisfied on or before the Forward Commitment Maturity Date as provided for in the Taxable Freddie Mac Commitment, the Freddie Mac Seller/Servicer will make a conventional loan to purchase and amend and restate the Taxable Funding Loan and the Taxable Funding Loan will no longer be outstanding under the Funding Loan Agreement. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Taxable Project Loan will remain outstanding, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to amending and restating the Taxable Funding Loan and the Initial Funding Lender will remain the owner of the Taxable Funding Loan as the holder of the Taxable Governmental Note.

**M.** As a Condition to Conversion, the Tax-Exempt Project Note and the Tax-Exempt Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the “**Freddie Mac Continuing Covenant Agreement**”), in each case pursuant to the forms attached to the Construction Phase Financing Agreement. As additional Conditions to Conversion, (i) the Taxable Governmental Note and the Taxable Project Note will be exchanged for a single Amended and Restated Taxable Project Note and the Taxable Governmental Note will no longer be outstanding under the Funding Loan Agreement, and the single Amended and Restated Taxable Project Note will be assigned to the Freddie Mac Seller/Servicer; (ii) the Tax-Exempt Governmental Note will be consolidated into a single Governmental Note with a single Governmental Note Amortization Schedule; and (iii) the Taxable Security Instrument will be amended and restated and the Borrower will be required to enter into a Multifamily Loan Agreement with the Freddie Mac Seller/Servicer, in each case pursuant to the forms attached to the Taxable Freddie Mac Commitment and the Taxable Funding Loan will no longer be governed by the Funding Loan Agreement. After Conversion, all references herein to “Funding Loan” shall mean the Tax-Exempt Funding Loan, all references herein to the “Project Loan” shall mean the Tax-Exempt Project Loan and the term “Security Instrument” shall mean the Tax-Exempt Security Instrument, as amended and restated.

**N.** If the Conditions to Conversion are satisfied and the Tax-Exempt Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/ Servicer shall deliver the Tax-Exempt Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the “**Freddie Mac Purchase Date**”).

**O.** Upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Tax-Exempt Funding Loan, the Tax-Exempt Governmental Note, the Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. KeyBank National Association will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date.

**P.** To provide additional financing for the Project and to refund a portion of the Prior Note, the Governmental Lender is issuing its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C (the “**Subordinate Bonds**”), dated September \_\_, 2018, in the original aggregate principal amount of \$3,570,000, pursuant to a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “**Subordinate Indenture**”), between the Governmental Lender and U.S. Bank National Association, a national banking association, as trustee for the Subordinate Bonds (the “**Trustee**”). The proceeds of the Subordinate Bonds are being loaned to the Borrower (the “**Subordinate Loan**”) pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “**Subordinate Loan Agreement**”), between the Governmental Lender and the Borrower, and the Borrower will apply such proceeds to refund a portion of the Prior Note and finance a portion of the acquisition, construction, and equipping of the Project and to pay certain closing costs with respect to the Subordinate Loan. The Subordinate Indenture, the Subordinate Loan Agreement, and the Subordinate Bonds and all related documents and any renewals or extensions thereof and all indebtedness owed thereunder, including the Subordinate Loan, shall be and are subordinated, inferior and subject to the Financing Documents, as the Financing Documents may be revised, modified, extended or amended from time to time, and all indebtedness owed thereunder pursuant to a Subordination Agreement, dated September \_\_, 2018, between the Governmental Lender, the Borrower, the Fiscal Agent, the Trustee, and the Administrative Agent, and its successors and assigns.

**NOW, THEREFORE,** for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

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



**ARTICLE I**  
**DEFINITIONS**

**Section 1.01 Definitions.** All words and phrases (except for Event of Default) defined in the Funding Loan Agreement and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Project Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement, the Continuing Covenant Agreement, and elsewhere herein, the following words and phrases shall have the following meanings:

“*Event of Default*” means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

“*Fee Component*” means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis.

“*Funding Loan Agreement*” means the Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent, the Governmental Lender, and the Fiscal Agent, as amended, supplemented or restated from time to time.

“*Project Loan Agreement*” means this Project Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, the Fiscal Agent, and the Borrower, together with any amendments hereto.

“*Project Loan Payment*” means each payment of the Project Loan on each Project Loan Payment Date pursuant to the Project Notes and this Project Loan Agreement.

“*Project Loan Payment Date*” means (A) the first day of each calendar month, commencing October 1, 2018, or (B) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date.

“*Project Note Amortization Schedule*” means the Project Note Amortization Schedule attached as Schedule 1 to each of the Project Notes (as such Schedule 1 may be replaced by a new amortization schedule provided by the Freddie Mac Seller/Servicer as provided in the Funding Loan Agreement).

“*Servicing Fee*” means, during the Permanent Phase, the ordinary fee payable to the Servicer in connection with the servicing of the Project Loan and the Funding Loan payable monthly in an amount equal to one-twelfth of \_\_\_% of the outstanding principal balance of the Project Loan, computed on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months.

“*Taxes*” means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

**Section 1.02 Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Project Loan Agreement are the Articles, sections and other subdivisions of this Project Loan Agreement as originally executed.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Project Loan Agreement; the term “heretofore” means before the date of execution of this Project Loan Agreement; and the term “hereafter” means after the date of execution of this Project Loan Agreement.

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

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.01** *Representations, Warranties and Covenants of the Governmental Lender.* The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Servicer:

(a) The Governmental Lender is a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State.

(b) The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Notes and to make the Project Loan from the proceeds thereof, and to execute, and deliver this Project Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Governmental Lender has taken all action on its part to incur the Funding Loan evidenced by the Governmental Notes and make the Project Loan from the proceeds thereof and for the sale, execution and delivery thereof.

(d) Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender.

(e) Based on the advice of Bond Counsel, the Governmental Lender has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Governmental Lender described or contemplated in the Financing Documents. To the actual knowledge of the Governmental Lender, the execution and delivery of the Governmental Notes and the Financing Documents to which the Governmental Lender is a party, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

(f) Based on the advice of Bond Counsel, no authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental

Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents or the issuance, sale, execution or delivery of the Governmental Notes or the redemption of the Prior Note; (iii) affects or questions the validity or enforceability of the Governmental Notes or any Financing Document; (iv) questions the tax-exempt status of the Tax-Exempt Governmental Note or the Prior Note; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Notes or any Financing Document, or to carry out the transactions contemplated by the Governmental Notes and the Financing Documents.

(h) No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Project Loan Agreement.

(i) Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Project Loan Agreement, the Tax Certificate or the Tax Regulatory Agreement, the Governmental Lender will promptly notify the Fiscal Agent, the Servicer and the Funding Lender Representative of such noncompliance.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Governmental Notes, or as to the correctness, completeness or accuracy of such statements.

**Section 2.02 *Representations, Warranties and Covenants of the Borrower.*** The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Servicer and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Servicer and the Fiscal Agent contained in this Project Loan Agreement:

(a) The Borrower is a limited liability limited partnership duly organized, validly existing and in good standing under the laws of the state in which it has been organized and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Project Loan Agreement and the other Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Project Loan Agreement and the other Financing Documents. All corporate general partners and all general partners which are limited liability companies, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations or limited liability companies, as applicable. All partnership general partners, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project; (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project; and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of construction of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.

(e) None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower; (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license; (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree; or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) Within six (6) month period preceding the Delivery Date, the Borrower has not acquired the Project or any interest therein, nor has the Borrower transferred or acquired any capital interest in the owner of the Project. The Borrower shall not cause or permit the Project, or any interest therein, to be sold, assigned or transferred, except as provided in the Financing Documents, and shall not sell the Project or any interest therein or in its ownership structure for a period of six (6) months following the Delivery Date.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents; (ii) adversely affect the financial condition of the Borrower; (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan, the redemption of the Prior Note, or the execution and delivery of any of the Financing

Documents; (iv) adversely affect the validity or enforceability of any of the Financing Documents; or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Governmental Note.

(h) The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and, following completion of the construction and equipping of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(i) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(j) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(k) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(l) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests except as may be permitted by the Borrower's partnership agreement [**or a separate purchase option agreement,**] which shall be subordinate to the Security Instrument. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Project Loan Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(m) The representations and warranties of the Borrower contained in the Tax Certificate and Tax Regulatory Agreement are true and accurate in all material respects.

(n) The information, statements or reports furnished in writing to the Governmental Lender, the Servicer and the Funding Lender Representative by the Borrower in connection with this Project Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements,

information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(o) To the knowledge of the Borrower, no member, commissioner, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(p) The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project.

(q) The Project is located wholly within the boundaries of the City of Minnetonka, Hennepin County, Minnesota.

(r) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Tax-Exempt Governmental Note. The Borrower shall operate the Project as required by the Tax Regulatory Agreement.

(s) The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(t) The Borrower has entered into a purchase agreement to purchase the land upon which the Project will be built and plans to use the proceeds of the Governmental Notes to purchase the land. Upon closing on the land, the Borrower shall have a fee simple interest in the land and improvements on the land, subject only to liens permitted under the Security Instrument.

(u) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer in any manner.

**Section 2.03 *Representations and Warranties of the Fiscal Agent.*** The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender and the Servicer:

(a) The Fiscal Agent is a national banking association, duly organized and existing under the laws of the United States. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(c) The Fiscal Agent has duly authorized (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(d) Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent, enforceable against the Fiscal Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Notes, (iii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party. The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.



**Section 2.04 *Arbitrage and Rebate Fund Calculations.*** The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.12 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.12 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.12 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide any such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

**Section 2.05 *Tax Covenants of the Borrower.*** The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate and the Tax Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Tax-Exempt Governmental Note to be included in gross income of the Funding Lender, for federal income tax purposes (excluding any action that causes such interest to be includable in gross income for federal income tax purposes as a result of the application of Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation), and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including without limitation the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Tax Regulatory Agreement);

(c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Tax-Exempt Governmental Note (except for any changes, actions, or omissions that adversely affect the tax-exempt status of the Tax-Exempt Governmental Note as a result of the application of Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation);

(d) It will comply with the requirements of Section 148 of the Code and the Treasury Regulations issued thereunder throughout the term of the Funding Loan and the Project Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Tax-Exempt Governmental Note under the Code and the related regulations of the United States Treasury, which would cause the Tax-Exempt Governmental Note to be an "arbitrage bond" within the meaning of Section 148 of the Code;

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Tax-Exempt Governmental Note becoming includable in gross income of the Funding Lender for purposes of federal income tax purposes (except to the extent such interest is includable in gross income for federal income tax purposes as a result of the application of Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation), it will

promptly give written notice of such circumstance, event or condition to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer;

(f) The full amount of each disbursement from the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least ninety-five percent (95%) of the net proceeds (as defined in Section 150 of the Code) of the Tax-Exempt Governmental Note will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code); (ii) less than twenty-five (25%) of the net proceeds of the Tax-Exempt Governmental Note will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; and (iii) no more than five percent (5%) of the proceeds (as defined for purposes of Section 147(g) of the Code) of the Tax-Exempt Governmental Note will be disbursed to provide working capital;

(g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code, the Tax Certificate, and the Tax Regulatory Agreement;

(h) All leases will comply with all applicable laws and the Tax Regulatory Agreement;

(i) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Project Loan Agreement, the Tax Certificate, or the Tax Regulatory Agreement;

(j) No proceeds of the Tax-Exempt Funding Loan shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed fifteen percent (15%) of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed one hundred percent (100%) of the portion of the cost of acquiring such structure financed with the proceeds;

(k) From the proceeds of the Tax-Exempt Funding Loan and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Tax-Exempt Governmental Note, will be used for Costs of Issuance of the Governmental Notes, all within the meaning of Section 147(g)(1) of the Code; and

(l) No proceeds of the Tax-Exempt Funding Loan shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

## ARTICLE III

### THE PROJECT LOAN

**Section 3.01** *Conditions to Funding the Project Loan.* On the Delivery Date and thereafter, the Governmental Lender shall cause the proceeds of the first advance of the Funding Loan to be deposited with the Fiscal Agent in accordance with Sections 2.01 and 2.12 of the Funding Loan Agreement and Section 3.03 hereof. The Fiscal Agent shall use such proceeds as provided in Article II of the Funding Loan Agreement to make the Project Loan, provided that no initial disbursements of proceeds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Project Notes and the Governmental Lender shall have endorsed the Project Notes to the Fiscal Agent;

(b) The Security Instrument and the Assignment, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to the Title Company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “**Recorder’s Office**”);

(c) The Tax Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the Title Company for recording in the Recorder’s Office, and the Fiscal Agent shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent;

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Servicer a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, Freddie Mac and the Freddie Mac Seller/Servicer; and

(f) The Borrower shall have satisfied all conditions to the first advance set forth in the Construction Continuing Covenant Agreement.

Pursuant to Section 2.11 of the Funding Loan Agreement, the second and subsequent advances of the Funding Loan are conditioned on the delivery by the Borrower to the Fiscal Agent of the items listed in Section 2.11 of the Funding Loan Agreement.

### **Section 3.02** *Terms of the Project Loan; Servicing.*

(a) The Project Loan shall (i) be evidenced by the Project Notes; (ii) be secured by the Security Instrument; (iii) be in the maximum aggregate principal amount of \$\_\_\_\_\_ ; (iv) bear interest as provided in the Project Notes; (v) provide for principal and interest payments in accordance with the Project Notes; and (vi) be subject to optional and mandatory prepayment

at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Project Notes. The outstanding principal balance of the Project Loan at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender, minus any amounts prepaid with respect to the principal in accordance with the terms hereof and the Project Notes. The outstanding principal balance of the Project Notes at any time shall be an amount equal to the proceeds of the corresponding Governmental Notes (Tax-Exempt or Taxable) advanced by the Funding Lender (as designated by the Funding Lender), minus any amounts prepaid with respect to the principal in accordance with the terms hereof and such Project Note.

(b) The Funding Lender Representative may appoint a Servicer to service the Loans for all or a portion of the term of the Loans. The Administrative Agent shall be the Servicer of the Loans during the Construction Phase. On the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer shall become the Servicer and shall service the Loans as required by the Freddie Mac Commitment and the Guide. The Funding Lender Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(c) Notwithstanding any provision in this Project Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Funding Loan Agreement shall be paid by the Borrower to the Servicer. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee (if any) collected from the Borrower and shall remit the Fee Component with respect to the Governmental Lender to the Governmental Lender and shall remit the Fiscal Agent's Ordinary Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative, and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Funding Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(d) The Governmental Lender, the Fiscal Agent, and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Servicer (which during the Construction Phase shall be the Administrative Agent) to service and administer the Project Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative; and (iii) neither the Governmental Lender, nor the Fiscal Agent shall terminate or attempt to terminate any Servicer as the servicer for the Project Loan or appoint or attempt to appoint a substitute servicer for the Project Loan.

The Governmental Lender, the Fiscal Agent, and the Borrower further hereby acknowledge and agree with respect to the Servicer during the Permanent Phase that: (i) the Guide is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and (ii) none of the Fiscal Agent, the Governmental Lender or the Borrower shall have any rights under, or be a third party beneficiary of, the Guide.

**Section 3.03 Deposits.** On the Delivery Date, (i) \$\_\_\_\_\_ of the initial advance of the Tax-Exempt Funding Loan pursuant to the Funding Loan Agreement shall be deposited with the Fiscal Agent into the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund in accordance with Section 2.12 and Section 4.02 of the Funding Loan Agreement; and (ii) \$\_\_\_\_\_ of the initial advance of the Tax-Exempt Funding Loan pursuant to the Funding Loan Agreement shall be deposited with the Fiscal Agent into the Refunding Fund in accordance with Section 4.07 of the Funding Loan Agreement and the Fiscal Agent will immediately transfer such proceeds to Bridgewater Bank, the holder of the Prior Note. On each date of an advance of the proceeds of the Funding Loan (except for an advance to pay interest and other amounts due to the Administrative Agent or the Initial Funding Lender as provided in Section \_\_\_\_\_ of the Construction Continuing Covenant Agreement), such proceeds shall be deposited into either the Tax-Exempt Note Proceeds Subaccount or the Taxable Note Proceeds Subaccount in the Project Account of the Project Loan Fund. On the Delivery Date, from the Borrower Equity Deposit, the Borrower will deposit with the Fiscal Agent the sum of (a) \$0.00 for credit to the Cost of Issuance Fund, and (b) \$0.00 for credit to the Borrower Equity Account of the Project Loan Fund. The Borrower will deposit with the Servicer the sum of \$0.00 as the Initial Debt Service Deposit. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Project Loan Fund are to be disbursed by the Fiscal Agent to the Title Company for further disbursement in accordance with the Construction Continuing Covenant Agreement and the Disbursing Agreement, or otherwise as provided in Section 2.12(d) of the Funding Loan Agreement.

To the extent that amounts in the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all costs of closing the Loans, the Borrower shall cause the payment of such additional costs of closing the Loans to be made on its behalf as such amounts become due.

**Section 3.04 Assignment to Fiscal Agent.** The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title, and interest in this Project Loan Agreement (excluding the Unassigned Rights), the Project Loan, the Project Notes, the Security Instrument, and the Revenues as security for the payment of the principal of, Prepayment Premium, if any, and interest on the Governmental Notes and the payment of any other amounts due under the Financing Documents.

**Section 3.05 Investment of Funds.** Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent as directed by the Borrower in Qualified Investments in accordance with Section 4.08 of the Funding Loan Agreement.

The Borrower acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Borrower the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Borrower specifically waives compliance with 12 C.F.R. Part 12 and hereby notifies the Fiscal Agent hereunder that no brokerage confirmations need be sent relating to the security transactions as they occur.

**Section 3.06 *Damage; Destruction and Eminent Domain.*** If, prior to payment in full of the Project Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

**Section 3.07 *Enforcement of Financing Documents.*** The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

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## ARTICLE IV

### LOAN PAYMENTS

#### **Section 4.01** *Payments Under the Project Notes; Independent Obligation of Borrower.*

(a) **Payment Obligations.** The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Project Notes, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Servicer, to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with the Prepayment Premium, if applicable), acceleration or otherwise. To ensure such timely payment during the Permanent Phase, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than two (2) Business Days prior to each respective Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Project Notes, provided that in all events payments made by the Borrower under and pursuant to the Project Notes shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason a Project Note or any provision of a Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, such Project Note or such provision of such Project Note shall be deemed to be the obligation of the Borrower pursuant to this Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Project Notes.

(b) **Obligations Unconditional; No Set-Off.** The obligations of the Borrower to repay the Project Loan, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Project Loan Agreement.

(c) **Payments from Borrower to Fiscal Agent or Servicer.** Each payment by the Borrower hereunder or under the Project Notes shall be made in immediately available funds to the

Servicer (which, during the Construction Phase, shall be the Administrative Agent) on each Project Loan Payment Date or such other date when such payment is due; provided, however, that during the Permanent Phase such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Project Loan Agreement or under the Project Notes shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

**Section 4.02 *Additional Payments Under the Project Notes and This Project Loan Agreement.***

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Project Notes include certain money to be paid in respect of, among others, the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) below. To the extent that any portion of the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) below.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03 hereof, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount, as applicable)), in consideration of the funding of the Project Loan, the following fees, expenses and other money payable in connection with the Loans:

(i) On the Delivery Date, from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Administrative Agent, the origination fees of the Initial Funding Lender, together with all third party and out-of-pocket expenses of the Administrative Agent and the Initial Funding Lender (including but not limited to the fees and expenses of counsel to the Administrative Agent and the Initial Funding Lender) in connection with the Loans.

(ii) On the Delivery Date, from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third party and out-of-pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Loans.

(iii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Governmental Lender, the Governmental Lender Fee, together with all third party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and



expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the issuance of the Governmental Notes.

(iv) [On the Delivery Date, from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Freddie Mac Seller/Servicer, its commitment fees and application fees, together with all third party and out-of-pocket expenses of the Freddie Mac Seller/Servicer (including but not limited to the fees and expenses of counsel to the Freddie Mac Seller/Servicer, if any) in connection with the Loans.]

(v) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to \$\_\_\_\_, together with all third party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Loans and the issuance of the Governmental Notes.

(vi) To the Fiscal Agent, the Fiscal Agent's Ordinary Fees and Expenses and the Fiscal Agent's Extraordinary Fees and Expenses when due from time to time.

(vii) To the Governmental Lender, any extraordinary expenses not covered by the Governmental Lender Fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time, including any expenses (including accountant or attorneys' fees) incurred in connection with any audit, inquiry, document request or other investigation by the Internal Revenue Service, the Minnesota Department of Revenue, the State Auditor, or any other federal or State agency.

(viii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Project Loan Agreement when due from time to time.

(ix) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(x) To the Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(xi) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Project Loan Documents.

(xii) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

**Section 4.03 *Payments to Rebate Fund.*** The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

#### **Section 4.04 *Prepayment.***

(a) **Optional Prepayment of the Project Loan.** The Borrower shall have the option to prepay the Project Loan in whole, together with all accrued and unpaid interest thereon, as provided in the Project Notes.

(b) **Mandatory Prepayment of the Project Loan.** The Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the applicable Project Note, as provided therein. Additionally, the Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the applicable Project Note, in connection with the following:

(i) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment;

(ii) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Administrative Agent, if the Notice of Conversion is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date; and

(iii) in whole, as required under the Construction Continuing Covenant Agreement.

(c) **Defeasance of the Funding Loan.** In addition, after the Conversion Date and prior to the Window Period, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a “**Defeasance Notice**”) to the Funding Lender Representative, the Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the “**Defeasance Date**”). The Defeasance Date may not be more than sixty (60) calendar days, nor less than thirty (30) calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement. In addition to, and not in limitation of any other provisions of this Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

**Section 4.05 *Borrower’s Obligations Upon Prepayment.*** In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and Prepayment Premium, if any. In addition, the Borrower will timely pay all fees, costs, and expenses associated with any prepayment of the Funding Loan.

#### **Section 4.06 *Limits on Personal Liability.***

(a) During the Construction Phase, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents shall be full-recourse liabilities of the Borrower.

(b) During the Permanent Phase, except as otherwise set forth in the Project Notes and subsection (c) below, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents shall be non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any partner of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Funding Lender Representative may have to enforce the Project Notes, the Security Instrument, or any other Financing Document in accordance with their terms.

(c) During the Permanent Phase, notwithstanding anything contained in any other provision of this Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and the Borrower's general partner: (i) the Borrower's obligations to the Governmental Lender and the Fiscal Agent under Section 4.02(b)(iii), (v), (vi), and (vii) hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 hereof; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 hereof and in the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

**Section 4.07 *Compliance with Issuer's Private Activity Bond Policy.*** The Borrower agrees to comply with the Governmental Lender's Policy Number 2.5 related to Tax Exempt Financing.

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## ARTICLE V

### SPECIAL COVENANTS OF BORROWER

**Section 5.01 *Performance of Obligations.*** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including without limitation its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

**Section 5.02 *Compliance with Applicable Laws.*** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.03 *Funding Loan Agreement Provisions.*** The execution of this Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

**Section 5.04 *Reserved.***

**Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.***

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within thirty (30) days after the end of each calendar year, render to the Fiscal Agent a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

**Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.*** The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

**Section 5.07 *Sale or Other Transfer of Project.*** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative.

**Section 5.08 *Right to Perform Borrower's Obligations.*** In the event the Borrower fails to perform any of its obligations under this Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Servicer, the Borrower's limited partners, and/or the Funding Lender Representative, after

giving requisite notice, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Project Loan Documents.

**Section 5.09 *Notice of Certain Events.*** The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.10 *Survival of Covenants.*** The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

**Section 5.11 *Access to Project; Records.*** Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, such information concerning the Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

**Section 5.12 *Tax Regulatory Agreement.*** The covenants of the Borrower in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement. The Borrower covenants to file of record the Tax Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Tax Regulatory Agreement. Subject to the provisions of Section 7.06 of hereof, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Tax Regulatory Agreement.

**Section 5.13 *Damage, Destruction and Condemnation.*** If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the

Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Project Loan Agreement and in the Project Notes to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project Loan Documents.

**Section 5.14 *Obligation of the Borrower To Construct the Project.*** The Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing Documents) to complete the construction, development and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Project Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of the acquisition, construction, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender Representative or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Project Loan. None of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and none of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer shall be liable to the Borrower, the Funding Lender, or any other person if for any reason the Project is not completed.

**Section 5.15 *Filing of Financing Statements.*** The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Project Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

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## ARTICLE VI

### INDEMNIFICATION

#### Section 6.01 *Indemnification.*

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the “**Indemnified Parties**”) against any and all losses, damages (including but not limited to consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including without limitation reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, “**Losses**”), to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) any breach by the Borrower of its obligations under the Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer, or resale of a Governmental Note;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, construction or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Servicer hereunder, or any Taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Fiscal Agent in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) [Reserved];

(vii) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative related to remedies under this Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(viii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Notes or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Notes or any of the Financing Documents to which the Borrower is a party necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) any declaration of taxability of interest on the Tax-Exempt Governmental Note or allegations (or regulatory inquiry) that interest on the Tax-Exempt Governmental Note is includable in gross income for federal income tax purposes (except to the extent taxable under Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation);

(x) any audit or inquiry by the Internal Revenue Service, the State Auditor, or the Minnesota Department of Revenue with respect to the Project and/or the tax-exempt status of the Tax-Exempt Governmental Note; or

(xi) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Notes to which it is a party;

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys, and agents, to the extent such Losses are caused by the negligence, unlawful acts, or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Funding Lender or the Governmental Lender or any of their respective officers, commissioners, members, directors, officials, employees, attorneys, and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

Notwithstanding the foregoing, during the Permanent Phase, nothing in this subsection (a) shall impose any recourse liability on the Borrower or its partners for the payment of any principal of or interest on the Project Loan.

(b) **Procedures.** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Project Loan Agreement, the Security Instrument and the Tax Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party



pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) **Survival.** The provisions of this Section 6.01 shall survive the termination of this Project Loan Agreement.

**Section 6.02 *Limitation With Respect to the Funding Lender.*** Notwithstanding anything in this Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

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## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01** *Events of Default.* The following shall be “**Events of Default**” under this Project Loan Agreement, and the term “Event of Default” shall mean, whenever it is used in this Project Loan Agreement, one or all of the following events:

(a) If any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) If the Borrower fails to pay any amounts due under this Project Loan Agreement, the Project Notes or the Security Instrument at the times and in the amounts required by this Project Loan Agreement, the Project Notes and the Security Instrument, as applicable, subject to any applicable cure or grace period set forth in the Construction Continuing Covenant Agreement;

(c) If the Borrower fails to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Project Loan Agreement, which failure continues for a period of thirty (30) days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within thirty (30) days but can be cured within a reasonable period and will not, in the Funding Lender Representative’s sole discretion, adversely affect the Funding Lender or result in impairment of this Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within thirty (30) days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative’s judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Agreement, result in harm to the Funding Lender, impairment of this Project Loan Agreement or any other Financing Document;

(d) The occurrence of a default under the Continuing Covenant Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Servicer or the

Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents.

**Section 7.02 Remedies on Default.** Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Project Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Notes to be immediately due and payable).

(b) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may, without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any Prepayment Premium on the Funding Loan collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

Notwithstanding the foregoing, if an Event of Default shall arise hereunder, the limited partners of the Borrower or affiliates under common control with the limited partners of the Borrower shall have the right, but not the obligation, to cure such default and the Governmental Lender shall accept such cure as if made on behalf of the Borrower.

**Section 7.03 No Remedy Exclusive.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loan, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Project Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but

any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Project Loan Agreement.

**Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.*** In the event the Borrower shall default under any of the provisions of this Project Loan Agreement and the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Project Loan Agreement or in the Project Notes, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.05 *No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in this Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 *Control of Proceedings.***

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Project Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Project Loan without the express direction of the Funding Lender Representative.

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) prosecute any action with respect to a lien on the Project; or

(ii) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Project Loan; or

(iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loan or the Funding Loan.

(c) Notwithstanding subsections (a) and (b) above, the Governmental Lender or the Fiscal Agent may:

(i) specifically enforce the tax covenants of the Borrower specified in Sections 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof; and

(ii) specifically enforce the Tax Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Tax Regulatory Agreement or are otherwise inconsistent with the operation of the Project in accordance with applicable requirements of the Internal Revenue Code and state law (but in neither the case of clause (i) above or this clause (ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding subsections (a) and (b) above, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any indemnified party related to the Governmental Lender or the Fiscal Agent under Section 6.01 hereof (each a “**Related Indemnified Party**”) to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01, and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent’s right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an event of default with respect to the Funding Loan, which reasonable fees and expenses of the Fiscal Agent shall be payable as provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

**Section 7.07 Assumption of Obligations.** At the Funding Lender’s discretion, in the event that the Fiscal Agent or the Funding Lender or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Project Loan Agreement, the Project Notes, the Tax Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

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

## ARTICLE VIII

### MISCELLANEOUS

#### **Section 8.01** *Notices.*

(a) Whenever in this Project Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the investor limited partner of the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Project Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and a duplicate copy of each notice or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Project Loan Agreement. If the party sending the Electronic Notice elects to give the Fiscal Agent e-mail or facsimile instructions (or instructions by a similar electronic method), the Fiscal Agent's understanding of such instructions shall be deemed controlling. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such instructions notwithstanding that such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower, the Administrative Agent, the Governmental Lender, or any other party sending such Electronic Notice pursuant to the Project Loan Agreement agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Fiscal Agent, including, without limitation, the risk of the Fiscal Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder known to the Fiscal Agent and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

**Section 8.02** *Concerning Successors and Assigns.* All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive

the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Project Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

**Section 8.03 *Governing Law.*** This Project Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America.

**Section 8.04 *Modifications in Writing.*** Modification or the waiver of any provisions of this Project Loan Agreement or consent to any departure by the parties therefrom shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.05 *Further Assurances and Corrective Instruments.*** The Governmental Lender, the Fiscal Agent and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Project Loan Agreement.

**Section 8.06 *Captions.*** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Project Loan Agreement.

**Section 8.07 *Severability.*** The invalidity or unenforceability of any provision of this Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.08 *Counterparts.*** This Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09 *Amounts Remaining in Loan Payment Fund or Other Funds.*** It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents) shall be paid in accordance with the Funding Loan Agreement.

**Section 8.10 *Effective Date and Term.*** This Project Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Funding Loan Agreement shall terminate.

**Section 8.11 *Cross-References.*** Any reference in this Project Loan Agreement to an “Exhibit,” an “Article,” a “Section,” a “subsection” or a “paragraph” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Project Loan Agreement,

an article of this Project Loan Agreement, a section of this Project Loan Agreement, a subsection of the section of this Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Project Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Project Loan Agreement are incorporated by reference into this Project Loan Agreement.

**Section 8.12 *Funding Lender Representative and Servicer as Third-Party Beneficiaries.***

The parties hereto agree and acknowledge that the Funding Lender Representative and the Servicer are third party beneficiaries of this Project Loan Agreement.

**Section 8.13 *Reserved.***

**Section 8.14 *Non-Liability of Governmental Lender.*** The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Project Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (or Prepayment Premium) or interest on the Funding Loan. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Project Loan Agreement, the Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Project Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Project Loan Agreement, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or Prepayment Premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent or the Funding Lender, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or Prepayment Premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

**Section 8.15 *No Liability of Officers.*** No recourse under or upon any obligation, covenant, or agreement or in the Governmental Notes, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of



and consideration for the execution of this Project Loan Agreement and the issuance of the Governmental Notes.

**Section 8.16 *Capacity of the Fiscal Agent.*** The Fiscal Agent is entering into this Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Fiscal Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

**Section 8.17 *Reliance.*** The representations, covenants, agreements and warranties set forth in this Project Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Project Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent under this Project Loan Agreement and under the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Project Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of Funding Loan issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Project Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

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IN WITNESS WHEREOF, the Governmental Lender, the Fiscal Agent, and the Borrower have executed this Project Loan Agreement, all as of the date and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

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

**U. S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

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

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE II, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

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**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,**  
a Minnesota limited liability limited partnership, as mortgagor  
**(Borrower)**

to

**CITY OF MINNETONKA, MINNESOTA**  
a municipal corporation, as mortgagee  
**(Governmental Lender)**

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING (SERIES A)**

Dated: September \_\_, 2018

**PREPARED BY AND UPON  
RECORDATION RETURN TO:**

Stinson Leonard Street LLP  
50 South Sixth Street, Suite 2600  
Minneapolis, Minnesota 55402  
Attention: David W. Kelley

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING (SERIES A)**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (SERIES A) (this "**Security Instrument**") is made as of this \_\_\_\_ day of September, 2018, by MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership, as mortgagor, having its principal place of business at 2905 Northwest Boulevard, Suite 150, Plymouth, MN 55441-7400, as mortgagor ("**Borrower**") for the benefit of the CITY OF MINNETONKA, MINNESOTA, a municipal corporation organized and existing under the laws of the State of Minnesota, having an address at 14600 Minnetonka Boulevard, Minnetonka, MN 55345-1502, together with its successors and assigns, as mortgagee ("**Governmental Lender**").

W I T N E S S E T H:

A. Pursuant to Minnesota Statutes Chapter 462C and the Project Loan Agreement dated as of the date hereof (the "**Project Loan Agreement**") by and among Governmental Lender, U.S. Bank National Association, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Saint Paul, Minnesota, as Fiscal Agent (in such capacity, "**Fiscal Agent**") and Borrower, Governmental Lender is agreeing to make a mortgage loan to Borrower in the maximum aggregate principal amount of \$[\_\_\_\_\_] (the "**Project Loan**") to provide for the financing of a multifamily rental housing development located at 11001 Bren Road East in Minnetonka, Minnesota to be known as "Legends of Minnetonka".

B. Borrower's repayment obligations in respect of the Project Loan will be evidenced by a Multifamily Note (Series A) (the "**Tax Exempt Project Note**") and a Multifamily Note (Series B) (the "**Taxable Project Note**," together with the Tax Exempt Project Note, the "**Project Notes**"), each dated as of the date hereof, delivered to Governmental Lender, which Project Notes will be endorsed by Governmental Lender to the Fiscal Agent as security for the Funding Loan.

C. Governmental Lender is making the Project Loan to Borrower with the proceeds received from the separate loan made to Governmental Lender pursuant to the Funding Loan Agreement dated as of the date hereof by and among U.S. Bank National Association, a national banking association, in its capacity as administrative agent for the "Lenders" under the Loan Agreement referred to below ("**Administrative Agent**"), Governmental Lender and Fiscal Agent (the "**Funding Loan Agreement**") in the maximum aggregate principal amount of \$[\_\_\_\_\_] (the "**Funding Loan**").

D. Lenders, pursuant to the terms and subject to the conditions of (i) the Funding Loan Agreement, (ii) that certain Construction Loan Agreement dated as of even date herewith, by and among Administrative Agent, Lenders and Borrower (together with any amendment, restatement or modification thereto, the "**Loan Agreement**") and (iii) the Construction Phase Financing Agreement dated as of the date hereof by and among Administrative Agent, on behalf

of the Lenders, Borrower, Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise, and KeyBank National Association (the “**Construction Phase Financing Agreement**”), have agreed to originate and fund the Funding Loan to Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by Governmental Lender to fund the Project Loan to Borrower in corresponding installments pursuant to the Project Loan Agreement.

E. Administration Agent will administer the Project Loan and the Funding Loan during the construction phase in accordance with the Loan Agreement, the Construction Phase Financing Agreement and the other Loan Documents (as defined in the Loan Agreement).

F. Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to such financing.

G. In order to secure Borrower's obligations under the Tax Exempt Project Note and pursuant to the Project Loan Agreement, the Loan Agreement and the Construction Phase Financing Agreement, Borrower is executing and delivering this Security Instrument to Governmental Lender.

H. The Project Loan will be made under an affordable housing program and Governmental Lender is a political subdivision of the State of Minnesota. Therefore, this Security Instrument is exempt from mortgage registry tax under Minn. Stat. Section 287.04(f).

NOW THEREFORE, in consideration of the foregoing Recitals (which are by this reference incorporated into this Security Instrument and made a part hereof), and the covenants, agreements, representations and warranties set forth in this Security Instrument:

#### Article 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Governmental Lender, and grant a security interest to Governmental Lender in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the “**Property**”):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the “**Land**”);

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the “**Improvements**”);

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All “equipment,” as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “*Equipment*”);

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the “*Fixtures*”);

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof



(collectively, the “**Personal Property**”), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state, states, commonwealth or commonwealths where any of the Property is located (as amended from time to time, the “**Uniform Commercial Code**”), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the “**Bankruptcy Code**”) (collectively, the “**Leases**”) and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including all cash, letters of credit or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or Property Manager and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Obligations (as hereinafter defined);

(i) Condemnation Awards. All awards or payments (including any administrative fees or attorneys’ fees), including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property, and including but not limited to any Compensation;

(j) Insurance Proceeds. All proceeds (including any administrative fees or attorneys’ fees) in respect of the Property under any insurance policies covering the Property (including but not limited to the Proceeds), together with the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(l) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Governmental Lender in the Property;

(m) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(n) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including all accounts established or maintained pursuant to the Loan Documents; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(p) Swap Contract. All of Borrower's present and future rights, titles and interests, but not its obligations, duties or liabilities for any breach, in, under and to all Swap Contracts and all Swap Transactions, any and all amounts received by Borrower in connection therewith or to which Borrower is entitled thereunder, and all proceeds of the foregoing including all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing;

(q) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise; and

(r) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (q) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Governmental Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures are collectively referred to as the "**Real Property**")

appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, will for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

Section 1.2 ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Governmental Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of Section 7.1(h) of this Security Instrument, Governmental Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents. Borrower will hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Obligations (as hereinafter defined), for use in the payment of such sums.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Governmental Lender, as security for the Obligations (as hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "*Collateral*"). If an Event of Default occurs, Governmental Lender, in addition to any other rights and remedies which it may have, will have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Governmental Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Governmental Lender after the occurrence of an Event of Default, Borrower will, at its expense, assemble the Collateral and make it available to Governmental Lender at a convenient place (at the Land if tangible property) acceptable to Governmental Lender. Borrower will pay to Governmental Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Governmental Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence of an Event of Default. Any notice of sale, disposition or other intended action by Governmental Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least 10 Business Days prior to such action, will, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Governmental Lender to the payment of the Obligations (as hereinafter defined) in such priority and proportions as Governmental Lender in its discretion deems proper. The principal place of business of Borrower (Debtor) is as set forth on page one hereof and the address of Governmental Lender (Secured Party) is as set forth on page one hereof.

Section 1.4 FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in

this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, will operate also as a financing statement naming Borrower as Debtor and Governmental Lender as Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 PLEDGES OF MONIES HELD. Borrower hereby pledges to Governmental Lender any and all monies now or hereafter held by Governmental Lender or on behalf of Governmental Lender in connection with the Project Loan, including any sums deposited in the Required Accounts and any and all Proceeds and Compensation, as additional security for the Obligations (as hereinafter defined) until expended or applied as provided in this Security Instrument or the Loan Agreement.

### CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Governmental Lender and its successors and assigns, forever;

PROVIDED, HOWEVER, this grant is made upon the express condition that, if Borrower pays to Governmental Lender the Obligations (as hereinafter defined) at the time and in the manner provided in the Loan Documents, and performs the Obligations (as hereinafter defined) in the time and manner set forth in the Loan Documents and complies with each and every covenant and condition set forth herein and in the other Loan Documents, the estate hereby granted will cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Governmental Lender pursuant to the provisions hereof will survive any such payment or release.

### Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the payment of the Project Loan, including but not limited to the obligations of Borrower to pay to Governmental Lender the principal and interest owing pursuant to the terms and conditions of the Tax Exempt Project Note, the Project Loan Agreement, and the Loan Agreement, together with the payment of all breakage costs, swap obligations, fees, costs, expenses, interest and other charges relating to the Project Loan, and any other obligations of Borrower under the Loan Documents, including but not limited to all LIBOR Breakage Costs, Swap Obligations and Fees (collectively, the "**Debt**"):

Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "**Other Obligations**"):

(a) the performance of all other obligations of Borrower contained herein, including all fees and charges payable by Borrower;

(b) the performance of each obligation of Borrower contained in the Loan Agreement and each other Loan Document; and

(c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Tax Exempt Project Note, the Project Loan Agreement, the Loan Agreement or any other Loan Document.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations will be referred to collectively herein as the "*Obligations*."

### Article 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF OBLIGATIONS. Borrower will pay and perform the Obligations at the time and in the manner provided in the Loan Agreement, the Project Loan Agreement, the Tax Exempt Project Note and this Security Instrument.

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Tax Exempt Project Note, (c) the Project Loan Agreement and (d) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 INSURANCE. Borrower will obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement. In the event Borrower fails to obtain, maintain, keep in force or deliver to Governmental Lender the policies of insurance required by the Loan Agreement in accordance with the terms thereof, Governmental Lender may (but has no obligation to) procure such insurance or single-interest insurance for such risks covering Governmental Lender's interests, and Borrower will pay all premiums thereon promptly upon demand by Governmental Lender, and until such payment is made by Borrower, the amount advanced by Governmental Lender with respect to all such premiums will, at Governmental Lender's option, bear interest at the Default Rate.

Section 3.4 MAINTENANCE OF PROPERTY. Borrower will cause the Property to be maintained in a good and safe condition and repair and otherwise in accordance with the Loan Agreement. The Improvements, the Fixtures, the Equipment and the Personal Property will not be removed, demolished or altered without the consent of Governmental Lender other than in accordance with the terms and conditions of the Loan Agreement. Borrower will promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty or become damaged, worn or dilapidated or which may be affected by any condemnation, and will complete and pay for any structure at any time in the process of construction or repair on the Land.

Section 3.5 WASTE. Borrower will not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any insurance policy which Borrower is obligated to

maintain pursuant to the Loan Agreement, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Governmental Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 PAYMENT FOR LABOR AND MATERIALS.

(a) Borrower will promptly pay when due all bills and costs for labor and materials (“*Labor and Material Costs*”) incurred in connection with the Property and not permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event not permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or Security Interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(b) After prior written notice to Governmental Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Default or Event of Default has occurred, (ii) either (A) such proceeding will suspend the collection of the Labor and Material Costs from Borrower and from the Property, or (B) Borrower has paid all of the Labor and Material Costs under protest, (iii) such proceeding is permitted and conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and will not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (v) Borrower has furnished such security as may be required in the proceeding, or as may be requested by Governmental Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon. Governmental Lender may pay over any such security or part thereof held by Governmental Lender to the claimant entitled thereto at any time when, in the judgment of Governmental Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) is in danger of being sold, forfeited, terminated, cancelled or lost or there is any danger of any Lien related to the contested Labor and Material Costs becoming senior in priority, in whole or in part, to the Lien of the Security Instrument.

Section 3.7 PAYMENT OF TAXES AND IMPOSITIONS.

(a) Borrower will pay, or cause to be paid prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments, duties, levies, imposts, deductions, charges or withholdings, of any kind or nature whatsoever, including nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property, or become due and payable, and which create or may create a lien upon the Property (all the foregoing, collectively, “*Impositions*”).

(b) After prior notice to Governmental Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Impositions, provided that (i) no Default or Event of Default has occurred, (ii) either (A) such proceeding will suspend the collection of the Impositions from Borrower and from the Property, or (B) Borrower has paid all of the Impositions under protest, (iii) such proceeding is permitted and conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and will not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (v) Borrower will promptly upon final determination thereof pay the amount of any such Impositions, together with all costs, interest and penalties which may be payable in connection therewith, and (vi) Borrower has furnished such security as may be required in the proceeding, or as may be reasonably requested by Governmental Lender to insure the payment of any contested Impositions, together with all interest and penalties thereon. Governmental Lender may pay over any such security or part thereof held by Governmental Lender to the claimant entitled thereto at any time when, in the judgment of Governmental Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) is in danger of being sold, forfeited, terminated, cancelled or lost or there is any danger of any Lien related to the contested Impositions becoming senior in priority, in whole or in part, to the Lien of the Security Instrument.

Section 3.8 CHANGE OF NAME, JURISDICTION. In addition to the restrictions contained in the Loan Agreement and the Project Loan Agreement, Borrower will not change Borrower's name, identity (including its trade name or names) or jurisdiction of formation or organization unless Borrower has first obtained the prior written consent of Governmental Lender to such change, and has taken all actions necessary or required by Governmental Lender to file or amend any financing statements or continuation statements to assure perfection and continuation of perfection of security interests under the Loan Documents. Borrower will notify Governmental Lender in writing of any change in its organizational identification number at least thirty (30) days in advance of such change becoming effective. If Borrower does not now have an organizational identification number and later obtains one, Borrower will promptly notify Governmental Lender in writing of such organizational identification number. At the request of Governmental Lender, Borrower will execute a certificate in form satisfactory to Governmental Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Section 3.9 UTILITIES. Borrower will pay or cause to be paid when due all utility charges that are incurred by Borrower for the benefit of the Property or that may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Property or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

Section 3.10 CASUALTY In the event of any damage, destruction or other casualty to the Property or any part thereof, Borrower shall comply in all respects with the terms, conditions and requirements set forth in Section 6.11 of the Loan Agreement, and, in the event of any casualty

or Condemnation, all Proceeds shall be paid, applied and disbursed in accordance with Section 6.11 of the Loan Agreement, and Borrower hereby authorizes and directs any affected insurance company to make payment of such Proceeds in accordance therewith.

Section 3.11 CONDEMNATION. With respect to any Condemnation, Borrower shall comply in all respects with the requirements set forth in Section 6.11 of the Loan Agreement. All Compensation shall be applied in the manner set forth in the Loan Agreement. In the event of a foreclosure of this Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Obligations, all right, title and interest of Borrower in and to the Compensation will vest in the purchaser at such foreclosure or in Governmental Lender or other transferee in the event of such other transfer of title.

#### Article 4 - OBLIGATIONS AND RELIANCES

Section 4.1 RELATIONSHIP OF BORROWER AND GOVERNMENTAL LENDER. The relationship between Borrower and Governmental Lender is solely that of debtor and creditor, and Governmental Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Tax Exempt Project Note, this Security Instrument or any of the other Loan Documents will be construed so as to deem the relationship between Borrower and Governmental Lender to be other than that of debtor and creditor.

Section 4.2 NO RELIANCE ON GOVERNMENTAL LENDER. The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Governmental Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Governmental Lender's expertise, business acumen or advice in connection with the Property.

#### Section 4.3 NO GOVERNMENTAL LENDER OBLIGATIONS.

(a) Notwithstanding anything to the contrary contained in this Security Instrument, Governmental Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Governmental Lender pursuant to this Security Instrument, the Loan Agreement, the Tax Exempt Project Note or the other Loan Documents, including any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Governmental Lender will not be deemed to have warranted, consented to, or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof will not constitute any warranty or affirmation with respect thereto by Governmental Lender.

Section 4.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Project Loan Agreement, the Tax Exempt Project Note, this Security Instrument and the other Loan Documents, Governmental Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in the Project



Loan Agreement and in Article 5 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Governmental Lender; that such reliance existed on the part of Governmental Lender prior to the date hereof; that the warranties and representations are a material inducement to Governmental Lender in making the Project Loan; and that Governmental Lender would not be willing to make the Project Loan and accept this Security Instrument in the absence of the warranties and representations set forth in the Project Loan Agreement and in Article 5 of the Loan Agreement.

#### Article 5 - FURTHER ASSURANCES

Section 5.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Governmental Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Tax Exempt Project Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 FURTHER ACTS, ETC. Borrower will, at Borrower's sole cost and expense, and without expense to Governmental Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Governmental Lender may, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Governmental Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Governmental Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all applicable Laws and Requirements of Law. Borrower, on demand, will execute and deliver, and in the event it fails to so execute and deliver, hereby authorizes Governmental Lender to execute in the name of Borrower or file or record without the signature of Borrower to the extent Governmental Lender may lawfully do so, one or more financing statements (including initial financing statements and amendments thereto and continuation statements), to evidence more effectively the security interest of Governmental Lender in the Property. Borrower also ratifies its authorization for Governmental Lender to have filed or recorded any like initial financing statements, amendments thereto and continuation statements, if filed or recorded prior to the date of this Security Instrument. Borrower grants to

Governmental Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Governmental Lender at law and in equity, including such rights and remedies available to Governmental Lender pursuant to this Section. To the extent not prohibited by applicable law, Borrower hereby ratifies all acts Governmental Lender has lawfully done in the past or will lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 5.3 CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Governmental Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any, in accordance with the applicable provisions of the Loan Agreement. If Governmental Lender is advised by counsel chosen by it that the payment of any such tax by Borrower would be unlawful or taxable to Governmental Lender or unenforceable or provide the basis for a defense of usury then Governmental Lender will have the option by written notice of not less than 120 days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the Property, or any part thereof, and no deduction will otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction is required by law, Governmental Lender will have the option, by written notice of not less than 120 days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State will require revenue or other stamps to be affixed to the Tax Exempt Project Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Article 6 - DUE ON SALE/ENCUMBRANCE

Section 6.1 GOVERNMENTAL LENDER RELIANCE. Borrower acknowledges that Governmental Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Project Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment and performance of the Obligations. Borrower acknowledges that Governmental Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Obligations or the performance of the Obligations, Governmental Lender can recover the Obligations by a sale of the Property.

Section 6.2 NO TRANSFER. Borrower will comply in all respects with the provisions of the Loan Agreement regarding (a) selling, transferring, leasing, conveying or encumbering the Land, the Equipment or the Improvements or the direct or indirect interests in Borrower, and (b) changing control of Borrower.

## Article 7 - RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 REMEDIES. Upon the occurrence of any Event of Default, unless such Event of Default is subsequently waived in writing by Governmental Lender (provided that Governmental Lender has no obligation whatsoever to grant any such waiver and any such waiver, if granted, will be considered a one-time waiver), Governmental Lender may exercise any or all of the following rights and remedies, consecutively or simultaneously, and in any order:

(a) Exercise any and all rights and remedies specified in the Loan Agreement, including declaring that the Commitment is terminated and/or declaring that the entire unpaid principal balance of the Obligations are immediately due and payment, together with accrued and unpaid interest thereon;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Obligations not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Tax Exempt Project Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Obligations either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Borrower, any guarantor or any indemnitor with respect to the Project Loan or of any Person liable for the payment of the Obligations;

(h) the license granted to Borrower under Section 1.2 hereof will automatically be revoked and Governmental Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records

and accounts to Governmental Lender upon demand, and thereupon Governmental Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Governmental Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Governmental Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Governmental Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Obligations, in such order, priority and proportions as Governmental Lender deems appropriate in its sole discretion after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Governmental Lender, its in-house and outside counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and the Personal Property, or any part thereof, and to take such other measures as Governmental Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) require Borrower at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Governmental Lender at a convenient place acceptable to Governmental Lender. Any notice of sale, disposition or other intended action by Governmental Lender with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least 5 days prior to such action, will constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Governmental Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole and absolute discretion:

- (i) Taxes;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Tax Exempt Project Note;
- (iv) The unpaid principal balance of the Tax Exempt Project Note;

(v) All other sums payable pursuant to the Tax Exempt Project Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including advances made by Governmental Lender pursuant to the terms of this Security Instrument;

(k) pursue such other remedies as Governmental Lender may have under the other Loan Documents and/or applicable law; or

(l) apply the undisbursed balance of any Proceeds and/or Shortfall Funds, together with interest thereon, to the payment of the Obligations in such order, priority and proportions as Governmental Lender will deem to be appropriate in its discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument will continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Governmental Lender pursuant to the Loan Agreement, this Security Instrument or the other Loan Documents, may be applied by Governmental Lender to the payment of the Obligations in such priority and proportions as Governmental Lender in its discretion will deem proper, to the extent consistent with applicable Laws.

Section 7.3 ACTIONS AND PROCEEDINGS. Borrower will give Governmental Lender prompt written notice of the assertion of any claim with respect to, or the filing of any action or proceeding purporting to affect the Property, the security hereof or the rights or powers of Governmental Lender. Governmental Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Governmental Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.4 RECOVERY OF SUMS REQUIRED TO BE PAID. Governmental Lender will have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations is due, and without prejudice to the right of Governmental Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 7.5 OTHER RIGHTS, ETC.

(a) The failure of Governmental Lender to insist upon strict performance of any term hereof will not be deemed to be a waiver of any term of this Security Instrument. Borrower will not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Governmental Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Project Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Tax Exempt Project Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Governmental Lender extending the time of payment or otherwise modifying or supplementing

the terms of the Tax Exempt Project Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Governmental Lender will have no liability whatsoever for decline in value of the Property, for failure to maintain any insurance policies, or for failure to determine whether insurance in force is adequate as to the amount or nature of risks insured. Possession by Governmental Lender will not be deemed an election of judicial relief if any such possession is requested or obtained with respect to all or any portion of the Property or collateral not in Governmental Lender's possession.

(c) Governmental Lender may resort for the payment of the Obligations to any other security held by Governmental Lender in such order and manner as Governmental Lender, in its discretion, may elect. Governmental Lender may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Governmental Lender thereafter to foreclose this Security Instrument. The rights of Governmental Lender under this Security Instrument will be separate, distinct and cumulative and none will be given effect to the exclusion of the others. No act of Governmental Lender will be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Governmental Lender will not be limited exclusively to the rights and remedies herein stated but will be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.6 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Governmental Lender may release any portion of the Property for such consideration as Governmental Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder are reduced by the actual monetary consideration, if any, received by Governmental Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Governmental Lender may require without being accountable for so doing to any other lienholder. This Security Instrument will continue as a lien on, and security interest in, the remaining portion of the Property.

Section 7.7 VIOLATION OF LAWS. If the Property is not in compliance in all material respects with any Requirements of Law, Governmental Lender may impose additional requirements upon Borrower in connection herewith including monetary reserves or financial equivalents.

Section 7.8 RIGHT OF ENTRY. Upon reasonable notice to Borrower, Governmental Lender and its agents will have the right to enter and inspect the Property at all reasonable times.

Section 7.9 BANKRUPTCY.

(a) After the occurrence of an Event of Default, Governmental Lender will have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and

other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there is filed by or against Borrower a petition under the Bankruptcy Code and Borrower, as lessor under any Lease, determines to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower will give Governmental Lender not less than 10 days' prior notice of the date on which Borrower will apply to the bankruptcy court for authority to reject the Lease. Governmental Lender will have the right, but not the obligation, to serve upon Borrower within such 10 day period a notice stating that (i) Governmental Lender demands that Borrower assume and assign the Lease to Governmental Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Governmental Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Governmental Lender serves upon Borrower the notice described in the preceding sentence, Borrower will not seek to reject the Lease and will comply with the demand provided for in clause (i) of the preceding sentence within 30 days after the notice is given, subject to the performance by Governmental Lender of the covenant provided for in clause (ii) of the preceding sentence.

Section 7.10 ACCEPTANCE OF CURE. Governmental Lender may, in its discretion, but without any obligation whatsoever to do so, accept a cure of an Event of Default from time to time. Borrower will only be entitled to rely on such an acceptance if Governmental Lender expressly states, in writing, that it has accepted such a cure. If Governmental Lender accepts a cure of an Event of Default, and no other uncured Event of Default is then continuing, then Governmental Lender may agree, in its discretion, but without any obligation to do so, to treat any provision in this Security Instrument or in any other Loan Document as if no Event of Default had ever occurred.

Section 7.11 ACCEPTANCE OF PAYMENTS. Borrower agrees that if Borrower makes a tender of a payment but does not simultaneously tender payment of any late charge, Default Rate interest, LIBOR Breakage Costs, Swap Obligations or other amount then due and owing by Borrower under this Security Instrument or the other Loan Documents, and such payment is accepted by Governmental Lender, with or without protest, such acceptance will not constitute any waiver of Governmental Lender's rights to receive such amounts. Furthermore, if Governmental Lender accepts any payment from Borrower or any Guarantor after a Default or Event of Default, such acceptance will not constitute a waiver or satisfaction of any such Default or Event of Default. Any waiver or satisfaction of a Default or Event of Default must be evidenced by an express writing of Governmental Lender.

## Article 8 - ENVIRONMENTAL HAZARDS

Section 8.1 ENVIRONMENTAL COVENANTS. Borrower has provided representations, warranties and covenants regarding environmental matters set forth in the Indemnity and Borrower will comply with the aforesaid covenants regarding environmental matters.

## Article 9 - INDEMNIFICATION

Section 9.1 INDEMNIFICATION. The provisions of Section 10.1 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

#### Article 10 - CERTAIN WAIVERS

Section 10.1 WAIVER OF OFFSETS; DEFENSES; COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Governmental Lender to offset any obligations to make the payments required by the Loan Documents. No failure by Governmental Lender to perform any of its obligations hereunder will be a valid defense to, or result in any offset against, any payments which Borrower is obligated to make under any of the Loan Documents.

Section 10.2 MARSHALLING AND OTHER MATTERS. To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption Laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all other Persons to the extent permitted by applicable law.

Section 10.3 WAIVER OF NOTICE. To the extent permitted by applicable law, Borrower will not be entitled to any notices of any nature whatsoever from Governmental Lender except with respect to matters for which this Security Instrument or any of the other Loan Documents specifically and expressly provides for the giving of notice by Governmental Lender to Borrower and except with respect to matters for which Governmental Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Governmental Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Governmental Lender to Borrower. All sums payable by Borrower pursuant to this Security Instrument must be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder will in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (b) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Governmental Lender, or any action taken with respect to this Security Instrument by any trustee or receiver of Governmental Lender, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Governmental Lender; (f) any default or failure on the part of Governmental Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Borrower has notice or knowledge of any of the foregoing.



Section 10.4 WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable law, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment or performance of the Obligations.

#### Article 11 - NOTICES

Section 11.1 NOTICES. All notices or other written communications hereunder will be delivered in accordance with the notice provisions of the Loan Agreement.

#### Article 12 - APPLICABLE LAW

Section 12.1 ***GOVERNING LAW; WAIVER OF JURY TRIAL; JURISDICTION***. IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MINNESOTA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT AND THE NOTE, AND THIS SECURITY INSTRUMENT AND THE NOTE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA, AND ANY LAWS OF THE UNITED STATES OF AMERICA APPLICABLE TO NATIONAL BANKS.

TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND GOVERNMENTAL LENDER HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION RELATING TO THE LOAN AND/OR THE LOAN DOCUMENTS. BORROWER, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF MINNESOTA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS SECURITY INSTRUMENT, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF MINNESOTA, (C) SUBMITS TO THE JURISDICTION AND VENUE OF SUCH COURTS AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT, AND (D) AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN WILL AFFECT THE RIGHT OF GOVERNMENTAL LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESSES FOR NOTICES

DESCRIBED IN THIS SECURITY INSTRUMENT, AND CONSENTS AND AGREES THAT SUCH SERVICE WILL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN WILL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

Section 12.2 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof will be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term will not be affected thereby.

#### Article 13 - DEFINITIONS

Section 13.1 DEFINITIONS. All capitalized terms not defined herein will have the respective meanings set forth in the Loan Agreement. If a capitalized term is defined herein and the same capitalized term is defined in the Loan Agreement, then the capitalized term that is defined herein shall be utilized for the purposes of this Security Instrument, *provided* that the foregoing shall not impact provisions that are incorporated herein by reference. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "***Borrower***" will mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the words "***Governmental Lender***" will mean "Governmental Lender and any subsequent holder of the Tax Exempt Project Note," the words "***Tax Exempt Project Note***" and "***Note***" will mean "the Tax Exempt Project Note and any other evidence of indebtedness secured by this Security Instrument," the word "***Property***" will include any portion of the Property and any interest therein, and the phrases "***attorneys' fees***", "***legal fees***" and "***counsel fees***" will include any and all in-house and outside attorneys', paralegals' and law clerks' fees and disbursements, including fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Governmental Lender in protecting its interest in the Property, the Leases and the Rents, and enforcing its rights hereunder.

#### Article 14 - MISCELLANEOUS PROVISIONS

Section 14.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Governmental Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.2 SUCCESSORS AND ASSIGNS. This Security Instrument will be binding upon and inure to the benefit of Borrower and Governmental Lender and their respective successors and assigns forever.

Section 14.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Loan Agreement, the Tax Exempt Project Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Tax Exempt Project Note and this Security Instrument will be construed without such provision.

Section 14.4 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 14.5 SUBROGATION. If any or all of the proceeds of the Loan have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Governmental Lender will be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Governmental Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Obligations, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Project Loan Agreement, the Tax Exempt Project Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 14.6 ENTIRE AGREEMENT. The Tax Exempt Project Note, the Loan Agreement, the Project Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Governmental Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Borrower and Governmental Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Tax Exempt Project Note, the Loan Agreement, the Project Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Governmental Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Tax Exempt Project Note, the Project Loan Agreement, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 14.7 LIMITATION ON GOVERNMENTAL LENDER'S RESPONSIBILITY. No provision of this Security Instrument will operate to place any obligation or liability for the control, care, management or repair of the Property upon Governmental Lender, nor will it operate to make Governmental Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained will be construed as constituting Governmental Lender a "mortgagee in possession."

Section 14.8 JOINT AND SEVERAL. If more than one Person has executed this Security Instrument as "Borrower," the representations, covenants, warranties and obligations of all such Persons hereunder will be joint and several.

Section 14.9 GOVERNMENTAL LENDER'S DISCRETION. Whenever, pursuant to this Security Instrument or any of the other Loan Documents, Governmental Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory or acceptable to Governmental Lender, or Governmental Lender exercises any right to grant or withhold consent, or Governmental Lender exercises its discretion in making any decision, the decision of Governmental Lender will, except as is otherwise specifically herein provided, be in the sole and absolute discretion of Governmental Lender and will be final and conclusive.

Section 14.10 NO MERGER. So long as the Obligations remain unpaid and undischarged and unless Governmental Lender otherwise consents in writing, the fee, leasehold, subleasehold and sub-subleasehold estates in and to the Property will not merge but will always remain separate and distinct, notwithstanding the union of estates (without implying Borrower's consent to such union) either in Borrower, Governmental Lender, any tenant or any third party by purchase or otherwise. In the event this Security Instrument is originally placed on a leasehold estate and Borrower later obtains fee title to the Property, such fee title will be subject and subordinate to this Security Instrument.

#### Article 15 - STATE-SPECIFIC PROVISIONS

Section 15.1 PRINCIPLES OF CONSTRUCTION. In the event of any inconsistencies between the terms and conditions of this Article 15 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 15 will control and be binding.

Section 15.2 REMEDIES OF GOVERNMENTAL LENDER; MORTGAGE FORECLOSURE. Borrower does hereby grant and confer upon Governmental Lender the fullest rights and remedies available for foreclosure of this Security Instrument by action or by advertisement pursuant to Minnesota Statutes Chapters 580, 581 and 582, as said statutes may be amended from time to time, and pursuant to other applicable Minnesota laws and statutes, as amended, governing and authorizing mortgage foreclosures by action and by advertisement including, but not limited to, a grant to Governmental Lender of the power of sale; and the power of sale granted Governmental Lender in this Security Instrument shall include, without limitation, the power of sale required to permit, at Governmental Lender's option, lawful foreclosure of this Security Instrument by advertisement in accordance with the statutes then made and provided. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is waived, Governmental Lender may, at its option, exercise any or all of the following rights and remedies:

(a) Foreclose this Security Instrument by judicial action or advertisement, and Borrower hereby authorizes Governmental Lender to do so, power being herein expressly granted to sell any or all of the Property at public auction and to convey the same to the purchaser, in fee simple, pursuant to the statutes of the State of Minnesota; or

(b) proceed under the UCC and exercising such rights and remedies as may be provided to a secured party by the UCC with respect to all or any portion of the Property which are fixtures or personal property.

Section 15.3 ASSIGNMENT OF RENTS AND LEASES; RECEIVER. This Security Instrument constitutes an assignment of leases and rents within the meaning of Minnesota Statutes §§ 559.17 and 576.25, and is intended to comply fully with the provisions thereof, and to afford Governmental Lender, the fullest rights and remedies of a secured lender under those statutes. The exercise by Governmental Lender of the statutory remedies referenced in this Section 15.3 shall not constitute Governmental Lender a “lender-in-possession” under Minnesota law. Notwithstanding anything apparently to the contrary in the Loan Documents, all Rents collected by Governmental Lender or any receiver of the Property subsequent to the occurrence of an Event of Default will be held and applied in the following order:

(a) First as provided in Minnesota Statutes § 576.25, Subd. 5.

(b) Thereafter, prior to any non-judicial foreclosure sale of the Property, or prior to the entry of a decree of foreclosure in an action to foreclose this Security Instrument, to Governmental Lender for the payment of the Debt, but no such payment made after the acceleration of all or any of the Debt will affect such acceleration unless such payment is sufficient to reinstate this Security Instrument under Minnesota Statutes § 580.30.

(c) Thereafter as follows:

(i) If the purchaser at the foreclosure sale is not Governmental Lender, first to Governmental Lender to the extent of any deficiency remaining after application of the net sale proceeds to repay the Debt, second to the purchaser as a credit to the redemption price, but if the Property is not redeemed, then to the purchaser of the Property.

(ii) If the purchaser at the foreclosure sale is Governmental Lender, to Governmental Lender to the extent of any deficiency remaining after application of the net sale proceeds to repay the Debt and the balance to be retained by Governmental Lender as a credit to the redemption price, but if the Property is not redeemed, then to Governmental Lender, whether or not such deficiency exists.

(d) The rights and powers of Governmental Lender and receivers under this Security Instrument and the application of Rents under this Section 15.3 shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

(e) If Governmental Lender makes any advances to a receiver, or otherwise for the benefit of the Property, such advances shall become Debt secured by this Security Instrument.

Section 15.4 INTENTIONALLY OMITTED.

Section 15.5 NON-AGRICULTURAL USE. Borrower represents and warrants that as of the date of this Security Instrument the Property is not in agricultural use as defined in Minnesota Statutes § 40A.02, Subd. 3, and is not used for agricultural purposes.

Section 15.6 MAXIMUM INDEBTEDNESS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECURITY INSTRUMENT, THE MAXIMUM PRINCIPAL AMOUNT OF INDEBTEDNESS SECURED BY THIS SECURITY INSTRUMENT, EXCLUDING ADVANCES MADE BY THE MORTGAGEE IN PROTECTION OF THE PROPERTY OR THIS MORTGAGE, IS \$[\_\_\_\_\_].

[NO FURTHER TEXT ON THIS PAGE]



***EXHIBIT A***  
**LEGAL DESCRIPTION**

[to be inserted]



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**Assignment of Mortgage,  
Assignment of Leases and Rents, Security  
Agreement and Fixture Filing**

(reserved for recording data)

Date: \_\_\_\_\_, 2018

FOR VALUABLE CONSIDERATION, the City of Minnetonka, a municipal corporation organized and existing under the laws of the State of Minnesota, Assignor, hereby sells, assigns and transfers to U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as Fiscal Agent, Assignee, Assignor's interest as mortgagee in the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of even date herewith, executed by Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, as mortgagor, in favor of Assignor, as mortgagee, and filed for record on \_\_\_\_\_, 2018, as Document Number \_\_\_\_\_, in the Office of the County Recorder of Hennepin County, Minnesota and encumbering the real property legally described on Exhibit A attached hereto and the other property described therein, together with all right and interest in the obligations therein specified and the debt thereby secured.

[Signature page follows.]

IN WITNESS WHEREOF, Assignor has caused this instrument to be executed and delivered by duly authorized officers of Assignor, as of the day and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

STATE OF MINNESOTA        )  
                                          ) ss.  
COUNTY OF HENNEPIN     )

On this \_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared \_\_\_\_\_, personally known to me (or provided on the basis of satisfactory evidence) to be the person who executed this instrument as the Mayor of the City of Minnetonka, Minnesota, on behalf of the City.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2018.

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

STATE OF MINNESOTA        )  
                                          ) ss.  
COUNTY OF HENNEPIN     )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared \_\_\_\_\_, personally known to me (or provided on the basis of satisfactory evidence) to be the person who executed this instrument as the City Manager of the City of Minnetonka, Minnesota, on behalf of the City.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2018.

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

**DRAFTED BY AND UPON RECORDING**  
**RETURN TO:**  
Stinson Leonard Street LLP  
50 South Sixth Street, Suite 2600  
Minneapolis, MN 55402  
Attn: David W. Kelley

[Signature Page to Assignment of Mortgage]

Exhibit A

[to be inserted]

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**REGULATORY AGREEMENT**

**between**

**CITY OF MINNETONKA, MINNESOTA,  
as Governmental Lender**

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,  
as Borrower**

**U.S. BANK NATIONAL ASSOCIATION,  
as Note Fiscal Agent**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Bond Trustee**

**Relating to**

**Preserve at Shady Oak  
10987 and 11015 Bren Road East  
Minnetonka, Minnesota**

**Dated September \_\_\_\_, 2018**

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This Instrument Drafted by:

Kennedy & Graven, Chartered (JAE)  
470 US Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402

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## REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated September \_\_\_\_, 2018 (the “**Regulatory Agreement**”), is made and entered into between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership, as the owner of the property described in EXHIBIT A hereto (the “**Borrower**”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “**Note Fiscal Agent**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “**Bond Trustee**”).

### RECITALS

The Governmental Lender is authorized to issue tax-exempt and taxable obligations to provide financing for multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapter 462C, as amended (the “**Act**”).

On May 7, 2018, the Governmental Lender issued its Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018 (the “**Prior Note**”), in the original aggregate principal amount of \$30,500,000, and loaned the proceeds thereof to the Borrower for the purpose of providing short-term financing for the acquisition, construction, and equipping of a 220-unit workforce housing rental development located at 10987 and 11015 Bren Road East, Minnetonka, Minnesota, on the real property described on EXHIBIT A attached hereto to be known as Preserve at Shady Oak (the “**Project**”).

The Borrower has proposed to refund the Prior Note and provide permanent financing for the acquisition, construction, and equipping of the Project, as hereinafter described.

In order to finance a portion of the costs of the Project, the Governmental Lender will issue its (i) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1 in the maximum principal amount of \$\_\_\_\_ (the “**Series A-1 Governmental Note**”); (ii) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2 in the maximum principal amount of \$\_\_\_\_ (the “**Series A-2 Governmental Note**”); (iii) the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-1 in the maximum principal amount of \$\_\_\_\_ (the “**Series B-1 Governmental Note**”); and (iv) the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-2 in the maximum principal amount of \$\_\_\_\_ (the “**Series B-2 Governmental Note**,” and together with the Series A-1 Governmental Note, the Series A-2 Governmental Note, and the Series B-1 Governmental Note, the “**Governmental Notes**”), each dated September \_\_\_\_, 2018. The Governmental Lender shall deliver the Governmental Notes to U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the “**Initial Note Funding Lender**”), pursuant to the terms of a Funding Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, the Administrative Agent, and the Note Fiscal Agent.

The Governmental Lender will loan the proceeds derived from the sale of the Governmental Notes to the Borrower pursuant to the terms of a Project Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, the Note Fiscal Agent, and the Borrower, and the Borrower will apply such proceeds to finance a portion of the Project.

In order to finance a portion of the costs of the Project, the Governmental Lender will issue its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C (the “**Bonds**”), in the original aggregate principal amount of \$3,570,000, pursuant to a Subordinate Indenture of Trust, dated as of September 1, 2018, between the Governmental Lender and the Bond Trustee.

The Governmental Lender will loan the proceeds of the Bonds to the Borrower pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018, between the Governmental Lender and the Borrower, and the Borrower will apply such proceeds to finance a portion of the Project.

A portion of the proceeds of the Series A-1 Governmental Note, the Series A-2 Governmental Note, and the Bonds will be applied to the refunding of the Prior Note.

For good and valuable consideration, the Borrower, the Note Fiscal Agent, the Bond Trustee, and the Governmental Lender have determined to enter into this Regulatory Agreement in order to assure compliance with certain requirements of the Code (hereinafter defined) and of the Act applicable to the Project.

NOW, THEREFORE, the Borrower, the Note Fiscal Agent, the Bond Trustee, and the Governmental Lender do hereby impose upon the Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Project and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein, for the length of time that this Regulatory Agreement shall be in full force and effect:

**Section 1. Definitions.** Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Note Funding Loan Agreement.

“*Act*” means Minnesota Statutes, Chapter 462C, as amended.

“*Adjusted Income*” means the adjusted income of a person (together with the adjusted income of all persons eighteen (18) years or older who intend to reside with such person in one Dwelling Unit), as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.

“*Administrative Agent*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as administrative agent for the Initial Funding Lender.

“*BMO Harris Bank*” means BMO Harris Bank N.A., a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

“*Bond Counsel*” means Kennedy & Graven, Chartered, or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds and other obligations issued by states and political subdivisions thereof, duly admitted to practice law before the highest court of any state of the United States of America.

“*Bond Indenture*” means the Subordinate Indenture of Trust, dated as of September 1, 2018, between the Governmental Lender and the Bond Trustee, as it may be supplemented and amended from time to time.

“*Bond Loan Agreement*” means the Subordinate Loan Agreement, dated as of September 1, 2018, between the Governmental Lender and the Borrower, as it may be amended and supplemented from time to time.

“*Bonds*” means the Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C, issued by the Governmental Lender on the Issue Date, in the original aggregate principal amount of \$3,570,000.

“*Bond Trustee*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as trustee under the Bond Indenture.

“*Borrower*” means Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, and its lawful successors and assigns to the extent permitted by the Note Project Loan Agreement and the Bond Loan Agreement.

“*Code*” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Tax-Exempt Obligations.

“*County*” means Hennepin County, Minnesota.

“*Dwelling Units*” means the units of multifamily residential rental housing comprising the Project.

“*Event of Default*” has the meaning specified in Section 13 hereof.

“*Functionally Related and Subordinate*” shall mean and include facilities for use by tenants, for example, laundry facilities, parking areas, and recreational facilities, provided that the same is of a character and size commensurate with the character and size of the Project.

“*Governmental Lender*” means the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State, and its successors.

“*Governmental Notes*” means, collectively, the Series A-1 Governmental Note, the Series A-2 Governmental Note, the Series B-1 Governmental Note, and the Series B-2 Governmental Note.

“*Housing Act*” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“*Initial Note Funding Lender*” means, together, U.S. Bank and BMO Harris Bank, their successors and assigns, each in its capacity as an initial holder of the Governmental Notes.

“*Issue Date*” means September \_\_\_\_\_, 2018, which is the date that the Governmental Notes and the Bonds are issued and delivered to their respective purchasers.



“*Loans*” means the loans provided by the Governmental Lender to the Borrower pursuant to the Note Project Loan Agreement and the Bond Loan Agreement to provide financing for the Project.

“*Low Income Tenants*” means tenants with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 152(f)(2) of the Code), unless the unit is occupied:

(i) by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State, or local laws; or

(ii) entirely by full-time students if such students are (A) single parents and their children and such parents are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual other than a parent of such children, or (B) married and entitled to file a joint return.

“*Low Income Units*” means the Dwelling Units in the Project designated for occupancy by Low Income Tenants pursuant to Section 4(a) of this Regulatory Agreement.

“*Median Income for the Area*” means the median yearly income for households of an applicable size in the applicable Primary Metropolitan Statistical Area as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the Housing Act, or, if such figures are no longer available, the method of calculation is substantially altered, or the programs under Section 8(f) are terminated, the Governmental Lender shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“*Note Fiscal Agent*” means U.S. Bank National Association, a national banking association, or any successor or assign, in its capacity as fiscal agent under the Note Funding Loan Agreement.

“*Note Funding Lender*” means the Administrative Agent and any subsequent holder of the Governmental Notes.

“*Note Funding Loan Agreement*” means the Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent, the Governmental Lender, and the Note Fiscal Agent.

“*Note Project Loan Agreement*” means the Project Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, the Note Fiscal Agent, and the Borrower, as amended from time to time.

“*Project*” has the meaning assigned to such term in the recitals to this Regulatory Agreement.

“*Qualified Project Period*” means the period beginning on the later of the date of issuance of the Governmental Notes and the first day on which ten percent (10%) of the Dwelling Units in the Project are occupied and ending on the latest of:

- (i) the date which is fifteen (15) years after the date on which fifty percent (50%) of the Dwelling Units in the Project are occupied;
- (ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding; or
- (iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

“*Regulatory Agreement*” means this Regulatory Agreement, dated the Issue Date, between the Governmental Lender, the Borrower, the Note Fiscal Agent, and the Bond Trustee, together with any amendments or supplements hereto.

“*Section 474A Penalty*” means the penalty described in Minnesota Statutes, Section 474A.047, subdivision 3, as applied to the Project.

“*Series A-1 Governmental Note*” means the Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Issue Date, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of U.S. Bank, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series A-2 Governmental Note*” means Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Issue Date, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of BMO Harris Bank, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series B-1 Governmental Note*” means the Taxable Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-1, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Issue Date, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of U.S. Bank, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series B-2 Governmental Note*” means the Taxable Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-2, in the maximum aggregate principal amount of \$\_\_\_\_\_, dated the Issue Date, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of BMO Harris Bank, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*State*” means the State of Minnesota.

“*Tax-Exempt Governmental Note*” means, together, the Series A-1 Governmental Note and the Series A-2 Governmental Note.

“*Tax-Exempt Obligations*” means, together, the Tax-Exempt Governmental Note and the Bonds.

“*Treasury Regulations*” means the regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

“*U.S. Bank*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

**Section 2. Representations by the Borrower.** The Borrower covenants, represents, and warrants that:

(a) The Borrower is a limited liability limited partnership organized and existing under the laws of the State. The Borrower is in good standing in the State and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement. The Borrower is duly authorized by the laws of the State to transact business in the State and to perform all of its duties hereunder.

(b) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the Project, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(c) The execution, delivery, and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, commitment, agreement, or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order, or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(d) There is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or to the best of the Borrower’s knowledge, threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

(i) affects or seeks to enjoin, prohibit, or restrain the issuance, sale, or delivery of the Governmental Notes or the Bonds or the use of the proceeds of the Governmental Notes or the Bonds to finance the acquisition or construction of the Project or the execution and delivery of this Regulatory Agreement,

(ii) affects or questions the validity or enforceability of the Governmental Notes, the Bonds, or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Tax-Exempt Obligations (except for any loss of tax-exempt status that results from the application of Section 147(a) of the Code or any successor provisions of the Code and applicable Treasury Regulations or any successor law or regulation), or

(iv) questions the power or authority of the Borrower to own, acquire, construct, equip, or operate the Project or to execute, deliver, or perform the Borrower's obligations under this Regulatory Agreement.

(e) The Project will be located wholly within the boundaries of the City of Minnetonka in the County.

(f) On and after the date on which the Bonds are executed and delivered to the Bond Trustee and the Governmental Notes are executed and delivered to the Administrative Agent, the Borrower will have title to the Project sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.

(g) The Project consists and will consist of those facilities described herein, which generally are described as a residential apartment building and related facilities situated on the real property described in EXHIBIT A hereto. The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exemption from federal income taxation of the interest on the Tax-Exempt Obligations. The Borrower will utilize and operate the Project as a multifamily rental housing project so long as the Tax-Exempt Obligations are outstanding, in accordance with all applicable federal, State, and local laws, rules, and regulations applicable to the Project.

(h) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits, and authorizations with respect to the operation of the Project.

(i) The Borrower acknowledges that if the Borrower or a "substantial user" of the Project financed with the proceeds of the Tax-Exempt Obligations or a "related person," as those terms are employed in Section 147(a) of the Code, owns the Tax-Exempt Obligations, or any portion thereof, interest on the Tax-Exempt Obligations during such period of ownership will not be excludable from gross income for federal income tax purposes.

(j) The Borrower does not own any buildings or structures which are proximate to the Project other than those buildings or structures which comprise the Project, which are being financed pursuant to a common plan under which the Project is also being financed. An affiliate of the Borrower will own a multifamily residential rental project adjacent to the Project.

(k) The statements made in the various certificates delivered by the Borrower to the Governmental Lender and the Note Fiscal Agent on the date of issuance of the Governmental Notes are true and correct.

(l) The statements made in the various certificates delivered by the Borrower to the Governmental Lender and the Bond Trustee on the date of issuance of the Bonds are true and correct.

**Section 3. Qualified Residential Rental Project.** The Borrower shall acquire, construct, own, manage, and operate the Project as a “qualified residential rental project,” as such phrase is utilized in Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Borrower hereby represents, warrants, and covenants as follows:

(a) that a qualified residential rental project will be constructed on the property described in EXHIBIT A hereto, and the Borrower shall own, manage and operate the Project as a qualified residential rental project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with Section 142(a)(7) and Section 142(d) of the Code and all applicable Treasury Regulations promulgated thereunder, as the same may be amended from time to time;

(b) that all of the Dwelling Units of the Project will be similarly constructed and each Dwelling Unit in the Project will contain complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family;

(c) that:

(i) none of the Dwelling Units in the Project shall at any time in the future be utilized on a transient basis;

(ii) that none of the Dwelling Units in the Project shall at any time in the future be leased or rented for a period of less than thirty (30) days; and

(iii) that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or trailer court for use on a transient basis, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that once available for occupancy:

(i) each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public, in compliance with this Regulatory Agreement, during the Qualified Project Period, except for any Dwelling Unit for a resident manager or maintenance personnel; and

(ii) other than Low Income Tenants as provided herein or as otherwise permitted by law, the Borrower shall not give preference in renting Dwelling Units in the Project to any particular class or group of persons,

(e) that the Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more parcels of land which are contiguous except for being separated only by a road, street, stream, or a similar property and (iii) financed by the Loans or otherwise pursuant to a common plan of financing, and which consists entirely of:

(i) units which are similar in quality and type of construction and amenities; and

(ii) property Functionally Related and Subordinate in purpose and size to the Project, *e.g.*, parking areas, laundries, swimming pools, tennis courts, and other recreational facilities

(none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for the Project, *e.g.*, heating and cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel;

(f) that no portion of the Project shall be used to provide any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(g) that the Project shall not include a Dwelling Unit in a building where all Dwelling Units in such building are not also included in the Project;

(h) that the Borrower shall not convert the Project to condominium or cooperative ownership;

(i) that no Dwelling Unit in the Project shall be occupied by the Borrower (or any person related to the Borrower within the meaning of Section 147(a)(2) of the Code) at any time unless such person resides in a Dwelling Unit in a building or structure which contains at least five (5) Dwelling Units and unless the resident of such Dwelling Unit is a resident manager or other necessary employee (*e.g.*, maintenance and security personnel);

(j) that the Tax-Exempt Obligations will not be “federally guaranteed,” as defined in Section 149(b) of the Code;

(k) that the Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and

(l) that the Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (*e.g.*, AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

**Section 4. Low Income Tenants.** Pursuant to the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, warrants, and covenants as follows:

(a) Upon completion of the Project, not less than forty percent (40%) of the completed units in the Project shall be continuously occupied or held for occupancy by Low Income Tenants. The Borrower will designate the Low Income Units and will make any revisions to such designations as necessary to comply with the applicable provisions of the Code and the Treasury Regulations. As set forth in paragraph (e) below, the Borrower shall advise the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee by delivery of a certificate in writing of the status of the occupancy of the Project with respect to Low Income Tenants on an annual basis for the term of this Regulatory Agreement. An Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, shall be prepared annually by the Borrower and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code (currently with the Internal Revenue Service Center, Ogden, Utah 84201), with a copy to be filed by the Borrower with the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee. The percentage of units is measured by number of units, and not square footage of units.

For purposes of satisfying the occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant until such time as any recertification of such tenant’s

income in accordance with subsections (c) and (h) below demonstrates that such tenant's income exceeds one hundred forty percent (140%) of the income limitation applicable to Low Income Tenants.

A unit occupied by a Low Income Tenant shall be deemed, upon the termination of such tenant's occupancy, to be continuously occupied by a Low Income Tenant until reoccupied, other than for a temporary period (not to exceed sixty (60) days), at which time the character of the unit shall be redetermined.

(b) The Borrower will notify the Governmental Lender on an annual basis of any vacancy of any Low Income Units.

(c) The Borrower will obtain, complete, and maintain on file income certifications from each Low Income Tenant, obtained immediately prior to the initial occupancy of such tenant in the Project and at least annually thereafter. Such income certifications (based upon their then current income) from each Low Income Tenant shall be provided in the form of income certification set forth in EXHIBIT B hereto or another form approved by Bond Counsel (the "Tenant Income Certification"). The preceding sentence shall not apply for any year if, during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants. The Borrower will also provide such additional information as may be required by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Treasury Regulations now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service applicable to the Tax-Exempt Obligations. Such Tenant Income Certification shall be obtained prior to initial occupancy. If requested by the Governmental Lender, a copy of such Tenant Income Certification shall be filed with the Governmental Lender prior to occupancy by the tenant whenever possible but in no event more than one month after initial occupancy by the tenant. A copy of each re-certification of income shall be attached to each report filed with the Governmental Lender, the Bond Trustee, and the Note Fiscal Agent pursuant to subsection (a) above. The Borrower shall make a good faith effort to verify that the income reported by an applicant in an income certification is accurate by taking at least one of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency; or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. If the Low Income Tenant is a Section 8 Certificate Holder, the Borrower shall retain a copy of the certificate or voucher for verification of income in lieu of an income verification.

The Borrower understands that failure to file the Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, as required by Section 142(d)(7) of the Code at the times stated therein may subject it to the penalty described in Section 6652(j) of the Code.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, upon reasonable prior notice, any duly authorized representative of the Governmental Lender, the Note Funding Lender, the Note Fiscal Agent, the Bond Trustee, the Department of the Treasury, or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. This section is not intended to create any additional duties to inspect records.

(e) The Borrower will prepare and submit to the Governmental Lender, the Note Fiscal Agent, the Bond Trustee, and if requested, the Administrative Agent (during the Construction Phase only) and the Note Funding Lender, on or before August 1 of each year during the Qualified Project Period,

beginning the first August 1 following commencement of the Qualified Project Period, a Continuing Program Compliance Certificate in the form attached hereto as EXHIBIT C and executed by the Borrower, and, if requested by the Governmental Lender, the Bond Trustee, the Administrative Agent (during the Construction Phase only) or the Note Funding Lender, the Tenant Income Certification described in subsection (c) above. The Note Fiscal Agent and the Bond Trustee may solely rely on the Continuing Program Compliance Certificate as evidence of compliance with this Section 4.

(f) The Borrower, upon becoming aware of an Event of Default, will notify the Governmental Lender, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, the Note Fiscal Agent, and the Bond Trustee, in writing, of the occurrence of any such Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly and in no event longer than ten (10) Business Days after the Borrower receives notice or gains knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Governmental Lender, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, the Note Fiscal Agent, and the Bond Trustee if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.

(i) Except as provided in clause (ii) below, the Borrower shall accept as tenants on the same basis as all other prospective Low Income Tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act or its successor and shall not apply selection criteria to Section 8 certificate/voucher holders that are more burdensome than the criteria applied to all other prospective tenants.

(ii) The Borrower agrees to modify the leases for units in the Project as necessary to allow the rental of Low Income Units to Section 8 certificate/voucher holders.

(g) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

(h) Throughout the Qualified Project Period, the Borrower shall re-certify each Low Income Tenant's income on or before the anniversary of the Low Income Tenant's tenancy by obtaining a completed Income Certification. The preceding sentence shall not apply for any year if, during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants. In the event the recertification demonstrates that any such tenant's household income exceeds one hundred forty percent (140%) of the applicable income limit, the Borrower shall hold the next available unit or units of comparable or smaller size in the Project available for rental by new Low Income Tenants.

The Borrower in its sole discretion may notify, in writing, each tenant who is no longer a Low Income Tenant of such fact, and that the rent of such tenant(s) is subject to increase thirty (30) days after receipt of such notice. The Borrower shall be entitled to so increase any such tenant's rent only if Borrower complies with any law applicable thereto and only after the Borrower has rented the next available unit or units in the Project on a one-for-one basis to a Low Income Tenant, or holds units vacant and available for occupancy by Low Income Tenants.



The Borrower agrees to inform all prospective Low Income Tenants of the requirements for recertification of income and of the provisions of the preceding paragraph.

**Section 5. Restrictions Imposed by Chapter 474A.** Because the Tax-Exempt Obligations are issued by the Governmental Lender as “residential rental project bonds,” as defined in Minnesota Statutes, Chapter 474A, as amended (“Chapter 474A”), and have received an allocation of tax-exempt bonding authority pursuant to applicable provisions of Chapter 474A, the restrictions imposed by Chapter 474A apply to the Project as described below.

(a) In addition to any other restrictions on rent or the income of tenants set forth in this Regulatory Agreement, during the Qualified Project Period, the Borrower shall restrict rents on at least twenty percent (20%) of the units in the Project (which shall consist of the same units as meet the requirements of Section 4) to an amount not exceeding the lesser of the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time, which units shall be occupied, or held for occupancy, by Low Income Tenants.

(b) The annual certifications required to be made by the Borrower hereunder shall conform to the requirements of Section 474A.047, subdivision 3, and the Governmental Lender shall have the authority to impose upon the Borrower any and all penalties described in Section 474A.047, subdivision 3, from time to time, in addition to any remedies otherwise available under this Regulatory Agreement.

(c) The Borrower must satisfy the requirements of Section 474A.047, subdivision 1(a), during the Qualified Project Period. The Borrower must annually certify to the Governmental Lender over the term of this Regulatory Agreement that the rental rates for the rent-restricted units are within the limitations under Section 474A.047, subdivision 1(a). The Governmental Lender may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management and Budget may request from the Governmental Lender a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management and Budget may require the Governmental Lender to request individual certification of all residents of the income-restricted units.

**Section 6. Covenants Run with the Land.** The Borrower hereby declares its express intent that, upon filing this Regulatory Agreement in the appropriate property records of the County, the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the land and shall, except as otherwise provided in, or the Freddie Mac Rider to, this Regulatory Agreement, pass to and be binding upon the Borrower’s successors in title including any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein. Except as otherwise provided in, or the Freddie Mac Rider to, this Regulatory Agreement, each and every contract, deed, or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

**Section 7. Indemnification.** The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Governmental Lender and its officers, agents, and employees (the “**Indemnified**

**Parties**”), the Note Fiscal Agent, the Bond Trustee, the Administrative Agent, the Note Funding Lender, and their respective officers, members, directors, officials, and employees as provided in the Note Project Loan Agreement and the Bond Loan Agreement, respectively. All provisions of the Note Project Loan Agreement and the Bond Loan Agreement relating to indemnification are incorporated by reference herein and are considered provisions of this Regulatory Agreement, as if expressly set out herein.

**Section 8. Consideration.** The Governmental Lender has issued the Governmental Notes and the Bonds in part to provide funds to make the Loans to finance the acquisition, construction, and equipping of the Project all for the purpose, among others, of inducing the Borrower to acquire, construct, equip, and operate the Project. In consideration of the issuance of the Governmental Notes and the Bonds by the Governmental Lender, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.

**Section 9. Reliance.** The Governmental Lender and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Governmental Notes and the Bonds and in the exemption from federal income taxation of the interest on the Tax-Exempt Obligations. In performing their duties and obligations hereunder, under the Note Funding Loan Agreement, and under the Bond Indenture, the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee, as the case may be, may rely upon statements and certificates of the Borrower and the tenants and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Governmental Lender, the Note Fiscal Agent, the Administrative Agent (during the Construction Phase only), or the Bond Trustee to the Borrower or Note Funding Lender upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee by the Borrower with respect to the occurrence or absence of a default unless it knows, or in the exercise of reasonable care should have known, that the notice or certificate is erroneous or misleading.

Neither the Note Fiscal Agent nor the Bond Trustee shall be under any duty or obligation to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents or any instruments delivered to it in accordance with this Regulatory Agreement, but the Note Fiscal Agent and the Bond Trustee may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.

**Section 10. Sale or Transfer of the Project.** The Borrower hereby covenants and agrees not to sell, transfer, or otherwise dispose of the Project, or any portion thereof, except as permitted under the terms of the Note Project Loan Agreement. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of the covenants herein, provisions, reservations, restrictions, charges, or easements shall be null and void ab initio and of no force and effect. Nothing herein shall prohibit the transfer, sale or assignment of the interests in the Borrower or any direct or indirect ownership interests in Borrower’s partners. In the event of sale, transfer, or disposition of the Project, the Borrower shall provide notice to the Governmental Lender of such event.

**Section 11. Term.** This Regulatory Agreement and the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the

Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Governmental Notes and the Bonds and termination of the Note Project Loan Agreement and the Bond Loan Agreement and the Loans if the Qualified Project Period has not expired at the time of such retirement and expiration. Notwithstanding anything in this Regulatory Agreement to the contrary:

(a) The Project may be transferred pursuant to a foreclosure, exercise of power of sale, or deed in lieu of foreclosure, or comparable proceedings without the consent of or fee of any kind payable to the Governmental Lender or compliance with the provisions of this Regulatory Agreement. In connection with any such foreclosure, deed in lieu of foreclosure, or other proceedings, this Regulatory Agreement shall be terminated upon completion of the foreclosure and expiration of the applicable redemption period, or recording of a deed in lieu of foreclosure.

(b) The requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law, or an action of a federal agency after the date of this Regulatory Agreement, which prevents the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Tax-Exempt Obligations are retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof (provided that this shall be deemed met if the Tax-Exempt Obligations have been previously retired); provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, or the delivery of a deed in lieu of foreclosure, or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Borrower hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure, or similar event, if the Borrower or any such related person as described above obtains an ownership interest in the Project for federal tax purposes during the Qualified Project Period, the limitations imposed by Section 4 hereof shall apply to the Project for the remainder of the Qualified Project Period.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Governmental Lender, the Borrower, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, and the Bond Trustee upon receipt by the Governmental Lender, the Borrower, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, and the Bond Trustee of an opinion of Bond Counsel to the effect that such termination will not cause interest on the Tax-Exempt Obligations to become included in gross income for federal income tax purposes or cause interest on the Tax-Exempt Obligations to become included in the net taxable income of individuals, trusts, and estates for State income tax purposes.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver, and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

**Section 12. Burden and Benefit.** The Governmental Lender and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower's legal interest in the Project is rendered less valuable thereby. The Governmental Lender and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project

by Low Income Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Governmental Notes and the Bonds were issued. Notwithstanding the foregoing, the Low Income Tenants are not intended to be third-party beneficiaries of this Regulatory Agreement and shall have no rights to enforce any provision herein.

**Section 13. Enforcement.** If the Borrower defaults in the performance or observance of any covenant, agreement, or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee to the Borrower, then the Governmental Lender or the Note Fiscal Agent, acting upon the direction of the Administrative Agent (during the Construction Phase only) or the Note Funding Lender pursuant to the Note Funding Loan Agreement, or the Governmental Lender or the Bond Trustee, pursuant to the Bond Loan Agreement, may declare an “Event of Default” to have occurred hereunder and, at their respective option, may take any one or more of the following steps:

(a) by mandamus or other suit, action, or proceeding at law or in equity require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Governmental Lender, the Note Fiscal Agent, the Bond Trustee, or the Note Funding Lender hereunder;

(b) have access to and inspect, examine, and make copies of all the books and records of the Borrower pertaining to the Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Borrower hereunder;

(d) with the Note Fiscal Agent’s consent (acting upon the direction of the Administrative Agent (during the Construction Phase only) or the Note Funding Lender), declare a default under its respective Loan, accelerate the indebtedness evidenced by the respective Loan, and proceed to redeem the Tax-Exempt Notes in accordance with their terms; or

(e) with the Bond Trustee’s consent (acting upon the direction of the holders of the Bonds), declare a default under the Loan related to the Bonds, accelerate the indebtedness evidenced by the Loan related to the Bonds, and proceed to redeem the Bonds in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee hereby agree that any cure of any default made or tendered by one or more of the Borrower’s partners or by the Administrative Agent (during the Construction Phase only) or the Note Funding Lender shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

All fees, costs, and expenses of the Note Fiscal Agent, the Bond Trustee, or the Governmental Lender incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Note Fiscal Agent, the Bond Trustee, or the Governmental Lender, as the case may be, on demand.

After the Tax-Exempt Obligations have been discharged, the Governmental Lender may act on its own behalf to declare an “Event of Default” to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Note Fiscal Agent at the direction of the holders of the Tax-Exempt Obligations or by the Bond Trustee at the direction of the holders of the Bonds.

**Section 14. The Note Fiscal Agent, the Bond Trustee, and the Governmental Lender.** The Note Fiscal Agent is entering into this Regulatory Agreement in its capacity as the Note Fiscal Agent under the terms of the Governmental Notes and the Note Funding Loan Agreement. The Bond Trustee is entering into this Regulatory Agreement in its capacity as the Bond Trustee under the terms of the Bonds and the Bond Indenture. The Governmental Lender may, at all times, assume the Borrower's compliance with this Regulatory Agreement unless otherwise notified in writing by the Note Fiscal Agent and the Bond Trustee (but the Note Fiscal Agent and the Bond Trustee shall have no obligation to so notify the Governmental Lender), or unless the Governmental Lender has actual knowledge of noncompliance. The Note Fiscal Agent and the Bond Trustee can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to them by the Borrower. It is expected that the Governmental Notes will be discharged and the Note Funding Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Tax-Exempt Obligations and the termination of the Note Funding Loan Agreement and the Bond Indenture: (i) all obligations, rights, and duties of the Note Fiscal Agent and the Bond Trustee, as applicable, under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Note Fiscal Agent and the Bond Trustee, as applicable, will instead be undertaken by the Governmental Lender; (iii) all notices to be delivered to the Note Funding Lender, the Note Fiscal Agent, or the Bond Trustee will instead be delivered to the Governmental Lender; and (iv) the Note Fiscal Agent and the Bond Trustee, as applicable, shall no longer be a party to this Regulatory Agreement and shall be considered released from all obligations hereunder.

**Section 15. Amendment.** The provisions hereof shall not be amended or revised prior to the stated term hereof except by an instrument in writing duly executed by the Governmental Lender and the Borrower, and consented to by the Note Fiscal Agent and the Bond Trustee as may be required by the Note Project Loan Agreement, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, and the Bond Indenture, and duly recorded. The consent of the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee to any such amendment or revision (whether or not the Tax-Exempt Obligations shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Governmental Lender, the Note Fiscal Agent, the Note Funding Lender, and the Bond Trustee that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Tax-Exempt Obligations. The Governmental Lender, the Note Fiscal Agent, and the Bond Trustee shall have no duty to prepare any such consent, amendment, or revision.

**Section 16. Right of Access to the Project and Records.** The Borrower agrees that during the term of this Regulatory Agreement, the Governmental Lender, the Note Fiscal Agent, the Note Funding Lender, the Bond Trustee, and the duly authorized agents of any of them shall have the right at all reasonable times, and upon reasonable notice of at least twenty-four (24) hours, to enter upon the site of the Project during normal business hours to examine and inspect the Project and to have access to the books and records of the Borrower with respect to the Project, a copy of which shall be maintained at the site of the Project.

**Section 17. No Conflict with Other Documents.** The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

**Section 18. Severability.** The invalidity of any clause, part, or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

**Section 19. Notices.** All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when sent by unsecured e-mail, facsimile transmission or other similar

unsecured electronic methods or when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

To the Governmental Lender: CITY OF MINNETONKA, MINNESOTA  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502  
Attn: Julie Wischnack, Community Development Director  
Email: jwischnack@eminnetonka.com  
Telephone: 952-939-8282

To the Note Fiscal Agent: U.S. BANK NATIONAL ASSOCIATION  
Corporate Trust Services  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Dan Sheff, Vice President  
Email: dan.sheff@usbank.com  
Telephone: 651-466-6302

To the Administrative Agent for  
the Note Funding Lender (for  
the Construction Phase only): U.S. BANK NATIONAL ASSOCIATION  
Community Lending Division  
800 Nicollet Mall, Third Floor  
BC-MN-H5AD  
Minneapolis, MN 55402  
Attn: Daniel P. Smith  
Email: daniel.smith1@usbank.com  
Telephone: 612-303-3689

U.S. BANK NATIONAL ASSOCIATION  
Community Lending  
1307 Washington Avenue, Suite 300  
St. Louis, MO 63103  
Attn: Alexander J. Silversmith  
Email: alexander.silversmith@usbank.com  
Telephone: 314-335-2661

To the Borrower: MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP  
c/o Dominion Development & Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400  
Attn: Ryan Lunderby  
Email: rlunderby@dominiuminc.com  
Telephone: 763-354-5634

with a copies to: WINTHROP & WEINSTINE, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Attn: John M. Stern, Esq.  
Email: jstern@winthrop.com  
Telephone: 612-604-6588  
(which copy shall not constitute notice to Borrower)

CITIBANK, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attn: Mark Sherman  
Email: mark.sherman@citi.com

NIXON PEABODY LLP  
799 Ninth Street, NW, Suite 500  
Washington, DC 20001-4501  
Attn: Matthew W. Mullen, Esq.  
Email: mmullen@nixonpeabody.com

TCAM  
186 Lincoln Street  
Boston, MA 02111-2408  
Attn: Jenny Netzer

To the Bond Trustee: U.S. BANK NATIONAL ASSOCIATION  
Corporate Trust Services  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Dan Sheff, Vice President  
Email: dan.sheff@usbank.com  
Telephone: 651-466-6302

**Section 20. Governing Law.** This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws.

**Section 21. Payment of Fees.** Notwithstanding payment of the Loans, the termination of the Note Project Loan Agreement, the termination of the Bond Indenture, and the defeasance or discharge of the Tax-Exempt Obligations, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:

(a) to the Governmental Lender, reimbursement for all reasonable fees and expenses, including, but not limited to, financial advisory and legal fees and expenses necessary for the Governmental Lender's reviewing and, if necessary, enforcing compliance by the Borrower with the terms of this Regulatory Agreement; and

(b) the fees and expenses of any entity or person designated by the Governmental Lender to perform the review of the Borrower's compliance with this Regulatory Agreement; provided that such fees and expenses are not duplicative of any fees and expenses paid under clause (a) above.

**Section 22. Limited Liability.** All obligations of the Governmental Lender hereunder shall be special, limited obligations of the Governmental Lender, payable solely and only from proceeds of the Governmental Notes and Bonds and amounts derived by the Governmental Lender from the Loans, the Note Project Loan Agreement, and the Bond Loan Agreement.

**Section 23. Actions of Governmental Lender.** The Governmental Lender shall be entitled to rely conclusively on an opinion of counsel in the exercise or non-exercise of any of the rights or powers vested in the Governmental Lender by virtue of this Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Governmental Notes and the Bonds; it being the intent of the parties hereto that the Governmental Lender, and any and all present and future trustees, members, commissioners, officers, employees, attorneys, and agents of the Governmental Lender shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Governmental Lender by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Governmental Notes; or for the performance or nonperformance of any obligation under, or the failure to assert any right, power, or privilege under this Regulatory Agreement, the Governmental Notes, the Note Project Loan Agreement, the Note Funding Loan Agreement, the Bonds, the Bond Indenture, the Bond Loan Agreement, or any other instrument or agreement executed in connection with the issuance of the Governmental Notes. If the Governmental Lender's consent or approval is required under this Regulatory Agreement, or any other agreement or instrument executed in connection with the issuance of the Governmental Notes or the Bonds, the Governmental Lender shall be entitled to rely conclusively on an opinion of counsel and shall not be responsible for any loss or damage resulting from any action or inaction in reliance upon such opinion.

**Section 24. Counterparts.** This Regulatory Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Regulatory Agreement, and, in making proof of this Regulatory Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 25. Recording and Filing.** Upon obtaining fee title to the Property, the Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Governmental Lender may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

**Section 26. Third-Party Beneficiary.** The parties to this Regulatory Agreement recognize and agree that the terms of this Regulatory Agreement and the enforcement of those terms are essential to the security of the Administrative Agent (during the Construction Phase only) and the Note Funding Lender and are entered into for the benefit of various parties, including the Administrative Agent (during the Construction Phase only) and the Note Funding Lender. The Administrative Agent (during the Construction Phase only) and the Note Funding Lender shall accordingly have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the



Governmental Lender, the Note Fiscal Agent, and/or the Bond Trustee or to cause the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee to enforce, the terms of this Regulatory Agreement. In addition, the Administrative Agent (during the Construction Phase only) and the Note Funding Lender are intended to be and shall be third-party beneficiaries of this Regulatory Agreement.

**Section 27. Freddie Mac Rider.** The Freddie Mac Rider to Regulatory Agreement (the “**Freddie Mac Rider**”) attached to this Regulatory Agreement forms an integral part of this Regulatory Agreement and the terms thereof are hereby incorporated in this Regulatory Agreement, provided that the Freddie Mac Rider shall not be effective unless and until Conversion (as defined in the Note Funding Loan Agreement) occurs, and shall be terminated automatically and without further action required of any party hereto or Freddie Mac following the Freddie Mac Purchase Date (as defined in the Note Funding Loan Agreement) upon the earlier of (a) the date the Governmental Notes are paid, retired, or otherwise discharged and (b) the date Freddie Mac ceases to be the Note Funding Lender.

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

**IN WITNESS WHEREOF**, the Governmental Lender, the Borrower, the Note Fiscal Agent, and the Bond Trustee have caused this Regulatory Agreement to be signed by their respective duly authorized representatives as of the day and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

STATE OF MINNESOTA        )  
                                          ) SS.  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the Governmental Lender.

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

STATE OF MINNESOTA        )  
                                          ) SS.  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the Governmental Lender.

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

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

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE II, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates SPE II, LLC, a Delaware limited liability company, the general partner of Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, on behalf of the Borrower.

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

Execution page of the Note Fiscal Agent to the Regulatory Agreement, dated the date and year first written above.

**U.S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Dan Sheff, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Note Fiscal Agent.

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

Execution page of the Bond Trustee to the Regulatory Agreement, dated the date and year first written above.

**U.S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Dan Sheff, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Bond Trustee.

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Lot 2, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota

**EXHIBIT B**

**FORM OF INCOME CERTIFICATION**

**FORM OF TENANT INCOME CERTIFICATION**

TENANT INCOME CERTIFICATION  <input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification <input type="checkbox"/> Other _____	Effective Date: _____ Move-in Date: _____ (MM/DD/YY): _____
--------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------

**PART I. DEVELOPMENT DATA**

Property Name: Preserve at Shady Oak  Address: 10987 and 11015 Bren Road East, Minnetonka, Minnesota	County: _____  Unit Number: _____	BIN #: _____  # Bedrooms: _____
------------------------------------------------------------------------------------------------------------	-----------------------------------------	---------------------------------------

**PART II. HOUSEHOLD COMPOSITION**

HH Br #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/Y Y)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						

**PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)**

HH Br #	(A) Employment or Wages	(B) Soc. Security / Pensions	(C) Public Assistance	(D) Other Income
<b>TOTAL</b>	\$	\$	\$	\$
Add totals from (A) through (D) above			<b>TOTAL INCOME (E):</b>	\$

**PART IV. INCOME FROM ASSETS**

HH Mbr#	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset

TOTALS:			\$	\$
Enter Column (H) Total		Passbook Rate		
if over \$5,000	\$ _____	x 2.00 %	=	(J) Imputed Income
Enter the greater of the total column I, or J: imputed income			TOTAL INCOME FROM	\$
ASSETS (K)				
(L) Total Annual Household Income from all sources [Add (E) + (K)]				\$

**HOUSEHOLD CERTIFICATION & SIGNATURES**

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full-time student.

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

_____	_____	_____	_____
Signature	(Date)	Signature	(Date)
_____	_____	_____	_____
Signature	(Date)	Signature	(Date)

**PART V. DETERMINATION OF INCOME ELIGIBILITY**

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES From Item (L) on page 1	\$ <input style="width: 100px; height: 20px;" type="text"/>	Household Meets	RECERTIFICATION ONLY:
		Income Restriction	Current Income Limit x 140%
		at:	
		<input type="checkbox"/> 60% <input type="checkbox"/>	\$ _____
Current Income Limit per Family Size: \$ _____		50% <input type="checkbox"/> 40% <input type="checkbox"/>	
		30% <input type="checkbox"/> ___%	Household income exceeds 140% at recertification:
Household Income at Move-in \$ _____			<input type="checkbox"/> Yes <input type="checkbox"/> No
			Household Size at Move-in: _____



**PART VI. RENT**

Tenant Paid Rent \$

Rent Assistance: \$

Utility Allowance \$

Other non-optional charges: \$

**GROSS RENT FOR UNIT:**

Tenant paid rent plus Utility Allowance and other non-optional charges

\$

Unit Meets Rent Restriction at:

60%  50%  40%  30%  \_\_\_%

Maximum Rent Limit for this unit: \$

**PART VII. STUDENT STATUS**

ARE ALL OCCUPANTS FULL-TIME STUDENTS?

yes     no

If yes, enter student explanation\*\*  
(also attach documentation)

Enter 1-4
--------------

Student explanation:

1. TANF assistance
2. Job training program
3. Single parent/dependent child
4. Married/joint return\*

**\*Exception for married/joint return is the only exception available for units necessary to qualify tax-exempt bonds.**

**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

a. Tax Credit     b. HOME     c. Tax Exempt     d. AHDP     e. \_\_\_\_\_   
(Name of Program)

See Part V above.

*Income Status*

- ≤ 50% AMGI  
 ≤ 60% AMGI  
 ≤ 80% AMGI  
 ≤ OI \*\*

*Income Status*

- 50% AMGI  
 60% AMGI  
 80% AMGI  
 OI \*\*

*Income Status*

- ≤ 50% AMGI  
 ≤ 80% AMGI  
 ≤ OI \*\*

*Income Status*

- \_\_\_\_\_  
 \_\_\_\_\_  
 ≤ 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 Regulatory Agreement (if applicable), to live in a unit in this Project.

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

\_\_\_\_\_  
DATE

## INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

*This form is to be completed by the owner or an authorized representative.*

### Part I – Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

- Move-in Date                      Enter the date the tenant has or will take occupancy of the unit.
- Effective Date                    Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.
- Property Name                    Enter the name of the development.
- County                              Enter the county (or equivalent) in which the building is located.
- BIN #                                Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
- Address                            Enter the unit number.
- Unit Number                      Enter the unit number.
- # Bedrooms                        Enter the number of bedrooms in the unit.

### Part II – Household Composition

List all occupants of the unit. State each household member's relationship to the head of the household by using one of the following coded definitions:

- |   |                   |   |                     |
|---|-------------------|---|---------------------|
| H | Head of household | S | Spouse              |
| A | Adult co-tenant   | O | Other family member |
| C | Child             | F | Foster child        |
| L | Live-in caretaker | N | None of the above   |

Enter the date of birth, student status, and Social Security number or alien registration number for each occupant.

*If there are more than seven occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.*

### Part III – Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the 12 months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

- Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
- Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
- Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.)
- Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
- Row (E) Add the totals from columns (A) through (D) above. Enter this amount.

**Part IV – Income from Assets**

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the 12 months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

- Column (F) List the type of asset (i.e., checking account, savings account, etc.)
- Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
- Column (H) Enter the cash value of the respective asset.
- Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
- TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

- Row (K) Enter the Greater of the total in Column (I) or (J)
- Row (L) Total Annual Household Income from All Sources Add (E) and (K) and enter the total

## HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than five days prior to the effective date of the certification.

### Part V – Determination of Income Eligibility

Total Annual Household Income from all sources	Enter the number from item (L).
Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in Household size at move-in	For recertifications only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household Meets Income Restriction	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
Current Income Limit x 140%	For recertification only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

### Part VI – Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at ___%	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

## Part VII – Student Status

If all household members are full-time\* students, check “yes.” If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

\* *Full time is determined by the school the student attends.*

## Part VIII – Program Type

Mark the program(s) for which this 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. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit                      See Part V above.

HOME                              If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.

Tax Exempt                      If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.

AHDP                              If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.

Other                                If the property participates in any other affordable housing program, complete the information as appropriate.

### **SIGNATURE OF OWNER / REPRESENTATIVE**

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well-trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

**EXHIBIT C**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

The undersigned, an authorized representative of Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the "Owner"), hereby certifies, represents, and warrants that:

1. The Owner owns the multifamily housing development located at 10987 and 11015 Bren Road East in the City of Minnetonka, Minnesota commonly known as Preserve at Shady Oak (the "Project").

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement, dated September \_\_, 2018 (the "Regulatory Agreement"), between the Owner, the City of Minnetonka, Minnesota (the "Governmental Lender"), U.S. Bank National Association, a national banking association, in its capacity as fiscal agent (the "Note Fiscal Agent"), and U.S. Bank National Association, a national banking association, in its capacity as trustee (the "Bond Trustee"); (2) the Project Loan Agreement, dated as of September 1, 2018 (the "Note Project Loan Agreement"), between the Borrower, the Governmental Lender, and the Fiscal Agent with respect to the Governmental Notes; and (3) the Subordinate Loan Agreement, dated as of September 1, 2018 (the "Bond Loan Agreement"), between the Governmental Lender and the Borrower. The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Governmental Notes and the Bonds. Capitalized terms used herein that are otherwise not defined shall have the meanings provided in the Regulatory Agreement.

3. A review of the activities of the Owner and of the Owner's performance under the Regulatory Agreement during the year ending \_\_\_\_ has been made under the supervision of the undersigned.

4. The Project's Qualified Project Period commenced on \_\_\_\_\_, 20\_\_ (the date on which 10% of the residential units in the Project were occupied), and will end on the latest of:

(i) \_\_\_\_\_, 20\_\_ (the date which is 15 years after the date on which 50% of the residential units in the Project were occupied);

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

5. As of the date of this Certificate, the following percentages of completed residential units in the Project are (i) occupied by Low Income Tenants or (ii) currently vacant and being held available for occupancy by Low Income Tenants and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

Occupied by Low Income Tenants \_\_\_\_\_ % Units Nos. \_\_\_\_

Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low \_\_\_\_\_ % Units Nos. \_\_\_\_

Income Tenants

6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Governmental Notes and the Bonds, if this is the first such certificate) have fewer than forty percent (40%) of the completed units in the Project been occupied by, last occupied, or held for occupation by Low Income Tenants.

7. As of the date of this Certificate, all of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size; or (ii) held vacant for occupancy for persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size. Project Units occupied or held vacant for persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size include Unit numbers \_\_\_\_\_.

8. At all times since the date of filing of the last Continuing Program Compliance Certificate the rent on at least 20% of the units in the Project has not exceeded the lesser of: (1) 30% of the adjusted income of a household whose gross income equals 60% of the median family income as most recently established by the United States Department of Housing and Urban Development for the Minneapolis/St. Paul standard metropolitan statistical area, as adjusted for household size; or (2) the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the United States Department of Housing and Urban Development.

9. To the knowledge of the undersigned, after due inquiry, all units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the Regulatory Agreement, the Note Project Loan Agreement, or the Bond Loan Agreement and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Governmental Notes or the Bonds.

10. **[CHOOSE ONE:** None/One or more] of the Tenants in the Project are currently receiving assistance under Section 8 of the United States Housing Act of 1937.

11. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee with respect to the Project. **(If the Owner has transferred any interest in the Project, such transfer should be detailed here.)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_.



**MINNETONKA LEASED HOUSING  
ASSOCIATES II, LLLP**, a Minnesota limited liability  
limited partnership

By: Minnetonka Leased Housing Associates SPE II,  
LLC, a Delaware limited liability company  
Its: General Partner

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

## FREDDIE MAC RIDER

This Freddie Mac Rider (the “**Rider**”) is attached to and forms a part of the Regulatory Agreement (the “**Regulatory Agreement**”), dated September \_\_\_\_, 2018, between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the “**Borrower**”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (together with any successor in such capacity, the “**Fiscal Agent**”), and U.S. Bank National Association, a national banking association, as Bond Trustee (as defined in the Regulatory Agreement).

1. Definitions. Terms used in this Rider as defined terms shall have the meanings given those terms in the Regulatory Agreement and the Funding Loan Agreement. In addition, the following terms shall have the following meanings:

“Freddie Mac” means the Federal Home Loan Mortgage Corporation, a shareholder owned government sponsored enterprise organized and existing under the laws of the United States.

“Funding Lender” means the holder of the Governmental Note, initially on the Conversion Date, KeyBank National Association, and on the Freddie Mac Purchase Date, Freddie Mac, and any successors or assigns thereof.

“Funding Loan Agreement” means the Funding Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, the Administrative Agent set forth therein and the Note Fiscal Agent, as such Funding Loan Agreement may from time to time be amended or supplemented.

“Governmental Note” means, together, the Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1 and the Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2 (which have been consolidated at Conversion), dated September \_\_\_\_, 2018, in the maximum principal amount of \$\_\_\_\_\_ and delivered by the Governmental Lender pursuant to the Funding Loan Agreement.

“Project Loan” means the loan to the Borrower pursuant to the Project Loan Documents, which Project Loan is to be assigned to the Note Fiscal Agent.

“Project Loan Agreement” means the Project Loan Agreement dated as September 1, 2018, between the Borrower, the Governmental Lender and the Fiscal Agent, as such Project Loan Agreement may from time to time be amended or supplemented.

“Project Loan Documents” means the Security Instrument, Project Note, the Project Loan Agreement, the Regulatory Agreement, the Continuing Covenant Agreement, any Subordination Agreement(s), and any and all other instruments and other documents, evidencing, securing or otherwise relating to the Project Loan or any portion thereof.

“Project Note” means the Amended and Restated Project Note, including applicable addenda, to be executed by the Borrower in favor of the Fiscal Agent, as assignee of the

Governmental Lender, evidencing the Borrower's financial obligations under the Project Loan, as the same may be amended, modified, supplemented or restated from time to time.

“Security Instrument” means the Amended and Restated Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement, together with all riders thereto, by the Borrower granting a first priority mortgage lien and security interest in the Project to the Fiscal Agent, and its successors and assigns, securing the Project Note, to be executed by the Borrower with respect to the Project, as it may be amended, modified, supplemented or restated from time to time.

“Servicer” means KeyBank National Association, or any successor Servicer selected by Freddie Mac.

2. Applicability. The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of, the Regulatory Agreement.

3. Indemnification. Inasmuch as the covenants, reservations and restrictions of the Regulatory Agreement run with the land, the indemnification obligations of the Borrower contained in the Regulatory Agreement will be deemed applicable to any successor in interest to the Borrower, but, it is acknowledged and agreed, notwithstanding any other provision of the Regulatory Agreement to the contrary, that neither the Funding Lender nor any successor in interest to the Funding Lender will assume or take subject to any liability for the indemnification obligations of the Borrower for acts or omissions of the Borrower prior to any transfer of title to Freddie Mac, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan. The Borrower shall remain liable under the indemnification provisions for its acts and omissions prior to any transfer of title to the Funding Lender. The Funding Lender shall indemnify the Governmental Lender following acquisition of the Project by the Funding Lender, by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan, during, and only during, any ensuing period that the Funding Lender owns and operates the Project, provided that the Funding Lender's liability shall be strictly limited to acts and omissions of the Funding Lender occurring during the period of ownership and operation of the Project by the Funding Lender. The Funding Lender shall have no indemnification obligations with respect to the Governmental Note or the Project Loan Documents. The Borrower shall remain liable under the Regulatory Agreement for its actions and omissions prior to any transfer of title to the Funding Lender.

4. Sale or Transfer. Restrictions on sale or transfer of the Project or of any interest in the Borrower, Governmental Lender, Fiscal Agent, and/or Bond Trustee consents, transferee agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to the Funding Lender or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan. No transfer of the Project shall operate to release the Borrower from its obligations under the Regulatory Agreement. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Project Loan Documents that requires the Borrower to obtain the consent of the Funding Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall have any applicability to a transfer to the Funding Lender upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan by the Funding Lender, or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

5. Enforcement. Notwithstanding anything contained in the Regulatory Agreement to the contrary: (i) the occurrence of an event of default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Project Loan Documents, except as may be otherwise specified in the Project Loan Documents; and (ii) the occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument. No person other than the Funding Lender shall have the right to (a) declare the principal balance of the Project Note to be immediately due and payable or (b) commence foreclosure or other like action with respect to the Security Instrument. The Governmental Lender and the Fiscal Agent acknowledge and agree that the exercise of any rights and remedies under the Regulatory Agreement is subject to the provisions of the Project Loan Documents.

6. Notice of Violations. Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Governmental Lender or the Fiscal Agent shall, by notice in writing to the Borrower, the Servicer and the Funding Lender, inform the Borrower, the Servicer and the Funding Lender that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such violation, neither the Governmental Lender nor the Fiscal Agent shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Project Loan, to enforce the Project Note or to foreclose on the Security Instrument.

7. Amendments. The Regulatory Agreement shall not be amended without the prior written consent of the Funding Lender.

8. Fees; Penalties. The Funding Lender shall not be liable for the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by the Borrower or any subsequent owner of the Project prior to the date of acquisition of the Project by the Funding Lender, whether such acquisition is by foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

9. Subordination. The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3 through 5, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Project Loan Documents.

10. Third-Party Beneficiary. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Funding Lender and are entered into for the benefit of various parties, including the Funding Lender. The Funding Lender shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender and/or the Fiscal Agent, or to cause the Governmental Lender or the Fiscal Agent to enforce, the terms of the Regulatory Agreement. In addition, the Funding Lender is intended to be and shall be a third-party beneficiary of the Regulatory Agreement.

11. Notices. Copies of all notices under the Regulatory Agreement shall be sent to the Servicer at the address set forth below or to such other address as the Servicer may from time to time designate:

KEYBANK NATIONAL ASSOCIATION  
11501 Outlook Street, Suite 300  
Mailcode: KS-01-11-0501  
Overland Park, KS 66211  
Attention: Ms. Gina Sullivan  
Email: Gina\_Sullivan@KeyBank.com

Any notice to be given to Freddie Mac shall be sent to Freddie Mac at the address set forth below or to such other address as Freddie Mac may from time to time designate:

FEDERAL HOME LOAN MORTGAGE CORPORATION  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

with a copy to:

FEDERAL HOME LOAN MORTGAGE CORPORATION  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: joshua\_schonfeld@freddiemac.com  
Telephone: (703) 903-2000

**CITY OF MINNETONKA, MINNESOTA**

**AMENDED AND RESTATED  
HOUSING PROGRAM FOR A  
MULTIFAMILY HOUSING DEVELOPMENT**

Pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Housing Act”), the City of Minnetonka, Minnesota (the “City”) is authorized to develop and administer programs to finance the acquisition, construction, and equipping of multifamily housing developments under the circumstances and within the limitations set forth in the Housing Act. Section 462C.07 of the Housing Act provides that such programs for multifamily housing developments may be financed by revenue bonds issued by the City.

On April 16, 2018, the City Council of the City approved a housing program (the “Original Housing Program”) providing for the acquisition, construction, and equipping of approximately 220 units of workforce housing to be located at or about 11001 Bren Road East in the City (the “Project”). The Original Housing Program initially contemplated the issuance by the City of one or more series of revenue bonds, as taxable and tax-exempt obligations, in the approximate aggregate principal amount not to exceed \$30,500,000, the proceeds of which were loaned to Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”).

The Borrower has requested that the City approve the issuance of additional obligations to finance the acquisition, construction, and equipping of the Project. The Obligations to be issued by the City for the purposes set forth herein shall not exceed \$55,000,000 and will be issued, in one or more series, as both taxable and tax-exempt obligations.

All or a portion of the dwelling units of the Project will be subject to occupancy limits imposed by federal income tax law and regulations such that only persons and families within designated income limits will be permitted to occupy such units.

The City, in establishing this amended and restated housing program for a multifamily housing development (the “Program”), has considered the information contained in the City’s comprehensive plan. The Project will be constructed in accordance with the requirements of Section 462C.05, subdivisions 1 and 2 of the Housing Act.

This Program hereby amends and restates, and replaces in its entirety, the Original Program.

Section A. Definitions. The following terms used in this Program shall have the following meanings, respectively:

“Borrower” shall mean Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership.

“City” shall mean the City of Minnetonka, Minnesota.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the treasury regulations promulgated thereunder.

“Housing Act” shall mean Minnesota Statutes, Chapter 462C, as currently in effect and as the same may be from time to time amended.

“Housing Unit” shall mean any one of the dwelling units financed with the Obligations, each located in the Project, occupied by one person or family, and containing complete living facilities.

“Land” shall mean the real property upon which the Project is situated.

“Obligations” shall mean the revenue bonds to be issued by the City to finance the Project.

“Program” shall mean this housing program for the financing of the Project pursuant to the Housing Act.

“Project” shall mean the approximately 220 units of workforce housing to be located at or about 11001 Bren Road East in the City to be acquired, constructed, and equipped by the Borrower.

Section B. Program for Financing the Project. It is proposed that the City establish this Program to provide financing for the acquisition, construction, and equipping of the Project at a cost and upon such other terms and conditions as are set forth herein and as may be agreed upon in writing between the City, the initial purchasers of the Obligations, and the Borrower. The City expects to issue the Obligations in one or more series as soon as the terms of the Obligations have been agreed upon by the City, the Borrower, and the initial purchasers of the Obligations. The proceeds of the Obligations will be loaned to the Borrower to finance the acquisition, construction, and equipping of the Project, to fund required reserves, if any, to pay interest on the Obligations during construction of the Project, if needed, and to pay the costs of issuing the Obligations.

It is anticipated that all series of Obligations will have a maturity of approximately forty (40) years or less. It is expected that the Obligations will bear interest at fixed rates, consistent with the market at the time of issuance, or at variable rates.

The City will hire no additional staff for the administration of the Program. Insofar as the City will be contracting with underwriters, legal counsel, bond counsel, trustees, purchasers, and others, all of whom will be reimbursed from bond proceeds and revenues generated by the Program, no administrative costs will be paid from the City’s budget with respect to this Program. The Obligations will not be general obligations of the City but will be issued as conduit revenue obligations of the City to be paid only from loan repayments by the Borrower and revenues generated by the property pledged to the payment thereof, which may include additional security such as additional collateral, insurance or a letter of credit.

Section C. Standards and Requirements Relating to the Financing of the Project Pursuant to the Program. The following standards and requirements shall apply with respect to the operation of the Project by the Borrower pursuant to this Program:

(1) Substantially all of the proceeds of the sale of the Obligations will be applied to the acquisition, construction, and equipping of the Project, the payment of the costs of issuing the Obligations, the financing of interest on the Obligations during the construction of the Project, if needed, and the funding of any required reserves. The proceeds of the Obligations will be made available to the Borrower pursuant to the terms of one or more loan agreements (or other revenue agreements) which will include certain covenants to be made by the Borrower to the City regarding the use of proceeds and the character and use of the Project.

(2) The Project qualifies as a “multifamily housing development” within the meaning of the Housing Act, since it is comprised of an apartment facility, of which the Housing Units are to be rented to persons or families for use as residences.

(3) The Borrower, and any subsequent owner of the Project, will not arbitrarily reject an application from a proposed tenant because of race, color, creed, religion, national origin, sex, marital status, or status with regard to public assistance or disability.

(4) Pursuant to the Regulatory Agreement between the City and the Borrower, forty percent (40%) of the Housing Units will be held for occupancy by seniors with adjusted gross income not in excess of sixty percent (60%) of median family income, adjusted for family size. This set aside will satisfy the low-income occupancy requirements of Section 462C.05, subdivision 2 of the Housing Act.

(5) The Economic Development Authority in and for the City of Minnetonka will also enter into a Declaration of Restrictive Covenants with the Borrower, which requires one hundred percent (100%) of the Housing Units to be held for occupancy by seniors with adjusted gross income not in excess of sixty percent (60%) of median family income, adjusted for family size.

Section D. Evidence of Compliance. The City may require from the Borrower at or before the issuance of the Obligations evidence satisfactory to the City of compliance with the standards and requirements for the financing established by the City, as set forth herein. In connection therewith, the City or its representatives may inspect the relevant books and records of the Borrower in order to confirm such ability, intention and compliance. In addition, the City may periodically require certification from either the Borrower or such other person deemed necessary concerning compliance with various aspects of this Program.

Section E. Issuance of Obligations. To finance the Project the City will by resolution authorize, issue and sell the Obligations, in one or more series, as taxable and tax-exempt obligations, in the approximate aggregate principal amount not to exceed \$55,000,000. The Obligations will be issued pursuant to Section 462C.07, subdivision 1 of the Housing Act, and will be payable primarily from the revenues of the Project and a pledge of the tax increment revenue received by the Borrower pursuant to a pay-as-you-go tax increment revenue note issued by the Economic Development Authority in and for the City of Minnetonka, Minnesota. If the costs of the Project, including capitalized interest, if needed, costs of issuance of the Obligations, and required reserve funds, if any, exceed the principal amount of the Obligations, the Borrower will contribute to or obtain additional financing for the Project the difference between the total costs of the Project and the principal amount of the Obligations available to finance the Project. The costs of the Project may change between the date of preparation of this Program and the date of issuance of the Obligations. The Obligations are expected to be issued in September 2018.

Section F. Severability. The provisions of this Program are severable and if any of its provisions, sentences, clauses or paragraphs shall be held unconstitutional, contrary to statute, exceeding the authority of the City or otherwise illegal or inoperative by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section G. Amendment. The City shall not amend this Program, while Obligations authorized hereby are outstanding, to the detriment of the holders of such Obligations.



Section H. State Ceiling.

(1) An application for an allocation of a portion of the annual volume cap for private activity bonds to be issued to provide “qualified residential rental projects,” within the meaning of Sections 142(a)(7) and 142(d) of the Code, has been made to the office of Minnesota Management & Budget, pursuant to Section 146 of the Code and Minnesota Statutes, Chapter 474A, as amended (the “Allocation Act”).

(2) Pursuant to the terms and requirements of the Allocation Act: (i) the Project will meet the requirements of Section 142(d) of the Code regarding the incomes of the occupants of the Project; and (ii) the maximum rent for at least twenty percent (20%) of the Housing Units will not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the United States Department of Housing and Urban Development.

(3) Prior to the issuance of the Obligations, the Borrower will enter into an agreement with the City (the “Regulatory Agreement”) that specifies the maximum rental rates of twenty percent (20%) of the Housing Units and the income levels of the residents of the Project occupying the income-restricted units. Such rental rates and income levels must be within the limitations established in accordance with the preceding paragraph (2). The Borrower will be required to annually certify to the City over the term of the agreement that the rental rates for the rent-restricted units are within the limitations under the preceding paragraph (2). The City may request individual certification of the income of residents of the income-restricted units of the Project. The office of Minnesota Management & Budget may request from the City a copy of the annual certification prepared by the Borrower. The office of Minnesota Management & Budget may require the City to request individual certification of all residents of the income-restricted units of the Project.

(4) The City will monitor Project compliance with the rental rate and income level requirements established under the preceding paragraph (2). The City may issue an order of noncompliance if the Project is found by the City to be out of compliance with the rental-rate or income-level requirements established under the preceding paragraph (2). The Borrower shall pay a penalty to the City equal to one-half of one percent (0.5%) of the total amount of the tax-exempt Obligations issued under the Housing Act for the Project if the City issues an order of noncompliance. For each additional year the Project is out of compliance, the annual penalty must be increased by one-half of one percent (0.5%) of the principal amount of the tax-exempt Obligations issued under the Housing Act for the Project. The City may waive insubstantial violations.

(5) The City will enter into the Regulatory Agreement with the Borrower with a term of at least fifteen (15) years in order to ensure that the Project satisfies the requirements of this Program, Section 142(d) of the Code, the Housing Act, and the Allocation Act.

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**SUBORDINATE INDENTURE OF TRUST**

**between**

**CITY OF MINNETONKA, MINNESOTA,  
as Issuer**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Dated as of September 1, 2018**

**Relating to:**

**\$4,090,000  
City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Bonds  
(Legends of Minnetonka Project)  
Series 2018C**

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This instrument drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

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## SUBORDINATE INDENTURE OF TRUST

THIS SUBORDINATE INDENTURE OF TRUST, dated as of September 1, 2018 (the “Indenture”), is between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “Issuer”), and U.S. Bank National Association, a national banking association, authorized to accept and execute trusts of the character herein set out, with its principal office in Saint Paul, Minnesota (the “Trustee”).

### WITNESSETH

WHEREAS, the Issuer is authorized by Minnesota Statutes, Chapter 462C, as amended (the “Act”), to issue revenue obligations to finance the acquisition, construction, rehabilitation, and equipping of multifamily housing developments, including housing developments for seniors; and

WHEREAS, Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), has requested that the Issuer issue its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “Subordinate Bonds”), in the original aggregate principal amount of \$4,090,000, and the Issuer has authorized the issuance of the Subordinate Bonds pursuant to a resolution adopted by the City Council of the Issuer on August 27, 2018, the Act, and this Indenture; and

WHEREAS, the Issuer will loan the proceeds of the Subordinate Bonds to the Borrower (the “Loan”) pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower, and the Borrower will apply the proceeds of the Loan to (i) finance a portion of the costs of the acquisition, construction, and equipping of a 262-unit senior housing rental development located at 11001 Bren Road East, Minnetonka, Minnesota to be known as Legends of Minnetonka (the “Project”); (ii) finance capitalized interest on the Subordinate Bonds during the construction of the Project; and (iii) pay costs of issuance of the Subordinate Bonds; and

WHEREAS, in order to finance an additional portion of the costs of the acquisition, construction, and equipping of the Project, the Issuer has agreed to issue, pursuant to a separate plan of financing, its (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 (the “Series A-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 (the “Series A-2 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (iii) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 (the “Series B-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; and (iv) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 (the “Series 2018B-2 Governmental Note,” and collectively with the Series A-1 Governmental Note, the Series A-2 Governmental Note, and the Series B-1 Governmental Note, the “Senior Notes”), in the maximum principal amount of \$\_\_\_\_; and

WHEREAS, the Senior Notes evidence loans (the “Funding Loans”) made to the Issuer by U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association, in their capacity as initial funding lenders (together, the “Funding Lender”), pursuant to a Funding Loan Agreement, dated as of September 1, 2018, between the Issuer, U.S. Bank National Association, a national banking association, as administrative agent for the Funding Lender, and U.S. Bank National Association, a national banking association, as fiscal agent with respect to the Senior Notes (the “Fiscal Agent”); and

WHEREAS, the Issuer will loan the proceeds of the Funding Loans to the Borrower pursuant to the terms of a Project Loan Agreement, dated as of September 1, 2018, between the Issuer, the Borrower, and the Fiscal Agent; and

WHEREAS, as security for the payment of the Subordinate Bonds, the Issuer has agreed to assign and pledge to the Trustee, among other things, all right, title and interest of the Issuer in and to the Loan Agreement (except certain rights reserved to the Issuer), including the Basic Payments (hereinafter defined); and

WHEREAS, as additional security for the Subordinate Bonds, the Borrower has agreed in the Loan Agreement and the Assignment, Pledge, and Security Agreement, dated as of September 1, 2018 (the "Security Agreement"), between the Borrower and the Trustee, to pledge to the Trustee the Borrower's interest in payments due to it under the TIF Note (hereinafter defined) for repayment of the Loan; and

WHEREAS, as additional security for the Subordinate Bonds, the Borrower will execute and deliver to the Issuer a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (the "Subordinate Mortgage"), providing the Issuer with a subordinate mortgage lien on the property described therein, which the Issuer shall assign to the Trustee; and

WHEREAS, as additional security for the Subordinate Bonds, the Borrower will cause the execution and delivery of a Subordinate Guaranty Agreement, dated as of September 1, 2018 (the "Guaranty"), from Dominion Holdings II, LLC, a Minnesota limited liability company, in favor of the Trustee; and

WHEREAS, in connection with the issuance of the Senior Notes and the Subordinate Bonds, the Issuer, the Borrower, the Fiscal Agent, and the Trustee will enter into a Regulatory Agreement, dated September \_\_\_\_, 2018, pursuant to which the Borrower will agree to comply with certain federal and state requirements applicable to the Project; and

WHEREAS, all things necessary to make the Subordinate Bonds, when authenticated by the Trustee and issued as in this Indenture provided, valid, binding and legal limited obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid contract for the security of the Subordinate Bonds, have been done and performed; and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of said Subordinate Bonds, subject to the terms hereof, have in all respects been duly authorized; and

**NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS INDENTURE WITNESSETH:**

The Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Subordinate Bonds by the Holders (hereinafter defined) thereof, in order to secure the payment of the principal of and interest and premium, if any, on the Subordinate Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Subordinate Bonds, does hereby grant a security interest in, assign, transfer in trust, and pledge to the Trustee, and to its successors in trust, and to them and their assigns forever, the following:

## FIRST

All rights, title, interest and privileges of the Issuer in, to and under the Loan Agreement, including but not limited to all sums which the Issuer is entitled to receive from the Borrower pursuant to the Loan Agreement and in particular the Basic Payments (but excluding the rights of the Issuer to indemnification and certain direct payments to be made to it pursuant to Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 of the Loan Agreement), and all other sums (including proceeds of the Subordinate Bonds) which are required to be deposited in the trust accounts in accordance with Article 5 hereof, including amounts paid under the Guaranty and payments on the TIF Note, except for the Rebate Fund which is not a part of the Trust Estate; and the earnings derived from the investment of any of the foregoing sums as provided herein;

## SECOND

Any and all other property of every name and nature which may from time to time hereafter by delivery or by writing of any kind be subjected to the lien hereof by the Issuer, or by anyone on its behalf or with its written consent, including, but not limited to, the interests of the Issuer, if any, under the Collateral Documents, and the Trustee is hereby authorized to receive any and all such property at any and all times and to hold and apply the same as additional security hereunder subject to the terms hereof; and

## THIRD

All property mortgaged, pledged, and assigned under the Subordinate Mortgage and the Security Agreement and any and all other property of every name and nature which may from time to time hereafter by delivery or by writing of any kind be subjected to the lien hereof by the Issuer or by anyone on its behalf or with its written consent, and the Trustee is hereby authorized to hold and apply the same as additional security hereunder subject to the terms hereof.

TO HAVE AND TO HOLD all the same (herein called the "Trust Estate") with all privileges and appurtenances hereby granted and assigned, or agreed or intended so to be, to the Trustee and its successors in trust and to them and their assigns forever;

SUBJECT TO the rights of the Borrower under the Loan Agreement and the Subordinate Mortgage;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all Holders from time to time of the Subordinate Bonds issued under and secured by this Indenture, without privilege, priority or distinction as to lien or otherwise of any of the Subordinate Bonds over any of the others except as otherwise provided herein;

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, or provide fully for payment as herein provided of the principal of the Subordinate Bonds and the interest due or to become due thereon (together with premium, if any), at the time and in the manner set forth in the Subordinate Bonds according to the true intent and meaning thereof, and shall make the payments into the Bond Fund as required under Article 5 hereof or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient for payment of the entire amount due or to become due thereon as herein provided, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted shall cease,



terminate and be void except as otherwise provided herein; otherwise, this Indenture shall be and remain in full force and effect.

UNDER THE PROVISIONS OF THE ACT, the Subordinate Bonds may not be payable from or be a charge upon any funds of the Issuer other than the revenue pledged to the payment thereof, nor shall the Issuer be subject to any pecuniary liability thereon, and no Holder or Holders of the Subordinate Bonds shall ever have the right to compel any exercise of the taxing power of the Issuer to pay any Subordinate Bonds or the interest and premium, if any, thereon, or to enforce payment thereof against any property of the Issuer, except as above provided; the Subordinate Bonds shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer, except as above provided; and no Subordinate Bond shall constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation, but nothing in the Act impairs the rights of the Holders of Subordinate Bonds issued under this Indenture to enforce the covenants made for the security thereof as provided in this Indenture and in the Act, and by authority of the Act the Issuer and the Trustee mutually covenant and agree, to the extent specifically provided herein, for the equal and proportionate benefit of all Holders of the Subordinate Bonds, as follows:

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## ARTICLE 1

### DEFINITIONS, EXHIBITS AND GENERAL PROVISIONS

Section 1.1 Definitions. In this Indenture the following terms have the following meanings unless the context hereof clearly requires otherwise:

*Act*: Minnesota Statutes, Chapter 462C, as amended.

*Act of Bankruptcy*: any of the following events:

(i) If the Borrower shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like, or of all or a substantial part of their property, (b) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts; or

(ii) A proceeding or case shall be commenced, without the application or consent of the Borrower, in any court of competent jurisdiction, and shall not be dismissed, vacated, or stayed within ninety (90) days after commencement, seeking (a) the liquidation, reorganization, dissolution, winding-up, or the composition or adjustment of its debts, (b) the appointment of a trustee, receiver, custodian, liquidator or the like of the Borrower, or of all or any substantial part of its assets, or (c) similar relief in respect of the Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts.

*Additional Charges*: the payments required by Section 4.4 of the Loan Agreement.

*Administrative Agent*: U.S. Bank National Association, a national banking association, in its capacity as administrative agent for the Initial Funding Lender, its successors and assigns.

*Affiliated Party*: as to a particular Person, any Person directly and indirectly controlling or controlled by or under direct or indirect common control with such specified Person. "Control," when used with respect to a particular Person, means the possession, directly or indirectly, of the power to direct management and policies of such Person whether through the ownership of voting stock, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

*Assignment of Subordinate Mortgage*: the Assignment of Mortgage, dated as of September 1, 2018, by the Issuer in favor of the Trustee, as it may be amended from time to time.

*Authority*: the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic organized under the laws of the State.

*Authorized Denominations*: \$5,000 or any integral multiple of \$5,000 in excess thereof.

*Available Tax Increment*: has the meaning provided in the TIF Note.

*Basic Payments*: the payments required by Section 4.2 of the Loan Agreement.

*Beneficial Owner:* the Person for which a DTC Participant holds an interest in the Subordinate Bonds as shown on the books and records of the DTC Participant.

*Bond Counsel:* Kennedy & Graven, Chartered, or any other firm of nationally recognized bond counsel experienced in tax-exempt bond financing selected by the Issuer and acceptable to the Borrower.

*Bond Fund:* the fund so designated in Section 5.5 hereof from which the principal of and interest on the Subordinate Bonds are payable.

*Bond Purchase Agreement:* the Bond Purchase Agreement, dated \_\_\_\_\_, 2018, between the Issuer, the Borrower, and the Underwriter, pursuant to which the Underwriter will purchase the Subordinate Bonds.

*Bond Register:* the register maintained by the Trustee pursuant to Section 2.9 hereof

*Bond Registrar:* has the meaning provided in Section 2.9 hereof.

*Bondholder or Holder:* a Person in whose name a Subordinate Bond is registered in the Bond Register.

*Bond Year:* any twelve (12) month period ending on the anniversary of the Date of Issuance.

*Borrower:* Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, its successors and assigns or other Person which may assume its obligations under the Loan Agreement.

*Business Day:* any day on which the Trustee or the Federal Reserve Bank of New York is not authorized by law to close.

*Capitalized Interest Fund:* the fund so designated in Section 5.6 hereof from which interest on the Subordinate Bonds shall be paid.

*Cede & Co.:* initially, Cede & Co., as nominee of DTC and any successor or subsequent such nominee designated by DTC respecting DTC's functions as book-entry depository for any Subordinate Bond or Bonds.

*City:* the Issuer.

*Code:* the Internal Revenue Code of 1986, as amended, and all applicable Treasury Regulations.

*Collateral Documents:* collectively, the Guaranty, the Subordination Agreement, the Security Agreement, the Disbursing Agreement, and any other written instrument other than the Loan Agreement, the Subordinate Mortgage, and this Indenture, whereby any property or interest in property of any kind is granted, pledged, conveyed, assigned, or transferred to the Issuer or Trustee, or both, as security for payment of the Subordinate Bonds or performance by the Borrower of its obligations under the Loan Agreement.

*Completion Date:* the date the Borrower certifies the construction of the Project is complete pursuant to Section 3.7 of the Loan Agreement.

*Condemnation:* the word “Condemnation” or phrase “eminent domain” as used herein shall include the taking or requisition by governmental authority or by a Person, acting under governmental authority and a conveyance made under threat of Condemnation, and “Condemnation award” shall mean payment for property condemned or conveyed under threat of Condemnation;

*Continuing Disclosure Agreement:* the Continuing Disclosure Agreement, dated as of September 1, 2018, between the Borrower and the Dissemination Agent, as it may be amended from time to time.

*Costs of Issuance Fund:* the fund so designated in Section 5.9 hereof from which the Issuance Expenses are payable.

*County:* Hennepin County, Minnesota.

*Date of Issuance:* September \_\_\_\_, 2018, which is the date on which there is delivery by the Issuer of and payment by the Underwriter for the Subordinate Bonds.

*Date of Taxability:* the date as of which the interest on the Subordinate Bonds is deemed taxable under a Determination of Taxability.

*Defaulted Interest:* interest on any Subordinate Bond which is payable but which is not punctually paid or duly provided.

*Determination of Taxability:* a determination that the interest income on any Subordinate Bond is included in gross income for federal income tax purposes under Section 103 of the Code for any reason, other than that the Holder is a Substantial User of the Project or a Related Person thereto, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(i) the date on which any change in law or regulation becomes effective or on which the Internal Revenue Service has issued any private ruling, technical advice or any other written communication to the effect that the interest income on any of the Subordinate Bonds is included in gross income for federal income tax purposes; or

(ii) the date on which the Borrower shall receive notice from the Trustee or the Issuer in writing that the Internal Revenue Service has issued a thirty (30) day letter or other notice which asserts that the interest on such Subordinate Bond is included in gross income for federal income tax purposes.

*Development Agreement:* the Contract for Private Development, dated \_\_\_\_\_, 2018, between the Issuer, the Authority, and the Borrower, as it may be amended from time to time, with respect to the Project.

*Disbursing Agreement:* the \_\_\_\_\_ Agreement, dated as of September 1, 2018, between the Borrower, the Trustee, the Fiscal Agent, the Administrative Agent, and Title, specifying the conditions for the disbursement of the proceeds of the Senior Notes and Subordinate Bonds to pay Project Costs.

*Discharge Date:* the date on which all Outstanding Bonds are discharged under Article 7 hereof.

*Dissemination Agent:* U.S. Bank National Association, a national banking association, its successors and assigns.

*DTC:* The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York, or any successor book-entry securities depository for the Subordinate Bonds appointed pursuant to Section 2.13 hereof.

*DTC Participants:* those broker-dealers, banks and other financial institutions from time to time for which DTC holds bonds or securities as depository.

*Escrow Fund:* the fund so designated in Section 5.8 hereof.

*Event of Default:* any of the events set forth in Section 8.1 hereof or Section 9.1 of the Loan Agreement.

*Federal Bankruptcy Code:* the United States Bankruptcy Reform Act of 1978, as amended, or any similar or succeeding federal bankruptcy law.

*Final Maturity Date:* the Maturity Date, Discharge Date, or Redemption Date on which all Outstanding Bonds either mature, are redeemed or discharged, whichever is earliest.

*Fiscal Agent:* U.S. Bank National Association, a national banking association, acting as fiscal agent with respect to the Senior Notes under the provisions of the Funding Loan Agreement.

*Freddie Mac Commitment:* the commitment from Freddie Mac to the Freddie Mac Seller/Serviceer pursuant to which Freddie Mac has agreed to purchase the Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

*Funding Loans:* the loans in the maximum aggregate principal amount of \$\_\_\_\_\_ made to the Issuer pursuant to the Funding Loan Agreement by the Initial Funding Lender.

*Funding Loan Agreement:* the Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent for the Initial Funding Lender, the Issuer, and the Fiscal Agent, as it may be amended from time to time.

*Government Obligations:* SLGS and any other direct general obligations of, or obligations the prompt payment of the principal of and the interest on which are fully and unconditionally guaranteed by, the United States of America.

*Guarantor:* Dominion Holdings II, LLC, a Minnesota limited liability company, its successors and assigns.

*Guaranty:* the Subordinate Guaranty Agreement, dated as of September 1, 2018, from the Guarantor in favor of the Trustee, as it may be amended from time to time.

*Holder or Bondholder:* the Person in whose name a Subordinate Bond is registered in the Bond Register.

*Independent:* when used with reference to an attorney, engineer, architect, certified public accountant, consultant or other professional person, means a person who (a) is in fact independent;

(b) does not have any material financial interest in the Borrower or the transaction to which his or her certificate or opinion relates (other than payment to be received for professional services rendered); and  
(c) is not connected with the Issuer or the Borrower as an officer, director or employee.

*Independent Accountant:* a certified public accountant or firm of certified public accountants registered and qualified to practice as such under the laws of the State, who does not have any direct financial interest in the Borrower, other than the payment to be received under contract for services performed and who is not connected with the Borrower as an officer, employee, underwriter, partner, affiliate, subsidiary, or person performing similar functions and is not a trustee or director of the Borrower.

*Independent Counsel:* any attorney duly admitted to practice law before the highest court of any state, who may be counsel to the Borrower or the Issuer but who may not be an officer or a full-time employee of the Borrower or the Issuer.

*Independent Engineer:* an Independent engineer or engineering firm or an Independent architect or architectural firm qualified to practice the profession of engineering or architecture under the laws of the State.

*Indenture:* this Subordinate Indenture of Trust, dated as of September 1, 2018, between the Issuer and the Trustee, as the same may from time to time be amended or supplemented as herein provided.

*Initial Funding Lender:* together, U.S. Bank National Association, a national banking association, its successors and assigns, and BMO Harris Bank N.A., a national banking association, as initial funding lender under the Funding Loan Agreement with respect to the Senior Notes, their successors and assigns.

*Interest Payment Date:* March 1 and September 1 of each year, commencing March 1, 2019, and continuing until payment in full of the Subordinate Bonds.

*Issuance Expenses:* any and all costs and expenses relating to the issuance, sale and delivery of the Subordinate Bonds incurred or payable by the Borrower, including but not limited to underwriter's discount, all fees and expenses of legal counsel, the Trustee, financial consultants, feasibility consultants and accountants, any fee to be paid to the Issuer, the preparation and printing of this Loan Agreement, the Indenture, the Disbursing Agreement, the Subordinate Mortgage, any preliminary and final official statement or offering memorandum, the Subordinate Bonds and all other related closing documents, the costs of rating the Subordinate Bonds, and all other expenses relating to the issuance, sale and delivery of the Subordinate Bonds and any other costs which are treated as "issuance costs" within the meaning of Section 147(g) of the Code.

*Issuer:* the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State, its successors and assigns.

*Loan:* the loan of the proceeds of the Subordinate Bonds by the Issuer to the Borrower pursuant to Section 4.1 of the Loan Agreement.

*Loan Agreement:* the Subordinate Loan Agreement, dated as of September 1, 2018, between the Issuer and the Borrower, as the same may from time to time be amended.

*Mandatory Redemption Payments:* the payments which are required to be made under Section 3.1(2) hereof to redeem the Subordinate Bonds in accordance with the Mandatory Redemption Schedule after appropriate credits, if any, have been made.

*Mandatory Redemption Schedule:* the mandatory redemption schedule for the Subordinate Bonds set forth in Section 3.1(2) hereof.

*Maturity or Maturity Date:* any date on which principal of or interest or premium, if any, on the Subordinate Bonds is due, whether at maturity, on a scheduled Interest Payment Date, or upon redemption, defeasance, acceleration, or otherwise.

*Moody's:* Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a municipal securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized municipal securities rating agency designated by the Borrower (other than S&P).

*Mortgaged Property:* has the meaning assigned in the Subordinate Mortgage.

*Net Bond Proceeds:* proceeds of the Subordinate Bonds, including interest earnings thereon.

*Net Proceeds:* when used with respect to proceeds of insurance or a condemnation award, money received or receivable by the Borrower as owner or the Trustee as secured party of the Project, less the cost of recovery (including attorneys' fees) of such money from the insuring company or the condemning authority.

*Notice by Mail:* notice of any action or condition by mail shall mean a written notice meeting the requirements of this Indenture mailed by first-class mail, postage prepaid, to the Holders of specified Bonds at the addresses shown in the Bond Register.

*Original Purchaser:* the Underwriter, or any other financial institution, investment banker, bond dealer, registered investment company, or other person who purchases the Subordinate Bonds from the Issuer.

*Outstanding:* as of the date of determination, all Subordinate Bonds theretofore issued and delivered under this Indenture except:

(i) Subordinate Bonds theretofore cancelled by the Trustee or Paying Agent or delivered to the Trustee or Paying Agent cancelled or for cancellation;

(ii) Subordinate Bonds for which payment or redemption money or securities (as provided in Article 7 hereof) shall have been theretofore deposited with the Trustee in trust for the Holders of such Subordinate Bonds, provided, however, that if such Subordinate Bonds are to be redeemed, notice of such redemption shall have been duly given pursuant to this Indenture or irrevocable action shall have been taken to call such Subordinate Bonds for redemption at a stated Redemption Date; and

(iii) Subordinate Bonds in exchange for or in lieu of which other Subordinate Bonds shall have been issued and delivered pursuant to this Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the Borrower shall be disregarded and deemed not to be Outstanding Bonds, except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Subordinate Bonds which the Trustee knows to be owned by the Borrower shall be disregarded.

*Paying Agent:* the Trustee or any other entity designated pursuant to this Indenture as the agent of the Issuer and the Trustee to receive and disburse the principal of and premium, if any, and interest on the Subordinate Bonds.

*Payment Date:* any Interest Payment Date, any Principal Payment Date, any Stated Maturity, the Discharge Date or any Redemption Date.

*Permitted Investments:*

- (i) Government Obligations;
- (ii) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including:
  - Export-Import Bank
  - Farmers Home Administration
  - General Services Administration
  - U.S. Maritime Administration
  - Small Business Administration
  - Government National Mortgage Association (GNMA)
  - U.S. Department of Housing & Urban Development (PHA's)
  - Federal Housing Administration;
- (iii) bonds, notes or other evidences of indebtedness rated at the time of investment "AAA" by S&P and "Aaa" by Moody's issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;
- (iv) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P and "P-1" by Moody's and maturing no more than three hundred sixty (360) days after the date of purchase (ratings on holding companies are not considered as the rating of the bank);
- (v) commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's and "P-1" by Moody's and which matures not more than two hundred seventy (270) days after the date of purchase;
- (vi) investments in a money market fund rated at the time of investment "AAAm" or "AAAm-G" or better by S&P;
- (vii) Pre-refunded municipal obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to



maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(a) which are rated at the time of investment, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of S&P and Moody’s; or

(b) (1) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in clause (i) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (2) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the Subordinate Bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

(viii) investment agreements issued or guaranteed by any financial institution maintaining a rating at the time of investment of “A” or better by S&P or “A2” or better by Moody’s; or

(ix) fixed income securities issued by any state of the United States of America or any agency, instrumentality or political subdivision thereof which are rated at the time of investment not less than “A” by S&P or “A2” by Moody’s.

*Permitted Encumbrances:* those encumbrances set forth in Section 5 of the Subordinate Mortgage.

*Person:* any natural person, corporation, limited liability company, joint venture, cooperative, partnership, trust or unincorporated organization, government or governmental body or agency, political subdivision or other legal entity, as in the context may be appropriate.

*Principal Payment Date:* March 1 and September 1 of each year, commencing September 1, 2022.

*Project:* the 262-unit senior housing rental development to be located on the Project Premises and to be known as Legends of Minnetonka, a portion of which will be acquired, constructed, and equipped with proceeds of the Subordinate Bonds.

*Project Costs:* the cost items enumerated in Section 3.2 of the Loan Agreement.

*Project Fund:* the fund so designated in Section 5.4 hereof from which the Project Costs are payable.

*Project Loan Agreement:* the Project Loan Agreement, dated as of September 1, 2018, between the Issuer, the Fiscal Agent, and the Borrower, as it may be amended from time to time.

*Project Loan Fund:* the fund established by the Fiscal Agent pursuant to Section 2.12 of the Funding Loan Agreement and the fund so designated in Section 5.2 hereof.

*Project Premises:* the real estate located at 11001 Bren Road East in the City and legally described in Exhibit A attached to the Subordinate Mortgage, together with all additions to, replacements of and substitutions for the foregoing, but excluding any real estate released from the lien of the Subordinate Mortgage pursuant to the terms of the Subordinate Mortgage.

*Rating Agency:* S&P or Moody's.

*Rebatable Arbitrage:* has the meaning provided in Section 5.7 hereof.

*Rating Category:* one of the generic rating categories of a Rating Agency, without regard to any refinement or gradation of such Rating Category by a numerical or other modifier.

*Rebate Amounts:* the amount determined pursuant to Section 5.7 hereof and Section 7.7(13) of the Loan Agreement to be rebated to the United States.

*Rebate Analyst:* a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Issuer, to make the rebate computations required under this Indenture and the Loan Agreement.

*Rebate Fund:* the fund so designated in Section 5.7 hereof.

*Record Date:* the fifteenth day of the calendar month next preceding an Interest Payment Date, whether or not such day is a Business Day.

*Redemption Date:* when used with respect to any Subordinate Bond to be redeemed, the date on which it is to be redeemed pursuant hereto.

*Redemption Price:* when used with respect to any Subordinate Bond to be redeemed, the price at which it is to be redeemed pursuant hereto.

*Regular Interest Payments:* all interest payments on the Subordinate Bonds, other than Special Interest Payments.

*Regulatory Agreement:* the Regulatory Agreement, dated the Date of Issuance, between the Issuer, the Borrower, the Fiscal Agent, and the Trustee, as the same may be amended from time to time.

*Related Person:* with reference to any Substantial User, means a "related person" within the meaning of Section 147(a)(2) of the Code.

*Related Loan Documents:* collectively, the Loan Agreement, the Subordinate Mortgage, the Collateral Documents, and the Disbursing Agreement.

*Representation Letter:* such Letter of Representations to DTC or other documentation required by DTC as a condition to its acting as book-entry depository for any bond or bonds together with any replacement thereof or amendment or supplement thereto (and including any standard procedures or policies referenced therein or applicable thereto) respecting the procedures and other matters relating to DTC's role as book-entry depository for the Subordinate Bonds.

*Representative:* the Mayor, City Manager, and Finance Director of the Issuer or a general partner of the Borrower, or any other person at any time designated to act on behalf of the Issuer or the Borrower, as the case may be, as evidenced by a written certificate furnished to the other party and the Trustee containing the specimen signature of such person and signed for the Issuer by its Mayor, City Manager, or Finance Director or for the Borrower by a general partner of the Borrower.

*Responsible Officer:* when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

*Restricted Obligations:* an obligation the interest on which is included in gross income for federal income tax purposes under Section 103 of the Code.

*Security Agreement:* the Assignment, Pledge, and Security Agreement, dated as September 1, 2018, from the Borrower in favor of the Trustee, granting a security interest in the TIF Note, as it may be amended from time to time.

*Senior Mortgage:* (i) with respect to the Series A-1 Governmental Note and the Series A-2 Governmental Note, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated September \_\_, 2018, from the Borrower to the Issuer and assigned by the Issuer to the Fiscal Agent, as it may be amended from time to time; and (ii) with respect to the Series B-1 Governmental Note and the Series B-2 Governmental Note, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated September \_\_, 2018, from the Borrower to the Issuer and assigned by the Issuer to the Fiscal Agent, as it may be amended from time to time.

*Senior Notes:* collectively, the Series A-1 Governmental Note, the Series A-2 Governmental Note, the Series B-1 Governmental Note, and the Series B-2 Governmental Note.

*Series A-1 Governmental Note:* the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$\_\_\_\_\_.

*Series A-2 Governmental Note:* the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$\_\_\_\_\_.

*Series B-1 Governmental Note:* the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$\_\_\_\_\_.

*Series B-2 Governmental Note:* the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$\_\_\_\_\_.

*Single Purpose Entity:* a Person, other than an individual, which is formed or organized solely for the purpose of directly holding an ownership interest in the Project, does not engage in any business unrelated to the Project, does not have any assets other than those related to its interest in such Project, has its own separate books and records and has its own accounts, in each case which are separate and

apart from the books and records and accounts of any other Person, and holds itself out as being a Person, separate and apart from any other Person. In addition to the foregoing, with respect to the Borrower, a Single Purpose Entity shall also be as follows:

(i) a Person which is and at all times since its formation has been (a) a duly formed and existing Person which is either not treated as a taxpayer under the tax laws of any governmental authority or (i) treated as a taxpayer under any tax law of any governmental authority and (ii) has tax liability which is adequately provided for, and, (b) duly qualified as a foreign Person in each jurisdiction in which such qualification was or may be necessary for the conduct of its business;

(ii) a Person which is in compliance with, and at all times since its formation has complied with, the provisions of its organizational documents and the laws of its jurisdiction of formation;

(iii) a Person which has at all times since its formation observed all customary formalities regarding its existence;

(iv) a Person which (a) has at all times since its formation accurately maintained its financial statements, accounting records and other books and records separate from those of any Person, (b) has not at any time since its formation commingled its assets with those of any Person and (c) has at all times since its formation accurately maintained its own bank accounts, payroll and separate books of account;

(v) a Person which has at all times since its formation paid its own liabilities from its own separate assets or, if paid by another, provided for reimbursement thereof;

(vi) a Person which (a) has at all times since its formation identified itself in all dealings with the public, under its own name or under any “doing business as” name (provided such “doing business as” name is used exclusively by such Person) and as a separate and distinct entity and (b) has not at any time since its formation identified itself as being a division or a part of any other entity and (c) has not at any time since its formation identified any other Person as being a division or part of such Person;

(vii) a Person which has been at all times since its formation adequately capitalized in light of the nature of its business;

(viii) a Person which, except with respect to obligations and liabilities set forth in the Loan Agreement, the Subordinate Mortgage, and the Collateral Documents, has not at any time since its formation incurred, assumed or guaranteed any indebtedness (contingent or otherwise) or the liabilities of any Person or has not at any time since its formation acquired obligations or securities of any Person or has not at any time since its formation made loans or advances to any Person; and

(ix) a Person which has not at any time since its formation entered into and was not a party to any transaction with any affiliate, except in the ordinary course of business of such Person on terms which are no less favorable to such Person than would be obtained in a comparable arm’s-length transaction with an unrelated third party.

*SLGS*: United States Treasury Certificates of Indebtedness, Notes and Bonds – State and Local Government Series.

*S&P:* S&P Global Ratings, its successors and their assigns, and if such entity shall be dissolved or liquidated or shall no longer perform the functions of a municipal securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized municipal securities rating agency designated by the Borrower (other than Moody’s).

*Special Interest Payments:* all payments of (or with respect to) interest on the Subordinate Bonds made upon the acceleration of the Subordinate Bonds pursuant to Section 8.2 hereof.

*Special Record Date:* the date fixed by the Trustee pursuant to Section 2.2 hereof relating to the payment of any Defaulted Interest.

*State:* the State of Minnesota.

*Stated Maturity:* when used with respect to any Subordinate Bond or any installment of interest thereon, the date specified in such Subordinate Bond as the fixed date on which principal of such Subordinate Bond or such installment of interest is due and payable.

*Subordinate Bond Proceeds Subaccount:* with respect to the Subordinate Bonds, the Subordinate Bond Proceeds Subaccount of the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 of the Funding Loan Agreement and the subaccount so designated in Section 5.4 hereof.

*Subordinate Bonds:* the Issuer’s Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C, issued by the Issuer in the original aggregate principal amount of \$4,090,000.

*Subordinate Mortgage:* the Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018, by the Borrower in favor of the Trustee and assigned by the Issuer to the Trustee pursuant to the Assignment of Subordinate Mortgage, as it may be amended from time to time.

*Subordination Agreement:* the Subordination Agreement, dated the Date of Issuance, between the Issuer, the Borrower, the Fiscal Agent, the Trustee, and the Administrative Agent for the Initial Funding Lender, as it may be amended from time to time.

*Substantial User:* a “substantial user” within the meaning of Section 147(a)(1) of the Code.

*Surplus Cash:* has the meaning assigned to such term in the Subordination Agreement.

*Tax Certificate:* the Borrower Tax Certificate executed by the Borrower on the Date of Issuance with the endorsement of the Issuer.

*Taxable Note Proceeds Subaccount:* the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 of the Funding Loan Agreement and the subaccount so designated in Section 5.4 hereof.

*Tax-Exempt Note Proceeds Subaccount:* the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 of the Funding Loan Agreement and the subaccount so designated in Section 5.4 hereof.

*Term of Loan Agreement:* the period of time commencing on the date of execution of the Loan Agreement and terminating on the date set forth in Section 10.10 of the Loan Agreement or such earlier date as provided by Section 7.8 or 8.4 of the Loan Agreement.

*TIF Note:* the pay-as-you-go note designated as the Tax Increment Revenue Note, Series 2018, dated \_\_\_\_\_, 2018, issued by the Authority in the maximum principal amount of \$4,161,000 in favor of the Borrower and pledged by the Borrower to the Trustee, at the direction of the Borrower, pursuant to the Loan Agreement and the Security Agreement to secure the Subordinate Bonds.

*Title:* Commercial Partners Title, LLC, a Minnesota limited liability company, its successors and assigns.

*Treasury Regulations:* the regulations promulgated under the Code.

*Trust Estate:* the Trust Estate as defined and set forth in the Granting Clauses hereof.

*Trustee:* U.S. Bank National Association, a national banking association, and any co-trustee or successor trustee appointed, qualified and then acting as such under the provisions of this Indenture.

*Underwriter:* Dougherty & Company LLC, or any successor underwriter appointed and serving in such capacity pursuant to this Indenture.

*Unpaid Bonds:* all Outstanding Bonds and any other Bonds which have neither matured nor been redeemed or purchased and cancelled under this Indenture.

*Working Capital Expense:* any cost that is not properly chargeable to the Project's capital account within the meaning of the Code.

Section 1.2 Rules of Interpretation. This Indenture shall be interpreted in accordance with and governed by the laws of the State.

The words "herein," "hereof," and "hereunder" and words of similar import, without reference to any particular section or subdivision, refer to this Indenture as a whole rather than to any particular section or subdivision of this Indenture.

References in this Indenture to any particular article, section or subdivision hereof are to the designated article, section or subdivision of this Indenture as originally executed.

All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

The Table of Contents and titles of articles and sections herein are for convenience only and are not a part of this Indenture.

Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Indenture.

For purposes of this Indenture and the Loan Agreement, an Act of Bankruptcy shall be deemed no longer pending if the petition is dismissed by order of a court of competent jurisdiction and no further appeal rights exist from such order.

Any opinion of counsel called for herein shall be a written opinion of such counsel.

References to the Subordinate Bonds as “tax exempt” or to the “tax-exempt status of the Subordinate Bonds” are to the exclusion of interest from gross income pursuant to Section 103(a) of the Code, irrespective of such forms of taxation as the alternative minimum tax or branch profits tax on foreign corporations, as is consistent with the approach taken in Section 59(i) of the Code.

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## ARTICLE 2

### THE SUBORDINATE BONDS

Section 2.1 Special Obligations and Sources of Payment; Authorized Amount and Form of Bonds.

(1) The Subordinate Bonds are special, limited obligations of the Issuer, the principal of, premium, if any, and interest on which are payable solely from the Trust Estate, but if such amounts are not sufficient, the Borrower shall make such payments from funds realized from the sale or other disposition of the Mortgaged Property and net revenues of the Project available after payment of all amounts due with respect to the Senior Notes.

(2) Subordinate Bonds secured by this Indenture shall be issued in fully registered form, without coupons, in any Authorized Denominations, in substantially the form set forth in EXHIBIT A attached hereto with such appropriate variations, omissions and insertions as are permitted or required by this Indenture, and in accordance with the further provisions of this Article 2. The total principal amount of the Subordinate Bonds that may be outstanding hereunder is expressly limited to \$4,090,000.

Section 2.2 Initial Issue. The Subordinate Bonds shall be initially issued in the original aggregate principal amount of \$4,090,000 and shall:

(1) be dated as of their date of nominal original issuance, or the date of their registration as provided in Section 2.9 hereof;

(2) be issued and delivered to the Original Purchaser as fully registered bonds without coupons in any Authorized Denomination and shall be numbered R-1 upward;

(3) be subject to the provisions of Section 3.1 hereof, have Stated Maturities on the Principal Payment Dates of each of the following years, in the following respective principal amounts, and bear interest at the rates per annum for each Stated Maturity of the Subordinate Bonds until paid or discharged as herein provided, with interest computed on the basis of a three hundred sixty (360) day year composed of twelve (12) thirty (30) day months, as set forth below opposite the respective Stated Maturities:

<u>Stated Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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(4) bear interest payable semiannually on each Interest Payment Date and continuing until payment in full of the Subordinate Bonds;

(5) be subject to redemption upon the terms and conditions and at the prices specified in Article 3 hereof;



(6) be payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, at the principal trust office of the Trustee acting as the Paying Agent, or a duly appointed successor Paying Agent, except that interest on the Subordinate Bonds will be payable by check or draft mailed by the Trustee to the Holders of such Subordinate Bonds on the applicable Record Date (the “Record Date Holders”) at the last addresses thereof as shown in the Bond Register on the applicable Record Date, and principal of and any premium on any Subordinate Bonds shall be payable at the principal office of the Trustee, provided that any Defaulted Interest shall be payable, on a date selected by the Trustee, to the Person in whose name such Subordinate Bond is registered in the Bond Register at the close of business on a Special Record Date selected by the Trustee and which shall be at least ten (10) days but not more than thirty (30) days before the date selected by the Trustee for payment of such Defaulted Interest; the Trustee shall give Notice by Mail of the Special Record Date and date for payment of Defaulted Interest at least ten (10) days before the Special Record Date; and

(7) notwithstanding the foregoing, if the date for payment of the principal of, premium, if any, or interest on any Subordinate Bond shall be a day which is not a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment.

Notwithstanding the foregoing, any Record Holder of at least \$500,000 in principal amount of the Outstanding Subordinate Bonds may file with the Trustee an instrument satisfactory to the Trustee requesting the interest payable by the Trustee to such Holder be paid by transferring by wire transfer in immediately available funds, on the day such payment is due, the amount to be distributed to such Holder to a designated account maintained by such Holder at any bank in the United States. The Trustee shall pay all amounts payable by the Trustee hereunder to such Holder by transfer directly to said designated bank in accordance with the provisions of any such instrument, provided that if such amount represents a payment of the principal of any Subordinate Bond, such Subordinate Bond shall have been presented to the Trustee. All payments so made shall be valid and effectual to satisfy and discharge the liability upon such Subordinate Bonds.

Section 2.3 Execution. The Subordinate Bonds shall be executed on behalf of the Issuer by the signatures of its Mayor and City Manager and be sealed with the seal of the Issuer, provided, however, that the seal of the Issuer may be a printed facsimile or may be omitted, provided further that all of such signatures may be printed or photocopied facsimiles, in which event the Subordinate Bonds shall also be executed manually by the Trustee as authenticating agent as provided in Section 2.4 hereof and Minnesota Statutes, Section 475.55, as amended. In the event of disability or resignation or other absence of either such officer, the Subordinate Bonds may be signed by the manual or facsimile signature of that officer who may act on behalf of such absent or disabled officer. In case either such officer whose signature or facsimile of whose signature shall appear on the Subordinate Bonds shall cease to be such officer before the delivery of the Subordinate Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. The Subordinate Bonds may be issued and delivered as typewritten bonds or as printed bonds, provided that if the typewritten bonds are delivered, the facsimile signatures of the Issuer may be conformed signatures.

Section 2.4 Authentication. No Subordinate Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless a certificate of authentication signed by the Trustee (the “Certificate of Authentication”) on such Subordinate Bond, substantially in the form attached hereto as EXHIBIT A, shall have been duly executed manually by a Responsible Officer. Certificates of Authentication on different Subordinate Bonds need not be signed by the same person. The Trustee shall authenticate the signatures of officers of the Issuer on each Subordinate Bond by execution of the Certificate of Authentication on the Subordinate Bond, and the executed Certificate of

Authentication on each Subordinate Bond shall be conclusive evidence that it has been authenticated and delivered under this Indenture.

Section 2.5 Delivery of Initial Issue. Upon the execution and delivery of this Indenture the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate, the Subordinate Bonds in the original aggregate amount of \$4,090,000 and the Trustee shall deliver the Subordinate Bonds to the Original Purchaser as hereinafter provided after filing with the Trustee the following:

(1) original executed counterparts of the Loan Agreement, the Subordinate Mortgage, the Regulatory Agreement, the Assignment of Subordinate Mortgage, the Disbursing Agreement, the Guaranty, the TIF Note, the Security Agreement, the Subordination Agreement, the Continuing Disclosure Agreement, and this Indenture;

(2) a copy, duly certified by the Issuer's appropriate recording officer, of the resolutions adopted and approved by the governing body of the Issuer, authorizing the execution and delivery of this Indenture and the documents described in subsection (1) above to which the Issuer is a party;

(3) a request and authorization (which may be part of a certificate of the Issuer) to the Trustee on behalf of the Issuer, signed by its Mayor and City Manager to deliver the Subordinate Bonds to the Original Purchaser therein identified upon payment to the Trustee for the account of the Issuer of a specified sum plus accrued interest (the "Issuer Request");

(4) the opinion of the Borrower's counsel in the form required by Bond Counsel and counsel to the Original Purchaser;

(5) the opinion of Bond Counsel approving the legality and tax-exempt status of the Subordinate Bonds issued pursuant to this Indenture; and

(6) any other documents or opinions as Bond Counsel may require for purposes of rendering its opinion required under subsection (5) above.

Section 2.6 Mutilated, Lost, Stolen or Destroyed Subordinate Bonds.

(1) In case any Subordinate Bond issued hereunder shall become mutilated or be destroyed or lost, the Issuer shall, if not then prohibited by law, cause to be executed, and the Trustee shall authenticate and deliver, a new Subordinate Bond of like series, amount, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Subordinate Bond, or in lieu of and in substitution for any such Subordinate Bond destroyed or lost, upon the Holder's paying the reasonable expenses and charges of the Trustee and Issuer and, in the case of a Subordinate Bond destroyed or lost, the filing with the Trustee evidence satisfactory to the Trustee that such Subordinate Bond was destroyed or lost, and of the ownership thereof, and furnishing the Issuer and the Trustee with indemnity satisfactory to them. If the mutilated, destroyed or lost Subordinate Bond has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Subordinate Bond prior to payment.

(2) In executing a new Subordinate Bond and in furnishing the Trustee with the written authorization to authenticate and deliver a new Subordinate Bond as provided for in this Section, the Issuer may rely conclusively on a representation of the Trustee that the Trustee is satisfied with the adequacy of the evidence presented concerning the mutilation, loss, theft or destruction of any Subordinate Bond.

Section 2.7 Ownership of Subordinate Bonds. The Issuer, Trustee and Paying Agent may deem and treat the Holder of any Subordinate Bond, whether or not such Subordinate Bond shall be overdue, as the absolute owner of such Subordinate Bond for the purpose of receiving payment thereof and for all other purposes whatsoever, and the Issuer (or any agent thereof), Trustee and Paying Agent shall not be affected by any notice to the contrary.

Section 2.8 Preparation of Subordinate Bonds. The Subordinate Bonds shall be printed or typewritten bonds substantially in the form attached hereto as EXHIBIT A.

Section 2.9 Registration, Transfer and Exchange of Subordinate Bonds.

(1) The Issuer will cause to be kept at the principal corporate trust office of the Trustee a Bond Register in which, subject to such reasonable regulations as the Trustee may prescribe, the Issuer shall provide for the registration of Bonds and the registration of transfers of Subordinate Bonds, and the Trustee is hereby appointed “Bond Registrar” for the purpose of registering the Subordinate Bonds and transfers of the Subordinate Bonds as herein provided. The Bond Register shall contain a record of every Subordinate Bond at any time authenticated hereunder, together with the name and address of the Holder thereof, the date of authentication, the date of transfer or payment, and such other matters as are appropriate for the Bond Register in the estimation of the Trustee.

(2) Upon surrender for transfer of any Subordinate Bond at the principal corporate trust office of the Trustee, the Issuer shall execute (if necessary), and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees (but not registered in blank or to “bearer” or a similar designation), one or more new Subordinate Bonds of any Authorized Denomination, having the same Stated Maturity and interest rate, as requested by the transferor. The execution by the Issuer of any Subordinate Bond of any denomination shall constitute full and due authorization of such denomination and the Trustee shall thereby be authorized to authenticate and deliver such Subordinate Bond.

(3) At the option of the Holder, Subordinate Bonds may be exchanged for other Subordinate Bonds of the same series of any Authorized Denomination of a like aggregate principal amount and Stated Maturity, upon surrender of the Subordinate Bonds to be exchanged at the principal corporate trust office of the Trustee, and upon payment, if the Issuer shall so require, of the taxes, if any, hereinafter referred to. Whenever any Subordinate Bonds are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Subordinate Bonds which the Holder making the exchange is entitled to receive.

(4) All Subordinate Bonds surrendered upon any exchange or transfer provided for in this Indenture shall be promptly cancelled by the Trustee and thereafter disposed of as directed by the Issuer.

(5) All Subordinate Bonds delivered in exchange for or upon transfer of Subordinate Bonds shall be valid special obligations of the Issuer evidencing the same debt, and entitled to the same benefits under this Indenture, the Loan Agreement, the Subordinate Mortgage, and any Collateral Document, as the Subordinate Bonds surrendered for such exchange or transfer.

(6) Transfer of a Subordinate Bond may be made on the Issuer’s books by the registered owner in person or by the registered owner’s attorney duly authorized in writing. Every Subordinate Bond presented or surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument or instruments of transfer, in the form printed on the Subordinate Bond or in another form satisfactory to the Trustee, duly executed and with guaranty of signature of the Holder thereof or his attorney duly authorized in writing and shall include written instructions as to the details of the transfer of the Subordinate Bond.

(7) No service charge shall be made to the Holder for any registration, transfer or exchange, but the Trustee may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in connection with any transfer or exchange of Subordinate Bonds, other than exchanges expressly provided in this Indenture to be made without expense or without charge to Bondholders.

(8) Subject to the provisions of subsection (9) below, the Trustee as Bond Registrar shall endeavor to comply with rules applicable to transfer agents registered with the Securities and Exchange Commission as to the seventy-two (72) hour “turnaround” standard established for the transfer of registered corporate securities.

(9) The Trustee shall not be required (i) to transfer or exchange any Subordinate Bond during a period beginning at the opening of business ten (10) days before the day of the first publication or the mailing (if there is no publication) of a notice of redemption of Subordinate Bonds under this Indenture and ending at the close of business on the day of such publication or mailing, or (ii) to transfer or exchange any Subordinate Bond so selected for redemption in whole or in part.

(10) The Bond Registrar shall insert in each Subordinate Bond the date of registration which, for purposes of delivering the original Subordinate Bonds to the Original Purchaser, shall be the date of original issue, and which for all other events shall be the last Interest Payment Date preceding the date of authentication to which interest on the Subordinate Bond has been paid or made available for payment, unless the date of authentication is an interest payment date to which interest has been paid or made available for payment, in which case the Subordinate Bond shall be dated as of the date of authentication. Each Subordinate Bond shall be so dated that neither gain nor loss in interest shall result from any transfers, exchange or substitution provided for herein.

Section 2.10 Interest Rights Preserved. Each Subordinate Bond delivered upon transfer of or in exchange for or in lieu of any other Subordinate Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Subordinate Bond.

Section 2.11 Cancellation of Subordinate Bonds. Whenever any Outstanding Subordinate Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount and interest represented thereby or for replacement pursuant to Section 2.6 hereof or transfer pursuant to Section 2.9 hereof, such Subordinate Bond shall be cancelled and, subject to the Trustee’s business practices, destroyed by the Trustee.

Section 2.12 Book-Entry System. Upon request of a Holder any Subordinate Bond may be registered in the Bond Register in the name of Cede & Co., as the nominee of DTC, who will thereafter act as securities depository for such Subordinate Bond or Subordinate Bonds.

With respect to Bonds registered in the Bond Register in the name of Cede & Co., as nominee of DTC, neither the Issuer, the Borrower nor the Trustee shall have any responsibility or obligation to any DTC Participant or to any Beneficial Owner. Without limiting the immediately preceding sentence, neither the Issuer, the Borrower, nor the Trustee shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the Subordinate Bonds, (ii) the delivery to any DTC Participant, any Beneficial Owner or any other Person, other than DTC, of any notice with respect to the Subordinate Bonds, including any notice of redemption, (iii) the payment to any DTC Participant, any Beneficial Owner or any other Person, other than DTC, of any amount with respect to the principal of or premium, if any, or

interest on the Subordinate Bonds, or (iv) the failure of DTC to provide any information or notification on behalf of any DTC Participant or Beneficial Owner.

The Issuer, the Borrower and the Trustee may treat as and deem DTC to be the absolute owner of each Subordinate Bond for the purpose of payment of the principal of and premium and interest on such Subordinate Bond, for the purpose of giving notices of redemption and other matters with respect to such Subordinate Bond, for the purpose of registering transfers with respect to such Subordinate Bonds, and for all other purposes whatsoever (except for the giving of certain Bondholder consents). The Trustee shall pay all principal of and premium, if any, and interest on the Subordinate Bonds to the Bondholders as shown on the Bond Register, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of and premium, if any, and interest on the Subordinate Bonds to the extent of the sum or sums so paid.

Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the transfer provisions in Section 2.9 hereof, references to "Cede & Co." in this Section shall refer to such new nominee of DTC.

Notwithstanding the provisions of this Indenture to the contrary (including without limitation surrender of Subordinate Bonds, registration thereof, and Authorized Denominations), as long as the Subordinate Bonds are in book-entry form, full effect shall be given to the Representation Letter and the procedures and practices of DTC thereunder.

Section 2.13 Termination of Book-Entry Only System. DTC may determine to discontinue providing its services with respect to any Subordinate Bonds registered in the name of Cede & Co. at any time by giving written notice to the Trustee and discharging its responsibilities with respect thereto under applicable law. Upon the termination of the services of DTC as provided above, the Subordinate Bonds may be registered in whatever name or names the Bondholders shall designate at that time, in accordance with Section 2.9 hereof. To the extent that the Beneficial Owners are designated as the transferee by the Bondholders, in accordance with Section 2.9 hereof, the Subordinate Bonds will be delivered in appropriate form, content and Authorized Denomination to the Beneficial Owners.

So long as any Subordinate Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal of and premium, if any, and interest on such Subordinate Bond and all notices with respect to such Subordinate Bond shall be made and given, respectively, to DTC as provided in the Representation Letter.

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**ARTICLE 3**

**REDEMPTION OF BONDS BEFORE MATURITY**

Section 3.1 Redemption Provisions. The Subordinate Bonds are subject to redemption and prepayment as follows:

(1) Optional Redemption. The Subordinate Bonds are subject to redemption and prepayment upon request by the Borrower to the Trustee on \_\_\_\_\_ 1, 20\_\_\_\_, and on any Business Day thereafter, in whole or in part, and if in part, in inverse order of their maturity dates in principal increments of \$5,000 and by lot within any Maturity, at a Redemption Price equal to the principal amount of the Subordinate Bonds to be redeemed plus accrued interest thereon.

(2) Mandatory Redemption Upon Failure to Meet Disbursement Requirements. The Subordinate Bonds are subject to mandatory redemption in whole but not in part on September 1, 2019 if the conditions set forth in Section 3.6 of the Loan Agreement for disbursement are not met on or before August 1, 2019.

(3) Mandatory Sinking Fund Redemption. The Subordinate Bonds maturing \_\_\_\_\_ 1, 20\_\_\_\_, \_\_\_\_\_ 1, 20\_\_\_\_, and \_\_\_\_\_ 1, 20\_\_\_\_ are subject to mandatory redemption by lot in the principal increments of \$5,000, at par and accrued interest without premium, on the dates and in the principal amounts set forth below (unless and to the extent a credit against any such amount is applied as provided in the Funding Loan Agreement):

Subordinate Bonds Maturing _____ 1, 20____			
Year	Amount	Year	Amount

\_\_\_\_\_  
\* *Maturity*

Subordinate Bonds Maturing _____ 1, 20____			
Year	Amount	Year	Amount

\_\_\_\_\_  
\* *Maturity*

Subordinate Bonds Maturing 1, 20

Year	Amount	Year	Amount
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\* *Maturity*

At the option of the Borrower exercised not less than forty-five (45) days prior to any Sinking Fund Redemption Date, the Borrower may (i) deliver to the Trustee for cancellation Subordinate Bonds in any aggregate principal amount desired, or (ii) receive a credit in respect of such sinking fund obligation for any Subordinate Bonds which prior to such date have been purchased or redeemed (other than through the operation of the sinking fund) and not otherwise previously applied as a credit against sinking fund payments.

(4) Extraordinary Redemption. In the events described in Section 8.4(1) of the Loan Agreement and exercise by the Borrower of its option to terminate the Loan Agreement, the Subordinate Bonds shall be redeemed in whole by the Issuer on the earliest date for which timely notice of call can be given after receipt of the Borrower's notice of exercise, at a Redemption Price equal to the principal amount to be redeemed, without any premium, plus accrued interest to the Redemption Date.

(5) Tax Redemption. The Subordinate Bonds are subject to mandatory redemption in whole on the first Business Day for which notice of redemption can properly be given as provided herein upon the occurrence of a Determination of Taxability at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Subordinate Bonds plus accrued interest thereon to the Redemption Date.

Section 3.2 Partial Redemption of Subordinate Bonds. In the case of any partial redemption of Subordinate Bonds of the same maturity pursuant to any provision of this Indenture, the particular Subordinate Bonds or portions thereof to be redeemed shall be selected by the Trustee by lot. In the case of any partial redemption of a Subordinate Bond in a denomination greater than \$5,000 then for all purposes in connection with such redemption, the first \$5,000 of face value of such Subordinate Bond shall be treated as though it were a separate Subordinate Bond in the denomination of \$5,000 and each remaining \$5,000 of face value of such Subordinate Bond shall be treated as though it were a separate Subordinate Bond in the denomination of \$5,000, and such Subordinate Bond shall be redeemed only in a principal amount sufficient to redeem one or more of such separate Subordinate Bonds in full. Any Subordinate Bond which is to be redeemed only in part shall be surrendered to the Trustee (i) for payment of the Redemption Price (including accrued interest thereon to the Redemption Date) of the portion thereof called for redemption and (ii) for exchange for Subordinate Bonds in any Authorized Denomination in aggregate principal amount equal to the unredeemed portion of such Subordinate Bond without charge therefor. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Subordinate Bonds shall relate, in the case of any Subordinate Bond redeemed or to be redeemed only in part, to the portion of the principal of such Subordinate Bond which has been or is to be redeemed.

Section 3.3 Procedure for Redemption. In the event the Borrower shall give notice to the Trustee of any redemption of the Subordinate Bonds under Section 3.1, the Trustee shall give notice, in the name of the Issuer, of the redemption of such Subordinate Bonds, which notice shall (1) specify the Subordinate Bonds (or portions thereof) to be redeemed, the Redemption Date, the Redemption Price and the place or places where or, if a partial redemption the manner in which the amounts due upon such

redemption will be payable and (2) state that on the Redemption Date the Subordinate Bonds (or portions thereof) to be redeemed shall cease to bear interest. Such notice may set forth any additional information relating to such redemption, including any conditions thereto. The Trustee shall give such Notice by Mail at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption, to the Holders of the Subordinate Bonds to be redeemed.

Notwithstanding the foregoing, notice of any redemption pursuant to Section 3.1(1) hereof may provide that the redemption is conditioned on the deposit of sufficient moneys for payment of the Redemption Price on or prior to the Redemption Date. If the notice is conditioned upon moneys being on deposit with the Trustee in an amount sufficient to pay the Redemption Price on the Redemption Date, the notice shall state such condition and that such redemption shall not be effective unless such condition is met.

Any Subordinate Bonds and portions of Subordinate Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with Article 7 hereof shall cease to bear interest on the specified Redemption Date.

Section 3.4 Payment of Subordinate Bonds Upon Redemption. The Redemption Price of Subordinate Bonds or portions thereof called for redemption in accordance with Section 3.3 hereof shall be payable on the date of redemption upon presentation and surrender of such Subordinate Bonds at the place or places of payment. If, on the Redemption Date, sufficient money shall have been deposited with the Trustee to effect such redemption in accordance with this Indenture, then interest shall cease to accrue on all Subordinate Bonds or portions thereof so called for redemption.

Section 3.5 No Partial Redemption After Default. Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and be continuing an Event of Default, there shall be no redemption of less than all of the Subordinate Bonds at the time Outstanding.

Section 3.6 Cancellation. All Subordinate Bonds which have been redeemed shall be cancelled by the Trustee as provided in Section 2.11 hereof and shall not be reissued.

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## ARTICLE 4

### GENERAL COVENANTS

Section 4.1 Payment of Principal, Premium and Interest. Solely from the money derived from the Loan Agreement (other than to the extent payable from proceeds of the Subordinate Bonds or temporary investments), the Issuer will duly and punctually pay the principal of, premium, if any, and interest on the Subordinate Bonds in accordance with the terms of the Subordinate Bonds and this Indenture. Money derived from the Loan Agreement include all money derived from the Granting Clauses set forth herein, including but not limited to Basic Payments under the Loan Agreement and trust funds deposited in the funds and accounts established under Article 5 herein to the extent and in the manner provided in said Article; provided, however, that the Rebate Fund shall not be a trust fund. Nothing in the Subordinate Bonds or in this Indenture shall be considered as assigning or pledging funds or assets of the Issuer other than those covered by the Granting Clauses set forth herein.

Section 4.2 Performance of and Authority for Covenants. The Issuer covenants that it is duly authorized under the Act to issue the Subordinate Bonds authorized hereby, to execute this Indenture, to loan the proceeds of the Subordinate Bonds to the Borrower and to assign and pledge the payments from the Loan Agreement in the manner and to the extent herein set forth; that all action on its part for the issuance of the Subordinate Bonds; and that the execution and delivery of this Indenture has been duly and effectively taken.

Section 4.3 Instruments of Further Assurance. The Issuer covenants that it has not made, done, executed or suffered, and will not make, do, execute or suffer, any act or thing whereby its interest in the Loan Agreement or any part thereof is now or at any time hereafter impaired, changed or encumbered in any manner whatsoever, except as may be expressly permitted herein; and that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such instruments supplemental hereto and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, pledging, assigning and confirming unto the Trustee all and singular the sums assigned and pledged hereby to the payment of the principal of and interest on the Subordinate Bonds.

Section 4.4 Recording and Filing. The Trustee requires that the Borrower cause this Indenture and all supplements thereto, to be kept, recorded and filed in such manner and in such places as may be required by law in order to preserve and protect fully the security of the Holders of the Subordinate Bonds and the rights of the Trustee hereunder and under any other instruments aforesaid.

Section 4.5 Books and Records. The Trustee covenants that so long as any Outstanding Subordinate Bonds issued hereunder and secured by this Indenture shall be unpaid, the Trustee will keep proper books or records and accounts, in which full, true and correct entries will be made of all its financial dealings or transactions in relation to the Project and the payments derived from the Loan Agreement and this Indenture. At reasonable times and under reasonable regulations established by the Trustee, such books shall be open to the inspection of Holders and such accountants or other agencies as the Trustee may from time to time designate.

Section 4.6 Bondholders' Access to Bond Register. Except as otherwise may be provided by law, the Bond Register shall not be deemed a public record and shall not be made available for inspection by the public, unless and until notice to the contrary is given to the Trustee by the Issuer.

Section 4.7 Rights Under Loan Agreement. The Loan Agreement sets forth covenants and obligations of the Issuer and the Borrower, and reference is hereby made to the same for a detailed statement of said covenants and obligations. The Issuer agrees to cooperate in the enforcement of all covenants and obligations of the Borrower under the Loan Agreement and agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Borrower under and pursuant to the Loan Agreement and on behalf of the Holders, whether or not the Issuer has undertaken to enforce such rights and obligations.

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## ARTICLE 5

### FUNDS AND ACCOUNTS

Section 5.1 “Trust Money” Defined. All money received by the Trustee (all such money being herein sometimes called “Trust Money”):

(1) as elsewhere herein provided to be held and applied under this Article 5, or required to be paid to the Trustee and whose disposition is not elsewhere herein otherwise specifically provided for, including but not limited to the investment income of all trust funds held by the Trustee under this Indenture; or

(2) as proceeds from the sale of the Subordinate Bonds; or

(3) as Basic Payments, or as otherwise payable under the Loan Agreement; or

(4) any payments received under the Guaranty; or

(5) any amounts received as a result of enforcement of the Security Agreement or the Subordinate Mortgage;

shall be held by the Trustee as a part of the Trust Estate, and, upon the exercise by the Trustee of any remedy specified in Article 8 hereof, such Trust Money shall be applied in accordance with Section 8.6 hereof, except to the extent that the Trustee is holding in Trust Money or Government Obligations, as the case may be, for the payment of any specified Subordinate Bonds which are no longer deemed to be Outstanding under the provisions of Article 7 hereof, which money or Government Obligations shall be applied only as provided in said Article 7. Prior to the exercise of any such remedy, all or any part of the Trust Money shall be held, invested, withdrawn, paid or applied by the Trustee, from time to time, as provided in this Article 5 or in Articles 6 and 7 hereof.

Section 5.2 Establishment of Funds. The Issuer hereby establishes as trust funds and creates the following funds and accounts:

(a) a Project Fund;

(b) a Bond Fund;

(c) a Rebate Fund;

(d) a Capitalized Interest Fund; and

(e) an Escrow Fund.

Section 5.3 Application of Proceeds and Other Funds. On the Date of Issuance, \$\_\_\_\_\_ of the proceeds of the Subordinate Bonds will be deposited in the Costs of Issuance Fund and disbursed to pay Issuance Expenses and \$\_\_\_\_\_ of the proceeds of the Subordinate Bonds will be deposited to the Capitalized Interest Fund. The remaining proceeds of the Subordinate Bonds received by the Trustee on the Date of Issuance in the amount of \$\_\_\_\_\_ will be held by the Trustee in the Escrow Fund until the conditions set forth in Section 3.6(1) of the Loan Agreement are satisfied. Upon satisfaction of

the conditions set forth in Section 3.6(1) of the Loan Agreement, the Trustee shall deposit the proceeds of the Subordinate Bonds in the amount of \$\_\_\_\_\_ to the following funds:

- (i) \$\_\_\_\_\_ to the Project Fund; and
- (ii) \$\_\_\_\_\_ to the Bond Fund.

Section 5.4 Project Fund.

(1) Upon satisfaction of the conditions set forth in Section 3.6(1) of the Loan Agreement, proceeds of the Subordinate Bonds shall be deposited to the Bond Fund the amount provided in Section 5.3(a)(i) hereof. The proceeds of the Subordinate Bonds deposited in the Project Fund shall be disbursed pursuant to the provisions of the Construction Continuing Covenant Agreement (as defined in the Funding Loan Agreement) and the Disbursing Agreement (except the disbursement of Issuance Expenses of the Subordinate Bonds shall not be subject to the provisions of the Disbursing Agreement).

(2) Any sums in the Project Fund in excess of any amount required to pay Project Costs shall be transferred to the Bond Fund at the time or times and in the manner provided in Article 3 of the Loan Agreement.

(3) Any funds deposited in the Project Fund by the Borrower shall be disbursed before any proceeds of the Subordinate Bonds, including any earnings thereon, in accordance with the Construction Continuing Covenant Agreement (as defined in the Funding Loan Agreement) and the Disbursing Agreement.

(4) Any interest earned on sums held in the Project Fund prior to the Completion Date shall remain a part of the Project Fund.

(5) Any sums remaining in the Project Fund in excess of any amount required to pay Project Costs shall be transferred to the Bond Fund. Any sums remaining in the Subordinate Bond Proceeds Subaccount of the Project Account of the Project Loan Fund in excess of any amount required to pay Project Costs shall be transferred to the Bond Fund.

Section 5.5 Bond Fund.

(1) Upon satisfaction of the conditions set forth in Section 3.6(1) of the Loan Agreement, proceeds of the Subordinate Bonds shall be deposited to the Bond Fund the amount provided in Section 5.3(a)(ii) hereof. There shall be credited to the Bond Fund, as and when received, each payment received by the Trustee under and pursuant to any of the provisions of this Indenture or the Loan Agreement which is required to be paid into the Bond Fund, or which is accompanied by directions that such payment is to be credited to the Bond Fund, and all payments received with respect to the TIF Note, together with all income derived from the investment of such amounts.

(2) The Trustee shall use amounts on deposit in the Bond Fund to pay the principal of and interest on the Subordinate Bonds as they become due and payable.

(3) If any Subordinate Bond shall not be presented for payment at Maturity, provided money sufficient to pay such Subordinate Bond shall have been made available to the Trustee and are held by the Trustee for the benefit of the Holder thereof, all liability of the Issuer to the Holder thereof for the payment of such Subordinate Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such money, without liability for interest thereon, for

the benefit of the Holder of such Subordinate Bond, who shall thereafter be restricted exclusively to such money for any claim of whatever nature on his part hereunder or on, or with respect to, such Subordinate Bond.

(4) Any money remaining in the Bond Fund after payment in full of all Subordinate Bonds, and payment of the fees, charges and expenses of the Trustee, the Paying Agent, the Issuer and any Co-Paying Agent which have accrued and which will accrue and all other items required to be paid hereunder shall be paid to the Borrower.

(5) Money in the Bond Fund shall be invested as provided in Section 6.1 hereof.

(6) Any surplus money in the Project Fund transferred to the Bond Fund pursuant to Section 5.4(5) hereof shall be used by the Trustee (a) to redeem the largest number of Subordinate Bonds callable, without premium or penalty, under the terms of this Indenture at the first opportunity or (b) to pay principal due on the Subordinate Bonds.

Section 5.6 Capitalized Interest Fund. There is hereby created a Capitalized Interest Fund into which the Trustee shall deposit and hold proceeds of the Subordinate Bonds, in the amount provided in Section 5.3(a)(iii) hereof, to pay interest on the Subordinate Bonds (net of projected tax increment collections) through March 1, 2022.

Any interest earned on sums held in the Capitalized Interest Fund prior to \_\_\_\_\_ shall remain a part of the Capitalized Interest Fund. Any funds remaining in the Capitalized Interest Fund following \_\_\_\_\_ shall be transferred to the Bond Fund.

Section 5.7 Rebate Fund. The Trustee shall deposit in the Rebate Fund, upon receipt, all Rebate Amounts deposited with the Trustee in accordance with Section 7.7(13) of the Loan Agreement, and for purposes of making such deposits the Trustee shall, at the direction of the Borrower, transfer from the appropriate fund to the Rebate Fund a sum equal to any Rebate Amounts attributable to sums held in the Project Fund.

On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Issuer nor the Borrower shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and by the Tax Certificate. The Trustee shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Issuer, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Issuer, Bond Counsel or the Rebate Analyst.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall deliver to the Trustee and the Issuer a certificate that it has determined no Rebateable Arbitrage is due or shall cause the Rebate Analyst to calculate the amount of Rebateable Arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the Rebateable Arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the

“Rebatable Arbitrage”). Pursuant to Section 7.7 of the Loan Agreement, the Borrower shall cause the Rebate Analyst to provide any such calculations to the Trustee and the Issuer. In the event that the Borrower fails to provide such information to the Trustee and the Issuer within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall select the Rebate Analyst, with the prior written approval of the Issuer, and shall cause the Rebate Analyst to calculate the amount of Rebatable Arbitrage as required herein.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, upon the written direction of the Issuer, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Trustee from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

The Trustee shall pay, as directed by the Issuer, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

(1) Not later than sixty (60) days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least ninety (90%) of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and

(2) Not later than sixty (60) days after the payment in whole of the Subordinate Bonds, an amount equal to one hundred percent (100%) of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Trustee.

Notwithstanding any provision of this Indenture to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Section 7.7 of the Loan Agreement and this Section 5.7, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Subordinate Bonds.

Any funds remaining in the Rebate Fund after payment in full of the Subordinate Bonds and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Trustee, shall be withdrawn and remitted to the Borrower.

The Trustee shall obtain and keep such records of the computations made pursuant to this Section 5.7 as are required under Section 148(f) of the Code to the extent furnished to the Trustee. The Borrower shall or shall cause the Rebate Analyst to provide to the Issuer and the Trustee copies of all rebate computations made pursuant to this Section 5.7. The Trustee shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Subordinate Bonds and the investments of earnings from those investments made by the Trustee as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebatable Arbitrage need not be made to the extent that neither the Issuer nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such

failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Subordinate Bonds, a copy of which shall be provided to the Trustee, at the expense of the Borrower.

Section 5.8 Escrow Fund. The Trustee shall maintain an Escrow Fund into which will be deposited proceeds of the Subordinate Bonds in the amount provided in Section 5.2 hereof. Upon satisfaction of the conditions set forth in Section 3.6(1) of the Loan Agreement, the Trustee shall disburse the funds in the Escrow Fund pursuant to Section 5.2 hereof.

Section 5.9 Costs of Issuance Fund. The Trustee shall maintain a Costs of Issuance fund into which will be deposited proceeds of the Subordinate Bonds in the amount provided in Section 5.3(a)() hereof. The Trustee shall disburse amounts in the Escrow Fund to pay Issuance Expenses.

Section 5.10 Deposit of Funds with Paying Agent.

(1) The Trustee shall transfer and remit sums from the Bond Fund to the Paying Agent in advance of each interest and principal due date and redemption date, from the balance then on hand in the Bond Fund, sufficient to pay all principal, interest and redemption premiums then due on the Subordinate Bonds. The Paying Agent shall hold in trust for the Holders of such Subordinate Bonds all sums so transferred to it until paid to such Holders or otherwise disposed of as herein provided.

(2) Interest on each Subordinate Bond including accrued interest to the date of deposit and interest, to the extent permitted by law, on overdue installments of interest at the rate borne by such Subordinate Bond, (a) shall cease on its Maturity Date, or on any prior date on which it shall have been duly called for redemption as herein provided, provided that funds sufficient for the payment thereof with accrued interest and any redemption premium have been deposited with the Paying Agent on or before the Maturity Date or Redemption Date, as the case may be, and in the case of redemption, that the requirements of Article 3 hereof have been complied with, or (b) shall cease on any date after Maturity on which such deposit has been made, and the Holder shall have no further rights with respect to the Subordinate Bonds or under this Indenture except to receive the payment so deposited.

(3) If any Subordinate Bond is not presented for payment when due and funds sufficient to pay such Subordinate Bond shall have been paid to the Trustee (or other Paying Agent, if any): (a) all liability of the Issuer for payment of such Subordinate Bond shall forthwith cease; (b) such Subordinate Bond shall forthwith cease to be entitled to any lien, benefit or security under this Indenture, the Loan Agreement, the Subordinate Mortgage, and any Collateral Document, and the Holder of such Subordinate Bond shall forthwith have no rights in respect thereof except to receive payment thereof; and (c) the Trustee (or other Paying Agent, if any) shall hold such funds, without liability for interest thereon, for the benefit of the Holder of such Subordinate Bond. Any money still held by the Trustee (or other Paying Agent, if any) after two (2) years and eleven (11) months from the date on which the Subordinate Bond with respect to such amount was paid to the Trustee (or other Paying Agent, if any), shall, if and to the extent permitted by law, be paid by the Trustee (or other Paying Agent, if any) to the Borrower and shall be discharged from the trust and all liability of the Paying Agent or the Trustee with respect to such Trust Money shall cease, and the Bondholders shall thereafter be entitled to look only to the Borrower for payment, and the Borrower shall not be liable for any interest thereon.

(4) If there is any Paying Agent who is not the Trustee, the Trustee will cause such Paying Agent to execute and deliver to it an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 5.9, that such Paying Agent will:

(a) hold all sums held by it for the payment of principal of (and premium, if any) or interest on Subordinate Bonds in trust for the benefit of the Holders of such Subordinate Bonds until such sums shall be paid to such Holders or otherwise disposed of as herein provided; and

(b) at any time during the continuance of any default in the making of any such payment of principal (and premium, if any) or interest, upon the written request of the Trustee forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Trustee, acting as Paying Agent, shall be bound by the terms of the foregoing requirements.

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**ARTICLE 6**  
**INVESTMENTS**

Section 6.1     Investments by Trustee.

(1)     Except during the continuance of an Event of Default, and subject to the provisions of Section 8.2 hereof, money held for the credit of the funds established by Article 5 hereof shall be held by the Trustee as required by law and shall at the written request of the Representative of the Borrower, to the extent practicable and permitted by the Act, and except as provided below with respect to the money in the Bond Fund, be invested as received and reinvested by the Trustee as directed by the Borrower in Permitted Investments (including investments in securities through a common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of money contributed thereto by the bank in its capacity as trustee, certificates of deposit, and repurchase agreements).

Subject to applicable Minnesota Statutes as to the investment of sums (other than proceeds of the Subordinate Bonds) held in the Bond Fund, the type, amount and maturity of such investments shall be as specified by the Representative of the Borrower, provided that sums in the Bond Fund may in any event only be invested in securities which mature or are subject to redemption or repurchase at the option of the Trustee on or prior to the date or dates on which the Trustee anticipates that cash funds will be required.

(2)     The Trustee shall sell and reduce to cash funds a sufficient portion of investments under the provisions of this Section whenever the cash balance in the fund for which the investment was made is insufficient for its current requirements. Securities so purchased as an investment of money shall be held by the Trustee, shall be registered in the name of the Trustee if registration is required, and shall be deemed at all times a part of the applicable fund, and the interest accruing thereon and any profit realized from such investments shall be credited to the fund from which the investment was made, subject to any transfer to another fund as herein provided. The Trustee shall have no liability whatsoever for any loss, fee, tax or other charge incurred in connection with any investment, reinvestment, sale or liquidation of an investment hereunder. Any loss resulting from such investment shall be charged to the fund from which the investment was made. In no event shall the Trustee be deemed an investment manager or adviser in respect of any selection of investments hereunder. The Trustee shall be entitled to rely on any written direction of the Borrower as to the suitability and legality of the directed investments. The Trustee shall have no responsibility whatsoever to determine whether any investments made pursuant to this Indenture are or continue to be Permitted Investments.

(3)     The Trustee may purchase from or sell to itself, or through any affiliated company, as principal or agent, securities herein authorized so long as such purchase or sale is at fair market value.

Section 6.2     Return on Investments.

(1)     In directing investments pursuant to Section 8.3 of the Loan Agreement, the Borrower will not instruct the Trustee to use the proceeds of the Subordinate Bonds or other sums pledged to the payment of the Subordinate Bonds, directly or indirectly, to acquire any securities or obligations the acquisition of which would cause any of the Subordinate Bonds to be “arbitrage bonds” as defined in Section 148 of the Code, and for this purpose the Trustee, in order to restrict yield on investments, may invest in SLGS (and accordingly is hereby authorized to act as agent of the Issuer for such purpose). The Trustee shall be fully protected in relying on an opinion of Bond Counsel with respect to whether the acquisition of any securities or obligations would have the effect prohibited by this Section.

(2) No money in any fund or account shall be invested in investments which cause the Subordinate Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code. If at any time the money in all funds and accounts relating to the Subordinate Bonds exceed, within the meaning of Section 149(b) of the Code, (a) amounts invested for an initial temporary period until the money is needed for the purpose for which the Subordinate Bonds were issued, (b) investments of a bona fide debt service fund, and (c) investments of a reserve which meet the requirement of Section 148(d) of the Code, then money in excess of such amounts shall be invested at the direction of the Borrower pursuant to Section 8.3 of the Loan Agreement in (i) obligations issued by the United States Treasury, (ii) other investments permitted under regulations, or (iii) obligations which are (a) not issued by, or guaranteed by, or insured by, the United States or any agency or instrumentality thereof or (b) not federally insured deposits or accounts, all within the meaning of Section 149(b) of the Code. The Borrower shall not direct the Trustee to take any action or do anything the effect of which shall be to cause the Subordinate Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

(3) The provisions of this Section 6.2 shall survive discharge and release of the Funding Loan Agreement.

Section 6.3 Computation of Balances in Funds. In computing the assets of any fund established hereunder, investments and accrued but unpaid interest thereon shall be deemed a part thereof, and such investments shall be valued at par value, or at the redemption price thereof, if then redeemable at the option of the holder, provided that in any event for purposes of determining whether any balance in a fund may only be invested at a restricted yield to comply with Section 148 of the Code and the federal arbitrage regulations, any investments in the fund shall be valued at their par value or the price (less accrued interest) at which they were purchased, whichever is the greater.

Section 6.4 Rebate to United States. The Subordinate Bonds are subject to the rebate to the United States of earnings in excess of the yield on the Subordinate Bonds imposed by Section 148 of the Code and Section 1.148-3 of the Treasury Regulations. The Trustee shall have no obligation to calculate the amount of, or make, any required rebate as provided in Section 5.7 hereof. The Trustee shall cooperate with the Borrower in the Borrower’s efforts to determine the amount of any rebate.

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## ARTICLE 7

### DISCHARGE OF LIEN

Section 7.1 Payment of Subordinate Bonds; Satisfaction and Discharge of Indenture. Whenever the conditions specified in either clause (a) or clause (b) of the following subsection (1) and the conditions specified in the following subsections (2) and (3) to the extent applicable, shall exist, namely:

(1) either:

(a) all Subordinate Bonds have been cancelled by the Trustee or delivered to the Trustee for cancellation, excluding, however,

(i) Subordinate Bonds for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Trustee and thereafter repaid to the Borrower or discharged from such trust, and

(ii) Subordinate Bonds alleged to have been destroyed, lost or stolen which have been replaced or paid as provided in Section 2.6 hereof, and (a) which, prior to the satisfaction and discharge of this Indenture as hereinafter provided, have not been presented to the Trustee with a claim of ownership and enforceability by the Holder thereof, or (b) whose enforceability by the Holder thereof has been determined adversely to the Holder by a court of competent jurisdiction or other competent tribunal; or

(b) the Issuer or the Borrower has deposited or caused to be deposited as trust funds:

(i) with the Trustee, cash which shall be sufficient, or

(ii) with the Trustee cash and/or Government Obligations, which do not permit the redemption thereof at the option of the issuer thereof, the principal of, premium, if any, and interest on which when due (or upon the redemption thereof at the option of the holder), will, without reinvestment, provide cash which together with the cash, if any, deposited with the Trustee at the same time, shall be sufficient,

to pay and discharge the entire indebtedness on Subordinate Bonds not theretofore cancelled by the Trustee or delivered to the Trustee for cancellation by the payment of interest on and principal (and premium, if any) of the Subordinate Bonds which have become due and payable or which shall become due at their stated Maturity or Redemption Date, as the case may be, and which are to be discharged under the provisions hereof, and has made arrangements satisfactory to the Trustee for the giving of notice of redemption, if any, by the Trustee in the name, and at the expense, of the Borrower in the same manner as is provided by Section 3.2 hereof; and

(2) the Borrower has paid, caused to be paid or made arrangements satisfactory to the Trustee for the payment of all other sums payable hereunder and under the Loan Agreement, and the Related Loan Documents by the Trustee or the Borrower until the Subordinate Bonds are so paid; and

(3) if the funds for payment are provided under subsection (1)(b)(ii) above, the Borrower has delivered to the Trustee a report of an Independent Accountant or other nationally recognized verification agent stating that the payments to be made on the security referred to in subsection (1)(b) above will be sufficient to pay when due the principal of, premium, if any, and interest on the Subordinate Bonds to be

defeased; provided, however, when a defeasance escrow is gross funded or when the Subordinate Bonds mature or will be redeemed within ninety (90) days of the deposit referred to in subsection (1)(b)(ii) above, a report of an Independent Accountant shall not be required; and

(4) if discharge is to be effected under subsection (1)(b) above, an opinion of Bond Counsel is delivered to the Trustee stating in effect that such discharge will not impair the tax-exempt status of the Subordinate Bonds;

then, except as otherwise provided in Article 7 and Sections 8.2 and 9.3 hereof, the rights of the Bondholders shall be limited to the cash or cash and securities deposited as provided in subsection (1)(a) or (b) above, and upon the Borrower's request the rights and interest hereby granted or granted by the Loan Agreement, the Subordinate Mortgage, and the Collateral Documents to or for the benefit of the Trustee or Bondholders shall cease, terminate and become null and void, and the Issuer and the Trustee shall, at the expense of the Borrower, execute and deliver such instruments of satisfaction and transfer as may be necessary, and forthwith the estate, right, title and interest of the Trustee in and to all of the Project and in and to all rights under the Loan Agreement and this Indenture (except the money or securities or both deposited as required above and except as may otherwise be provided in Article 7 and Sections 8.2 and 9.3 hereof shall thereupon be discharged and satisfied); except that in any event the obligations of the Borrower under Sections 7.4, 7.7, 7.8, 10.10, 10.11, 10.12, and 10.13 of the Loan Agreement shall survive.

Section 7.2 Discharge of the Indenture. Notwithstanding the fact that the lien of this Indenture upon the Trust Estate may have been discharged and cancelled in accordance with Section 7.1 hereof, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Trust Estate may have been discharged and cancelled, shall nevertheless continue and subsist until the principal of and the interest on, all of the Subordinate Bonds shall have actually been paid in full and the Trustee shall have applied all funds theretofore held by the Trustee for payment of any Subordinate Bonds not theretofore presented for payment or purchase, as the case may be, which funds shall be held in trust solely for the Holders of such Subordinate Bonds pending their application in accordance herewith.

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## ARTICLE 8

### DEFAULT PROVISIONS AND REMEDIES

Section 8.1 Events of Default. Each of the following events is hereby defined as, and declared to be and to constitute, an “Event of Default” hereunder:

- (1) default in the due and punctual payment of any interest on any Subordinate Bond; or
- (2) default in the due and punctual payment of the principal of any Subordinate Bond at its Maturity; or
- (3) default in the due and punctual payment of any other money required to be paid to the Trustee under the provisions hereof and such default shall have continued for a period of thirty (30) days after written notice thereof, specifying such default, shall have been given by the Trustee to the Issuer and the Borrower, or to the Issuer, the Borrower and the Trustee by the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the then Outstanding Subordinate Bonds; or
- (4) default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer contained in this Indenture or in the Subordinate Bonds, and such default shall have continued for a period of thirty (30) days after written notice thereof given in the manner provided in clause (3) above; notwithstanding the foregoing, if the default reasonably requires more than thirty (30) days to cure, such default shall not constitute an Event of Default, provided that the curing of the default is promptly commenced upon receipt by the Issuer of the notice of the default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that the Issuer informs the Trustee at all times of its progress in curing the default, provided in no event shall such additional cure period extend beyond sixty (60) days; or
- (5) the occurrence of an Act of Bankruptcy; or
- (6) the occurrence of an “Event of Default” under the Loan Agreement or the Subordinate Mortgage.

The investor limited partner or the special limited partner in the Borrower shall have the right, but not the obligation, to cure Events of Default on behalf of the Borrower.

#### Section 8.2 Acceleration.

(1) Upon the occurrence of an Event of Default referred to in Section 8.1 hereof, the Trustee may, and at the written request of the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Subordinate Bonds shall, by notice in writing delivered to the Issuer and the Borrower declare the principal of all Subordinate Bonds immediately due and payable, whereupon the same shall become immediately due and payable any time herein or in the Subordinate Bonds to the contrary notwithstanding.

(2) Upon any declaration of acceleration, or occurrence resulting in acceleration under this Section 8.2, the Trustee shall immediately declare the Basic Payments required to be made by the Borrower under the Loan Agreement to be immediately due and payable in accordance with Section 9.2 of the Loan Agreement.

(3) Upon any acceleration required under this Section 8.2, interest shall cease to accrue on the Subordinate Bonds as of the date of declaration of such acceleration.

(4) Except as provided in this Section 8.2, under no other circumstances may the Trustee accelerate the payment of the Subordinate Bonds.

Section 8.3. Remedies. The following remedies are all subject to the terms of the Subordination Agreement.

(1) Subject to the provisions of Section 8.2 hereof, upon the occurrence of an Event of Default and acceleration of the Subordinate Bonds, the Trustee may, subject to the terms of the Subordination Agreement, proceed to pursue any available remedy by suit at law or in equity to enforce all rights of the Bondholders, including without limitation the right to the payment of the principal or premium, if any, and interest on the then Outstanding Subordinate Bonds. Upon the occurrence of an Event of Default under the Loan Agreement, the Guaranty, the Security Agreement, or the Subordinate Mortgage (subject to the terms of the Subordination Agreement), the Trustee may also enforce any and all rights, if any, of the Issuer thereunder. The Issuer may also exercise any of its rights under the Loan Agreement.

(2) If any Event of Default shall have occurred, and if it shall have been requested to do so by the Holders of a majority in aggregate principal amount of the then Outstanding Subordinate Bonds, and if it shall have received an indemnity bond as provided in Section 9.1 hereof, the Trustee shall be obliged to exercise such rights and powers conferred on the Trustee by this Section and Section 8.2 hereof as the Trustee (being advised by Independent Counsel) shall deem most expedient in the interests of the Bondholders, provided, however, that the Trustee shall have the right to decline to comply with any such request if the Trustee shall be advised by Independent Counsel that the action so requested may not lawfully be taken or if the Trustee in good faith shall determine that such action would be unjustly prejudicial to the Bondholders not parties to such request.

(3) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy (i) given to the Trustee or to the Holders hereunder or (ii) now or hereafter existing at law or in equity or by statute.

(4) No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

(5) No waiver of any Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent Event of Default or impair any rights or remedies consequent thereon.

Section 8.4 Direction of Proceedings By Bondholders. The Holders of a majority in aggregate principal amount of the then Outstanding Subordinate Bonds shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, the Loan Agreement, the Subordinate Mortgage, and the Collateral Documents or for the appointment of a receiver or any other proceedings hereunder, provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 8.5 Waiver of Stay or Extension Laws. Upon the occurrence of an Event of Default, to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through it or under it shall or will set up, claim, or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture, but the Issuer, for itself and all who may claim through or under it, hereby waives to the extent that it lawfully may do so the benefit of all such laws and all right of appraisal and redemption to which it may be entitled under the laws of the State.

Section 8.6 Priority of Payment and Application of Money. All money received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such other money and of the related expenses, liabilities and advances incurred or made by the Issuer or the Trustee, including attorneys' and agent's fees and expenses, be deposited in the Bond Fund. All money in the Bond Fund shall be applied, subject to the provisions of Article 5 hereof, as follows:

(1) Unless the principal of all the Subordinate Bonds shall have become or shall have been declared due and payable, all such money shall be applied:

FIRST: To the payment to the Persons entitled thereto of all installments of interest then due on the Subordinate Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

SECOND: To the payment to the Persons entitled thereto the unpaid principal of any of the Subordinate Bonds which shall have become due in the order of their due dates with interest on such Subordinate Bonds at the applicable rate and, if the amount available shall not be sufficient to pay in full the unpaid principal on Subordinate Bonds due on any particular due date, then to the payment ratably, according to the amount of principal and premium, if any, due on such date, to the Persons entitled thereto, without any discrimination or privilege; and

(2) If the principal of all Subordinate Bonds shall have become due or shall have been declared due and payable, all such money shall be applied to the payment of the principal and interest then due and unpaid upon the Subordinate Bonds, without preference or priority of principal or any redemption premium over interest or of interest over principal or any redemption premium, or of any installment of interest over any other installment of interest, or of any Subordinate Bond over any other Subordinate Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Subordinate Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of subsection (2) above in the event that the principal of all the Subordinate Bonds shall later become due or be declared due and payable, the money shall be applied in accordance with the provisions of subsection (1) above.

Whenever money is to be applied by the Trustee pursuant to the provisions of this Section, such money shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such money available for application and the likelihood of additional money becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall (i) fix the date (which shall be an Interest Payment Date unless it shall deem another date more

suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue and (ii) on or before such date set aside the money necessary to effect such application. The Trustee shall give to the Bondholders mailed notice of the deposit with it of any such money and of the fixing of any such date. Neither the Trustee nor any Paying Agent shall be required to make payment to the Holder of any Subordinate Bond until such Subordinate Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Subordinate Bonds and interest thereon have been paid under the provisions of this Section 8.6, and all expenses and charges of the Trustee and the Issuer have been paid, any balance remaining shall be paid to the person entitled to receive the same pursuant to Section 12.9 hereof.

Section 8.7 Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Subordinate Bonds may be enforced by the Trustee without the possession of any of the Subordinate Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Subordinate Bonds, and any recovery or judgment shall be for the equal benefit of the Holders of the Outstanding Subordinate Bonds to the extent and in the manner provided herein. The Issuer and the Trustee hereby agree, without in any way limiting the effect and scope thereof, that the pledge and assignment hereunder to the Trustee of all rights included within the Trust Estate shall constitute an agency appointment coupled with an interest on the part of the Trustee which, for all purposes of this Indenture, shall be irrevocable and shall survive and continue in full force and effect notwithstanding the bankruptcy or insolvency of the Issuer or its default hereunder or on the Subordinate Bonds.

Section 8.8 Rights and Remedies of Holders. No Holder of any Subordinate Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture, the Loan Agreement, or for the execution of any trust hereof or any remedy hereunder or thereunder or for the appointment of a receiver, unless: (1) a default thereunder shall have become an Event of Default and the Holders of a majority in aggregate principal amount of the Subordinate Bonds then Outstanding shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereunder granted or to institute such action, suit or proceeding in its own name; (2) such Holders shall have offered to indemnify the Trustee as provided in Section 9.1(11) hereof; and (3) the Trustee shall thereafter fail or refuse to exercise within a reasonable period of time the remedies hereunder granted, or to institute such action, suit or proceeding in its own name. Such notification, request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, the Loan Agreement, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Subordinate Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture, by its, his, her, or their action or to enforce any right thereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Holders of all Subordinate Bonds then Outstanding, provided, however, that nothing herein shall be construed to preclude any Bondholder from enforcing, or impair the right of any Bondholder to enforce, the payment by the Trustee of principal of, and interest and premium, if any, on any Subordinate Bond of such Bondholder at or after its date of Maturity, if and to the extent that such payment is required to be made to such Bondholder by the Trustee from available funds in accordance with the terms hereof.

Section 8.9 Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture or the Loan Agreement by the appointment of a receiver, by entry and possession or otherwise, and such proceedings shall have been discontinued or abandoned for any reason,



or shall have been determined adversely to the Trustee, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder with respect to the property herein conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 8.10 Waiver of an Event of Default. The Trustee may waive any Event of Default and its consequences and shall do so upon written request of the Holders of a majority in aggregate principal amount of the Subordinate Bonds then Outstanding. No Event of Default giving rise to mandatory acceleration may be waived. No such waiver or rescission shall extend to any subsequent or other Events of Default, or impair any right consequent thereon.

Section 8.11 Borrower as Agent of Issuer.

(1) No default under Section 8.1(4) hereof shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given by the Trustee to the Issuer, the Borrower, and the Issuer and the Borrower shall have had the time permitted by the applicable subsection after receipt of such notice to correct said default or cause said default to be corrected and the Issuer or Borrower shall not have corrected said default or caused said default to be corrected within said time.

(2) With regard to any alleged default concerning which notice is given to the Borrower under the provisions of this Section 8.11, the Issuer hereby names and appoints the Borrower as its attorney-in-fact and agent with full authority to perform any covenant or obligation of the Issuer alleged in said notice to constitute a default, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts and with power of substitution, provided that the Borrower shall give the Issuer notice of its intention so to perform on behalf of the Issuer, and provided further that the Issuer may at any time, by a writing addressed to the Borrower withdraw, limit or modify the appointment hereby made.

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## ARTICLE 9

### THE TRUSTEE

Section 9.1 Acceptance of the Trustee. The Trustee, prior to the occurrence of an Event of Default, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations should be read into this Indenture against the Trustee. In case an Event of Default has occurred, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person ordinarily would exercise and use under the circumstances in the conduct of their own affairs. The Trustee shall not be liable for any action taken or omitted by it in the performance of its duties under this Indenture except for its own negligence or willful misconduct, but in any such event, only upon and subject to the following express terms and conditions:

(1) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers, or employees, but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such reasonable compensation to any attorney, agent, receiver or employee retained or employed by it in connection herewith. The Trustee may act upon the opinion or advice of any attorney, surveyor, engineer or accountant selected by it in the exercise of reasonable care or, if selected or retained by the Issuer, approved by the Trustee in the exercise of such care, provided that the only legal advice or opinion that the Trustee may rely upon for purposes of securing advice or an opinion relating to the tax-exempt status of the Subordinate Bonds is given by Bond Counsel. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction in good faith in reliance upon such opinion or advice.

(2) The Trustee shall not be responsible for any recital herein, or in the Subordinate Bonds (except with respect to the certificate of the Trustee endorsed on the Subordinate Bonds) or for the investment of money as herein provided, except as may be provided in Section 6.1 hereof, or for the validity of the execution by the Issuer of this Indenture, or of any supplemental indentures or instruments of further assurance, or for the sufficiency of any security for the Subordinate Bonds issued hereunder or intended to be secured hereby, or for the value of title of the property herein conveyed, if any, or otherwise as to the maintenance of the security hereof; except as otherwise provided in Section 4.4 and except that in the event the Trustee enters into possession of a part or all of the property conveyed pursuant to any provisions of this Indenture, it shall use due diligence in preserving such property. The Trustee may, but shall be under no duty to, require of the Borrower full information and advice as to the performance of the covenants, conditions and agreements in the Loan Agreement as to the condition of the Project and the performance of all other obligations thereunder and shall use its best efforts, but without any obligation, to advise the Issuer and the Borrower of any impending Event of Default known to the Trustee.

(3) The Trustee shall not be accountable for the use or application by the Issuer or the Borrower of any of the Subordinate Bonds or the proceeds thereof (except as herein expressly provided) or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or for the use and application of money received by any Paying Agent. The Trustee may become the owner of Subordinate Bonds secured hereby with the same rights it would have if not Trustee.

(4) The Trustee shall be protected in acting upon any written notice, order, requisition, request, consent, certificate, opinion (including an opinion of Independent Counsel or Bond Counsel), affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct

and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Subordinate Bond, shall be conclusive and binding upon all future Holders of the same Subordinate Bond and upon Subordinate Bonds issued in exchange therefor, upon transfer thereof, or in place thereof.

(5) As to the existence or non-existence of any fact or as to the sufficiency or authenticity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate of the Issuer signed by its Representative as sufficient evidence of the facts stated therein as the same appear from the books and records under the Representative's custody or control or are otherwise known to him or her. The Trustee may accept a certificate of the City Clerk of the Issuer under the seal of the Issuer, provided, however, that the seal of the Issuer may be a printed facsimile or may be omitted, to the effect that a motion, resolution or ordinance in the form therein set forth has been adopted by the governing body of the Issuer as conclusive evidence that such motion, resolution or ordinance has been duly adopted, and is in full force and effect, and may accept such motion, resolution or ordinance as sufficient evidence of the facts stated therein and the necessity or expediency of any particular dealing, transaction or action authorized or approved thereby, but may at its discretion, secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(6) The Trustee shall not be answerable except for its own negligence, willful misconduct, or willful default.

(7) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which they may be in possession of or managing the real and tangible personal property as in this Indenture provided.

(8) At any and all reasonable times, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property comprising the Project, including all books, papers and records of the Issuer pertaining to the Project and the Subordinate Bonds, and to take such memoranda from and with regard thereto as may be desired.

(9) The Trustee shall not be required to give any bond or surety with respect to the execution of said trusts and powers or otherwise in respect to the premises.

(10) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Subordinate Bonds, the withdrawal of any cash, the release of any property or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions (including opinions of Independent Counsel), appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Subordinate Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(11) Before taking any action under this Indenture, the Trustee may require that it be furnished with an indemnity bond satisfactory to the Trustee for the reimbursement of all expenses to which it may be put and to protect it against all liability except liability which is adjudicated to have resulted from the negligence, willful misconduct, or willful default of the Trustee, by reason of any action so taken by the Trustee.

(12) All money received by the Trustee, the Paying Agent or any Co-Paying Agent for the Subordinate Bonds shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required herein or by law. The Trustee, the Paying Agent, and any Co-Paying Agent shall not be under any liability for interest on any money received hereunder except such as may be agreed upon.

(13) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if the Trustee shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(14) The Trustee shall make no representation as to the validity or adequacy of this Indenture or the Subordinate Bonds, shall not be accountable for the Issuer's use of the proceeds of the Subordinate Bonds or any money paid to the Issuer or upon the Issuer's direction under any provision hereof, shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and shall not be responsible for any statement or recital herein or any statement in the Subordinate Bonds or any other document in connection with the sale of the Subordinate Bonds or pursuant to this Indenture other than its Certificate of Authentication.

(15) In no event shall the Trustee be liable for incidental, indirect, special, consequential or punitive damages or penalties (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such damages or penalty and regardless of the form of action.

(16) The Trustee shall not be required to take notice or be deemed to have notice of any default, except an Event of Default under Section 8.01(1) and (2) hereof, unless the Responsible Officer shall be notified of such default in writing by the Issuer, the Borrower or by the holders of a majority in aggregate principal amount of the Subordinate Bonds then Outstanding and all notices required to be delivered to the Trustee must, in order to be effective, be delivered at the designated corporate trust office of the Trustee and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

Section 9.2 Trustee's Fees, Charges and Expenses. The Trustee and any Paying Agent shall be entitled to payment and/or reimbursement for reasonable fees for services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in and about the execution of the trusts created by this Indenture and in and about the exercise and performance of the powers and duties of the Trustee hereunder and for the reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence, willful misconduct, or willful default of the Trustee). In this regard the Issuer has made provisions in Section 4.4 of the Loan Agreement for the payment of said fees, advances, counsel fees, costs and expenses and reference is hereby made to the Loan Agreement for the provisions so made, and the Issuer shall not otherwise be liable for the payment of such sums. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment on account of interest on or principal or premium, if any, of any Subordinate Bond and upon the money received by it hereunder, for said fees, advances, counsel fees, costs and expenses incurred by it.

Section 9.3 Notice to Holders of Default. The Trustee shall give to the Bondholders written notice of all Events of Default known to the Trustee, within ninety (90) days after the occurrence of an Event of Default, provided that, except in the case of an Event of Default in the payment of the principal of or interest on any of the Subordinate Bonds, the Trustee shall be protected in withholding such notice if and so long as the Board of Directors, the executive committee or a trust committee of directors or chief

executive officer of the Trustee in good faith determine that the withholding of such notice is in the interest of the Holders.

Section 9.4 Intervention by Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders of Subordinate Bonds, the Trustee may intervene on behalf of Holders and shall do so if requested in writing by the Holders of at least twenty-five percent (25%) of the aggregate principal amount of Outstanding Subordinate Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction in the premises.

Section 9.5 Successor Trustee. Any corporation, association or agency into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor trustee and paying agent under this Indenture and vested with all of the title to the Trust Estate, and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9.6 Resignation by Trustee. The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving thirty (30) days' written notice to the Issuer and to the Borrower and by first class mail to each Holder of Subordinate Bonds as shown on the Bond Register, and such resignation shall take effect upon the appointment of a successor trustee by the Holders or by the Issuer. Such notice to the Issuer and the Borrower may be served personally or sent by registered mail. If no successor trustee is appointed within sixty (60) days of the Trustee's resignation, the Trustee may petition a court of competent jurisdiction to appoint a replacement.

Section 9.7 Removal of Trustee. The Trustee may be removed at any time upon thirty (30) days' written notice by an instrument or concurrent instruments in writing delivered to the Trustee, to the Borrower and to the Issuer, and signed by the Holders of a majority in aggregate principal amount of then Outstanding Subordinate Bonds. Such removal shall only take effect upon the appointment of a successor trustee.

Section 9.8 Appointment of Successor Trustee. In case the Trustee shall resign or be removed, or be dissolved or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Holders of a majority in aggregate principal amount of the then Outstanding Subordinate Bonds, by an instrument or concurrent instruments in writing signed by such Holders, or by their attorney-in-fact, duly authorized. Nevertheless, in case of such vacancy the Issuer by resolution of its governing body may appoint a temporary trustee to fill such vacancy until a successor trustee shall be appointed by the Holders in the manner above provided, and any such temporary trustee so appointed by the Issuer shall immediately and without further act be superseded by the trustee so appointed by such Holders. Every such Trustee appointed pursuant to the provisions of this Section 9.8 shall be a trust company or bank having trust powers and having a reported capital and surplus not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Section 9.9 Acceptance by Successor Trustees. Every successor trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor, to the Borrower and also to the Issuer, an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any

further act, deed or conveyance shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors as Trustee and Paying Agent, but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor trustee, execute and deliver an instrument transferring to such successor trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder, and every predecessor Trustee shall deliver all securities and money held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor trustee for more fully and certainly vesting in such successor the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor trustee, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be forthwith filed or recorded or both by the successor trustee in each recording office where this Indenture shall have been filed or recorded or both.

Section 9.10 Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon any part of the Trust Estate is not paid as required herein, the Trustee may pay such tax, assessment or charge, without prejudice, however, to any rights of the Trustee or the Bondholders hereunder arising in consequence of such failure, and any amount at any time so paid under this Section, or under the Loan Agreement, with interest thereon (to the extent permitted by law) from the date of such payment until paid to the Trustee in full at a rate per annum equal to the prime rate, shall become so much additional indebtedness secured hereby, and the same shall be given a preference in payment over the principal of and the interest on, the Subordinate Bonds and shall be paid out of the revenues and receipts from the Trust Estate, if not otherwise caused to be paid. The Trustee shall not be under an obligation to make any such payment unless it shall have been requested to do so by the Holders of at least twenty-five percent (25%) in principal amount of the Subordinate Bonds then Outstanding and shall have been provided with sufficient money for the purpose of making such payment.

Section 9.11 Trustee Protected in Relying Upon Resolutions. The resolutions, orders, requisitions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee.

Section 9.12 Successor Trustee as Custodian of Bond Fund and Paying Agent. In the event of a change in the office of the Trustee, the predecessor trustee which has resigned or been removed shall cease to be custodian of the funds described in Article 5 hereof and shall cease to act as the Paying Agent for principal and interest on the Subordinate Bonds, and the successor trustee shall be and become such custodian and Paying Agent.

Section 9.13 Co-Trustee. At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located, the Issuer and the Trustee shall have the power to appoint, and, upon the request of the Trustee or of the Holders of at least fifty-one percent (51%) in aggregate principal amount of the then Outstanding Subordinate Bonds, the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint one or more persons approved by the Trustee either to act as co-trustee or co-trustees, jointly with the Trustee, of all or any part of the Trust Estate, or to act as separate trustee or separate trustees of all or any part of the Trust Estate, and to vest in such person or persons, in such capacity, such right to the Trust Estate or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable subject to the remaining provisions of this Section 9.13.

If the Issuer shall not have joined in such appointment within fifteen (15) days after the receipt by it of a request so to do, or in case an Event of Default shall have occurred and be continuing, the Trustee alone shall have power to make such appointment.

The Issuer shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

Every co-trustee or separate trustee shall, to the extent permitted by law but to such extent only, be appointed subject to the following terms, namely:

(1) The Subordinate Bonds shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Trustee.

(2) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees or separate trustee or separate trustees jointly, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(3) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.

(4) Any co-trustee or separate trustee may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(5) The Trustee at any time, by an instrument in writing, with the concurrence of the Issuer, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 9.13, and, in case of a continuing Event of Default the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section 9.13.

(6) No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(7) Any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing delivered to the Trustee shall be deemed to have been delivered to each co-trustee or separate trustee.

(8) Any money, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with such interest in and to the Trust Estate or any part thereof, and with such rights, powers, duties or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as local law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee. Any co-trustee or separate trustee may, at any time by an instrument in writing, constitute the Trustee its or his attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its or his behalf and in its or his name.

In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Estate and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the manner herein provided.

Section 9.14 Obligation to Trustee as to Reporting. The Trustee shall, at the request of the Borrower, cause to be filed any reports lawfully required by any public agency to be filed under any applicable security laws and any other reports lawfully required by any public agency to be filed under the Act or any other applicable state law. For this purpose the Trustee is entitled to require the Borrower to cause to be furnished to the Trustee whatever information is necessary to comply with such reporting requirements at the Borrower's sole expense.

Section 9.15 Successor Paying Agent. The provisions of Sections 9.5 through 9.9 hereof with respect to removal, resignation and appointment of a successor trustee shall be equally applicable to resignation, removal and appointment of a successor to the Paying Agent. The Trustee shall be eligible for appointment as successor to the Paying Agent.

Section 9.16 Confirmation of the Trustee.

(1) At any time while Subordinate Bonds remain Outstanding under this Indenture and in any of the following circumstances, to the extent permitted by law, to-wit:

(a) The Trustee is in doubt as to whether or not the Indenture or any Related Loan Document or instrument requires Bondholders' consent or the consent of the Borrower, any guarantor, or the Issuer in connection with any proposed action;

(b) The Trustee has substantial doubt as to whether its consent to a proposed action, although authorized, should in the particular circumstances be given;

(c) The Trustee's consent is sought or deemed necessary in connection with a proposed action which is not specifically dealt with or contemplated by the Indenture or any other Related Loan Document, or it is unclear whether the Indenture or other Related Loan Document is intended to deal with the proposed action;

(d) There is a disagreement between any of the parties to the Indenture or any other Related Loan Document as to whether a proposed action may be taken or is required to be taken;

(e) There appears to be a conflict, ambiguity or inconsistency between or among the provisions of the Indenture and any other Related Loan Document other than as provided for in Sections 10.1 and 11.1 hereof;



(f) There is doubt as to whether or not a proposed action falls within one of the provisions of Sections 10.1 and 11.1 hereof authorizing such action without Bondholders' consent;

(g) Bondholders' consent is required by this Indenture or Related Loan Document but consent cannot be obtained because:

(i) it is not possible to comply with requirements of this Indenture or any other Related Loan Document as to the notice to be given to Bondholders with respect to the proposed matter requiring consent, or

(ii) if action is to be taken at a meeting of Bondholders, the requisite number of Bondholders (the quorum) necessary to be present at a meeting in order for a proposed action to be taken was not present at such meeting or any adjourned meeting;

(h) The Trustee wishes to depart from the procedures set forth in Section 12.3 hereof for purposes of calling or conducting a meeting of the Bondholders; or in any other eventuality in which it shall be necessary to determine a question arising under or to construe this Indenture or any other Related Loan Document, the Trustee may, and upon request of the Issuer, the Borrower or the Holders of twenty-five percent (25%) or more in principal amount of Outstanding Subordinate Bonds shall, proceed in accordance with the provisions of Minnesota Statutes, Sections 501.33 through 501.38, as amended.

If Bondholder's consent cannot be obtained because of the circumstances described in clause (g) above, a court of competent jurisdiction may amend or supplement the Loan Agreement or Indenture or any Related Loan Document upon a proper showing of the necessity therefor.

(2) In construing and interpreting the Indenture and any other Related Loan Document, the objective shall always be to ascertain and effectuate the intention of the parties. So far as possible and appropriate, and to the extent that it does not conflict with the provisions of the Indenture or the other Related Loan Documents, the principles of statutory construction enunciated in Minnesota Statutes, Sections 645.16 through 645.20, as amended, shall be applied in the interpretation and construction of the Indenture and other Related Loan Documents.

(3) The Trustee or successor trustee shall not be answerable for actions taken in compliance with any final order of the court. The Trustee or successor trustee shall not be entitled to require an indemnity bond pursuant to Section 9.1(11) hereof prior to taking any action directed by final order of the court.

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## ARTICLE 10

### SUPPLEMENTAL INDENTURES

Section 10.1 Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may, from time to time and at any time, without the consent of, or notice to, any of the Holders, and when so required by this Indenture shall, enter into an indenture or indentures supplemental to this Indenture as shall not be inconsistent with the terms and provisions hereof (which supplemental indenture or indentures shall thereafter form a part hereof), so as to thereby (1) cure any ambiguity or formal defect or omission in this Indenture or in any supplemental indenture; (2) grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Holders or the Trustee; (3) more precisely identify the Trust Estate, or any other property which may become a part of the Trust Estate; (4) subject to the lien and pledge of this Indenture additional revenues, properties or collateral; (5) evidence the appointment of a separate trustee or a co-trustee or the succession of a new Trustee and/or Paying Agent hereunder; (6) modify, eliminate and/or add to the provisions of this Indenture to such extent as shall be necessary to prevent any interest on the Subordinate Bonds from becoming taxable under the federal income tax laws or to effect the qualification of this Indenture under the Trust Indenture Act of 1939, as then amended, or under any similar Federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by said Trust Indenture Act of 1939, excluding however the provisions referred to in Section 316(a)(2) of said Trust Indenture Act of 1939; (7) make any other change which is required by any provision of this Indenture or which is necessary to reconcile the Indenture with the Related Loan Documents, or any amendments thereto; or (8) make any other change which is necessary or desirable and will not materially prejudice any non-consenting Holder of a Subordinate Bond.

Section 10.2 Supplemental Indentures Requiring Consent of Holders. Exclusive of supplemental indentures covered by Section 10.1 hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Trustee, upon receipt of an instrument evidencing the consent to the below-mentioned supplemental indenture by the Holders of not less than a majority of the aggregate principal amount of the then Outstanding Subordinate Bonds, shall join with the Issuer in the execution of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture, provided, however, that nothing herein contained shall permit or be construed as permitting (1) an extension of the maturity of the principal or of the interest on any Subordinate Bond issued hereunder; (2) a reduction in the principal amount of any Subordinate Bond or the rate of interest thereon or any premium thereon; (3) a privilege or priority of any Subordinate Bond or Subordinate Bonds over any other Subordinate Bond or Subordinate Bonds except as may be otherwise expressly provided herein; (4) a reduction in the aggregate principal amount of the Subordinate Bonds required for consent to such supplemental indenture; or (5) modifying any of the provisions of this Section without the consent of the Holders of one hundred percent (100%) of the principal amount of all Subordinate Bonds adversely affected thereby (“100% Bondholders’ Consent”).

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section which does not require 100% Bondholders’ Consent, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed by first class mail, postage prepaid, to the Holders of the Subordinate Bonds at the addresses shown on the Bond Register. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal office of the Trustee for inspection by all Bondholders. The Trustee shall not, however, be

subject to any liability to any Bondholder by reason of its failure to mail such notice to any particular Bondholder if notice was generally mailed to Bondholders, and any such failure shall not affect the validity of such supplemental indenture when consented to and approved as provided in this Section. If the Holders of not less than a majority in aggregate principal amount of the then Outstanding Subordinate Bonds at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Holder of any Subordinate Bond shall have any right to object to any of the terms and provisions contained herein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and is deemed to be modified and amended in accordance herewith.

Anything herein to the contrary notwithstanding, a supplemental indenture under this Article 10 which adversely affects the right of the Borrower under the Loan Agreement shall not become effective unless and until the Borrower shall have consented (either in writing or by inaction as provided below) to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture, together with a copy of the proposed supplemental indenture, to be mailed by certified or registered mail to the Borrower, the investor limited partner and the special limited partner at least thirty (30) days prior to the proposed date of execution and delivery of any such supplemental indenture. The Borrower shall be deemed to have consented to the execution and delivery of any such supplemental indenture if the Trustee does not receive (i) a letter signed by a Representative of the Borrower of protest or objection thereto or (ii) a letter signed by a representative of the investor limited partner of protest or objection thereto on or before 4:30 P.M., Minnesota time of the fifteenth day after the mailing of said notice and a copy of the proposed supplemental indenture to the Borrower unless such fifteenth day falls on a day which is not a Business Day, in which event the letter of objection must be received on the next succeeding Business Day.

Section 10.3 Rights of Trustee. If, in the opinion of the Trustee, any supplemental indenture provided for in this Article affects the rights, duties or immunities of the Trustee under this Indenture or otherwise, the Trustee may, in its discretion, decline to execute such supplemental indenture, except to the extent that this may be required in the case of a supplemental indenture entered into under Section 10.1 hereunder. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an opinion of Independent Counsel as conclusive evidence that any such supplemental indenture conforms to the requirements of this Indenture.

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## ARTICLE 11

### AMENDMENTS TO RELATED LOAN DOCUMENTS

Section 11.1 Amendments Not Requiring Bondholder Consent. The Issuer and/or the Trustee may, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of the Related Loan Documents:

- (1) which may be required or permitted without Bondholder consent by the provisions of the Related Loan Documents or this Indenture;
- (2) for the purpose of curing any ambiguity or formal defect or omission;
- (3) to reconcile the Collateral Documents or Related Loan Documents with any amendment or supplement to the Indenture; or
- (4) to effect any other change to the Related Loan Documents which will not materially prejudice any non-consenting Holder of a Subordinate Bond.

Section 11.2 Amendments Requiring Bondholder Consent. Except for amendments, changes or modifications as provided in Section 11.1 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Related Loan Documents, without the giving of notice and the written approval or consent of the Holders of not less than a majority in aggregate principal amount of the Subordinate Bonds then Outstanding given and procured as provided in this Section; provided that in no event shall such amendment, change or modification relieve the Borrower of the obligation under the Related Loan Documents to make when and as due any payments required for the payment of principal, interest and any premium due or to become due on the Subordinate Bonds unless the consent of the Holders of all Subordinate Bonds adversely affected thereby is first secured.

If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of any Related Loan Document, the Borrower shall request consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided in Section 10.2 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of the Trustee for inspection by all Holders. The Trustee shall not, however, be subject to any liability to any Holder by reason of its failure to mail such notice to any particular Bondholder if notice was generally mailed to Bondholders, and any such failure shall not affect the validity of such amendment, change or modification when consented to and approved as provided in this Section. If the Holders of not less than a majority in aggregate principal amount of the Subordinate Bonds then Outstanding at the time of the execution of any such amendment shall consent to the execution thereof as herein provided, no Holder of any Subordinate Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment, the affected Related Loan Document shall be deemed to be modified and amended in accordance therewith. Nothing in this Section contained shall permit or be construed as permitting any reduction in the payments required to be made (i) by Section 4.2 of the Loan Agreement or (ii) permitting a reduction or change in the Stated Maturities of the Subordinate Bonds.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

Section 12.1 Consent of Holders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Holders may be in any number of concurrent writings of similar tenor and must be signed or executed by such Holders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Subordinate Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

(1) The fact and date of the execution by any Person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such writing acknowledged before him or her the execution thereof, or by an affidavit of any witness to such execution.

(2) The fact of the ownership by any Person of Subordinate Bonds and the amounts and numbers of such Subordinate Bonds, and the date of the holding of the same, may be proved only by reference to the Bond Register.

Section 12.2 Rights Under Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Subordinate Bonds is intended or shall be construed to give any person or company other than the parties hereto, and the Bondholders, any legal or equitable right, remedy, or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Holders of the Subordinate Bonds hereby secured as herein provided.

Section 12.3 Meetings of Bondholders.

(1) A meeting of Bondholders may be called at any time and from time to time pursuant to this Section to facilitate any of the following purposes:

(a) to give any notice to the Issuer, the Borrower or the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any default under this Indenture, or to take any other action authorized to be taken by the Bondholders under this Indenture;

(b) to remove the Trustee or to appoint a successor trustee pursuant to Sections 9.7 and 9.8 hereof;

(c) to consent to the execution of a supplemental indenture pursuant to Section 10.2 hereof, or to consent to the execution of an amendment, change or modification of any Related Loan Document pursuant to Section 11.2 hereof; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Subordinate Bonds under any other provision of this Indenture or under applicable law.

(2) Meetings of Bondholders may be held at such place or places as the Trustee or, in case of its failure to act, the Bondholders calling the meeting, shall from time to time determine.

(3) The Trustee may at any time call a meeting of Bondholders to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of Bondholders setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed by first class mail, postage prepaid, to the Holders of the Subordinate Bonds at the address shown on the Bond Register. Any failure of the Trustee to mail such notice to a particular Bondholder, or any defect therein shall not, however, in any way impair or affect the validity of any such meeting if notice was generally mailed to Bondholders. In the event that the Holders of at least ten percent (10%) in aggregate principal amount of the Outstanding Subordinate Bonds shall have requested the Trustee to call a meeting of the Bondholders by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have accomplished the mailing of notice of such meeting within twenty (20) days after receipt of such request, then such Bondholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in subsection (1) above by giving notice of such meeting in accordance with the provisions of this subsection (3).

(4) To be entitled to vote at any meeting of Bondholders, a person shall be a Holder of one or more Subordinate Bonds Outstanding, or a person appointed by an instrument in writing as proxy for a Bondholder by such Bondholder. The only persons who shall be entitled to be present or to speak at any meeting of Bondholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee, Borrower, and Issuer and their counsel.

(5) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Bondholders in regard to proof of the ownership of Subordinate Bonds and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the ownership of Subordinate Bonds shall be proved in the manner specified in Section 12.1 hereof and the appointment of any proxy shall be proved in the manner specified in said Section or by having the signature of the person executing the proxy witnessed or guaranteed by any bank, banker or trust company authorized by said Section to certify to the ownership of Subordinate Bonds:

(a) The Trustee or, if the Bondholders have called the meeting, the Bondholders shall, by an instrument in writing, appoint a temporary chairperson of the meeting. A permanent chairperson and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority of the Subordinate Bonds represented at the meeting and entitled to vote.

(b) At any meeting such Bondholder or proxy shall be entitled to one vote for each \$5,000 of principal amount of Outstanding Subordinate Bonds owned or represented by him or her, provided, however, that no vote shall be cast or counted at any meeting in respect of any Subordinate Bond challenged as not Outstanding and ruled by the chairperson of the meeting to be not Outstanding. The chairperson of the meeting shall have no right to vote, except as a Bondholder or proxy.

(c) At any meeting of Bondholders, the presence of persons owning or representing Subordinate Bonds in an aggregate principal amount sufficient under the appropriate provision of this Indenture to take action upon the business for the transaction of which such meeting was called shall constitute a quorum. Any meeting of Bondholders duly called pursuant to this Section may be adjourned from time to time by vote of the Holders (or proxies for the Holders) of

a majority of the Subordinate Bonds represented at the meeting and entitled to vote, whether or not a quorum shall be present, and the meeting may be held as so adjourned without further notice.

(6) The vote upon any resolution submitted to any meeting of Bondholders shall be by written ballots on which shall be subscribed the signatures of the Bondholders or of their proxies and the number or numbers of the Subordinate Bonds Outstanding held or represented by them. The permanent chairperson of the meeting shall appoint two (2) inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Bondholders shall be prepared by the secretary of the meeting. The original reports of the inspectors of votes on any vote by ballot taken at such meeting, and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was published or mailed as provided in this Section shall be attached to such record. Each copy shall be signed and verified by the affidavits of the permanent chairperson and secretary of the meeting and one (1) such copy shall be delivered to the Issuer, another to the Borrower and another to the Trustee to be preserved by the Trustee, which copy shall have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

(7) At any time prior to the preparation of the record of the meeting in accordance with the terms of this Section for delivery to the Trustee evidencing the taking of any action by the Holders of the percentage in aggregate principal amount of the Subordinate Bonds specified in this Indenture in connection with such action, any Holder of a Subordinate Bond the number of which is included in the Subordinate Bonds, the Holders of which have consented to such action, may, by filing written notice with the Trustee at its principal corporate trust office and upon proof of holding as provided in Section 12.1 hereof, revoke such consent so far as it concerns such Subordinate Bond. Except as aforesaid, any such consent given by the Holder of any Subordinate Bond shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Subordinate Bond and of any Subordinate Bond issued in exchange therefor, upon transfer thereof, or in lieu thereof, irrespective of whether or not any notation in regard thereto is made upon such Subordinate Bond. Any action taken by the Holders of the percentage in aggregate principal amount of the Subordinate Bonds specified in this Indenture in connection with such action shall be conclusively binding upon the Issuer, the Borrower, the Trustee and the Holders of all the Subordinate Bonds.

(8) Nothing in this Section 12.3 is intended to limit or prevent the Trustee from taking any action permitted under Section 9.16 hereof, including but not limited to the Trustee's right to apply to a court of competent jurisdiction for confirmation of appointment, or for instructions in accordance with the provisions of Minnesota Statutes, Sections 501C.0201 through 501C.0208, as amended.

Section 12.4 Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any phrase, sentence, clause or paragraph in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

Section 12.5 Notices. All notices, certificates or other communications hereunder shall be in writing (except as otherwise expressly provided herein) and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower, the Bondholders and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Indenture. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Issuer: City of Minnetonka, Minnesota  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502  
Attention: Community Development Director

To the Borrower: Minnetonka Leased Housing Associates III, LLLP  
c/o Dominion Development and Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400  
Attention: Ryan Lunderby

with copies to: Winthrop & Weinstine P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota 55402-4629  
Attention: John M. Stern, Esq.

and:

Citibank, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attention: Mark Sherman

and:

Nixon Peabody LLP  
779 Ninth Street, NW, Suite 500  
Washington, DC 20001-4501  
Attention: Matthew W. Mullen, Esq.

and:

TCAM  
186 Lincoln Street  
Boston, MA 02111-2408  
Attention: Jenny Netzer

To the Trustee: U. S. Bank National Association  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attention: Corporate Trust Services



To Underwriter :           Dougherty & Company LLC  
                                  90 South Seventh Street, Suite 4300  
                                  Minneapolis, MN 55402  
                                  Attention: Frank J. Hogan

Section 12.6 Required Approvals. Consents and approvals required by this Indenture to be obtained from the Borrower, the Issuer or the Trustee shall be in writing and shall not be unreasonably withheld or delayed.

Section 12.7 Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.8 Limitation of Liability of Issuer and Its Officers, Employees and Agents. No covenant, provision or agreement of the Issuer herein or in the Subordinate Bonds or in any other document executed by the Issuer in connection with the issuance, sale and delivery of the Subordinate Bonds, or any obligation herein or therein imposed upon the Issuer or breach thereof, shall give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers or shall obligate the Issuer financially in any way except with respect to this Indenture and the application of revenues therefrom and the proceeds of the Subordinate Bonds. No failure of the Issuer to comply with any term, condition, covenant or agreement therein shall subject the Issuer to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Indenture or revenues therefrom or proceeds of the Subordinate Bonds. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the Issuer. In making the agreements, provisions and covenants set forth herein, the Issuer has not obligated itself except with respect to this Indenture and the application of revenues hereunder as hereinabove provided. The Subordinate Bonds constitute special obligations of the Issuer, payable solely from the revenues pledged to the payment thereof pursuant to this Indenture, and does not now and shall never constitute an indebtedness or a loan of the credit of the Issuer or the State of Minnesota or any political subdivision thereof or a charge against general taxing powers within the meaning of any constitutional or statutory provision whatsoever. It is further understood and agreed by the Borrower and the Holders that the Issuer shall not incur any pecuniary liability hereunder nor shall it be liable for any expenses related hereto, all of which the Borrower agrees to pay. If, notwithstanding the provisions of this Section, the Issuer incurs any expense, or suffers any losses, claims or damages or incurs any liabilities, the Borrower will indemnify and hold harmless the Issuer from the same and will reimburse the Issuer for any legal or other expenses incurred by the Issuer in relation thereto, and this covenant to indemnify, hold harmless and reimburse the Issuer shall survive delivery of and payment for the Subordinate Bonds. The liability of the Issuer is further restricted as provided in the Act.

Section 12.9 Amounts Remaining in Funds. Upon expiration or sooner termination of the Loan Agreement as provided therein and after adequate provision has been made to discharge the Subordinate Bonds in accordance with Article 7 hereof and make all other payments required hereunder and under the Loan Agreement, the Trustee forthwith shall, pay all remaining amounts in the funds established in Article 5 hereof to the Borrower.

Section 12.10 Electronic Signatures. The parties agree that the electronic signature of a party to this Indenture shall be as valid as an original signature of such party and shall be effective to bind such party to this Indenture. For purposes hereof, (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.



IN WITNESS WHEREOF, the Issuer and the Trustee have executed this Subordinate Indenture of Trust as of the date and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

Execution page of the Trustee to the Subordinate Indenture of Trust, dated as of the date and year first written above.

**U. S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

**EXHIBIT A**

**FORM OF SUBORDINATE BOND**

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
CITY OF MINNETONKA

No. R-\_\_\_\_\_

\$\_\_\_\_\_

TAX INCREMENT REVENUE AND  
SUBORDINATE MULTIFAMILY HOUSING REVENUE BOND  
(LEGENDS OF MINNETONKA PROJECT)  
SERIES 2018C

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP Number</u>
_____%	_____ 1, 20__	September ___, 2018	

REGISTERED HOLDER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

(1) KNOW ALL PERSONS BY THESE PRESENTS that the City of Minnetonka, Minnesota, in the County of Hennepin and the State of Minnesota (the "Issuer"), for value received, promises to pay to the registered holder named above, or registered assigns, but only from the Bond Fund, and upon presentation and surrender hereof at the principal corporate trust office of the Trustee named below, the principal sum specified above, on the maturity date specified above, or, if this Bond is prepayable as stated below, or a prior date on which it shall have been duly called for redemption, and to pay interest on said principal sum to the Record Date Holder hereof, as defined below, semiannually on March 1 and September 1 (each an "Interest Payment Date") commencing March 1, 2019, solely from the Bond Fund, until the principal sum is paid or discharged at the rates per annum specified above on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months.

This Bond shall bear interest from the Date of Original Issue set forth above, or in the case of transfer or exchange, from the most recent Interest Payment Date to which interest has been paid or provided for. The "Record Date Holder" is the person in whose name this Bond is registered in the Bond Register maintained by the Trustee named below or its successor in trust (the "Registered Holder" or "Holder" hereof) on the fifteenth day of the calendar month next preceding an Interest Payment Date, whether or not such day is a Business Day. Interest shall be payable by check or draft mailed to the Registered Holder at his or her address as it appears on the Bond Register on the Record Date, except as otherwise provided in the Indenture (hereinafter defined).

The principal of and interest and premium, if any, on this Bond are payable in lawful money of the United States of America. Upon notice to the Trustee accompanied by proper wire instructions, any Holder of Bonds in an aggregate principal amount equal to or greater than \$500,000 may elect to be paid

the interest on such Bonds payable on any Interest Payment Date by Federal Reserve wire transfer in immediately available funds to any bank in the United States specified by such Holder.

Interest not timely paid or duly provided for will be paid by check mailed to the person in whose name this Bond is registered on the Bond Register at the close of business on a date (the “Special Record Date”) fixed by the Trustee, notice of which is to be mailed to all Bondholders.

Capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture.

(2) This Bond is one of an issue designated as the “Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “Bonds”), in the original aggregate principal amount of \$4,090,000, all of like nominal date of original issue and tenor, except as to number, amount, rate, and redemption privilege, issued in accordance with a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), between the Issuer and U.S. Bank National Association, a national banking association (the “Trustee”), setting forth the terms upon which the Bonds are issued. The Bonds are equally and ratably secured and entitled to the protection of the Indenture. The Bonds are issued for the purpose of financing a portion of the acquisition, construction, and equipping of a 262-unit senior housing project (the “Project”), in accordance with Minnesota Statutes, Chapter 462C, as amended (the “Act”), to be owned by Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”). The Borrower has agreed under a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower, to repay all amounts necessary to repay the Bonds, together with interest thereon, in amounts and at times sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable (the “Basic Payments”). Pursuant to the Indenture, the Issuer has assigned and pledged to the Trustee, for the equal and ratable benefit of the Holders of the Bonds, the Basic Payments due under the Loan Agreement. The Borrower has assigned to the Trustee the Borrower’s interest in the pay-as-you-go tax increment revenue note issued by the Economic Development Authority in and for the City of Minnetonka, Minnesota in the maximum principal amount of \$4,161,000 (the “TIF Note”). By a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (the “Subordinate Mortgage”), from the Borrower in favor of the Issuer and assigned by the Issuer to the Trustee, the Borrower has granted to the Trustee a subordinate mortgage lien on and security interest in substantially all of the real and personal property comprising the Project (the “Mortgaged Property”). The Borrower, the Issuer, the Trustee, and U.S. Bank National Association, as fiscal agent (the “Fiscal Agent”) with respect to the Senior Notes, have entered into a Regulatory Agreement of even date herewith (the “Regulatory Agreement”) requiring the Borrower to comply with certain requirements of federal and state law relating to the operation of the Project as a multifamily rental housing project for seniors. Proceeds of the Bonds will be disbursed to or for the benefit of the Borrower pursuant to the Disbursing Agreement.

(3) Reference is hereby made to the Loan Agreement, the Indenture, the Subordinate Mortgage, the Regulatory Agreement, the TIF Note, and the Disbursing Agreement, including all indentures supplemental thereto, for a description of the Mortgaged Property, the provisions, among others, with respect to the nature and extent of the security, the rights of the Issuer, and the rights, duties and obligations of the Borrower, the Trustee and the Holders of the Bonds and the terms upon which the Bonds are issued and secured.

(4) The term “Business Day” shall mean any day on which the Trustee or the Federal Reserve Bank of New York is not authorized by law to close. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Bond, is not a

Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day.

(5) The Bonds are subject to redemption prior to maturity as provided in the Indenture as follows:

(a) Optional Redemption. The Bonds are subject to redemption and prepayment upon request by the Borrower to the Trustee on \_\_\_\_\_ 1, 20\_\_ and on any Business Day thereafter, in whole or in part, and if in part, in inverse order of maturity date, in principal increments of \$5,000 and by lot within a maturity, at a Redemption Price equal to the principal amount of the Bonds to be redeemed, plus accrued interest thereon.

(b) Mandatory Redemption Upon Failure to Meet Disbursement Requirements. The Bonds are subject to mandatory redemption in whole but not in part on September 1, 2019 if the conditions set forth in Section 3.6 of the Loan Agreement for disbursement are not met on or before August 1, 2019.

(c) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory redemption by lot in the principal increments of \$5,000, at par and accrued interest without premium, on the dates and in the principal amounts set forth in the Indenture.

(d) Extraordinary Redemption. In the event of damage to or destruction of the Project or any part thereof or Condemnation of the Project or any part thereof to the extent provided in Section 8.4 of the Loan Agreement, or in the event of any changes in the Constitution or laws of the United States of America or the State as provided in Section 8.4 of the Loan Agreement and termination of the Loan Agreement upon the occurrence of one of those events, all Bonds shall be redeemed by the Issuer on the earliest date for which timely notice of call can be given, at a Redemption Price equal to the principal amount to be redeemed, without any premium, plus accrued interest to the Redemption Date.

(e) Tax Redemption. The Bonds are subject to mandatory redemption in whole on the first Business Day for which notice of redemption can properly be given as provided herein upon the occurrence of a Determination of Taxability (as such term is defined in the Indenture) at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Bonds plus accrued interest thereon to the Redemption Date.

(6) In the case of any partial redemption of the Bonds of the same maturity, the particular Bonds to be redeemed shall be selected by the Trustee by lot and the Bonds shall be redeemed in the principal amounts specified in the Indenture. Any Bond which is to be redeemed only in part shall be surrendered to the Trustee (i) for payment of the Redemption Price (including accrued interest thereon to the Redemption Date) of the portion thereof called for redemption and (ii) for exchange for Bonds in any authorized denomination or denominations in aggregate principal amount equal to the unredeemed portion of such Bond.

(7) Notice of redemption shall be mailed at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption to each Registered Holder of a Bond to be redeemed. All Bonds so called for redemption, provided funds for their redemption have been duly deposited, will cease to bear interest on the specified Redemption Date and (except for the purpose of payment) shall no longer be protected by the Indenture and shall not be deemed Outstanding under the Indenture, and shall thereafter be payable solely from the funds provided for payment.

Notwithstanding the foregoing, notice of any redemption pursuant to subsection (a) above may provide that the redemption is conditioned on the deposit of sufficient moneys for payment of the Redemption Price on or prior to the Redemption Date. If the notice is conditioned upon moneys being on deposit with the Trustee in an amount sufficient to pay the Redemption Price on the Redemption Date, the notice shall state such condition and that such redemption shall not be effective unless such condition is met.

(8) In addition to the foregoing, if under certain circumstances an Event of Default, as defined in the Indenture, shall occur, the principal of all the Bonds and all interest accrued thereon may, without prior notice to the Bondholders, be declared due and payable in the manner and with the effect provided in the Loan Agreement and Indenture.

(9) This Bond and the series of which it forms a part are issued pursuant to and in full compliance with the Constitution and laws of the State, including the Act, and pursuant to a resolution adopted and approved by the governing body of the Issuer on August 27, 2018, which resolutions authorized the financing of the Project and the execution and delivery of the Indenture, and the issuance of the Bonds as special, limited obligations payable solely from revenues derived from the Loan Agreement except that under certain circumstances the Bonds may be payable from Bond proceeds. The loan repayments under the Loan Agreement are scheduled to be sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable and are to be paid to the Trustee for the account of the Issuer and credited to the Bond Fund as a special trust fund account created by the Issuer and have been and are hereby pledged for that purpose.

(10) The Bonds, including principal, premium and any other payments however designated, and the interest due thereon do not and shall never constitute a general indebtedness of the Issuer within the meaning of any state constitutional or statutory provision and do not and shall not constitute or give rise to a pecuniary liability or moral obligation of the Issuer, the State or any of its political subdivisions, or a charge against its general credit or taxing powers, or to the extent permitted by law, any pecuniary liability of any officer, employee or agent of the Issuer. The provisions of this paragraph are controlling notwithstanding anything herein to the contrary.

(11) The Registered Holder of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. Modifications or alterations of the Indenture, or of any indenture supplemental thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

(12) With the consent of the Issuer, the Borrower and the Trustee, as appropriate, and to the extent permitted by and as provided in the Indenture, the terms and provisions of the Indenture, the Loan Agreement, or of any instrument supplemental thereto relating to the Bonds, may be modified or altered by the consent of the Registered Holders of at least a majority in aggregate principal amount of the Bonds then Outstanding thereunder.

(13) The Indenture also contains provisions permitting Holders of a majority in aggregate principal amount of the Bonds at the time Outstanding, on behalf of all the Holders of all the Bonds, to waive compliance by the Issuer with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Registered Holder of this Bond shall be conclusive and binding upon such Registered Holder and on all future Registered Holders of this Bond and of any Bond issued in lieu hereof whether or not notation of such consent or waiver is made upon this Bond.



(14) The Bonds are issued as fully registered Bonds without coupons in the Authorized Denominations. The Bonds are interchangeable for one or more Bonds in Authorized Denominations and of the same series, aggregate principal amount, interest rate and maturity date, upon surrender thereof by the Holder at the principal office of the Trustee, in the manner and subject to the limitations provided in the Indenture. The Issuer, the Trustee and any additional paying agents may deem and treat the Registered Holder hereof as the absolute owner hereof (whether or not this Bond shall be overdue) for the purpose of receiving payment of or on account of principal hereof and interest (except as otherwise hereinabove provided with respect to the Record Date) due hereon and for all other purposes, and the Issuer, the Trustee and any additional paying agents shall not be affected by any notice to the contrary.

(15) Subject to the limitations provided in the Indenture, this Bond is only transferable by the Registered Holder hereof upon surrender of this Bond for transfer at the principal corporate trust office of the Trustee, duly endorsed or accompanied by a written instrument or instruments of transfer in the form printed on this Bond or in another form satisfactory to the Trustee and executed and with guaranty of signature by the Registered Holder hereof or his attorney duly authorized in writing, containing written instructions as to the details of the transfer of the Bond. Thereupon the Issuer shall execute (if necessary) and the Trustee shall authenticate and deliver, in exchange for this Bond, one or more new Bonds in the name of the transferee (but not registered in blank or to "bearer" or a similar designation), of an authorized denomination, in aggregate principal amount equal to the principal amount of this Bond, of the same maturity, and bearing interest at the same rate.

(16) No service charge shall be made to the Registered Holder for any registration, transfer or exchange hereinbefore referred to, but the Trustee may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, other than exchanges expressly provided in the Indenture to be made without charge to Bondholders.

(17) IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner, as required by law, and that the issuance of this Bond and the series of which it forms a part, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation.

(18) This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture unless the Certificate of Authentication hereon shall have been executed by the Trustee.

IN WITNESS WHEREOF, the City of Minnetonka, Minnesota, by its governing body, has caused this Bond to be executed in its name by the facsimile signatures of its Mayor and City Manager and by the manual signature of a Responsible Officer of the Trustee acting as authenticating agent.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

\_\_\_\_\_  
**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

Date of Authentication: \_\_\_\_\_, 2018

**U.S. BANK NATIONAL ASSOCIATION, as Trustee**

By \_\_\_\_\_  
Responsible Officer

\_\_\_\_\_  
**ASSIGNMENT**

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the Bond on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

Signature Guaranteed:

\_\_\_\_\_

Signature(s) must be guaranteed by a member of a Medallion Signature Program.

The Trustee will not effect transfer of this Bond unless the information concerning the transferee requested below is provided.

Name and Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Include information for all joint owners if the  
Bond is held by joint account)

Insert social security or  
other identifying number of  
Transferee

\_\_\_\_\_

\_\_\_\_\_

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**SUBORDINATE LOAN AGREEMENT**

**between**

**CITY OF MINNETONKA, MINNESOTA,  
as Issuer**

**and**

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,  
as Borrower**

**Dated as of September 1, 2018**

**Relating to:**

**\$4,090,000  
City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Bonds  
(Legends of Minnetonka Project)  
Series 2018C**

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With the exception of certain reserved rights, the interest of the City of Minnetonka, Minnesota in this Subordinate Loan Agreement, dated as of September 1, 2018, has been assigned to U.S. Bank National Association.

This instrument drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

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## **SUBORDINATE LOAN AGREEMENT**

THIS SUBORDINATE LOAN AGREEMENT, dated as of September 1, 2018 (the “Loan Agreement”), is between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “Issuer”), and MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”).

### WITNESSETH:

Reference is hereby made to the Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), between the Issuer and U.S. Bank National Association, a national banking association (the “Trustee”), for the recitals and the definitions of various terms used herein.

In consideration of the premises, the respective representations and agreements contained herein, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to secure the payments to be made by the Borrower pursuant to Article 4 hereof and the performance of all the covenants of the Borrower contained herein, the parties hereto agree as follows:

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



## ARTICLE 1

### DEFINITIONS AND MISCELLANEOUS

Section 1.1 Definitions. The terms defined in Section 1.1 of the Indenture, when used in this Loan Agreement, shall have the meanings specified in that Section.

Section 1.2 Legal Description of Project Premises. The Project Premises are legally described in Exhibit A attached to the Subordinate Mortgage.

Section 1.3 Borrower's Acts. Where the Borrower is permitted or required to do or accomplish any act or thing hereunder, the Borrower may cause the same to be done or accomplished by a third party selected by the Borrower with the same force and effect as if done or accomplished by the Borrower.

Section 1.4 Rules of Interpretation.

(1) This Loan Agreement shall be interpreted in accordance with and governed by the laws of the State.

(2) The words "herein," "hereof" and "hereunder" and words of similar import, without reference to any particular section or subdivision, refer to this Loan Agreement as a whole rather than to any particular section or subdivision of this Loan Agreement.

(3) References in this instrument to any particular article, section or subdivision hereof are to the designated article, section or subdivision of this instrument as originally executed.

(4) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

(5) The Table of Contents and titles of articles and sections herein are for convenience of reference only and are not a part of this Loan Agreement, and shall not define or limit the provisions hereof.

(6) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

(7) Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Loan Agreement.

(8) For purposes of this Loan Agreement and the Indenture, an Act of Bankruptcy shall be deemed no longer in effect if the petition initiating the Act of Bankruptcy is dismissed by order of a court of competent jurisdiction and no further appeal rights exist from such order.

(9) Any opinion of counsel required hereunder shall be a written opinion of such counsel.

(10) References to the Subordinate Bonds as “tax exempt” or to the “tax-exempt status of the Bonds” are to the exclusion of interest on the Subordinate Bonds from gross income pursuant to Section 103(a) of the Code, irrespective of such forms of taxation as the alternative minimum tax or branch profits tax on foreign corporations, as is consistent with the approach taken in Section 59(i) of the Code.

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

## ARTICLE 2

### REPRESENTATIONS OF ISSUER AND BORROWER

Section 2.1 Representations of the Issuer. The Issuer makes the following representations and warranties as the basis for its covenants herein:

(1) The Issuer is a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State and is authorized to issue the Subordinate Bonds to finance the Project pursuant to the Act.

(2) In authorizing the Project, the Issuer's purpose is, and in its judgment the effect thereof will be, to promote the public welfare by providing a senior rental housing development within the meaning of the Act and assisting seniors within the City to obtain decent, safe and sanitary housing at rentals they can afford, and facilitating the development of rental housing opportunities for residents of the City.

(3) A public hearing on the proposal to finance the Project was called and held on August 27, 2018, at which time all persons who appeared were given an opportunity to express their views with respect to the proposal to undertake and finance the Project.

(4) The issuance and sale of the Subordinate Bonds, the execution and delivery of this Loan Agreement, the Indenture, the Regulatory Agreement, the Bond Purchase Agreement, and the Assignment of Subordinate Mortgage, and the performance of all covenants and agreements of the Issuer contained in this Loan Agreement, the Regulatory Agreement, the Bond Purchase Agreement, the Assignment of Subordinate Mortgage, and the Indenture and of all other acts and things required under the Constitution and laws of the State to make this Loan Agreement, the Indenture and the Subordinate Bonds valid and binding obligations of the Issuer in accordance with their terms, are authorized by the Act and have been duly authorized by a resolution of the governing body of the Issuer adopted at a meeting thereof duly called and held on August 27, 2018 by the affirmative vote of not less than a majority of the governing body's members.

(5) Under the provisions of the Indenture, the Issuer's interest in this Loan Agreement (except for certain reserved or unassigned rights) and certain payments due hereunder are pledged and assigned to the Trustee as security for the payment of the principal and purchase price of, interest, and premium, if any, on the Subordinate Bonds.

Section 2.2 Representations of the Borrower. The Borrower makes the following representations and warranties as the basis for its covenants herein:

(1) The Borrower is a limited liability limited partnership duly organized under the laws of the State, is duly authorized to conduct its business in the State, has power to enter into the Related Loan Documents to which it is a party, and to use the Project for the purpose set forth in this Loan Agreement and by proper action has authorized the execution and delivery of the Related Loan Documents to which it is a party.

(2) The execution and delivery of the Related Loan Documents to which it is a party, and the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the partnership agreement of the Borrower, any restriction or any agreement or instrument to which the

Borrower is now a party or by which it is bound or to which any property of the Borrower is subject, and do not and will not constitute a default under any of the foregoing, or cause the Borrower to be in violation of any order, decree, statute, rule or regulation of any court or any state or federal regulatory body having jurisdiction over the Borrower or its properties, including the Project, and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound.

(3) The design and plan of the Project comprise a multifamily rental housing development for seniors as contemplated by the Act, and subject to the other provisions of this Loan Agreement, it is presently intended and reasonably expected that the equipment purchased from the proceeds of the Subordinate Bonds will be permanently located and exclusively used on the Project Premises and that the Borrower will own and operate the Project on the Project Premises throughout the Term of Loan Agreement in the normal conduct of the Borrower's business.

(4) There is public access to the Project Premises, and, as of the date of completion of the Project, the use of the Project will comply, in all material respects, with all presently applicable development, pollution control, water conservation and other laws, regulations, rules and ordinances of the federal government and the State and the respective agencies thereof and the political subdivisions in which the Project is located. The Borrower has obtained or will obtain all necessary and material approvals of and licenses, permits, consents and franchises from federal, state, county, municipal or other governmental authorities having jurisdiction over the Project to construct, equip, and operate the Project and to enter into, execute and perform its obligations under the Related Loan Documents to which it is a party.

(5) The sum of the proceeds of the Subordinate Bonds and the proceeds of the Senior Notes, together with any other funds to be contributed to the Project by the Borrower or otherwise in accordance with this Loan Agreement, will be sufficient to pay the cost of constructing the Project in a manner suitable for operation as a multifamily housing development for seniors as required in Article 3 hereof.

(6) The Subordinate Bonds are issued within the exemption provided under Section 142(d) of the Code with respect to residential rental property, and "substantially all" of the proceeds of the Subordinate Bonds will be used for expenditures chargeable to the capital account of the Project.

(7) A major inducement to the Borrower to construct and equip the Project was the source of financing provided under the Act and the assurance the Borrower received from the Issuer that such financing would be made available to the Borrower; all Project Costs heretofore incurred by the Borrower for which the Borrower will seek reimbursement from the proceeds of the Subordinate Bonds were incurred in anticipation of reimbursement from the proceeds of the Subordinate Bonds, if such proceeds should become available on terms acceptable to the Borrower; the Borrower investigated the possibility of such financing prior to incurring such Project Costs; and the Borrower did not commence construction of the Project more than sixty (60) days prior to April 16, 2018, which is the date on which the City Council of the Issuer gave preliminary approval to the Project and the financing thereof in whole or part through the Subordinate Bonds, and adopted a statement of official intent to reimburse an original expenditure pursuant to Section 1.150-2 of the Treasury Regulations.

(8) The Borrower is not in the trade or business of selling properties such as the Project and the Borrower is acquiring the Project for investment purposes only or otherwise for use by the Borrower in its trade or business; therefore, the Borrower has no intention, now or in the foreseeable future to voluntarily sell, surrender or otherwise transfer, in whole or part, its interest in the Project, except as contemplated by the partnership agreement of the Borrower.

(9) There are no actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower or any property of the Borrower in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to the Borrower, would have a material adverse effect upon the Borrower or upon the business or properties of the Borrower or upon the validity or enforceability of the instruments referred to in subsection (1) above, or the ability of the Borrower to perform its obligations thereunder, and the Borrower is not in default with respect to any order of any court or governmental agency.

(10) The Borrower is not in default in the payment of the principal of or interest on any indebtedness for borrowed money nor in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued.

(11) The Borrower has filed all federal and state income tax returns which, to the knowledge of the Borrower, are required to be filed and has paid all taxes shown on said returns and all assessments and governmental charges received by it to the extent that they have become due.

(12) To the best of the Borrower's knowledge, no public official of the Issuer has either a direct or indirect financial interest in this Loan Agreement nor will any public official either directly or indirectly benefit financially from this Loan Agreement within the meaning of Minnesota Statutes, Sections 412.311 and 471.87, as amended.

(13) No other obligations have been or will be issued under Section 103 of the Code which are sold at substantially the same time as the Subordinate Bonds, pursuant to the same plan of financing, which are reasonably expected to be paid out of substantially the same source of funds as the Subordinate Bonds.

(14) The Project will be eligible for low income housing tax credits under Section 42 of the Code.

(15) The Development Agreement is in full force and effect and has not been amended or revised and there is no litigation pending or threatened with respect to the TIF Note or the Development Agreement.

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## ARTICLE 3

### COMPLETION OF PROJECT

Section 3.1 Construction and Equipping of Project by Borrower. In connection with the acquisition, construction, and equipping of the Project, the Borrower represents and covenants as follows:

(1) Construction and Equipping. The Borrower will construct and equip the Project within the boundary lines of the Project Premises and will provide all other improvements, access roads, utilities, parking facilities, and other items required for a facility fully operable for use as a multifamily residential rental property for seniors.

(2) Completion. The Borrower will construct the Project as promptly as practicable with all reasonable dispatch and in any event no later than \_\_\_\_\_, 20\_\_\_\_, except only as completion may be delayed by strikes, riots or acts of God or the public enemy, shortages of materials or supplies or any other reason beyond the reasonable control of the Borrower for which a reasonable extension of the time of completion shall be granted as determined by the Issuer, provided that if the Project is not completed by that date there shall be no resulting liability on the part of the Issuer and no abatement or diminution in the payments required to be made by the Borrower under Article 4 hereof.

Section 3.2 Payment of Project Costs by Borrower. The Borrower agrees that it will provide any and all money required for the prompt and full payment of all sums required to complete the Project, including all of the following items (the "Project Costs") which the Issuer agrees will be payable or reimbursable from available money in the Project Fund from and to the extent and in the manner provided in Sections 3.5 and 3.6 hereof and subject to the provisions of the Act and the Code:

(1) all expenses incurred and to be incurred in connection with the construction and equipping of the Project, the contract price of all labor, services, materials, supplies and equipment furnished under any contract for construction of the Project, any developer fee or construction management fee or other amounts incurred in connection therewith, including the cost of all equipment and all appurtenances thereto, and of all rights-of-way for access and utility connections to and from the Project, and all fees required for recording all financing statements and any real estate documents;

(2) the expense of preparation of the plans and specifications for the Project, including utilities, and all other facilities necessary or desirable in connection therewith, and all other architectural, engineering and supervisory services incurred and to be incurred in the planning, construction and completion of the Project;

(3) all legal (including Bond Counsel and counsel to the Issuer, Borrower, Original Purchaser, and Trustee), abstractors', financial and accounting fees and expenses, administrative and rating agency fees (if any), printing and engraving costs and other expenses incurred and to be incurred on or before or in connection with the Completion Date with respect to (i) the establishment of title to the Project Premises, (ii) the authorization, sale and issuance of the Subordinate Bonds, (iii) the preparation of this Loan Agreement, the Indenture, the Regulatory Agreement, and all other documents necessary to the Date of Issuance or required by this Loan Agreement or the Indenture, (iv) the establishment of the Completion Date, including compliance with any governmental or administrative rules or regulations on or before such date, or (v) the administrative charges imposed by the Issuer pursuant to Section 4.4(2) hereof in connection with the issuance of the Subordinate Bonds;

- (4) premiums on all insurance (including any title insurance) required to be taken out and maintained during the period before the Completion Date;
- (5) all expenses incurred in seeking to enforce any remedy against any contractor, or any subcontractor or any supplier in respect of any default under any contract with such Person;
- (6) all deed taxes, mortgage registry taxes, recording fees and other taxes, charges and assessments and license and registration fees of every nature whatsoever incurred and to be incurred in connection with construction or completion of the Project including the financing thereof;
- (7) the cost of all other labor, services, materials, supplies and equipment necessary to complete the construction and equipping of the Project;
- (8) all fees and expenses of the Trustee and Paying Agent under the Indenture that become due on or before the Completion Date or in connection with the establishment of the Completion Date; and
- (9) without limitation by the foregoing, all other expenses which under accepted accounting practice constitute necessary capital expenditures for the completion of the Project or issuance of the Subordinate Bonds, not including Working Capital Expenses (all of which are nevertheless to be supplied by the Borrower from its own funds without reimbursement).

All Project Costs may be paid or reimbursed from available money in the Project Fund to the extent and in the manner permitted in Sections 3.5 and 3.6 hereof. If, however, such money is insufficient to pay in full Project Costs payable therefrom or are otherwise unavailable to pay any Project Costs, the Borrower shall nevertheless promptly pay so much of such Project Costs as may be in excess of such available money in the Project Fund or shall, at the request of the Trustee, forthwith pay over to the Trustee such money as is necessary to pay such Project Costs. The Borrower shall not by reason of the payment of such excess Project Costs be entitled to any reimbursement from the Issuer in excess of any money available therefor in the Project Fund or for any abatement or diminution of the Basic Payments or Additional Charges.

Section 3.3 Authorization by Issuer. In accordance with the Act, the Borrower is authorized by the Issuer, and the Borrower, pursuant to such authorization, agrees:

- (1) to construct and equip the Project as provided in Section 3.1 hereof, upon the Project Premises;
- (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, with any other Persons, and in general to do all things which may be requisite or proper for constructing and equipping the Project;
- (3) pursuant to the provisions of this Loan Agreement, to pay all fees, costs and expenses incurred in the construction and equipping of the Project from funds made available therefor in accordance with this Loan Agreement or otherwise subject to the right to contest such fees, costs and expenses;
- (4) so long as the Borrower is not in default under any of the provisions of this Loan Agreement to exercise all authority hereby conferred, which is granted and conferred irrevocably to the Completion Date and thereafter until all activities in connection with the construction and equipping of the Project shall have been completed.

Neither the authorization granted in this Section nor any other provision of this Loan Agreement shall be construed as making the Borrower an agent or joint venturer with the Issuer.

Section 3.4 Issuance of Subordinate Bonds. The Issuer and Borrower have contracted for the sale of the Subordinate Bonds authorized by the Indenture, and the Borrower has and does approve the terms of the Indenture. Forthwith upon execution of the Indenture, the Related Loan Documents, and all other documents required to be executed by the aforementioned documents, or as soon thereafter as practicable, the Issuer will execute the Subordinate Bonds and cause them to be authenticated by the Trustee and delivered to the Original Purchaser upon payment of the purchase price of the Subordinate Bonds and filing with the Trustee the opinion of Bond Counsel as to the legality of the Subordinate Bonds and the furnishing of all other documents required by this Loan Agreement, the Disbursing Agreement, the Bond Purchase Agreement and the Indenture to be furnished before delivery.

If for any reason such documents are not furnished and the approving opinion of Bond Counsel in customary form cannot be obtained, then this Loan Agreement shall be terminated and be void and of no effect and the Borrower shall be obligated to pay all costs and expenses enumerated in Section 3.2 hereof and incurred on or before the date of such termination.

Section 3.5 Proceeds of Subordinate Bonds. On the Date of Issuance, \$\_\_\_\_\_ of the proceeds of the Subordinate Bonds will be disbursed to pay Issuance Expenses and \$\_\_\_\_\_ of the proceeds of the Subordinate Bonds will be deposited to the Capitalized Interest Fund. The remaining proceeds of the Subordinate Bonds received by the Trustee on the Date of Issuance in the amount of \$\_\_\_\_\_ will be held by the Trustee in the Escrow Fund until the conditions set forth in Section 3.6(1) hereof are satisfied.

Section 3.6 Conditions of Second and Subsequent Disbursements of Proceeds of Subordinate Bonds.

(1) Following the initial advance of proceeds of the Subordinate Bonds described in Section 3.5 hereof, no further disbursements of the proceeds of the Subordinate Bonds from the Project Fund shall be made until the Borrower provides the Trustee with the following:

- (a) A fully executed Freddie Mac Commitment.
- (b) Evidence of a rate lock with regard to the Permanent Phase Interest Rate (as defined in the Funding Loan Agreement).
- (c) Evidence that all of requirements of the Initial Funding Lender to fund the Funding Loan have been satisfied.
- (d) Evidence that the Regulatory Agreement has been recorded in the land records of the County.

(2) Upon satisfaction of the conditions set forth in Section 3.6(1) hereof, the Trustee will cause the proceeds of the Subordinate Bonds to be deposited as follows: the amount of \$\_\_\_\_\_ to the Project Fund and the amount of \$\_\_\_\_\_ to the Bond Fund.

(3) Upon satisfaction of the conditions set forth in Section 3.6(1) hereof, the funds in the Project Fund shall be disbursed in accordance with the Construction Continuing Covenant Agreement (as defined in the Funding Loan Agreement) and the Disbursing Agreement (except the disbursement of



Issuance Expenses of the Subordinate Bonds shall not be subject to the provisions of the Disbursing Agreement), to or upon the order of the Borrower, in payment or reimbursement of Project Costs.

Section 3.7 Establishment of Completion Date. Within \_\_\_\_\_ days of the Completion Date, any balance remaining in the Project Fund in excess of the amount retained therein pursuant to the Disbursing Agreement shall be transferred to the Bond Fund held by the Trustee and established under the Indenture and shall be used by the Trustee (a) to redeem the largest number of Subordinate Bonds callable, without premium or penalty, under the terms of the Indenture at the first opportunity or (b) to pay principal due on the Subordinate Bonds, in accordance with Sections 5.4(2) and 5.5(2) of the Indenture.

Section 3.8 Payment and Performance Bond. The Borrower shall have a payment and performance bond for the construction of the Project as required by the financing documents for the Senior Notes.

Section 3.9 Enforcement of Contract. In the event of default of any contractor or subcontractor under any construction contract or in the event of a breach of warranty with respect to any materials, workmanship or performance, the Borrower will promptly proceed, either separately or in conjunction with others, to exhaust its remedies against the contractor, subcontractor or vendor in default and against any surety on a bond securing the performance of such contract, provided, however, that the Borrower may on the advice of its counsel and with the Trustee's consent refrain from exhausting such remedies if determined by the Borrower not to be in its best interests and not necessary to complete the Project. The Borrower will promptly advise the Trustee of the steps it intends to take in connection with any such default. Any amounts recovered pursuant to any bond or by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, other than any amounts resulting from the loss of income, shall be paid into the Project Loan Fund if received before the Completion Date, and otherwise shall be paid into the Bond Fund, provided that the Borrower may obtain reimbursement for any payments made by the Borrower in connection with such action as an item of Project Cost as provided in Section 3.6 hereof.

Section 3.10 Title Insurance. In connection with the issuance of the Subordinate Bonds, the Borrower agrees to furnish the Trustee with a commitment for a mortgagee's policy of title insurance and a title insurance policy issued by Title in an amount not less than the original principal amount of the Subordinate Bonds, insuring the following:

- (1) that fee title to the Project Premises in in the name of the Borrower;
- (2) that the Subordinate Mortgage is a subordinate mortgage lien upon the Project Premises subject to the Senior Mortgages and the other Permitted Encumbrances; and
- (3) that the Project and its use do not violate any zoning or other use restrictions covering the Project Premises and provides the coverage included within the standard zoning endorsement.

Such commitment must also waive and insure over the following standard exceptions: (a) facts which would be disclosed by a comprehensive survey of the premises; (b) mechanics', contractors', or materialmen's liens and lien claims; and (c) right of parties in possession other than Digi International, as the seller of the premises.

Notwithstanding the foregoing, the Trustee shall have no duty to review or analyze such commitment or the insurance policy.

## ARTICLE 4

### THE LOAN, BASIC PAYMENTS, ADDITIONAL CHARGES AND ADDITIONAL FINANCING

Section 4.1 The Loan. The Issuer agrees, upon the terms and conditions herein specified, to lend to the Borrower the proceeds received by the Issuer from the sale of the Subordinate Bonds, by causing such proceeds to be deposited with the Trustee for disposition as provided herein and in the Indenture. The amount of the Loan shall be deemed to include any “discount” or any other amount by which the aggregate price at which the Issuer sells the Subordinate Bonds to the Underwriter is less than the aggregate principal amount of the Subordinate Bonds, and the obligation of the Issuer to make the Loan shall be deemed fully discharged upon so depositing the proceeds of the Subordinate Bonds with the Trustee.

Section 4.2 Basic Payments. Subject to the Borrower’s right of prepayment granted in Section 8.2 hereof, the Borrower agrees to repay the Loan in installments of Basic Payments as follows:

(1) During the Term of Loan Agreement, and subject to the prior pledge by the Borrower to make payments under the Project Loan Agreement, the Borrower shall make Basic Payments under this Loan Agreement in immediately available funds as follows:

(a) On or before the twentieth day of each month, the Borrower shall make Basic Payments in an amount which, (i) commencing on October 20, 2018 and continuing through February 20, 2019, will equal one-fifth of the total interest due on all Outstanding Subordinate Bonds on the next Interest Payment Date net of the anticipated regularly scheduled semiannual payment on the TIF Note; (ii) commencing on March 20, 2019 and continuing thereafter, will equal one-sixth of the total interest due on all Outstanding Subordinate Bonds on the next Interest Payment Date net of the anticipated regularly scheduled semiannual payment on the TIF Note; and (iii) commencing on March 20, 2022 and continuing thereafter, will equal one-sixth of the total principal due on all Outstanding Subordinate Bonds on the next principal payment date (including principal due pursuant to the Mandatory Redemption Schedule after taking into account any credit to which the Borrower may be entitled under Section 3.1(2) of the Indenture net of the anticipated regularly scheduled semiannual payment on the TIF Note). There shall be credited against such payments amounts deposited in the Bond Fund interest earnings retained in or credited to the Bond Fund. Interest payments shall be made from funds in the Capitalized Interest Fund until those funds are depleted.

(b) In any event the sum of the Basic Payments payable under this Section and amounts deposited in the Bond Fund shall be sufficient to pay all principal, interest and premium, if any, on the Subordinate Bonds as such principal, interest and premium become due, at maturity, upon redemption, acceleration or otherwise, and accordingly if on the Business Day immediately preceding each Maturity Date the balance in the Bond Fund is not sufficient for this purpose, the Borrower will make a Basic Payment on such Business Day to cure the deficiency.

(2) All payments of Basic Payments shall be made directly to the Trustee at its corporate trust office, for the account of the Issuer and shall be deposited by the Trustee in the Bond Fund. In the event the Borrower should fail to make any of the payments required in this Section 4.2, the item so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon (including to the extent permitted by

law, interest on overdue installments of interest) at the rate borne by the respective Subordinate Bonds as to which such default exists.

(3) Except during the continuance of an Event of Default, all available remaining sums on deposit in the Bond Fund not credited against currently payable installments of Basic Payments or applied as provided in Section 7.8, 8.2 or 8.4 hereof shall be credited against the last installments of Basic Payments.

(4) In no event shall any purchase of any Subordinate Bonds made by or on behalf of the Borrower result in the discharge of either (a) the Subordinate Bonds so purchased; (b) the obligations under this Section 4.2 to make Basic Payments relating to the Subordinate Bonds so purchased; or (c) the Loan made hereunder to the extent of the Subordinate Bonds so purchased, unless and to the extent the Subordinate Bonds so purchased are surrendered to the Trustee and canceled.

Section 4.3 [Intentionally Omitted].

Section 4.4 Additional Charges. The Borrower agrees to pay, when due, each and all of the following:

(1) to or upon the order of the Trustee, when due, all reasonable fees of the Trustee for services rendered under the Indenture and all reasonable fees and charges of the Paying Agent, registrars, legal counsel, accountants, engineers, public agencies and others incurred in the performance on request of the Trustee of services required under the Indenture for which the Trustee and such other Persons are entitled to payment or reimbursement, provided that the Borrower may, without creating a default hereunder, contest in good faith the necessity or reasonableness of any such services, fees or expenses;

(2) the reasonable fees and expenses of counsel for the Issuer and an administrative fee equal to one-eighth of one percent (0.125%) of the original aggregate principal amount of the Subordinate Bonds due on Date of Issuance (\$\_\_\_\_\_);

(3) to the Trustee, the amount of all advances made by the Trustee, with interest thereon, as provided in Section 5.4 hereof;

(4) to the Issuer or Trustee, as the case may be, interest at the rate equal to one percent (1%) over the prime rate on each payment commencing on the date when due and required in this Section to be made to the Issuer or Trustee, if not made when due and if not advanced by the Trustee under the Indenture; and

(5) any costs incurred by the Trustee or Original Purchaser in the preparation of printed bonds.

Section 4.5 Borrower's Obligations Unconditional. All Basic Payments and Additional Charges and all other payments required of the Borrower hereunder shall be paid without notice or demand and without setoff, counterclaim, or defense for any reason and without abatement or deduction or defense (except as provided in Sections 8.2 and 9.13 hereof). The Borrower will not suspend or discontinue any such payments, and will perform and observe all of its other agreements in this Loan Agreement, and, except as expressly permitted in Sections 7.8 and 8.4 hereof, will not terminate this Loan Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction or damage to the Project or the Borrower's business, the taking of the Project or the Borrower's business by Condemnation or otherwise, the lawful prohibition of the Borrower's use of the Project or the Borrower's business, the interference with such use by any Person,

the invalidity or unenforceability or lack of due authorization or other infirmity of this Loan Agreement, the lack of right, power or authority of the Issuer to enter into this Loan Agreement, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer or Trustee, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State or any political subdivision thereof, or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Basic Payments and other amounts payable by the Borrower hereunder shall be paid in full when due without any delay or diminution whatever. Pursuant to the Guaranty, the Guarantor has guaranteed the payments of the Borrower required under Sections 4.2 and 4.4 hereof.

Section 4.6 Assignment of Issuer's Rights. As security for the payment of the Subordinate Bonds, the Issuer will pledge the amounts payable hereunder and assign, without recourse or liability, to the Trustee, the Issuer's rights under this Loan Agreement, including the right to receive payments hereunder (except the right to receive payments, if any, under Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 hereof) and hereby directs the Borrower to make said payments directly to the Trustee. The Borrower herewith assents to such assignment and will make payments under this Loan Agreement directly to the Trustee without defense or setoff by reason of any dispute between the Borrower and the Trustee.

Section 4.7 Borrower's Remedies. Nothing contained in this Article shall be construed to release the Issuer from the performance of any of its agreements herein, and if the Issuer should fail to perform any such agreements, the Borrower may institute such action against the Issuer as the Borrower may deem necessary to compel such performance so long as such action shall not violate the Borrower's agreements in Section 4.4 hereof or diminish or delay the amounts required to be paid by the Borrower pursuant to Section 4.2 hereof. The Borrower acknowledges, however, and agrees that any pecuniary obligation of the Issuer created by or arising out of this Loan Agreement shall be payable solely out of the proceeds derived from this Loan Agreement and the sale of the Subordinate Bonds.

Section 4.8 Compliance with Issuer's Private Activity Bond Policy. The Borrower agrees to comply with the Issuer's Policy Number 2.5 related to Tax Exempt Financing.

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## ARTICLE 5

### PROJECT COVENANTS

#### Section 5.1 Project Operation and Maintenance.

(1) The Borrower shall pay all expenses of the operation and maintenance of the Project, including but without limitation adequate insurance thereon and insurance against all liability for injury to Persons or property arising from the operation thereof, and all taxes and special assessments levied upon or with respect to the Project and payable during the Term of Loan Agreement and further described in this Article 5.

(2) At the request of the Trustee or the Underwriter, the Borrower shall prepare and deliver to the Trustee and to the Underwriter, on January 1, 2037, and on every fifth anniversary thereafter, a needs assessment for the ensuing five (5) year period with respect to the Project (the "Capital Needs Assessment"). The Capital Needs Assessment will include the projected costs of the required capital expenditures for such period identified in the Capital Needs Assessment.

Section 5.2 Sale or Lease of Project. So long as any Subordinate Bonds are Outstanding, the Borrower will not lease the Project (except tenant leases in the normal course of business), in whole or in part, nor sell, mortgage or otherwise encumber its interests in the Project, in whole or part, except as provided in Sections 7.5 and 8.1 hereof, provided that in no event shall such lease, assignment or sale be permitted if (1) the effect thereof would be to impair the validity or the exclusion from gross income under Section 103 of the Code of the interest on the Subordinate Bonds, or (2) if any such transaction should release the Borrower of any of its obligations under this Loan Agreement (except as otherwise provided in Section 8.1 hereof). Before any such lease, sale or assignment, the Borrower shall deliver to the Trustee an opinion of Bond Counsel, addressed to the Trustee and in form and substance satisfactory to the Trustee, stating in effect that such lease, sale or assignment will not cause interest on the Subordinate Bonds to be included in gross income for purposes of federal income taxation. The Borrower shall give at least thirty (30) days' notice to the Trustee and the Issuer of any such sale, assignment or lease, unless such thirty (30) day notice is waived by the Trustee and the Issuer.

Section 5.3 Subordinate Mortgage and Security Agreement. In consideration of the Loan, and as security for the Basic Payments to be made by the Borrower for the payment of the Subordinate Bonds, and as security for the performance of all of the other obligations, agreements, and covenants of the Borrower to be performed and observed hereunder, the Borrower shall execute and cause to be delivered and recorded in the real estate records of the County the Subordinate Mortgage, shall execute and deliver the Security Agreement, and shall keep, perform, and observe each of its obligations thereunder.

Section 5.4 Advances. The Borrower acknowledges and agrees that under the Indenture, the Trustee may take certain action and make certain advances relating to the Project or to certain other matters as expressly provided therein, and the Borrower shall be obligated to repay all such advances on demand, with interest from the date of each such advance, at the rate and under the conditions set forth in the Indenture.

Section 5.5 Alterations to the Project and Removal of Equipment. The Borrower shall have the right from time to time, at its cost and expense, to remodel and make such additions, modifications, alterations, improvements and changes (collectively referred to as "alterations") in or to the Project or to remove any equipment therefrom as the Borrower, in its discretion, may deem to be desirable for its uses

and purposes, provided such alterations or removal do not impair the character of the Project as a “project” within the meaning of the Act or otherwise impair the exclusion from gross income under Section 103 of the Code of the interest on the Subordinate Bonds.

Section 5.6 Insurance. The Borrower shall maintain, or cause to be maintained, at its cost and expense, insurance as follows:

(1) Insurance against loss and/or damage to the Project under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire and extended coverage in an amount not less than one hundred percent (100%) of the full insurable replacement cost of the Project but any such policy may have a deductible amount of not more than \$100,000. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior consent thereto in writing by the Trustee. The term “full insurable replacement cost” shall mean the actual replacement cost of the Project (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items) and equipment, and shall be determined from time to time at the request of the Trustee, every five (5) years, commencing September 1, 2023, by an insurance consultant or insurer, selected and paid for by the Borrower. Unless otherwise required by the financing documents with respect to the Senior Notes, all policies evidencing insurance required by this subsection (1) with respect to the Project shall be carried in the names of the Borrower and the Trustee as their respective interests may appear and shall contain standard mortgage clauses which provide for Net Proceeds of insurance resulting from claims per casualty thereunder to the Project which are less than \$100,000 for loss or damage covered thereby to be made payable directly to the Borrower, and Net Proceeds from such claims which are equal to or in excess of \$100,000 to be made payable directly to the Trustee. Unless otherwise required by the financing documents with respect to the Senior Notes, the Net Proceeds of such insurance required by this subsection (1) with respect to the Project shall be applied as provided in Sections 5.7 and 5.8 hereof. Unless otherwise required by the financing documents with respect to the Senior Notes, the Net Proceeds of such insurance required by this subsection (1) with respect to the facilities of the Borrower other than the Project shall be payable to the Borrower.

(2) Comprehensive general public liability insurance, including personal injury liability, and, if the Borrower owns or leases any automobiles, automobile insurance, including owned, non-owned and hired automobiles, against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$1,000,000, for public liability not arising from ownership or operation of automobiles (or other motor vehicles), and in the minimum amount of \$500,000 for each occurrence and for each year for liability arising out of ownership or operation of automobiles (or other motor vehicles) and shall be endorsed to show the Trustee and the Issuer as additional insureds.

(3) Business interruption insurance or rental loss insurance covering actual losses in gross operating earnings of the Borrower resulting directly from necessary interruption of business caused by damage to or destruction (resulting from fire and lightning; accident to a fired-pressure vessel or machinery; and other perils, including windstorm and hail, explosion, civil commotion, aircraft and vehicles, sprinkler leakage, smoke, vandalism and malicious mischief, and accident) to real or personal property constituting part of the Project, less charges and expenses which do not necessarily continue during the interruption of business, for such length of time as may be required with the exercise of due diligence and dispatch to rebuild, repair or replace such properties as have been damaged or destroyed, with limits equal to at least the sum of twelve (12) months’ operating expenses of the Project, plus the combined maximum amount of principal of and interest payable on the Outstanding Senior Notes and the Subordinate Bonds in the current or any future calendar year.

(4) Such other insurance, including workers' compensation insurance respecting all employees of the Borrower, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure, provided that the Borrower may be self-insured with respect to all or any part of its liability for workers' compensation.

All insurance required in this Section shall be taken out and maintained in responsible insurance companies selected by the Borrower which are authorized under the laws of the State to assume the risks covered thereby. The Borrower will annually provide to the Trustee a certificate of the authorized Borrower representative stating that the insurance required by this Section is in full force and effect in the amounts required above, and the Trustee shall be authorized to conclusively rely on such certificate. The Trustee has no duty or obligation to determine the sufficiency of such insurance requirements. Each policy shall contain a provision that the insurer shall not cancel nor modify it without giving written notice to the Borrower and the Trustee at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Borrower may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

Section 5.7 Damage or Destruction. The Borrower agrees to notify the Trustee immediately in the case of damage exceeding \$250,000 in amount to, or destruction of, the Project or any portion thereof resulting from fire or other casualty. In the event that any such damage or destruction does not exceed \$250,000, the Borrower shall forthwith repair, reconstruct and restore the Project to substantially the same or an improved condition or value as existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Borrower will apply the Net Proceeds of any insurance relating to such damage received by the Borrower to the payment or reimbursement of the costs thereof. Net Proceeds of any insurance relating to such damage up to \$250,000 shall be paid directly to the Borrower.

In the event the Project or any portion thereof is destroyed by fire or other casualty and the damage or destruction is estimated to exceed \$50,000, then the Borrower shall within one hundred twenty (120) days after such damage or destruction elect one (1) of the following options by written notice of such election to the Trustee:

(1) Option A - Repair and Restoration. The Borrower may elect to repair, reconstruct and restore the damaged Project. In such event, the Borrower shall proceed forthwith to repair, reconstruct and restore the damaged or destroyed Project to substantially the same condition or value as existed prior to the event causing such damage or destruction and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Borrower will apply the Net Proceeds of any insurance relating to such damage or destruction received by the Borrower from the Trustee to the payment or reimbursement of the costs thereof. So long as no Event of Default exists, any Net Proceeds of insurance relating to such damage or destruction received by the Trustee shall be released from time to time by the Trustee to the Borrower upon the receipt of:

(a) A certificate of the Borrower Representative specifying the expenditures made or to be made or the indebtedness incurred in connection with such repair, reconstruction and restoration and stating that such Net Proceeds, together with any other money legally available for such purposes, will be sufficient to complete such repair, reconstruction and restoration; and

(b) The written approval of such certificate by an Independent Engineer.

In the event the Borrower shall elect this Option A, the Borrower shall complete the repair, reconstruction and restoration of the Project, whether or not the Net Proceeds of insurance received by the Borrower for such purposes are sufficient to pay for the same. Net Proceeds not required for the repair,

reconstruction and restoration of the Project or prepayment of the Senior Notes shall be applied to the prepayment of the Subordinate Bonds or used for such other purpose as the Trustee, based upon an opinion of Bond Counsel, determines will not cause interest on the Subordinate Bonds to be included in gross income for purposes of federal income taxation.

(2) Option B - Redemption of the Subordinate Bonds. In the event that the Borrower shall determine that it is not practical or desirable to rebuild, repair or restore the Project, or, in case the Borrower is unable to deliver the certificates or reports necessary under Option A of this Section, this Loan Agreement shall be terminated in accordance with Section 8.4 hereof and the Subordinate Bonds shall be redeemed. If the Net Proceeds of insurance, together with all amounts then held by the Trustee under the Indenture available to redeem or retire the Subordinate Bonds, shall be insufficient to so redeem the Subordinate Bonds (including the expenses of redemption), the Borrower shall pay such deficiency to the Trustee as a Basic Payment and the Net Proceeds of insurance, together with such Basic Payment and amounts held by the Trustee under the Indenture, shall be applied to such redemption of the Subordinate Bonds in accordance with Section 8.4 hereof and Section 3.1 of the Indenture. If the Subordinate Bonds have been fully paid and all obligations of the Borrower hereunder have been paid or provided for, all Net Proceeds shall be paid to the Borrower.

Section 5.8 Condemnation. If the Project or any material portion thereof is condemned or taken for any public or quasi-public use and title thereto vests in the party condemning or taking the same, the Borrower hereby irrevocably assigns to the Trustee, subject to the terms of the Project Loan Documents (as defined in the Funding Loan Agreement) and the Funding Loan Agreement providing for the utilization of such Net Proceeds, all the Borrower's right, title and interest in and to any Net Proceeds of any award, compensation or damages (hereinafter referred to as an "award"), payable in connection with any such condemnation or taking. The Trustee shall cooperate fully with the Borrower in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any material part thereof. The Borrower shall, within one hundred twenty (120) days after the date on which the Net Proceeds are finally determined, elect one of the following options by written notice of such election to the Trustee.

(1) Option A - Repairs and Improvements. The Borrower may elect to use the Net Proceeds of the award made in connection with such condemnation or taking for additions, repairs and improvements to the Project. In such event, so long as no Event of Default exists, the Borrower shall have the right to receive such Net Proceeds from the Trustee from time to time upon receipt by the Trustee of:

(a) A Certificate of the Borrower Representative specifying the expenditures made or to be made or the indebtedness incurred in connection with such repairs and improvements and stating that such Net Proceeds, together with any of the money legally available for such purposes, will be sufficient to complete such repairs and improvements; and

(b) If such Net Proceeds equal or exceed \$500,000 in amount, the written approval of such Certificate by an Independent Engineer.

The Borrower agrees to apply any such Net Proceeds so received solely to the purposes specified in such Certificate. Net Proceeds not required for the repairs and improvements or prepayment of the Senior Notes shall be applied to the prepayment of the Subordinate Bonds or in such other manner as the Trustee, based upon an opinion of Bond Counsel, determines will not cause interest on the Subordinate Bonds to be included in gross income for purposes of federal income taxation.



(2) Option B - Redemption of the Subordinate Bonds. The Borrower may elect that this Loan Agreement shall be terminated in accordance with Section 8.4 hereof and the Subordinate Bonds shall be redeemed. If the Net Proceeds of condemnation, together with the amount then held by the Trustee under the Indenture available to redeem the Subordinate Bonds shall be insufficient to redeem the Subordinate Bonds (including principal, accrued interest, and expenses of redemption), the Borrower shall pay such deficiency to the Trustee as a Basic Payment, and the Net Proceeds of condemnation, together with such Basic Payment and amounts held by the Trustee under the Indenture shall be applied to such redemption of the Subordinate Bonds in accordance with Section 8.4 hereof and Section 3.1 of the Indenture. If the Subordinate Bonds have been duly paid and all other obligations of the Borrower hereunder have been paid or provided for, any remaining Net Proceeds shall be paid to the Borrower.

Section 5.9 [Intentionally Omitted].

Section 5.10 Hazardous Materials. The Borrower shall not use the Project in any manner so as to violate in any material respect any applicable law, rule, regulation or ordinance of any governmental body or in such manner as to vitiate insurance upon the Project. The Borrower shall not commit or permit any waste upon the Project which would materially decrease the value of the Project. The Borrower shall comply in all material respects with all regulations concerning the environment, health and safety relating to the generation, use, handling, production, disposal, discharge and storage of Hazardous Materials, as defined herein, in, on, under, or about the Project. The Borrower shall promptly take any and all necessary action in response to the presence, storage, use, disposal, transportation or discharge of any Hazardous Materials in, on, under or about the Project by the Borrower or Persons acting on behalf of or at the direction of the Borrower as all applicable laws, rules, regulations, or ordinances may require, provided, however, that the Borrower shall not, without the Trustee's prior written consent, which consent shall not be unreasonably withheld, take any remedial action in response to the presence of any Hazardous Materials in, on, under or about the Project, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims, proceedings, lawsuits or actions, completed or threatened pursuant to any Hazardous Materials laws or in connection with any third party, if such remedial action, settlement, consent or compromise might, in the Trustee's sole determination, impair the value of the Project; the Trustee's prior consent shall not, however, be necessary in the event that the presence of Hazardous Materials in, on, under, or about the Project either (1) poses an immediate threat to the health, safety, welfare or property right of any individual, or (2) is of such a nature that an immediate remedial response is necessary under applicable laws, rules, regulations, or ordinances, and it is not possible to obtain the Trustee's consent prior to undertaking such action.

In the event the Borrower undertakes any remedial action with respect to any Hazardous Materials on, under or about the Project, the Borrower shall immediately notify the Trustee of any such remedial action, and shall conduct and complete such remedial action (a) in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies, (b) to the reasonable satisfaction of the Trustee and (c) in accordance with the orders and directives of all federal, state and local governmental authorities. As used herein, the term "Hazardous Materials" shall mean (unless, and only to the extent that, being used in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies): (1) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other substances, materials or pollutants which (A) pose a hazard to the Project, to adjacent premises or to Persons on or about the Project or adjacent premises, (B) cause the Project to be in violation of any local, state or federal law, rule, regulation or ordinance, or (C) are defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations, policy guidelines or other publications adopted or promulgated pursuant thereto, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42

U.S.C. § 9601, et seq.; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1601, et seq.; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; (iv) the Clean Air Act, 42 U.S.C. § 7412; (v) the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq.; (vi) the Clean Water Act, 33 U.S.C. § 1317 and 1321(b)(2)A and (vii) rules, regulations, ordinances and other publications adopted or promulgated pursuant to the aforesaid laws; (2) asbestos in any form which is or could become friable, (3) urea formaldehyde foam insulation, and (4) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety or property interests of the Borrower or its employees, the occupants of the Project or the owners or occupants of property adjacent to or surrounding the Project.

Section 5.11 Release of Real Property. The Borrower shall have the right, at any time and from time to time, to a release of any portion of the Project Premises from the Subordinate Mortgage, but only as follows:

(1) Project Premises not containing any permanent structure necessary for the total operating unity and efficiency of the Project may be released for the purpose of selling the same to a third person or to facilitate the construction or financing of additions to the Project or additional structures not related to the Project on such portion of the Project Premises, but only upon receipt by the Trustee of the following:

(a) Certificate of a Borrower Representative setting forth in substance as follows:

(i) The address and legal description of the portion of the Project to be released;

(ii) The number of square feet of the property to be released,

(iii) A certification that (a) the portion of the Project to be released is not needed for the operation of the Project and is not necessary for the total operating unity and efficiency of the Project, and the release will not cause a reduction in the net revenues of the Project; (b) the release will not impair the structural integrity of the Project or the usefulness of the Project; and (c) the release will not inhibit adequate means of ingress to or egress from the Project;

(iv) No Default exists under this Loan Agreement, and

(v) All conditions precedent herein provided for relating to such release have been complied with;

(b) An ALTA survey prepared by a registered land surveyor describing and showing the Project Premises, after giving effect to such release; and

(c) An opinion of counsel stating that the certificates, opinions and other instruments which have been or are therewith delivered to and deposited with the Trustee conform to the requirements of this Loan Agreement and that, upon the basis of such application, the property may be released from the lien of the Subordinate Mortgage, and that all conditions precedent herein provided for relating to such release have been complied with.

(d) If the Senior Notes are outstanding, evidence that the Initial Funding Lender or Freddie Mac, as applicable, has consented in writing to the release of such real property and evidence of such written approvals provided to the Trustee.

(2) The Borrower may at any time or times grant easements, licenses, rights of way and other rights or privileges in the nature of easements with respect to the Project Premises, free from the lien of the Subordinate Mortgage, or the Borrower may release existing easements, licenses, rights of way and other rights or privileges with or without consideration, and the Trustee will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right of way or privilege, provided, however, that prior to any such grant or release, there shall have been supplied to the Trustee a certificate of the Borrower Representative and, if requested by the Trustee, of an Independent Engineer to the effect (i) that such grant or release is not detrimental to the proper operation of the Facilities and (ii) such grant or release will not impair the operating unity or the efficiency of the Facilities on such Project Premises or materially and adversely affect the character thereof.

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## ARTICLE 6

### DAMAGE, DESTRUCTION AND CONDEMNATION

Section 6.1 Damage and Destruction. Pursuant to Section 5.7 hereof, if there are any Outstanding Subordinate Bonds when the Project is damaged or destroyed by fire or other casualty, the Borrower shall either restore the Project to the extent permitted or required by this Loan Agreement, the Indenture, the Subordinate Mortgage, or, if Section 8.4 hereof is applicable, exercise its option to prepay the Loan pursuant to said Section.

Section 6.2 Condemnation. Pursuant to Section 5.8 hereof, if there are any Outstanding Subordinate Bonds when the Project or any part thereof is taken by Condemnation, the Borrower shall either restore the Project to the extent permitted or required by this Loan Agreement, the Indenture, the Subordinate Mortgage, or, if Section 8.4 hereof is applicable, exercise its option to prepay the Loan pursuant to said Section.

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## ARTICLE 7

### BORROWER'S COVENANTS

Section 7.1 Covenant for the Benefit of the Trustee and Bondholders. The Borrower recognizes the authority of the Issuer to assign its interest in and pledge money receivable under this Loan Agreement (other than certain payments required to be made to the Issuer under Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 hereof) to the Trustee as security for the payment of the principal and purchase price of and interest and redemption premiums, if any, on the Subordinate Bonds, and the payment of all fees and expenses of the Trustee, and hereby agrees to be bound by, and joins with the Issuer in the grant of, a security interest to the Trustee in any right and interest the Borrower may have in sums held in the funds described in Article 5 of the Indenture, pursuant to the terms and conditions thereof, to secure payment of the Subordinate Bonds. Each of the terms and provisions of this Loan Agreement is a covenant for the use and benefit of the Trustee and Holders of the Subordinate Bonds, so long as any thereof shall remain Outstanding, but upon payment in full of the Subordinate Bonds in accordance with Article 7 of the Indenture and of all fees and charges of the Trustee and Paying Agent, all references in this Loan Agreement to the Subordinate Bonds, the Holders thereof and the Trustee shall be ineffective, and neither the Trustee nor the Holders of any of the Subordinate Bonds shall thereafter have any rights hereunder, save and except those that shall have theretofore vested or that arise from provisions hereunder which survive termination of this Loan Agreement.

Section 7.2. Inspection and Access. The Borrower agrees that the Trustee and its duly authorized agents shall have the right at all reasonable times upon prior written notice to examine and inspect, and for that purpose to enter upon, the Project Premises, and shall also have such right of access thereto as may be reasonably necessary to cause the Project to be properly maintained in accordance with Article 5 hereof and the applicable provisions of the Subordinate Mortgage in the event of failure by the Borrower to perform these obligations.

Section 7.3 Annual Statement, Audit, Certificate of Compliance and Other Reports.

(1) Commencing with the fiscal year ending December 31, 2018 and continuing thereafter, the Borrower shall furnish to the Trustee by no later than one hundred twenty (120) days after the close of each fiscal year of the Borrower during the term hereof, a copy of annual financial statements of the Borrower for the preceding fiscal year, including a balance sheet and operating statements (such statements are required to be audited by an Independent Accountant commencing with the fiscal year ending December 31, 2020). The Borrower also agrees to furnish to the Trustee by no later than forty-five (45) days after the close of each fiscal quarter, commencing with the fiscal quarter ending December 31, 2018, a copy of unaudited, internally prepared financial statements of the Borrower presented in a manner similar to the annual audited financial statements, as well as physical and economic occupancy statistics for such quarter.

(2) At the time the Borrower causes to be furnished the annual financial statements, the Borrower shall also furnish the Trustee a certificate executed by the Borrower Representative, declaring that during the same fiscal year covered by the statements and continuing to the date of execution of the certificate, the Borrower has fully complied with the terms and conditions of this Loan Agreement.

(3) The Borrower will furnish the Issuer and the Trustee all reports required pursuant to law and regulations of the Act.

(4) The Borrower will, and at the request of the Issuer or Trustee at the Borrower's expense, furnish to the Trustee and the Issuer at such times and in such form as the Issuer and Trustee, may reasonably require (A) a copy of such other reports containing such information as is necessary to comply with any lawful reporting or continuing registration requirements imposed by any agency of the State under the Act, the Minnesota Blue Sky Laws or any other applicable state law as it now exists or may hereafter be amended or by any agency of any other state in which the Subordinate Bonds have been sold, or (B) such information as is necessary to comply with federal securities law.

(5) The Trustee shall have no duty to review or analyze any such financial statements or reports. The Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed in any manner therein.

Section 7.4 Indemnity by Borrower. The Borrower will, to the fullest extent permitted by law, protect, indemnify and save the Issuer and Trustee and their officers, agents, directors, and employees and any Person who controls the Issuer or Trustee within the meaning of the Securities Act of 1933, as amended, harmless from and against all liabilities, losses, damages, reasonable costs, and expenses (including reasonable attorneys' fees and expenses of the Trustee and the Issuer), taxes, causes of action, suits, claims, demands and judgments of any nature arising from:

(1) except for any gross negligence or willful misconduct of the Issuer or Trustee, any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the use, non-use, condition or occupancy of the Project or any part thereof, including any and all acts or operations relating to the construction or installation of property or improvements. The foregoing indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Borrower, customers, suppliers or affiliated organizations under any Workers' Compensation Acts, Disability Benefit Acts or other employee benefit acts;

(2) violation of any agreement, provision or condition of this Loan Agreement, except by the Issuer or the Trustee, unless the Issuer or Trustee acts pursuant to direction of the Borrower;

(3) violation by the Borrower of any contract, agreement or restriction, which shall have existed at the commencement of the Term of Loan Agreement or shall have been approved by the Borrower;

(4) violation of any law, ordinance, court order or regulation affecting the Project or a part thereof or the ownership, occupancy or use thereof;

(5) any statement or information relating to the expenditure of the proceeds of the Subordinate Bonds contained in the Tax Certificate or similar document furnished by the Borrower to the Issuer or Trustee which, at the time made, is misleading, untrue or incorrect in any material respect; and

(6) any untrue statement or alleged untrue statement by the Borrower of a material fact contained in the Official Statement or any other offering material approved by the Borrower relating to the sale of the Subordinate Bonds (as from time to time amended or supplemented) or arising out of or based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading, or failure to properly register or otherwise qualify the sale or reoffering of the Subordinate Bonds or failure to comply with any licensing or other law or regulation which would affect the manner whereby or to whom the Subordinate Bonds could be sold.

Promptly after receipt by the Issuer or Trustee or any such other indemnified person, as the case may be, of notice of the commencement of any action with respect to which indemnity may be sought against the Borrower under this Section, such person will notify the Borrower in writing of the commencement thereof, and, subject to the provisions hereinafter stated, the Borrower shall assume the defense of such action (including the employment of counsel, who shall be counsel satisfactory to the Issuer, Trustee or such other person as the case may be, and the payment of expenses). Insofar as such action shall relate to any alleged liability with respect to which indemnity may be sought against the Borrower, the Issuer, Trustee or any such other indemnified person shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the Borrower unless the employment of such counsel has been specifically authorized by the Borrower. The Borrower shall not be liable to indemnify any person for any settlement of any such action effected without the Borrower's consent.

The provisions of this Section 7.4 shall survive the payment and discharge of the Subordinate Bonds.

Section 7.5 Status of Borrower. Throughout the Term of Loan Agreement, the Borrower will maintain its existence as a limited liability limited partnership organized under the laws of the State and a Single Purpose Entity and will not wind up or otherwise dispose of all or substantially all of its assets, provided that subject to the sale restrictions in Section 5.2 hereof and the assignment and transfer conditions in Section 8.1 hereof, the Borrower may, sell or otherwise transfer to another Person all or substantially all of its assets in its entirety and thereafter wind up if the transferee Person assumes all of the obligations of the Borrower under the Related Loan Documents to which it is a party by written instrument delivered to the Issuer and the Trustee. Every such transferee shall be bound by all of the covenants and agreements of the Borrower herein with respect to any further sale or transfer.

Upon any change in the identity of its general partner by way of substitution, sale or otherwise of the Borrower, the Trustee shall be promptly informed and, if requested, each and every general partner of the Borrower as newly constituted shall deliver to the Trustee for the benefit of the Issuer and Bondholders an instrument in form satisfactory to the Trustee affirming the joint and several liability of all then existing general partners for the obligations of the Borrower hereunder for which the general partners are liable (subject in all instances, to Section 9.13 hereof).

The Issuer and Borrower agree that, upon any change in the status of the Borrower, including a change in the identity of its general partner, so long as the requirements, restrictions and conditions of Sections 5.2 and 8.1 hereof and the Regulatory Agreement with respect to such change have been satisfied as provided therein, the general partner involved shall be discharged from liability hereunder. The Trustee by execution of the Indenture shall be deemed to have agreed to execute such documents as may be necessary or desirable to indicate such discharge upon receipt of evidence satisfactory to said parties that the requirements for this Section, Sections 5.2 and 8.1 hereof, and the Regulatory Agreement have been satisfied, and provided that no Event of Default under this Loan Agreement shall have happened and be continuing on the date of the discharge.

The Borrower shall not effect such transfer or change if the result thereof would be to violate any sale restrictions set forth in Section 5.2 hereof, or to subject the interest payable on the Subordinate Bonds (in the hands of any Person who is not a Substantial User of the Project or a Related Person) to federal income taxes under Section 103 of the Code.

Notwithstanding anything to the contrary contained herein or in any other loan document (1) the assignment of administrative limited partner, class B limited partner, or investor limited partner interests in the Borrower, or (2) the removal of the general partner pursuant to the terms of the limited partnership

agreement of the Borrower, shall not be deemed an Event of Default hereunder or under any other loan document and shall not require the consent of the Issuer or the Trustee.

Section 7.6 Filing of Financing Statements. The Borrower agrees that it will, at its sole expense, file any financing statements required to perfect the security interest granted to the Trustee under the Indenture in this Loan Agreement and the payments. The Trustee shall not be responsible for filing or for the sufficiency or accuracy of any financing statements initially filed to perfect security interests granted under the Indenture or this Loan Agreement. The Trustee shall file continuation statements with respect to each UCC financing statement relating to the Trust Estate filed by the Borrower at the time of the issuance of the Subordinate Bonds; provided that a copy of the filed initial financing statement is timely delivered to the Trustee. In addition, unless the Trustee shall have been notified in writing by the Issuer or the Borrower that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (a) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this section and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the customary fees charged by the Trustee for the preparation and filing of continuation statements and for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "Extraordinary Services" fees.

Section 7.7 Assurance of Tax Exemption. In order to assure that the interest on the Subordinate Bonds shall at all times be excluded from gross income for the purposes of federal income taxation, the Borrower represents and covenants with the Issuer, Trustee and all Holders of the Subordinate Bonds as follows:

(1) The Borrower will fulfill all continuing conditions specified in Section 142 of the Code and Section 1.103-8(b) of the Regulations, to qualify the Subordinate Bonds as residential rental property bonds thereunder.

(2) The Borrower will not use (or permit to be used) the Project or use or invest (or permit to be used or invested) the proceeds of the Subordinate Bonds, or any other sums treated as "bond proceeds" under Section 148 of the Code and applicable federal income tax regulations, including "investment proceeds," "invested sinking funds" and "replacement proceeds," in such a manner as to cause the Subordinate Bonds to be classified "arbitrage bonds" under Section 148 of the Code or "federally guaranteed obligations" under Section 149(b) of the Code.

(3) At least ninety-five percent (95%) of Net Bond Proceeds will be used to finance costs properly chargeable to the capital account of a qualified residential rental project within the meaning of Section 142(d) and functionally related and subordinate property thereto.

(4) The Borrower has not permitted and will not permit any obligation or obligations to be issued within the meaning of Section 103(b) of the Code so as to cause such obligations to become part of the same "issue of obligations" as the Subordinate Bonds, so as to impair the tax-exempt status of the Subordinate Bonds.

(5) No portion of the proceeds of the Subordinate Bonds will to be used to provide any airplanes, skybox, or other private luxury box, health club facility, facility primarily used for gambling or liquor store.

(6) No portion of the proceeds of the Subordinate Bonds will be used to acquire (a) property to be leased to the government of the United States of America or to any department, agency or



instrumentality of the government of the United States of America, (b) any property not part of the residential rental housing portion of the Project, or (c) any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice-skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility or racetrack.

(7) No portion of the proceeds of the Subordinate Bonds (including investment earnings) shall be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes, and less than twenty-five percent (25%) of the proceeds of the Subordinate Bond (including investment earnings) shall be used (directly or indirectly) for the acquisition of land to be used for purposes other than farming purposes.

(8) The Borrower understands that the Code imposes a penalty for failure to file with the Secretary of the Treasury an annual certification of compliance with low income occupancy requirements, and if the requirements for a “qualified residential rental project” are not met, does not allow deduction for interest paid on the Subordinate Bonds which accrues during the period beginning on the first day of the taxable year in which the Project ceases to meet such requirements and ending on the date the Project again meets such requirements.

(9) The Borrower shall provide the Issuer on or prior to the Date of Issuance with all information required to satisfy the informational requirements set forth in Section 149(e) of the Code including the information necessary to complete IRS Form 8038.

(10) No money in the Bond Fund or the Project Fund shall be invested in investments which cause the Subordinate Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code. If at any time the moneys in such funds exceed, within the meaning of Section 149(b) of the Code, (i) amounts invested for an initial temporary period until the moneys are needed for the purpose for which the Subordinate Bonds were issued, (ii) investments of a bona fide debt service fund, and (iii) investments of a reserve which meet the requirement of Section 148(c) and (d) of the Code, such excess moneys shall be invested in only those Permitted Investments or Government Obligations, as otherwise appropriate, which are (a) obligations issued by the United States Treasury, (b) other investments permitted under regulations, or (c) obligations which are (a) not issued by, or guaranteed by, or insured by, the United States or any agency or instrumentality thereof or (b) not federally insured deposits or accounts, all within the meaning of Section 149(b)(3)(B) of the Code.

(11) The Borrower on behalf of the Issuer shall pay to the United States, as a rebate, an amount equal to the sum of (a) the excess of (i) the aggregate amount earned on all nonpurpose investments (other than investments attributable to an excess described in this clause), over (ii) the amount which would have been earned if all nonpurpose investments were invested at a rate equal to the yield on the Subordinate Bonds, plus (b) any income attributable to the excess described in clause (a), at the times and in the amounts required by Section 148(f) of the Code, all within the meaning of Section 148(f) of the Code. The Borrower and the Trustee shall maintain detailed records of the interest rate borne by the Subordinate Bonds and the investments of the Project Fund and the Bond Fund (and any other fund created under the Indenture) and earnings thereon. The Borrower shall comply with Section 5.7 of the Indenture.

(12) The Borrower will not permit more than two percent (2%) of the proceeds of the Subordinate Bonds to be expended (or to be used to reimburse any person for an expenditure) to pay Issuance Expenses as provided by Section 147(g) of the Code.

(13) In order to qualify the Subordinate Bonds and this Loan Agreement under the “program investment” provisions of Section 1.148-2(d)(2)(iii) of the Treasury Regulations, the Borrower (and any Related Person thereto) will take no action the effect of which would be to disqualify this Loan Agreement as a “program investment” as defined in Section 1.148-1(b) of the Treasury Regulations, including but not limited to entering into any arrangement, formal or informal, for the Borrower to purchase bonds or notes of the Issuer in an amount related to the amount of the Subordinate Bonds.

(14) The Borrower will not otherwise use proceeds of the Subordinate Bonds, including expenses, earnings, or take, or permit or cause to be taken, any action that would adversely affect the exclusion from gross income of the interest on the Subordinate Bonds, nor otherwise omit to take or cause to be taken any action necessary to maintain such exclusion from gross income, and if it should take or permit, or omit to take or cause to be taken, as appropriate, any such action, the Borrower shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(15) All of the proceeds of the Subordinate Bonds, except those portions of the proceeds used to pay for Issuance Expenses, if applicable, shall, for federal income tax purposes, be (i) allocated to the Project and the land on which the building is located and (ii) be used to pay costs of the acquisition and construction of the Project which are includible in the aggregate basis of the building and the land on which the building is located, in a manner such that the Project satisfies the requirements of Section 42(h)(4)(B) of the Code.

(16) The Borrower will at all times comply with the terms of the Tax Certificate, the Regulatory Agreement, and the Development Agreement.

In the event of a conflict between the terms and requirements of this Section 7.7 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

#### Section 7.8 Determination of Taxability.

(1) Promptly after the occurrence of a Determination of Taxability, the Borrower shall give written notice to the Issuer and Trustee of the Determination of Taxability and the Borrower shall provide to the Trustee in immediately available funds, an amount which when added to the amounts on deposit in the funds, will equal the principal amount of all the Unpaid Bonds plus accrued interest thereon to the Redemption Date, and the Subordinate Bonds shall be redeemed pursuant to Article 3 of the Indenture.

(2) Upon a Determination of Taxability the Borrower shall also pay to the Trustee an amount equal to the Paying Agent’s and Trustee’s fees, accrued and to accrue until final payment and redemption of the Subordinate Bonds, and all other advances, fees, costs and expenses reasonably incurred by the Trustee, the Issuer and the Paying Agent, including Bond Counsel and legal fees.

(3) If this Loan Agreement has not been terminated under Section 8.4 hereof prior to the Redemption Date for the Subordinate Bonds, this Loan Agreement shall be terminated on said Redemption Date and the closing for the termination of this Loan Agreement shall be completed otherwise as provided for termination of this Loan Agreement upon exercise of the Borrower’s options under Section 8.4 hereof.

(4) Neither the Borrower nor any Holder shall be required to contest or appeal any notice of deficiency, ruling, decision or legislative enactment which may give rise to a Determination of Taxability, and the expenses of any such contest or appeal shall be paid by the party initiating the contest or appeal.

Section 7.9 Subordination of Management Fees. As long as Dominion Management Services, LLC (including its successors and assigns), or an affiliate thereof, is the manager of the Project, any management fees payable by the Borrower with respect to the Project will be wholly subordinate and junior in right of payment to all sums payable under this Loan Agreement with respect to the Subordinate Bonds. Without limiting the foregoing, during the continuance of an Event of Default hereunder, no payment of such management fees shall be made by the Borrower. Further, the Borrower will not pay any such management fees if such payment will cause an Event of Default hereunder.

Section 7.10 Pledge of TIF Note. The Borrower hereby pledges to repayment of the Loan its interest in the TIF Note, which is secured by Available Tax Increment generated from the real property legally described as Exhibit A to the Development Agreement, which consists of a portion of the real property within the Dominion Housing Tax Increment Financing District, a housing district, within the Opus Redevelopment Project. The Borrower represents that it has not previously assigned and covenants that it will not further assign its interest in the TIF Note. To further evidence the Borrower's pledge of the TIF Note to the repayment of the Subordinate Bonds created by this Section 7.10, the Borrower agrees to execute and deliver the Security Agreement.

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## ARTICLE 8

### BORROWER'S OPTIONS

Section 8.1 Assignment and Transfer. The Borrower may assign its rights and obligations under this Loan Agreement and, as an incident thereto, transfer its interest in the Project without prior consent of the Issuer or the Trustee, but subject to the provisions of Sections 5.2 and 7.5 hereof.

Section 8.2 Prepayment.

(1) The Borrower shall have the option to direct the Trustee to call for redemption and prepayment of the Outstanding Subordinate Bonds in whole or in part to the extent and upon the terms provided in Section 3.1 of the Indenture. The Subordinate Bonds to be redeemed shall be redeemed at a price equal to their principal amount plus accrued interest set forth in Section 3.1 of the Indenture. In the event the Subordinate Bonds are called for redemption in whole or in part, the Borrower shall make a Basic Payment as provided in Section 4.2 hereof on such Redemption Date.

(2) If, after the Borrower exercises its option to redeem all Subordinate Bonds, no Subordinate Bonds remain Outstanding, the Indenture is discharged, and the Borrower has satisfied all of its obligations hereunder, the Trustee and the Issuer shall execute and deliver to the Borrower such release and other instruments as the Borrower reasonably determines are necessary to terminate this Loan Agreement. All further obligations of the Borrower hereunder, except as set forth in Section 10.10 hereof, shall thereupon terminate.

Section 8.3 Direction of Investments. Except during the continuance of an Event of Default, the Borrower shall have the right during the Term of Loan Agreement to direct the Trustee to invest or reinvest all money held for the credit of funds established by Article 5 of the Indenture in such securities as are authorized by law for such funds, subject, however, to the further conditions of Article 6 of the Indenture and Section 7.7 hereof.

The Borrower acknowledges that regulations of the Comptroller of the Currency grant the Borrower the right to receive brokerage confirmations of security transactions as they occur. The Borrower specifically waives such right to notification to the extent permitted by law and acknowledges that they will receive periodic transaction statements that will detail all investment transactions.

Section 8.4 Termination of Loan Agreement. Except during the continuance of an Event of Default, the Borrower shall have the option of terminating this Loan Agreement subject to the following conditions:

(1) Such option may be exercised if one of the events described in Section 5.7 or 5.8 hereof shall have occurred or if as a result of any changes in the Constitution of the State or the Constitution of the United States of America, or of any legislative or administrative action, whether state or federal, or of any final decree, judgment or order of any court or administrative body, whether state or federal, entered after the contest thereof by the Borrower in good faith, the agreements contained in this Loan Agreement shall have become impossible of performance in accordance with the intent and purposes of the parties as expressed herein, or unreasonable burdens or excessive liabilities shall have been imposed upon the Borrower, including but not limited to the imposition of new state or local ad valorem, property, income or other taxes not imposed on the date of this Loan Agreement, other than ad valorem taxes upon privately owned property and for the same general purpose as the Project and special assessments levied

in amounts proportionate to and not exceeding the benefits of future public improvements to the land included in the Project.

(2) With respect to any of the events stated in subsection (1), if the Borrower determines to exercise its option to terminate this Loan Agreement it must give written notice to the Issuer and Trustee of its decision to exercise its option within one hundred twenty (120) days after such event.

(3) The Borrower shall give written notice to the Issuer and Trustee of its intention to exercise the option, stating therein a termination date not less than forty-five (45) nor more than ninety (90) days after the date the notice is mailed, but in no event prior to the date on which all Outstanding Subordinate Bonds shall be deemed discharged under Article 9 of the Indenture, and the Borrower shall make arrangements satisfactory to the Trustee for the giving of any notice required for redemption of all of the Outstanding Subordinate Bonds on the date on which the Subordinate Bonds are to be redeemed.

(4) The Borrower shall make a Basic Payment as provided in Section 4.2 hereof on the Redemption Date.

(5) The Borrower shall pay to the Trustee at least five (5) days prior to the Discharge Date, an amount equal to the Trustee's and Paying Agent's fees and expenses under the Indenture, accrued and to accrue until final payment and redemption of the Subordinate Bonds and all other advances, fees, costs and expenses reasonably incurred and to be incurred on or before the termination date by the Trustee and Paying Agent under the Indenture and by the Issuer under this Loan Agreement.

(6) On the termination date, a closing shall be held at the principal office of the Trustee, or any other office mutually agreed upon. At the closing the Issuer and Trustee shall, upon acknowledgment of receipt of the sum set forth in subsection (4) above, execute and deliver to the Borrower such release and other instruments as the Borrower reasonably determines are necessary to terminate this Loan Agreement. All further obligations of the Borrower hereunder, except under Sections 7.4, 7.7, 7.8, 10.10, 10.11, 10.12, and 10.13 shall thereupon terminate, provided, however, that the Borrower shall also remain obligated to pay or reimburse the Issuer and Trustee for the payment of all other fees, costs and expenses unaccounted for in the sum paid in accordance with subsection (4) above and reasonably incurred before or subsequent to such closing in connection with the Subordinate Bonds.

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## ARTICLE 9

### EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default. Any one or more of the following events is an Event of Default under this Loan Agreement, and the term “Event of Default,” wherever used herein, means any one of the following events, whatever the reason for such default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

(1) if the Borrower shall fail to pay any Basic Payments on the date due under this Loan Agreement;

(2) if the Borrower shall fail to pay any Additional Charges on or before the date that the payment is due, and shall continue to be in arrears for thirty (30) days after mailing of a notice to it by the Issuer or the Trustee that said Additional Charges have not been received on the due date;

(3) if the Borrower shall fail to observe and perform or shall breach any other covenant, condition or agreement on its part under this Loan Agreement for a period of forty-five (45) days after mailing of a notice to it by the Issuer or the Trustee, stating that it is a “Notice of Default” hereunder and specifying such default or breach and requesting that it be remedied;

(4) if the Borrower shall be dissolved or liquidated (other than when a new entity assumes the obligations of the Borrower under the conditions permitting such action contained in Section 7.5 hereof);

(5) if any representation or warranty made by the Borrower herein, or by a general partner or Representative of the Borrower in any document or certificate furnished to the Trustee or the Issuer or the Underwriter in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to be, in any material respect, incorrect or misleading as of the date made; or

(6) if an event of default occurs and is continuing under the Indenture or any Related Loan Document, subject to applicable notice and cure periods.

The investor limited partner, administrative limited partner or class B limited partner in the Borrower shall have the right, but not the obligation, to cure Events of Default on behalf of the Borrower, and the Issuer and Trustee shall accept such cure as if it were made by the Borrower itself.

Section 9.2 Remedies. The following remedies are all subject to the terms of the Subordination Agreement.

(1) Whenever any Event of Default shall have happened and be subsisting the Trustee may by written notice to the Borrower, declare all the Basic Payments payable for the remainder of the Term of Loan Agreement (an amount equal to that necessary to pay in full all Outstanding Subordinate Bonds and the interest thereon assuming acceleration of the Subordinate Bonds under the Indenture and to pay all other indebtedness thereunder) to be immediately due and payable whereupon the same shall become immediately due and payable by the Borrower. The provisions of this Section 9.2 do not limit the application of Section 9.1 hereof.

(2) Upon the occurrence of an Event of Default, but subject to the terms of the Subordination Agreement, the Trustee may also take whatever action at law or in equity may appear necessary or appropriate to collect all sums then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the Borrower, under this Loan Agreement, or any Collateral Documents, or to otherwise compensate the Issuer, Trustee or Bondholders for any damages on account of such Event of Default. The Subordination Agreement does not restrict the Trustee from proceeding to collect revenues derived from the TIF Note.

(3) The Issuer (without the prior written consent of the Trustee if the Trustee is not enforcing the Issuer's right in a manner to protect the Issuer or is otherwise taking action that brings adverse consequences to the Issuer) may take whatever action at law or in equity may appear necessary or appropriate to enforce its rights of indemnification under Section 7.4 and to collect all sums then due and thereafter to become due to the Issuer under Sections 3.2, 4.4, 7.4, 9.5, 10.11, 10.12, and 10.13 hereof. Notwithstanding the foregoing, the Issuer is not precluded from exercising any of its rights reserved to it as set forth in this Section, even if the Trustee is exercising the rights of the Issuer hereunder.

Section 9.3 Disposition of Funds. Any amounts collected pursuant to action taken under Section 9.2 hereof (other than sums collected for the Issuer on account of its rights to indemnification and certain direct payments to be made to the Issuer under Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 hereof which sums shall be paid directly to the Issuer) shall be applied in accordance with the provisions of the Indenture.

Section 9.4 Nonexclusive Remedies. No remedy herein conferred upon or reserved to the Issuer or Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer (or Trustee) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or as may be required by law.

Section 9.5 Attorneys' Fees and Expenses. If an Event of Default shall exist under this Loan Agreement and the Issuer or Trustee should employ attorneys or incur other expenses for the collection of any amounts due hereunder, or for the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower will upon demand pay to the Issuer or Trustee the reasonable fees of such attorneys and such other expenses so incurred.

Section 9.6 Effect of Waiver. In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 9.7 Waiver of Stay or Extension. The Borrower covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any appraisal, valuation, stay, or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants in, or the performance of, this Loan Agreement, and the Borrower (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Issuer or Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 9.8 Issuer May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower or the property of the Borrower, the Trustee, or the Issuer with the prior consent of the Trustee, shall be entitled and empowered, by intervention in such proceeding or otherwise:

(1) to file and prove a claim and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Issuer and Trustee (for themselves and on behalf of Bondholders) (including any claim for the reasonable compensation, expenses, disbursements and advances of the Issuer and Trustee, their agents and counsel) allowed in such judicial proceeding; and

(2) to collect and receive any money or other property payable or deliverable on any such claims, and to distribute the same.

Section 9.9 Restoration of Positions. If the Issuer or Trustee have instituted any proceeding to enforce any right or remedy under this Loan Agreement, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Issuer or Trustee, then and in every such case the Borrower, Trustee and the Issuer shall, subject to any determination in the proceeding, be restored to the positions they held prior to commencement of such proceedings, and thereafter all rights and remedies of the Issuer shall continue as though no such proceeding had been instituted.

Section 9.10 Suits to Protect the Project. If the Borrower shall fail to do so after thirty (30) days' prior written notice from the Issuer or Trustee, the Issuer shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Project or any portion thereof, by any acts which may be unlawful or in violation of this Loan Agreement, and such suits and proceedings as the Issuer may deem expedient to protect its interests in the Project or any portion thereof, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule or order would impair or adversely affect the Project or be prejudicial to the interests of the Bondholders.

Section 9.11 Performance by Third Parties. The Issuer may permit third parties to perform any and all acts or take such action as may be necessary for and on behalf of the Borrower to cure any Event of Default hereunder. The acceptance by the Issuer or the Trustee of any such performance by third parties shall not in any way diminish or absolve the Borrower of primary liability hereunder.

Section 9.12 Exercise of the Issuer's Remedies by Trustee. Whenever any Event of Default shall have happened and be subsisting the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the Issuer under this Article 9, without notice to the Issuer.

Section 9.13 Limited Recourse. Notwithstanding any provision or obligation to the contrary set forth in this Loan Agreement, (1) the liability of the Borrower and any partner, trustee, director, officer, employee, or agent thereof (collectively, "Borrower Parties") under this Loan Agreement or the Subordinate Mortgage shall be limited to the Mortgaged Property or to such other security as may from time to time be given or have been given for payment of the Borrower's obligations under this Loan Agreement and Subordinate Bonds, and any judgment rendered against the Borrower Parties under this Loan Agreement or the Subordinate Mortgage and the Subordinate Bonds shall be limited to the Mortgaged Property and any other security so given for satisfaction thereof; and (2) no deficiency or other personal judgment nor any order or decree of specific performance shall be sought or rendered against the Borrower Parties, their successors, transferees or assigns, in any action or proceeding arising out of this



Loan Agreement, the Subordinate Mortgage, the Subordinate Bonds, or any judgment, order or decree rendered pursuant to any such action or proceeding, provided, however, that nothing in this Loan Agreement, the Subordinate Mortgage, or the Subordinate Bonds shall limit the Issuer's or Trustee's ability to exercise any right or remedy that it may have with respect to any property pledged or granted to the Issuer or the Trustee, or both of them, or to exercise any right against the Borrower Parties or any other person or entity on account of any damage caused by fraud or intentional misrepresentation by the Borrower or any intentional damage of the property subject to the Subordinate Mortgage. Furthermore, the Borrower shall be fully liable for the misapplication of (a) proceeds paid prior to any foreclosure under any and all insurance policies, under which the Trustee and/or the Issuer is named as insured, by reason of damage, loss or destruction to any portion of the property subject to the Subordinate Mortgage, to the full extent of such misapplied proceeds and awards, (b) proceeds or awards resulting from the condemnation, or other taking in lieu of condemnation, prior to any foreclosure of the property subject to the Subordinate Mortgage, to the full extent of such misapplied proceeds and awards (c) rents, issues, profits and revenues received or applicable to a period subsequent to the occurrence of a default under this Loan Agreement, the Subordinate Mortgage, and the Subordinate Bonds but prior to foreclosure, and (d) proceeds from the sale of all or any part of the property subject to the Subordinate Mortgage and any other proceeds that, under the terms hereof, should have been paid to the Issuer or the Trustee. Furthermore, the Borrower shall be fully liable for the breach of the Borrower's covenants contained in Sections 3.2, 4.4(1), (2) and (3), 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 of this Loan Agreement, provided, however, in no event shall the Borrower or any Borrower Parties be personally liable for payment of the principal of, premium, if any, or interest on the Subordinate Bonds. The limit on the Borrower's liability set forth in this paragraph shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of the Borrower's obligations under this Loan Agreement or a release, in whole or in part, or an impairment of the lien and security interest of this Loan Agreement, the Subordinate Mortgage, and the Subordinate Bonds upon the properties described therein, or to preclude the Issuer or the Trustee from foreclosing the Subordinate Mortgage in case of any default or enforcing any other right of the Issuer or the Trustee, or to alter, limit or affect the liability of any person or party who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Borrower under this Loan Agreement, the Subordinate Mortgage, and the Subordinate Bonds.

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## ARTICLE 10

### GENERAL PROVISIONS

Section 10.1 Amounts Remaining in Funds. Except during the continuance of an Event of Default, any amounts remaining in the funds created under Article 5 of the Indenture upon expiration or earlier termination of this Loan Agreement, as provided herein, and after adequate provision has been made for payment in full of the Subordinate Bonds, in accordance with Article 7 of the Indenture, any Additional Charges payable to the Trustee and the Issuer, including Paying Agent's fees and expenses, and all other amounts required to be paid under this Loan Agreement and the Indenture, shall, forthwith be paid to the Borrower.

Section 10.2 Notices. All notices, certificates or other communications hereunder shall be in writing (except as otherwise expressly provided herein) and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower, and Trustee may, by written notice given by each of them to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Loan Agreement. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Issuer: CITY OF MINNETONKA, MINNESOTA  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502  
Attn: Julie Wischnack, Community Development Director

To the Trustee: U.S. BANK NATIONAL ASSOCIATION  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Corporate Trust Services

To the Borrower: MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP  
c/o Dominion Development & Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400  
Attn: Ryan Lunderby

With copies to:

WINTHROP & WEINSTINE, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Attn: John M. Stern, Esq.

and:

CITIBANK, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attention: Mark Sherman

and:

NIXON PEABODY LLP  
779 Ninth Street, NW, Suite 500  
Washington, DC 20001-4501  
Attention: Matthew W. Mullen, Esq.

and:

TCAM  
186 Lincoln Street  
Boston, MA 02111-2408  
Attention: Jenny Netzer

Section 10.3 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer and Borrower and their respective successors and assigns.

Section 10.4 Severability. In the event any provisions of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.5 Amendments, Changes, and Modifications. Except as otherwise provided in this Loan Agreement or in the Indenture, subsequent to the issuance of the Subordinate Bonds and before the lien of the Indenture is satisfied and discharged in accordance with its terms, this Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee.

Section 10.6 Execution Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.7 Required Approvals. Consents and approvals required by this Loan Agreement to be obtained from the Borrower, the Issuer or the Trustee shall be in writing and shall not be unreasonably withheld or delayed.

Section 10.8 Limitation on Issuer's Liability. No agreements or provisions contained in this Loan Agreement nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project shall give rise to any pecuniary liability of the Issuer or a charge against its general credit or taxing powers, or shall obligate the Issuer financially in any way

except with respect to the Project and the application of revenues therefrom and the proceeds of the Subordinate Bonds. No failure of the Issuer to comply with any term, condition, covenant or agreement herein shall subject the Issuer to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the Project or revenues therefrom or from proceeds of the Subordinate Bonds, and no execution of any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the Issuer. Nothing herein shall preclude a proper party in interest from seeking and obtaining specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement herein, provided that no costs, expenses or other monetary relief shall be recoverable from the Issuer except as may be payable from the Project or its revenues.

Section 10.9 Representations of Borrower. All representations made in this Loan Agreement by the Borrower are based on the best of the Borrower's knowledge of the facts and law, and no such representations are made in reliance upon any representations made or legal advice given by the Issuer, its Bond Counsel, or any of its agents, officers or employees.

Section 10.10 Termination. At any time when no Subordinate Bonds remain Outstanding and arrangements satisfactory to the Issuer and Trustee have been made for the discharge of all liabilities under this Loan Agreement, this Loan Agreement shall terminate. All obligations of the Borrower under Sections 7.4, 7.7, 7.8, 10.11, 10.12, and 10.13 hereof shall survive termination of this Loan Agreement.

Section 10.11 Administrative Fees, Attorneys' Fees and Costs. The Borrower shall reimburse the Issuer, upon demand, for all costs and expenses, including without limitation attorneys' fees, paid or incurred by the Issuer in connection with (i) the discussion, negotiation, preparation, approval, execution and delivery of the Subordinate Bonds, the Indenture, this Loan Agreement, and the documents and instruments related hereto or thereto; (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the discussion, negotiation, preparation, approval, execution and delivery of any and all documents necessary or desirable to effect such amendments or modifications; (iii) the servicing and administration of the Loan during the Term of Loan Agreement or thereafter; and (iv) the enforcement by the Issuer during the term hereof or thereafter of any of the rights or remedies of the Issuer hereunder or under the foregoing documents, or any document, instrument or agreement related hereto or thereto, including, without limitation, costs and expenses of collection in the Event of Default, whether or not suit is filed with respect thereto.

Section 10.12 Release. The Borrower hereby acknowledges and agrees that the Issuer, its officers, employees and agents shall not be liable to the Borrower, and hereby releases and discharges the Issuer, its officers, employees and agents from any liability, for any and all losses, costs, expenses (including attorneys' fees), damages, judgments, claims and causes of action, paid, incurred or sustained by the Issuer or the Borrower as a result of or relating to any action, or failure or refusal to act, on the part of the Trustee or any other party with respect to the Subordinate Bonds, the Indenture, this Loan Agreement, or the documents and transactions related hereto or thereto or contemplated hereby or thereby, including, without limitation, the exercise by the Trustee or any third party of any of its rights or remedies pursuant to any of such documents.

Section 10.13 Audit Expenses. The Borrower agrees to pay any costs incurred by the Issuer as a result of the Issuer's compliance with an audit or inquiry, random or otherwise, by the Internal Revenue Service, the Minnesota Department of Revenue, the Minnesota Office of the State Auditor, or any other governmental agency with respect to the Subordinate Bonds or the Project.

Section 10.14 Electronic Signatures. The parties agree that the electronic signature of a party to this Loan Agreement shall be as valid as an original signature of such party and shall be effective to bind

such party to this Loan Agreement. For purposes hereof, (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

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IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Subordinate Loan Agreement to be executed by their duly authorized officers as of the date and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

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

**MINNETONKA LEASED HOUSING  
ASSOCIATES III, LLLP**, a Minnesota limited liability  
limited partnership

By: Minnetonka Leased Housing Associates SPE III,  
LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

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**SUBORDINATE COMBINATION MORTGAGE, SECURITY AGREEMENT,  
FIXTURE FINANCING STATEMENT, AND ASSIGNMENT OF LEASES AND RENTS**

by

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,  
as Mortgagor**

in favor of

**CITY OF MINNETONKA, MINNESOTA,  
as Mortgagee**

**Dated as of September 1, 2018**

**Relating to:**

**\$4,090,000  
City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Bonds  
(Legends of Minnetonka Project)  
Series 2018C**

**THIS SUBORDINATE MORTGAGE IS EXEMPT FROM MORTGAGE REGISTRATION TAX IMPOSED BY MINNESOTA STATUTES §287.035, PURSUANT TO MINNESOTA STATUTES §287.04(f), BECAUSE THE PRINCIPAL AMOUNT OF THE ORIGINAL MORTGAGE LOAN REFERRED TO HEREIN IS MADE UNDER A LOW AND MODERATE INCOME OR OTHER AFFORDABLE HOUSING PROGRAM AND THE MORTGAGEE IS THE CITY OF MINNETONKA, MINNESOTA, A MUNICIPAL CORPORATION ORGANIZED AND EXISTING UNDER THE CONSTITUTION AND LAWS OF THE STATE OF MINNESOTA.**

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This Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents contains after-acquired property provisions and constitutes a fixture financing statement under Minnesota Statutes, Section 336.9-502. The maximum principal indebtedness secured hereby is \$4,090,000 and matures on March 1, 2046.

This instrument was drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402



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**SUBORDINATE COMBINATION MORTGAGE, SECURITY AGREEMENT,  
FIXTURE FINANCING STATEMENT, AND ASSIGNMENT OF LEASES AND RENTS**

THIS SUBORDINATE COMBINATION MORTGAGE, SECURITY AGREEMENT, FIXTURE FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS, dated as of September 1, 2018 (the “Subordinate Mortgage”), is by MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (the “Mortgagor”), in favor of CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “Mortgagee”).

WITNESSETH:

WHEREAS, the Mortgagee will issue and deliver its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “Subordinate Bonds”), in the original aggregate principal amount of \$4,090,000; and

WHEREAS, the Subordinate Bonds are being issued pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Act”), and a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), between the Mortgagee and the Trustee; and

WHEREAS, proceeds of the Subordinate Bonds will be loaned to the Mortgagor pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Mortgagee and the Mortgagor, for the purposes of (i) financing a portion of the costs of the acquisition, construction, and equipping of a 262-unit senior housing rental development located at 11001 Bren Road East, Minnetonka, Minnesota to be known as Legends of Minnetonka (the “Project”); (ii) financing capitalized interest on the Subordinate Bonds during the construction of the Project; and (iii) paying costs of issuance of the Subordinate Bonds; and

WHEREAS, in order to finance an additional portion of the costs of the acquisition, construction, and equipping of the Project, the Mortgagee has agreed to issue, pursuant to a separate plan of financing, its (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 (the “Series A-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 (the “Series A-2 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (iii) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 (the “Series B-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; and (iv) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 (the “Series 2018B-2 Governmental Note,” and collectively with the Series A-1 Governmental Note, the Series A-2 Governmental Note, and the Series B-1 Governmental Note, the “Senior Notes”), in the maximum principal amount of \$\_\_\_\_; and

WHEREAS, the Senior Notes evidence loans (the “Funding Loans”) made to the Mortgagee by U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association, in their capacity as initial funding lenders (together, the “Funding Lender”), pursuant to a Funding Loan Agreement, dated as of September 1, 2018, between the Mortgagee, U.S. Bank National Association, a national banking association, as administrative agent for the Funding Lender, and U.S. Bank National Association, a national banking association, as fiscal agent with respect to the Senior Notes (the “Fiscal Agent”); and

WHEREAS, the Mortgagee will loan the proceeds of the Funding Loans to the Mortgagor pursuant to the terms of a Project Loan Agreement, dated as of September 1, 2018, between the Mortgagee, the Mortgagor, and the Fiscal Agent; and

WHEREAS, in connection with the issuance of the Senior Notes, the Mortgagor has executed and delivered to the Mortgagee, as assigned by the Mortgagee to the Fiscal Agent, the following mortgages (together, the "Senior Mortgages"), which will provide the Fiscal Agent, as assignee thereunder, with a first mortgage lien on and security interest in the Project: (i) with respect to the Series A-1 Governmental Note and the Series A-2 Governmental Note, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated September \_\_, 2018; and (ii) with respect to the Series B-1 Governmental Note and the Series B-2 Governmental Note, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated September \_\_, 2018; and

WHEREAS, by the Loan Agreement, the Mortgagor has covenanted, among other things, to make Basic Payments (as defined in the Indenture), sufficient to pay the principal of, premium, if any, and interest on the Subordinate Bonds when due; and

WHEREAS, pursuant to the Act, the Mortgagee may assign the Basic Payments to the Trustee to secure the Subordinate Bonds; and

WHEREAS, the Mortgagee accordingly has, by the Indenture, pledged and granted to the Trustee a security interest in all of the Mortgagee's right, title and interest in the Loan Agreement (except for certain rights for payment of fees, legal expenses and indemnification), including but not limited to such Basic Payments, in order to secure the full and prompt payment of the principal of, premium, if any, and interest on the Subordinate Bonds; and

WHEREAS, the Mortgagee has required as an express condition precedent to making a loan to the Mortgagor pursuant to the Loan Agreement that the Mortgagor provide this Subordinate Mortgage as security for repayment of the Basic Payments, which are due and payable in full on March 1, 2046; and

WHEREAS, this Subordinate Mortgage will be subordinate, junior, and subject to the Senior Mortgages; and

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged; in consideration of the purchase and acceptance of the Subordinate Bonds by the persons who, from time to time, may become the owners thereof; and to secure the due and punctual payment of any and all liabilities of the Mortgagor under the Loan Agreement and all covenants and agreements of the Mortgagor therein, including (without limitation) all Basic Payments payable thereunder in respect of the Subordinate Bonds, and the payment of all fees and expenses and advances of the Mortgagee and the Trustee under the Loan Agreement, the Indenture and this Subordinate Mortgage, the Mortgagor does hereby grant, bargain, sell, convey, and warrant and assign to the Mortgagee, its permitted successors and assigns a lien on and security interest in, and does hereby mortgage and pledge unto the Mortgagee, its successors and assigns, forever, with power of sale, the following:

I.

All of its right, title and interest in and to the tracts, parcels and interests in land described in EXHIBIT A attached hereto (the "Land") and the buildings, structures and other improvements now standing or at any time hereafter constructed or placed upon the Land (the "Buildings"), including but not limited to (i) all building materials, supplies and equipment now or hereafter located on the Land and suitable or intended to be incorporated in any building, structure, or other improvement located or to be erected on the Land, (ii) all heating, plumbing and lighting apparatus, motors, engines and machinery, electrical equipment, incinerator apparatus, air conditioning equipment, water and gas apparatus, pipes, faucets, and all building service equipment and other fixtures of every description which are now or may hereafter be placed or used upon the Land or in any building or improvement now or hereafter located thereon, (iii) all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to and of any and all of the foregoing, and (iv) all hereditaments, easements, appurtenances, estates, and other rights and interests now or hereafter belonging to or in any way pertaining to the Land or to any building or improvement now or hereafter located thereon.

II.

All furnishings, furniture, equipment and all other tangible personal property of any nature whatever now or hereafter located in the Buildings or elsewhere on the Land (the "Equipment"), including all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to and of any and all such property, excluding any items released or disposed of in accordance with the Loan Agreement and excluding personal property owned by tenants occupying rental units in the Buildings.

III.

All rents, issues, condemnation awards, insurance proceeds, and similar revenues and income arising from the ownership of the Land, the Buildings and the Equipment and all proceeds and products thereof (collectively, the "Revenues and Income").

To have and to hold, the Land, Buildings and Equipment (the "Mortgaged Property"), and the Revenues and Income thereof, together with all privileges, hereditaments and appurtenances thereunto now or hereafter belonging, or in any way appertaining, and the proceeds thereof, unto the Mortgagee, its successors and assigns forever,

In trust nevertheless, upon the terms and trust as part of the Trust Estate set forth in the Indenture, for the equal and proportionate benefit, security and protection of all owners of the Subordinate Bonds, without preference, priority or distinction as to lien or otherwise of any of the Subordinate Bonds over any of the others,

Provided, nevertheless, that these presents are upon the express condition that if the Mortgagor shall pay all Basic Payments under the Loan Agreement and cause to be paid the principal of, premium (if any) on and interest on the Subordinate Bonds, and if the Mortgagor shall strictly observe and perform all of the terms, covenants and conditions contained in the Loan Agreement and this Subordinate Mortgage, then this Subordinate Mortgage and the estate, right and interest of the Mortgagee in and to the Mortgaged Property, and the Revenues and Income thereof, shall cease and be and become void and of no force and effect, and shall be satisfied at the Mortgagor's expense, otherwise to remain in full force and effect.

The Mortgagor and the Mortgagee further agree as follows:

1. Definitions. Capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture.

2. Amount and Maturity of Subordinate Bonds; Basic Payments. The parties represent and agree as follows:

(a) The Subordinate Bonds shall be in the aggregate principal amount of \$4,090,000 and the final maturity thereof shall be March 1, 2046, subject to the optional or mandatory redemption of the Subordinate Bonds, including mandatory sinking fund redemption, all as further set forth in the Indenture.

(b) Basic Payments are required to be made monthly by the Mortgagor in order to pay principal of, premium (if any) and interest on the Subordinate Bonds when and as the same shall become due, or when required to be redeemed, as more fully provided in the Loan Agreement and Indenture.

3. Additional Payments. Under the Loan Agreement, the Mortgagor will be obligated, in addition to the Basic Payments described above, to pay all required rebate payments to the United States in respect of the Subordinate Bonds, the reasonable fees and expenses of the Trustee and any paying agent of the Subordinate Bonds, fees and expenses of the Mortgagee and any advances by the Mortgagee or the Trustee to meet obligations of the Mortgagor for (among other things) taxes, special assessments, utility charges, insurance premiums, and liens in connection with the Mortgaged Property and also to provide indemnity to the Mortgagee, all as more fully provided in the Loan Agreement, which obligations are additional indebtedness intended to be secured by this Subordinate Mortgage.

4. Release of Property. Property included in the Mortgaged Property may be released from the lien of this Subordinate Mortgage as provided in the Loan Agreement and Indenture.

5. Warranty of Title; Permitted Encumbrances. The Mortgagor does hereby covenant, represent and warrant that it is the lawful owner of and has good right and lawful authority to grant, bargain, sell, convey, warrant, mortgage, assign and pledge the Mortgaged Property and Revenues and Income thereof as provided herein; that the Mortgagor is and will continue to be well and truly seized of good and marketable title to the Mortgaged Property; that the Mortgaged Property and Revenues and Income thereof are and shall remain free and clear of all mortgages, liens, pledges, charges and encumbrances, excepting, with respect to the Land, Permitted Encumbrances, and excepting, with respect to any equipment, furnishings or other personal property, liens or security interests existing on the date hereof or hereafter arising with respect to any security interest granted in connection with purchase money acquisitions of such personal property the lien of which extends only to such purchased personal property; and that the Mortgagor does warrant and will defend the title to the Mortgaged Property and Revenues and Income thereof against all claims and demands whatsoever not permitted hereunder or under the Loan Agreement. "Permitted Encumbrances" shall mean the following:

(a) liens for taxes and special assessments which are not then delinquent;

(b) utility, access and other easements and rights-of-way, restrictions, restrictive covenants and exceptions that the Mortgagor certifies to the Mortgagee will not interfere with or impair the operation of the Mortgaged Property, or, if it is not being operated, the operation for which it was designed or last modified;

(c) any mechanic's, laborer's, materialman's, supplier's, or vendor's lien or right in respect thereof if payment is not yet due under the contract in question;

(d) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Land and which the Mortgagor certifies to the Mortgagee do not materially impair the property affected thereby for the purpose for which it was intended;

(e) zoning laws;

(f) liens arising in connection with workers' compensation, unemployment insurance, taxes, assessments, statutory obligations or liens, social security legislation, undetermined liens and charges incidental to construction, or other similar charges arising in the ordinary course of operation and not overdue, and such other liens and charges at the time required by law as a condition precedent to the transaction of the multifamily housing activities of the Mortgagor or the exercise of any privileges or licenses necessary to the Mortgagor;

(g) purchase money liens on personalty as provided above in this Section 5;

(h) the Senior Mortgages; and

(i) exceptions, easements, restrictions and encumbrances shown as of the date of this Subordinate Mortgage on EXHIBIT B attached hereto.

6. Events of Default; Remedies. If any Event of Default as defined in the Loan Agreement shall occur and be continuing, or if any Event of Default as defined in the Indenture shall occur and be continuing, the Mortgagee shall have authority (i) to accelerate the Basic Payments and to declare the Subordinate Bonds immediately due and payable as provided in the Loan Agreement and Indenture, and (ii) to pursue one or more of the remedies provided for in the Loan Agreement and Indenture respectively, and in lieu thereof or addition thereto, one or more of the following remedies and provisions for foreclosure or enforcement of this Subordinate Mortgage:

(a) The Mortgagee may proceed to protect and enforce its rights by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted, or for the foreclosure of this Subordinate Mortgage, or for the enforcement of any other appropriate legal or equitable remedy.

(b) The Mortgagee shall have and may exercise with respect to all personal property and fixtures which are part of the Mortgaged Property all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code, as in effect in the State of Minnesota (the "State"). If notice to the Mortgagor of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given (in the manner specified in the Loan Agreement and Indenture) at least ten (10) calendar days prior to the date of intended disposition.

(c) The Mortgagee shall be entitled, without notice, except that which is required by law, and without any showing of waste of the Mortgaged Property, inadequacy of the Mortgaged Property as security, or insolvency of the Mortgagor, to the appointment of a receiver of the rents and profits of the Mortgaged Property including those past due, as permitted by State law. The Mortgagee or any receiver shall be entitled to receive and dispose of the Revenues and Income of the Mortgaged Property and to sue for and recover any account or other item of Revenues and

Income from the Mortgagor or any account debtor or other third person. Subject to any order of a court appointing a receiver or otherwise having jurisdiction of the Trust Estate, the Mortgagee in its discretion may apply the Revenues and Income received by it as provided in State law, as follows:

(i) To payment of all reasonable fees (if any) of the receiver approved by the court.

(ii) To payment of all tenant security deposits then owing to tenants under any of the Leases (as defined in Section 12 hereof) pursuant to the provisions of Minnesota Statutes, Section 504B.178.

(iii) To payment of all prior or current real estate taxes and special assessments with respect to the Mortgaged Property, or if this Subordinate Mortgage requires periodic escrow payments for such taxes and assessments, to the escrow payments then due.

(iv) To payment of all premiums then due for the insurance required by this Subordinate Mortgage, or if this Subordinate Mortgage requires periodic escrow payments for such premiums, to the escrow payments then due.

(v) To keeping of the covenants of a landlord or licensor pursuant to Minnesota Statutes, Section 504B.161, subdivision 1.

(vi) To payment of expenses incurred for normal maintenance of the Mortgaged Property.

(vii) If received prior to any foreclosure sale of the Mortgaged Property, to the Mortgagee for payment of the indebtedness secured hereby in such order as the Mortgagee determines but no such payment made after acceleration of the indebtedness secured hereby shall affect such acceleration.

(viii) If received during or with respect to the period of redemption after a foreclosure sale of the Mortgaged Property:

(1) If the purchaser at the foreclosure sale is not the Mortgagee, first to the Mortgagee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured hereby, second to the purchaser as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to the Mortgagor.

(2) If the purchaser at the foreclosure sale is the Mortgagee, to the Mortgagee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured hereby and the balance to be retained by the Mortgagee as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to the Mortgagee, whether or not any such deficiency exists.

The rights and powers of the Mortgagee under this Subordinate Mortgage and the application of Rents under this Section 6(c) shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

(d) Subject to the rights of the Fiscal Agent under the Senior Mortgages, the Mortgagee may (and is hereby authorized and empowered to) foreclose this Subordinate Mortgage by action or advertisement, pursuant to the statutes of the State in such case made and provided, power being expressly granted to sell the Mortgaged Property at public auction and convey the same to the purchaser in fee simple and to apply the proceeds arising from such sale, first, as provided in the Indenture, to the payment of the indebtedness secured thereby and hereby, including all reasonable expenses, liabilities and advances of the Mortgagee and the Subordinate Bonds and interest thereon and Basic Payments relating thereto, and all legal costs and charges of such foreclosure, which costs, charges and fees the Mortgagor agrees to pay, and, second, to the payment of any obligations of the Mortgagor to the Mortgagee under the Loan Agreement, and, third, to return any surplus to the Mortgagor or such other person as may be entitled thereto. Such sale shall be made at public auction and at such place or places and at such time or times and upon such notice as the Mortgagee may be advised by counsel to be consistent with the laws applicable thereto, and upon such terms as the Mortgagee or the public officer conducting such sale may fix. Any such sale made pursuant to judicial proceedings or advertisement shall be made either as an entirety or in such parcels as may be directed by the court or as the Mortgagee in its sole discretion may determine. The Mortgagor, for it and all persons and corporations hereafter claiming through or under it, does hereby expressly waive and release all right to have the properties and rights comprised in the Mortgaged Property or in the Trust Estate marshaled upon any foreclosure or other enforcement hereof. The Mortgagee or public officer conducting such sale from time to time may adjourn any such sale to be made by it by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication it may make such sale at the time to which the same shall be so adjourned, but in the event of such adjournment or adjournments, sale shall be made within any limitation of time or number of adjournments prescribed by law and, in any event, within six months from the date of sale fixed in the advertisement or court order, unless notice of sale on some later date shall be given again in the manner provided by law.

(e) Upon any foreclosure sale, the owners of any Subordinate Bonds outstanding, or the Trustee, may bid for and purchase the Trust Estate or any part thereof and upon compliance with the terms of sale may hold, retain and possess and dispose of such property in their or its own absolute right without further accountability, and any purchaser at any such sale may, in paying the purchase money, turn in any of such Subordinate Bonds or claims for interest in lieu of cash to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

(f) Upon the completion of any sale or sales made under or by virtue of this Subordinate Mortgage and the Indenture, the Mortgagee shall execute and deliver, or cause to be executed and delivered, to the accepted purchaser or purchasers the property sold with good and sufficient transfers, assigning and transferring all its right, title and interest in and to the properties sold. The Mortgagee and its successor or successors are hereby appointed the true and lawful attorney or attorneys irrevocable of the Mortgagor in its name and stead or in the name of the Mortgagee to make all necessary assignments, transfers and deliveries of the property thus sold, and for that purpose, the Mortgagee and its successors may execute all necessary instruments of assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that said attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor, if so requested in writing by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for the purpose and as may be designated in such request.



(g) Upon any sale made under the power of sale hereby granted or under judgment or decree in any judicial proceedings for the foreclosure or otherwise for the enforcement of this Subordinate Mortgage or the Indenture, the receipt of the Mortgagee or of the officer making such sale shall be a sufficient discharge to the purchaser or purchasers at any sale for the purchase money, and such purchaser or purchasers, their assigns or personal representatives shall not, after paying such purchase money and receiving such receipt of the Mortgagee or of such officer therefor, be obliged to see to the application of such purchase money, or be in anyway answerable for any loss, misapplication, or nonapplication thereof.

(h) The Mortgagor does hereby expressly consent to sale of the Mortgaged Property by advertisement pursuant to Minnesota Statutes, Chapter 580, which provides for sale after service of notice thereof upon the occupant of the Mortgaged Property and publication of said notice for six (6) weeks in the county in which the Mortgaged Property is located, notwithstanding that service might not be made upon the Mortgagor personally, and that no hearing of any type is required in connection with the sale. Except as required by the aforesaid statutory provision, the Mortgagor hereby expressly waives any and all rights to notice of sale of the Mortgaged Property and any and all rights to a hearing of any type in connection with the sale of the Mortgaged Property.

(i) In case of any Event of Default as aforesaid, to the extent that such rights may then lawfully be waived, neither the Mortgagor nor anyone claiming through or under it shall or will set up, claim, or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property may be situated, in order to prevent or hinder the enforcement or foreclosure of this Subordinate Mortgage or the Indenture, or the absolute sale of the Mortgaged Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat.

(j) Any sale made under the power of sale granted hereby or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this Subordinate Mortgage or the Indenture shall, if and to the extent then permitted by law, operate to divest all right, title, interest, claims and demand whatsoever, either at law or in equity, of the Mortgagor of, in and to the property so sold, and be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons, firms or corporations claiming or who may claim the property sold, or any part thereof, from, through or under the Mortgagor.

(k) The Mortgagee may also exercise its remedies under Section 19 below.

7. Possession of Mortgagor. Unless a default on the part of the Mortgagor shall exist under the Loan Agreement or an Event of Default shall exist under the Indenture, the Mortgagor shall be entitled to the possession and disposition of the Mortgaged Property and the Revenues and Income thereof subject, however, to the rights of the Trustee to the possession and disposition of the funds and accounts provided for in the Loan Agreement and Indenture.

8. Further Assurances. As provided in the Loan Agreement, the Mortgagor shall execute, deliver, file and record at its expense such supplements to this Subordinate Mortgage, financing statements or other documents as may be required in the opinion of counsel, including (without limitation) any supplement to this Subordinate Mortgage to particularly describe any properties which have been or are intended to become subject to the lien hereof.

9. Amendments. This Subordinate Mortgage may be amended only as provided in the Loan Agreement and Indenture.

10. Loan Agreement and Indenture Control. Any provision in this Subordinate Mortgage which is inconsistent with the Loan Agreement or the Indenture or any provision thereof shall be interpreted as if such provision were not contained herein and as if the provisions of the Loan Agreement and Indenture had been fully incorporated herein. In all cases of inconsistency, and in case of any amendment of or supplement to the Loan Agreement or Indenture, entered into in accordance with the provisions thereof, the provisions of the Loan Agreement (as amended and supplemented) and Indenture (as amended and supplemented) shall control. Reference is hereby made to copies of the Loan Agreement and Indenture to be placed on file at the offices of the Mortgagor and the Trustee.

11. Fixture Filing. From the date of its recording, this Subordinate Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein on EXHIBIT A. For this purpose, the following information is set forth:

- |     |                                                                                         |                                                                                                                                                              |
|-----|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) | Name and address of Debtor:                                                             | Minnetonka Leased Housing Associates III, LLLP<br>c/o Dominion Development and Acquisition, LLC<br>2905 Northwest Boulevard, Suite 150<br>Plymouth, MN 55441 |
| (2) | Name and address of Secured Party:                                                      | City of Minnetonka, Minnesota<br>14600 Minnetonka Boulevard<br>Minnetonka, MN 55345-1502                                                                     |
| (3) | Description of the types (or items) of property covered by this Financing Statement:    | The Fixtures as defined herein.                                                                                                                              |
| (4) | Description of real estate to which collateral is attached or upon which it is located: | See EXHIBIT A attached hereto.                                                                                                                               |

Some of the above-described collateral is or is to become fixtures upon or minerals and mineral rights located upon the Land, and this financing statement is to be filed for record in the public real estate records.

12. Assignment of Leases and Rents. The Assignor does hereby grant, transfer and assign to the Assignee (the "Assignment") all of the right, title and interest of the Assignor in and to (i) any and all present or future leases or tenancies, whether written or oral, covering or affecting any or all of the Mortgaged Property (all of which, together with any and all extensions, modifications and renewals thereof, are hereinafter collectively referred to as the "Leases" and each of which is referred to as a "Lease"), and (ii) all rents, profits and other income or payments of any kind due or payable or to become due or payable to or by the Assignor as the result of any use, possession or occupancy of all or any portion of the Mortgaged Property or as the result of the use of or lease of any personal property constituting a part of the Mortgaged Property (all of which are hereinafter collectively referred to as "Rents"), but not including any general revenues, income or accounts receivable of the Assignor, and

whether the Rents accrue before or after foreclosure of this Subordinate Mortgage or during the periods of redemption thereof, all for the purpose of securing:

(a) All indebtedness under the Loan Agreement and all other sums secured by this Subordinate Mortgage and Assignment pertaining to the Subordinate Bonds; and

(b) Performance and discharge of each and every obligation, covenant and agreement of the Assignor contained herein and in the Loan Agreement.

13. Covenant. The Assignor warrants and covenants that it is and will remain the absolute owner of the Rents and Leases free and clear of all liens and encumbrances other than the lien granted herein and Permitted Encumbrances; that it has not heretofore assigned or otherwise encumbered its interest in any of the Rents or Leases to any person other than as set forth in the Permitted Encumbrances; that it has the right under applicable law, under the Leases, and otherwise to execute and deliver this Assignment and keep and perform all of its obligations hereunder; that it will warrant and defend the Leases and Rents against all adverse claims, whether now existing or hereafter arising.

14. Performance of Leases. The Assignor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which it is now or hereafter becomes liable to observe or perform under any present or future Lease, and, at its sole cost and expense, enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the tenant under each and every Lease, subject to such waivers or extensions of time as may be granted by Assignee, provided that Assignee shall have the right, at any time, to rescind any such waiver or extension of time. The Assignor will observe and comply with all provisions of law applicable to the operation and ownership of the Mortgaged Property. The Assignor will at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of the Assignor or any tenant thereunder.

15. Collection of Rents. Unless permitted by the Mortgagee, the Assignor will not collect or accept any Rents for the use or occupancy of the Mortgaged Property for more than one (1) month in advance. Security deposits shall not be deemed Rents for purposes of this paragraph.

16. Protecting the Security of This Assignment. Should the Assignor fail to perform or observe any covenant or agreement contained in this Assignment, then the Assignee, but without obligation to do so and without releasing the Assignor from any obligation hereunder, may make or do the same in such manner and to such extent as the Assignee may deem appropriate to protect the security hereof, including, specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Assignor contained in the Leases and in exercising any such powers to pay necessary costs and expenses, employ counsel and pay reasonable attorneys' fees. The Assignor will pay immediately upon demand all sums expended by the Assignee under the authority of this Assignment, together with interest thereon, and the same shall be added to said indebtedness and shall be secured hereby.

17. Present Assignment. This Assignment shall constitute a perfected, absolute and present assignment, provided that the Assignor shall have the right to collect, but not prior to accrual (except as permitted by Section 15 above), all of the Rents, and to retain, use and enjoy the same unless and until an Event of Default shall occur under the Loan Agreement, this Subordinate Mortgage or the Indenture or the Assignor shall have breached any warranty or covenant in this Assignment. Any Rents which accrue prior to an Event of Default under the Loan Agreement or this Subordinate Mortgage or the Indenture but are paid thereafter shall be paid to the Assignee.

18. Survival of Obligation to Comply with Subordinate Mortgage and This Assignment. All of the Assignor's obligations under this Subordinate Mortgage and Assignment shall survive foreclosure of this Subordinate Mortgage and the Assignor covenants and agrees to observe and comply with all terms and conditions of this Subordinate Mortgage and Assignment and to preclude any Event of Default from occurring under the Loan Agreement, this Subordinate Mortgage or Indenture throughout any period of redemption after foreclosure of this Subordinate Mortgage.

19. Additional Remedies. Upon the occurrence of any Event of Default specified in the Loan Agreement, the Indenture or herein, the Assignee may, at its option, in addition to any remedies set forth in Section 6 hereof, at any time:

(a) in the name, place and stead of the Assignor and without becoming a mortgagee in possession (i) enter upon, manage and operate the Mortgaged Property or retain the services of one or more independent contractors to manage and operate all or any part of the Mortgaged Property; (ii) make, enforce, modify and accept surrender of the Leases; (iii) obtain or evict tenants, collect, sue for, fix or modify the Rents and enforce all rights of the Assignor under the Leases; and (iv) perform any and all other acts that may be necessary or proper to protect the security of this Assignment;

(b) with or without exercising the rights set forth in subsection (a) above, give or require the Assignor to give, notice to any or all tenants under the Leases authorizing and directing the tenants to pay all Rents under the Leases directly to the Assignee; and

(c) without regard to waste, adequacy of the security or solvency of the Assignor, apply for, and the Assignor hereby consents to, the appointment of a receiver of the Mortgaged Property, whether or not foreclosure proceedings have been commenced under this Subordinate Mortgage, and if such proceedings have been commenced, whether or not a foreclosure sale has occurred.

The exercise of any of the foregoing rights or remedies and the application of the rents, profits and income pursuant to Section 20 hereof shall not cure or waive any Event of Default (or notice of default) under this Subordinate Mortgage or invalidate any act done pursuant to such notice.

20. Application of Rents, Profits and Income. All Rents collected by the Assignee or the receiver each month pursuant to Section 19(b) hereof shall be applied for the purposes referred to in Section 19(a) hereof. The rights and powers of the Assignee under this Assignment and the application of Rents under this Section 20 shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

21. No Liability for Assignee. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of the Assignor under the Leases. This Assignment shall not operate to place upon the Assignee responsibility for the control, care, management or repair of the Mortgaged Property or for the carrying out of any of the terms and conditions of the Leases. The Assignee shall not be responsible or liable for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, for any negligence in the management, upkeep, repair or control of said Mortgaged Property or for failure to collect the Rents.

22. Assignor's Indemnification. The Assignor shall and does hereby agree to indemnify and to hold the Assignee harmless of and from any and all claims, demands, liability, loss or damage (including all costs, expenses, and reasonable attorney's fees in the defense thereof) asserted against, imposed on or incurred by the Assignee in connection with or as a result of this Assignment or the exercise of any rights or remedies under this Assignment or under the Leases or by reason of any alleged obligations or undertakings of the Assignee to perform or discharge any of the terms, covenants or agreements contained in the Leases which do not result from Assignee's own gross negligence or willful misconduct. Should the Assignee incur any such liability, the amount thereof, together with interest thereon, shall be secured hereby and the Assignor shall reimburse the Assignee therefor immediately upon demand.

23. Authorization to Tenants. Upon notice from the Assignee that it is exercising the remedy set forth in Section 19(b) hereof, the tenants under the Leases are hereby irrevocably authorized and directed to pay to the Assignee all sums due under the Leases, and the Assignor hereby consents and directs that said sums shall be paid to the Assignee without the necessity for a judicial determination that an Event of Default has occurred hereunder or that the Assignee is entitled to exercise its rights hereunder, and to the extent such sums are paid to the Assignee, the Assignor agrees that the tenant shall have no further liability to the Assignor for the same. The signature of the Assignee alone shall be sufficient for the exercise of any rights under this Assignment and the receipt of the Assignee alone for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Mortgaged Property. Checks for all or any part of the Rents collected under this Assignment shall upon notice from the Assignee be drawn to the exclusive order of the Assignee.

24. Assignee an Attorney-In-Fact. The Assignor hereby irrevocably appoints the Assignee, and its successors and assigns, as its agent and attorney-in-fact, which appointment is coupled with an interest, with the right but not the duty to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as the Assignee may deem appropriate to make this Assignment and any further assignment effective, including without limiting the generality of the foregoing, the right to endorse on behalf and in the name of the Assignor all checks from tenants in payment of Rents that are made payable to the Assignor.

25. Assignee Not a Mortgagee in Possession. Nothing herein contained and no actions taken pursuant to this Assignment shall be construed as constituting the Assignee a mortgagee in possession.

26. Specific Assignment of Leases. The Assignor will transfer and assign to the Assignee, upon written notice by Assignee, any and all specific Leases that the Assignee requests. Such transfer or assignment by the Assignor shall be upon the same or substantially the same terms and conditions as are herein contained, and the Assignor will properly file or record such assignments, at the Assignor's expense, if requested by the Assignee.

27. Unenforceable Provisions Severable. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof shall in no way be affected thereby. It is the intention of the parties hereto, however, that this Assignment shall confer upon the Assignee the fullest rights, remedies and benefits available pursuant to Minnesota Statutes, Sections 559.17 and 576.01, subdivision 2.

28. Limited Recourse. Notwithstanding any provision or obligation to the contrary set forth in this Subordinate Mortgage, (a) the liability of the Mortgagor and any partner, trustee, director, officer,

employee, or agent thereof (collectively, "Mortgagor Parties") under this Subordinate Mortgage or the Loan Agreement shall be limited to the property subject to this Subordinate Mortgage or to such other security as may from time to time be given or have been given for payment of the Mortgagor's obligations under the Loan Agreement and Subordinate Bonds, and any judgment rendered against the Mortgagor Parties under this Subordinate Mortgage or the Loan Agreement and Subordinate Bonds shall be limited to the property subject to this Subordinate Mortgage and any other security so given for satisfaction thereof; and (b) no deficiency or other personal judgment nor any order or decree of specific performance shall be sought or rendered against the Mortgagor Parties, their successors, transferees or assigns, in any action or proceeding arising out of this Subordinate Mortgage, the Loan Agreement, the Subordinate Bonds, or any judgment, order or decree rendered pursuant to any such action or proceeding; provided, however, that nothing in this Subordinate Mortgage, the Loan Agreement or the Subordinate Bonds shall limit the Mortgagee's ability to exercise any right or remedy that it may have with respect to any property pledged or granted to the Mortgagee, or to exercise any right against the Mortgagor or any other person or entity on account of any damage caused by fraud or intentional misrepresentation by the Mortgagor or any intentional damage of the property subject to this Subordinate Mortgage. Furthermore, the Mortgagor shall be fully liable for the misapplication of (i) proceeds paid prior to any foreclosure under any and all insurance policies, under which the Mortgagee is named as insured, by reason of damage, loss or destruction to any portion of the property subject to this Subordinate Mortgage, to the full extent of such misapplied proceeds and awards, (ii) proceeds or awards resulting from the condemnation, or other taking in lieu of condemnation, prior to any foreclosure of the property subject to this Subordinate Mortgage, to the full extent of such misapplied proceeds and awards (iii) rents, issues, profits and revenues received or applicable to a period subsequent to the occurrence of a default under this Subordinate Mortgage, the Loan Agreement and the Subordinate Bonds but prior to foreclosure, and (iv) proceeds from the sale of all or any part of the property subject to this Subordinate Mortgage and any other proceeds that, under the terms hereof, should have been paid to the Mortgagee. Furthermore, the Mortgagor shall be fully liable for the breach of the Mortgagor's covenants contained in Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 of the Loan Agreement; provided, however in no event shall the Mortgagor Parties be personally liable for payment of the principal of, premium, if any, or interest on the Subordinate Bonds. The limit on the Mortgagor's liability set forth in this paragraph shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of the Mortgagor's obligations under the Loan Agreement or a release, in whole or in part, or an impairment of the lien and security interest of this Subordinate Mortgage, the Loan Agreement and the Subordinate Bonds upon the properties described therein, or to preclude the Mortgagee from foreclosing this Subordinate Mortgage in case of any default or enforcing any other right of the Mortgagee, or to alter, limit or affect the liability of any person or party who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Mortgagor under this Subordinate Mortgage, the Loan Agreement and the Subordinate Bonds.

29. Tax Credit Requirements. The Mortgagor and Mortgagee agree, notwithstanding any other provision herein to the contrary, that in the event of a foreclosure, that no tenant may be evicted for the three year period following foreclosure if such eviction would be contrary to the provisions of Section 42(h)(6)(E) of the Internal Revenue Code of 1986, as amended, and that this Subordinate Mortgage, the Loan Agreement, and the Subordinate Bonds are expressly subordinate to this provision.

30. Assignment. The Mortgagor acknowledges that this Subordinate Mortgage will be assigned to the Trustee by the Mortgagee, and that the Trustee will have all the rights, obligations and interests of the Mortgagee herein. After such assignment, references to the Mortgagee herein shall be deemed to refer to the Trustee.

31. Mortgage Registry Tax. This Subordinate Mortgage is exempt from the tax imposed under Minnesota Statutes, Section 287.035 for the privilege of recording a mortgage, pursuant to Minnesota Statutes, Section 287.04(f), as amended.

32. Successors and Assigns. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of the Assignor and the Assignee, including any purchaser at a foreclosure sale.

33. Captions. The captions and headings of the paragraphs of this Subordinate Mortgage are for convenience only and shall not be used to interpret or define the provisions of this Subordinate Mortgage.

34. Subordination. Pursuant to the Subordination Agreement, dated September \_\_\_\_, 2018, between the Borrower, the Trustee, and the Fiscal Agent, the lien of mortgage created hereunder shall be subordinate and junior to the lien of the Senior Mortgages.

35. Waiver of Setoff. The Mortgagor represents and agrees that no rent has been or will be paid in advance by any persons in possession of all or any portion of the Mortgaged Property for a period of more than one (1) month and that the payment of none of the rents to accrue for all or any portion of the Mortgaged Property has or will be waived, released, reduced or discounted, or otherwise discharged or compromised, by the Mortgagor. The Mortgagor waives any right of setoff against any person in possession of all or any portion of the Mortgaged Property. The Mortgagor represents that it has not assigned any of said rents or profits to any third party and agrees that it will not so assign any of said rents or profits without the prior written consent of the Mortgagee.

36. Electronic Signatures. The parties agree that the electronic signature of a party to this Subordinate Mortgage shall be as valid as an original signature of such party and shall be effective to bind such party to this Subordinate Mortgage. For purposes hereof, (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

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

IN WITNESS WHEREOF, the Mortgagor has executed this Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents as of the date and year first written above.

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE III, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates SPE III, LLC, a Delaware limited liability company, the general partner of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, on behalf of the Mortgagor.

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



**EXHIBIT A**

**LEGAL DESCRIPTION**

Lot 1, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota

**EXHIBIT B**

**PERMITTED ENCUMBRANCES**

[Insert Permitted Encumbrances]

**ASSIGNMENT OF MORTGAGE**  
By Corporation or Partnership

Form No. 47-M

Miller-Davis Co., Minneapolis (10-3-86)  
Minnesota Uniform Conveyancing Blanks (1986)

**ASSIGNMENT OF MORTGAGE**

Date: September 1, 2018

(reserved for recording data)

FOR VALUABLE CONSIDERATION, the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the "Assignor"), hereby sells, assigns, and transfers to U.S. Bank National Association, a national banking association, whose mailing address is 60 Livingston Avenue, Third Floor, EP-MN-WS3C, Saint Paul, Minnesota 55107-2292, as trustee (the "Assignee") under the Subordinate Indenture of Trust, dated as of September 1, 2018 (the "Indenture"), between the Assignor and the Assignee, the Assignor's interest in the Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018, by Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the "Borrower"), in favor of the Assignor, as mortgagee, and filed for record on \_\_\_\_\_, 2018, as Document Number \_\_\_\_\_ in the Office of the Registrar of Titles of Hennepin County, Minnesota, together with all right and interest in the bonds and obligations therein specified and the debt thereby secured. Assignor covenants with Assignee, its successors and assigns, that there is due and unpaid of the debt secured by the Mortgage the sum of \_\_\_\_\_ Dollars, with the interest thereon from September \_\_\_\_, 2018, and that Assignor has good right to sell, assign and transfer the same.

**ASSIGNOR:**

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

STATE OF MINNESOTA        )  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under the its charter and the Constitution and laws of the State of Minnesota, on behalf of the Assignor.

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

STATE OF MINNESOTA        )  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by GERALYN BARONE, the City Manager of the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under the its charter and the Constitution and laws of the State of Minnesota, on behalf of the Assignor.

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

THIS INSTRUMENT WAS DRAFTED BY

KENNEDY & GRAVEN, CHARTERED (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300

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**ASSIGNMENT, PLEDGE, AND SECURITY AGREEMENT**

**between**

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,  
as Borrower**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Dated as of September 1, 2018**

**Relating to:**

**\$4,090,000**

**City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Bonds  
(Legends of Minnetonka Project)  
Series 2018C**

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This instrument drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

## ASSIGNMENT, PLEDGE, AND SECURITY AGREEMENT

THIS ASSIGNMENT, PLEDGE, AND SECURITY AGREEMENT, dated as of September 1, 2018 (the “Security Agreement”), is between MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as trustee (together with its successors and assigns, the “Trustee”) under the Indenture (hereinafter defined).

### Recitals

The Borrower, as developer, entered into a Contract for Private Development, dated \_\_\_\_\_, 2018 (the “Development Agreement”), with the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) and the City of Minnetonka (the “City”), pursuant to which the Borrower agreed to develop a 262-unit senior housing rental development to be known as Legends of Minnetonka (the “Project”) located at 11001 Bren Road East, Minnetonka, Minnesota, on the property legally described in Exhibit A attached to the Development Agreement (the “Development Property”). In consideration for the development of the Project, the Authority agreed to reimburse the Borrower for certain land acquisition costs, site improvement costs, and costs of constructing housing related to the Project which are eligible to be reimbursed with tax increment.

In order to provide for the reimbursement to the Borrower, the Authority issued to the Borrower a pay-as-you-go note designated as the Tax Increment Revenue Note, Series 2018 (the “TIF Note”), dated \_\_\_\_\_, 2018, in the maximum principal amount of \$4,161,000. The TIF Note is payable solely from Available Tax Increment, as defined and described in the Development Agreement.

The Borrower has requested that the City of Minnetonka, Minnesota (the “Issuer”) provide assistance in financing the acquisition, construction, and equipping of the Project. For the purpose of financing the costs of the construction and equipping of the Project, the Issuer is issuing the following obligations: (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 (the “Series A-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 (the “Series A-2 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (iii) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 (the “Series B-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (iv) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 (the “Series 2018B-2 Governmental Note,” and collectively with the Series A-1 Governmental Note, the Series A-2 Governmental Note, and the Series B-1 Governmental Note, the “Senior Notes”), in the maximum principal amount of \$\_\_\_\_; and (v) Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “Subordinate Bonds”), in the original aggregate principal amount of \$4,090,000.

The Senior Notes evidence loans (the “Funding Loans”) made to the Issuer by U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association, in their capacity as initial funding lenders (together, the “Funding Lender”), pursuant to a Funding Loan Agreement, dated as of September 1, 2018, between the Issuer, U.S. Bank National Association, a national banking association, as administrative agent for the Funding Lender, and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent with respect to the Senior Notes (the “Fiscal Agent”). The Issuer will loan the proceeds of the Funding Loans to the Borrower pursuant to the terms of a Project Loan Agreement, dated as of September 1, 2018, between the Issuer, the Borrower, and the Fiscal Agent.

The Issuer will issue the Subordinate Bonds under the terms of a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), between the Issuer and the Trustee. The Issuer will loan the proceeds of the Subordinate Bonds (the “Loan”) to the Borrower pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower.

By the terms of the Loan Agreement and this Security Agreement, the Borrower has pledged its interest in the TIF Note to the repayment of the Loan, and by the terms of the Indenture, the Issuer has assigned to the Trustee its interest in the Loan Agreement.

In order to further evidence such pledge and assignment, and as a condition to the issuance of the Subordinate Bonds and the making of the Loan, the execution and delivery of this Security Agreement is necessary and desirable.

NOW, THEREFORE, in consideration of the premises, the truth and correctness of which are hereby confirmed by the Borrower, and intending to be legally bound hereby, the Borrower and the Trustee hereby agree as follows:

1. The Agreement.

(a) Pledge, Assignment and Grant of Security Interest. As security for the payment and performance by the Borrower of all of its covenants, agreements and obligations under the Loan Agreement, the Borrower hereby grants, bargains, pledges, assigns, transfers conveys and sets over to the Trustee a first and prior security interest in all of its rights, titles and interests in, to and under (i) the TIF Note and all payments of any and every kind due and payable thereunder, including but not limited to principal and interest and (ii) all proceeds of any of the foregoing, in each case whether now or hereafter owned, existing or acquired (collectively, the “Collateral”). A true and correct copy of the TIF Note is attached hereto as EXHIBIT A.

(b) Enforcement. Upon the occurrence of an Event of Default under the Loan Agreement, the Trustee may declare all indebtedness evidenced and/or secured thereby to be immediately due and payable as therein provided and shall also have all of the rights, remedies and recourses with respect to the Collateral afforded a secured party under the Minnesota Uniform Commercial Code or otherwise existing at law. In addition to, and not in limitation of, the other rights, remedies and recourses afforded the Trustee under the Loan Agreement, the Collateral may, in the discretion of the Trustee, be held by the Trustee as collateral for, or then or at any time thereafter be applied in whole or in part by the Trustee against, any amount due and payable under the Loan Agreement. Mere delay or failure to act shall not preclude the exercise or enforcement of any rights and remedies available to the Trustee. All rights and remedies of the Trustee shall be cumulative and may be exercised singly in any order or sequence, or concurrently, at the Trustee’s option, and the exercise or enforcement of any such right or remedy shall neither be a condition to, nor bar the exercise or enforcement of, any other.

(c) Waiver of Notice and Hearing. THE BORROWER HEREBY WAIVES ALL RIGHTS TO A JUDICIAL HEARING OF ANY KIND PRIOR TO THE EXERCISE BY THE AGENT OF ITS RIGHTS TO POSSESSION OF THE COLLATERAL, TO RECEIVE ALL PAYMENTS UNDER AND PROCEEDS OF THE COLLATERAL, AND/OR TO SELL OR OTHERWISE DISPOSE OF THE COLLATERAL, ALL WITHOUT JUDICIAL PROCESS, OR OF ITS RIGHTS TO REPLEVY, ATTACH, OR LEVY UPON THE COLLATERAL WITHOUT PRIOR NOTICE OR HEARING. THE BORROWER ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY COUNSEL OF ITS CHOICE WITH RESPECT TO THIS

PROVISION AND THIS SECURITY AGREEMENT. If notice of intended disposition of all or any of the Collateral, or of any other intended action hereunder, is required by law in any particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) calendar days prior to the date of intended disposition or other action.

(d) Perfection. To perfect the Trustee's security interest in the TIF Note, the Borrower shall endorse and deliver the TIF Note to the Trustee to be held pursuant to the terms of this Security Agreement. The Borrower will not change any of its name, its principal place of business, its chief executive office, the place where its records relating to the Collateral are kept or located or its jurisdiction of organization without first giving the Trustee thirty (30) days' prior written notice of any such change. The Borrower will at all times and at the Borrower's expense cause appropriate financing statements describing the rights and interests subject to this Section 1 to be filed in such manner and in such places deem necessary or advisable to establish, preserve and protect the interests granted hereunder as a perfected security interest in the rights and interests covered thereby. The Borrower hereby authorizes the Trustee to file one or more financing statements or continuation statements in respect thereof, and amendments thereto, relating to all or any part of the Collateral, without the signature of the Borrower, where permitted by law. A photocopy or other reproduction of this Security Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law. The Borrower shall, at any time, at its expense and upon request from the Trustee, execute any documentation assigning or endorsing the Collateral to the Trustee that may be requested by the Trustee and take all further action that may be necessary or desirable, or that the Trustee may request, in order to perfect and protect the security interest granted hereby or to enable the Trustee to exercise and enforce its rights and remedies under this Security Agreement, including but not limited to delivering physical possession and control of the Collateral to the Trustee. The Trustee may, at any time or times hereafter, place upon the Borrower's books and records relating to the Collateral notations or legends evidencing the Trustee's security interest. The Collateral shall be subject to the Trustee's exclusive dominion and control. ALL PAYMENTS OF PRINCIPAL OF AND INTEREST ON THE TIF NOTE SHALL BE MADE DIRECTLY TO THE TRUSTEE WHILE THIS SECURITY AGREEMENT IS IN EFFECT. The Trustee shall not be responsible for and makes no representations as to the legality, effectiveness, or sufficiency of any security document for the creation, perfection, priority, or protection of any lien securing the TIF Note.

(e) Negative Pledge. The Borrower will not sell, abandon, release, waive, pledge, mortgage, grant any other security interest in, encumber, assign or otherwise dispose of its interest in the Collateral or any of its rights therein without the Trustee's prior written consent.

(f) Appointment of the Trustee as Attorney-in-Fact. The Borrower hereby appoints the Trustee as the Borrower's attorney-in-fact in its name, place and stead to exercise and perform to the exclusion of the Borrower all of the Borrower's rights and privileges with respect to the Collateral, to perform the obligations of the Borrower hereunder and under the Loan Agreement, if the Borrower fails to do so in a timely fashion, and to apply the Collateral to repay any amounts expended and/or loaned under the Loan Agreement or the Indenture. Said appointment is given as security for the prompt payment and performance, when due, of the obligations of the Borrower hereunder and under the Loan Agreement, and is irrevocable until such time as this Security Agreement is terminated in accordance with its terms. All payments made under the TIF Note shall be applied in the same manner as payments made under the Loan Agreement.

2. Representations and Warranties of the Borrower. The Borrower represents and warrants to the Trustee and agrees as follows:



(a) The Development Agreement and the TIF Note are valid and enforceable agreements against the Borrower and the Borrower is not in default thereunder, and all covenants, conditions, and agreements of the Borrower required by the Development Agreement have been performed as required therein.

(b) The Borrower will keep the TIF Note free from any lien, encumbrance, assignment or security interest whatsoever, other than this assignment and security interest.

(c) There have been no defaults on the part of the Borrower under the Development Agreement.

3. Covenants of the Borrower. The Borrower covenants and agrees that:

(a) It shall perform each and every of its duties and obligations under the Development Agreement and observe and comply with each and every term, covenant, condition, agreement, requirement, restriction and provision of the Development Agreement.

(b) It shall give prompt notice to the Trustee of any claim of or notice of default under the Development Agreement, the Indenture, the Loan Agreement, the Subordinate Mortgage, the Regulatory Agreement or the Disbursing Agreement known or given to it together with a copy of any such notice or claim if in writing.

(c) At the sole cost and expense of the Borrower it will enforce the full and complete performance of each and every duty and obligation to be performed by the other party to the Development Agreement.

(d) It will appear in and defend any action arising out of or in any manner connected with the Development Agreement and the duties and obligations of the Borrower thereunder.

(e) The Borrower will not without the prior written consent of the Trustee modify, amend, supplement, terminate, surrender or change in any manner whatsoever the Development Agreement and will not release or discharge the obligations of any party thereto or modify or extend the time of performance thereunder or the scope of the work thereunder.

(f) It reasonably expects to incur Public Development Costs (as defined in the Development Agreement) in an aggregate principal amount not less than \$4,161,000 and has delivered to the Trustee (i) a sworn construction statement duly executed by the Borrower and the general contractor for the Project, showing estimates of all anticipated contractors' contracts or subcontracts for specific portions of the work on the Project and the amounts anticipated to become due each such contractor, including all costs and expenses of any kind incurred and to be incurred in constructing the Project and (ii) a total project cost statement, incorporating estimates of the construction costs as shown on the sworn construction statement and setting forth all other costs and expenses of any kind anticipated to be incurred in completion of the Project and sworn to by the Borrower to be a true, complete and accurate account of all costs actually incurred and a reasonably accurate estimate of all costs to be incurred in the future both showing Public Development Costs in an aggregate principal amount not less than \$4,161,000.

(g) It will submit invoices or cancelled checks evidencing the payment of Public Development Costs as required by Section 3.4 of the Development Agreement, as promptly as

possible, subject to the limitations provided in the Development Agreement, and in any event not later than December 31, 2019.

4. Costs and Expenses; Indemnity. The Borrower will pay or reimburse the Trustee on demand for all out-of-pocket expenses (including in each case all filing and recording fees and taxes and all reasonable fees and expenses of counsel and of any experts and agents) incurred by the Trustee in connection with the creation, perfection, protection, satisfaction, foreclosure or enforcement of the security interest granted hereunder and the preparation, administration, continuance, amendment or enforcement of this Security Agreement, all of which shall be secured hereby. The Borrower shall indemnify and hold the Trustee and its officers, directors, employees, agents, and representatives harmless from and against any and all claims, losses and liabilities (including reasonable attorneys' fees) growing out of or resulting from this Security Agreement and the security interest hereby created (including enforcement of this Security Agreement) or the Trustee's actions pursuant hereto, except claims, losses or liabilities resulting from the Trustee's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction. Any liability of the Borrower to indemnify and hold the Trustee harmless pursuant to the preceding sentence shall be the personal obligation of the Borrower to the Trustee and shall be secured hereby. The obligations of the Borrower under this Section 3 shall survive any termination of this Security Agreement.

5. Waivers. This Security Agreement can be waived, modified, amended, terminated or discharged, and the security interest granted hereunder can be released, only explicitly in a writing signed by the Trustee. A waiver so signed shall be effective only in the specific instance and for the specific purpose given. Execution of this Security Agreement by the Trustee constitutes acceptance hereof, and the Borrower hereby waives any other notice of acceptance hereof by the Trustee.

6. Notices. Unless otherwise required by the specific provisions hereof or by law in respect to any matter, any demand, notice or other communication to any party in connection with this Security Agreement shall be in writing and shall be sent by manual delivery, overnight courier or United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

To the Trustee: U. S. Bank National Association  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attention: Corporate Trust Services

To the Borrower: Minnetonka Leased Housing Associates III, LLLP  
c/o Dominion Development and Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400  
Attention: Ryan Lunderby

with copies to: Winthrop & Weinstine P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota 55402-4629  
Attention: John M. Stern

and

Citibank, N.A.  
390 Greenwich Street, Second Floor  
New York, NY 10013  
Attention: Mark Sherman, Director

and

Citibank, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attention: Tom Carroll

or addressed to any such party at such other address in the United States of America as such party shall hereafter furnish by written notice to the other party hereto, at least ten (10) days prior to the effective date of said change in address, and all periods of notice shall be measured from the date of delivery thereof if manually delivered, from the first business day after the date of sending if sent by overnight courier, or from four (4) days after the date of mailing if mailed.

7. Governing Law; Waiver of Jury Trial; Consent to Jurisdiction. This Security Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota, without giving effect to conflict of laws principles thereof, but giving effect to federal laws of the United States applicable to national banks. The Borrower and the Trustee irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Security Agreement. At the option of the Trustee, this Security Agreement may be enforced in any federal court or Minnesota state court sitting in Minnetonka or Hennepin County, Minnesota; and the Borrower consents to the jurisdiction and venue of any such court and waives any argument that venue in such forums is not convenient. In the event the Borrower commences any action in another jurisdiction or venue under any tort or contract theory arising directly or indirectly from the relationship created by this Security Agreement, the Trustee, at its option, shall be entitled to have the case transferred to one of the jurisdictions and venues above-described, or if such transfer cannot be accomplished under applicable law, to have such case dismissed without prejudice, but any statute of limitation shall continue to be tolled for a period of six (6) months after such dismissal.

8. Headings. The section headings in this Security Agreement are included herein for convenience of reference only and shall not constitute a part of this Security Agreement for any other purpose.

9. Defined Terms. Any capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture.

10. Term of Agreement; Successors and Assigns. This Security Agreement shall remain in full force and effect from the date hereof until such time as all amounts owing by the Borrower to the Trustee under the Loan Agreement have been fully repaid, at which time the TIF Note shall be reassigned, re-endorsed and redelivered, by the Trustee to the Borrower, and any financing statement filed pursuant hereto shall be terminated. This Security Agreement shall (a) be binding upon the Borrower and its successors and assigns, and (b) inure to the benefit of and be enforceable by the Trustee and its successors, transferees and assigns.

11. Electronic Signatures. The parties agree that the electronic signature of a party to this Guaranty shall be as valid as an original signature of such party and shall be effective to bind such party to this Guaranty. For purposes hereof, (i) "electronic signature" means a manually signed original

signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

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

IN WITNESS WHEREOF, the Borrower and the Trustee have caused this Assignment, Pledge, and Security Agreement to be duly executed as of the date and year first written above.

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE III, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

Execution page of the Trustee to the Assignment, Pledge, and Security Agreement, dated as of the date and year first written above.

**U. S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

The Economic Development Authority in and for the City of Minnetonka, Minnesota, as the issuer of the TIF Note, hereby consents to and acknowledges the Assignment, Pledge, and Security Agreement, dated as of the date and year first written above.

**ECONOMIC DEVELOPMENT AUTHORITY IN  
AND FOR THE CITY OF MINNETONKA,  
MINNESOTA**

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

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

**EXHIBIT A**

**TIF NOTE**

[Insert executed copy of TIF Note]



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**SUBORDINATE GUARANTY AGREEMENT**

by

**DOMINIUM HOLDINGS II, LLC,  
as Guarantor**

in favor of

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Dated as of September 1, 2018**

**Relating to:**

**\$4,090,000  
City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Bonds  
(Legends of Minnetonka Project)  
Series 2018C**

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This instrument drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

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## SUBORDINATE GUARANTY AGREEMENT

THIS SUBORDINATE GUARANTY AGREEMENT, dated as of September 1, 2018 (the “Guaranty”), is by DOMINIUM HOLDINGS II, LLC, a Minnesota limited liability company (the “Guarantor”), in favor of U.S. BANK NATIONAL ASSOCIATION, a national banking association, as trustee (together with its successors and assigns, the “Trustee”) under the Indenture (hereinafter defined).

### RECITALS

WHEREAS, the City of Minnetonka, Minnesota (the “Issuer”) and the Trustee are entering into a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), in connection with the issuance by the Issuer of its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “Subordinate Bonds”), in the original aggregate principal amount of \$4,090,000; and

WHEREAS, the proceeds of the Subordinate Bonds are to be loaned by the Issuer to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), under a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower; and

WHEREAS, the proceeds of the Subordinate Bonds are to be applied to (i) finance a portion of the costs of the acquisition, construction, and equipping of a 262-unit senior housing rental development located at 11001 Bren Road East, Minnetonka, Minnesota to be known as Legends of Minnetonka (the “Project”); (ii) finance capitalized interest on the Subordinate Bonds during the construction of the Project; and (iii) pay costs of issuance of the Subordinate Bonds; and

WHEREAS, as security for the Subordinate Bonds, the Borrower will execute and deliver to the Issuer a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (the “Subordinate Mortgage”), providing the Issuer with a subordinate mortgage lien on the property described therein, which the Issuer shall assign to the Trustee; and

WHEREAS, the Trustee is authorized by the Indenture to receive any and all other property conveyed, mortgaged, assigned or transferred, or in which a security interest is granted, by (among others) the Borrower, and to hold and apply for the security and payment of the Subordinate Bonds, pursuant to the provisions of the Indenture; and

WHEREAS, the Guarantor desires that the Issuer issue the Subordinate Bonds and apply the proceeds thereof as described above and further proposes to execute this Guaranty to permit or enhance the marketability and security of the Subordinate Bonds and thereby achieve the most favorable terms thereof; and

NOW, THEREFORE, the Guarantor hereby, subject to the terms hereof, covenants and agrees with the Trustee, for the benefit of the Trustee, the Issuer and all who at any time become registered owners (the “Holders”) of the Subordinate Bonds, as follows:

## ARTICLE I

### REPRESENTATIONS AND COVENANTS OF GUARANTOR

#### Section 1.1 Representations and Covenants of Guarantor.

- (a) The Guarantor has duly executed and delivered and, by proper corporate action, has duly authorized the execution and delivery of this Guaranty.
- (b) The assumption by the Guarantor of the obligations hereunder will result in a direct financial benefit to Borrower and the Guarantor and to the financial and operational success of the Project.
- (c) As to itself, at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of the liability of the Guarantor to the Trustee, or the immediate taking effect of this Guaranty.
- (d) As to itself, this Guaranty is a valid, legal and binding obligation of the Guarantor subject only to the application of bankruptcy laws and general principles of equity.
- (e) The Guarantor is a limited liability company duly formed, existing and in good standing under the laws of the State of Minnesota and the execution and delivery by the Guarantor of this Guaranty does not, and the performance of the agreements contained herein will not, contravene or constitute a default under any agreement, indenture, commitment, provision of its organizational and governing documents, or other requirement of law to which the Guarantor is a party or by which the Guarantor is or may be bound; the Guarantor shall preserve and maintain its duly organized existence.

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## ARTICLE II

### COVENANTS AND AGREEMENTS

Section 2.1 Obligation. Subject to the limitations set forth in Section 2.2 hereof, the Guarantor hereby absolutely and unconditionally guarantees to the Trustee for the benefit of all persons who may become the owners from time to time of the Subordinate Bonds (i) the full and prompt payment of all principal of and premium, if any, on the Subordinate Bonds when and as the same shall become due, whether at the stated maturity thereof, by acceleration, call for redemption or otherwise; (ii) the full and prompt payment of all interest on the Subordinate Bonds when and as the same shall become due; and (iii) the performance of all other obligations of Borrower under the Loan Agreement, including but not limited to the obligation to provide for the full and prompt payment of all other amounts owing by Borrower under the Loan Agreement, including but not limited to Basic Payments payable under Section 4.1 thereof, the payment of any rebate payments owing in respect of the Subordinate Bonds to the United States under Section 148(f) of the Internal Revenue Code of 1986, as amended, and any advances or expenses of the Trustee under the Indenture and all additional charges owing under Section 4.4 of the Loan Agreement.

Section 2.2 Term.

(a) *General*. The obligations of the Guarantor under this Guaranty shall arise absolutely and unconditionally upon the execution and delivery of the Loan Agreement by the Borrower and shall, subject to the provisions of subsection (b) below, remain in full force and effect until all obligations of the Borrower under the Loan Agreement have been satisfied in full and payment has been made of all principal of, premium, if any, and interest on the Subordinate Bonds, when due.

(b) *Termination of Guaranty*. Notwithstanding the foregoing, this Guaranty shall terminate and the Guarantor's obligations hereunder shall be extinguished upon (i) defeasance of the Subordinate Bonds in accordance with Article 7 of the Indenture; or (ii) the payment in full of the principal of and interest on the Subordinate Bonds.

Section 2.3 Obligations Unconditional. The Guarantor's obligations under this Guaranty shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following:

(a) the compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the Borrower under the Loan Agreement or of the Issuer under the Indenture;

(b) the failure to give notice to the Borrower or the Guarantor of the occurrence of any default or event of default under the terms and provisions of this Guaranty, the Loan Agreement, the Indenture, or the Subordinate Mortgage;

(c) the waiver of the payment, performance or observance by the Borrower or the Guarantor of any of the obligations, covenants or agreements of any of them contained in the Indenture, the Loan Agreement, the Subordinate Mortgage, or this Guaranty;

(d) the extension of the time for payment of principal of, premium, if any, or interest on any Subordinate Bond or of the time for performance of any other obligations, covenants or agreements under or arising out of the Indenture, the Loan Agreement, the Subordinate Mortgage, or this Guaranty or the extension or the renewal of any thereof;

(e) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Indenture, the Loan Agreement, or the Subordinate Mortgage;

(f) the taking or omission of any of the actions referred to in the Indenture, the Loan Agreement, or the Subordinate Mortgage or any actions under this Guaranty;

(g) any failure, omission, delay or lack on the part of the Issuer or Trustee to enforce, assert or exercise any rights, power or remedy conferred on the Issuer or Trustee in this Guaranty, the Indenture, the Loan Agreement, or the Subordinate Mortgage;

(h) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors or readjustment of or other similar proceedings affecting the Guarantor or the Borrower, or any of the assets of any of them, or any allegation or contest of the validity of this Guaranty in any such proceeding;

(i) to the extent permitted by law, the release or discharge of the Borrower or of the Issuer from the performance or observance of any obligations, covenants or agreements contained in the resolution adopted by the City Council of the Issuer on August 27, 2018 with respect to the Subordinate Bonds (the "Bond Resolution"), the Indenture, the Loan Agreement, the Subordinate Mortgage, or the Subordinate Bonds by operation of law;

(j) the default or failure of the Guarantor to perform any of its obligations set forth in this Guaranty;

(k) the default or failure of the Borrower, the Trustee or the Issuer to fully perform any of their obligations to the Guarantor; or

(l) the invalidity or unenforceability of the Indenture, the Loan Agreement, the Subordinate Mortgage, or the Bond Resolution.

Notwithstanding the provisions of this Section 2.3, the Guarantor shall not be obligated to make any payment under Section 2.1 hereof if the obligation of the Borrower to make such payment has been effectively waived, modified or amended by action of the Trustee or Bondholders under the applicable provisions of the Indenture.

Section 2.4 No Set-Offs, Counterclaims. No set-off, counterclaim, reduction, or diminution of the obligation, or any defense of any kind or nature which the Guarantor has or may have against the Issuer, the Borrower, the Trustee or any Bondholder shall be available hereunder to the Guarantor against the Trustee.

Section 2.5 Borrower Default. In the event of a default in the payment of principal of any Subordinate Bond when and as the same shall become due, whether at the stated maturity thereof, by acceleration, call for redemption or otherwise, or of a default in the payment of any interest on any Subordinate Bond when and as the same shall become due, or in the event of a failure of the Borrower to make any other payment due and owing under the Loan Agreement or Indenture, the Trustee, in its sole discretion, shall have the right to proceed first and directly against the Guarantor under this Guaranty without proceeding against the Borrower under the Indenture, the Loan Agreement, or the Subordinate Mortgage or exhausting any other remedies which it may have and without resorting to any other security held by the Trustee.

(a) The Trustee shall not be obligated to expend or risk its own funds or otherwise incur any financial liability in the taking of any action hereunder except liability which is adjudicated to have resulted from its negligence or willful default by reason of any action so taken.

(b) The Guarantor agrees to pay all the costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Trustee in enforcing or attempting to enforce this Guaranty following any default on the part of either Borrower or the Guarantor, whether the same shall be enforced by suit or otherwise.

Section 2.6 Waiver of Acceptance. The Guarantor hereby expressly waives notice from the Trustee or any of the Holders from time to time of the Subordinate Bonds of their acceptance of and reliance on this Guaranty.

Section 2.7 Guarantor Events of Default. Each of the following shall constitute an event of default (an "Event of Default") under this Guaranty, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any governmental or non-governmental body:

(a) Failure to make any payment due under this Guaranty within ten (10) days of written demand therefor (a "Payment Default").

(b) Any representation or warranty made by the Guarantor under this Guaranty or any other agreement, report, certificate, financial statement or other instrument referred to herein and furnished to the Trustee or the Underwriter in connection herewith shall prove incorrect or misleading in any material respect when made or when deemed to have been made.

(c) Default in the performance or observance of any agreement or covenant contained in this Guaranty (other than a covenant, agreement, or default that is otherwise specifically addressed in this Guaranty) and the continuance of such default for a period of thirty (30) days following written notice from the Trustee.

(d) The filing by the Guarantor of a petition for the appointment of a trustee with respect to itself or any of its property.

(e) The making by the Guarantor of an assignment for the benefit of creditors.

(f) The insolvency of the Guarantor or the commencement by the Guarantor of a case in bankruptcy or for compromise, adjustment or other relief under the laws of the United States or of any state relating to the relief of debtors.

(g) The failure of the Guarantor to obtain the dismissal, within ninety (90) days after service upon the Guarantor of any case commenced against the Guarantor (i) for the appointment of a trustee for Guarantor or any of its property; or (ii) in bankruptcy or for declaration of insolvency or for compromise, adjustment or other relief under the laws of the United States or of any state relating to the relief of debtors.

(h) The failure of the Guarantor to generally pay its material debts as such debts become due.

(i) The making, or the attempted making, by the Guarantor of a fraudulent conveyance within the meaning of the Uniform Fraudulent Conveyances Act.

Section 2.9 Consequences of Event of Default. If a Payment Default or other Event of Default relating to payment shall have occurred and be continuing, either the Borrower or the Trustee may proceed hereunder against the Guarantor, and the Borrower and the Trustee shall have, in their discretion, the right to proceed first and directly against the Guarantor under this Guaranty without exhausting any other remedies it may have or without resorting to any security held by the Borrower. In the event an Event of Default other than a Payment Default shall have occurred and be continuing, the Trustee may require the Guarantor to provide security for the obligations guaranteed, which security shall be sufficient, in the Trustee's sole reasonable discretion, to protect the obligations guaranteed hereunder. The provisions of this Section 2.8 are intended to supplement any remedies available to the Trustee under Article III hereof or any other provision of the Loan Agreement, the Security Agreement, or the Subordinate Mortgage.

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## ARTICLE III

### MISCELLANEOUS

Section 3.1 Remedies. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any provision contained in this Guaranty should be breached by the Guarantor and thereafter duly waived by Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 3.2 Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, bankruptcy reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the rights of creditors of the Guarantor, the Trustee shall be entitled and empowered by intervention in such proceeding or otherwise,

(i) Subject to the limitation set forth in Section 2.1(b) hereof, to file and prove a claim for the whole amount of principal, premium, if any, and interest owing and unpaid (whether at stated maturity or by acceleration, call for redemption or otherwise) in respect of the Subordinate Bonds and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Bondholders allowed in such judicial proceeding, and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Bondholders, to pay to the Trustee any amount due to it for the reasonable expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 2.5 hereof.

Section 3.3 Trustee May Enforce Claims without Possession of Subordinate Bonds. All rights of action and claims under this Guaranty may be prosecuted and enforced by the Trustee without the possession of any of the Subordinate Bonds or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of any express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Subordinate Bonds in respect of which such judgment has been recovered.

Section 3.4 Waiver, Amendment. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the Trustee. The Trustee shall not consent to any amendment or modification of this Guaranty without the approval or consent of the Holders of not less than a majority in aggregate

principal amount of the Subordinate Bonds. Nothing contained herein shall permit or be construed as permitting, without the approval or consent of the Holders of all the Subordinate Bonds, any amendment, change or modification of this Guaranty which would (a) reduce the amount payable by the Guarantor hereunder, (b) change the time for payment of the amounts payable by the Guarantor hereunder, or (c) change the unconditional nature of this Guaranty herein contained.

Section 3.5 Addresses. The current mailing addresses of the Guarantor are set forth below:

DOMINIUM HOLDINGS II, LLC  
2905 Northwest Blvd., Suite 150  
Plymouth, MN 55441  
Attention: Mark S. Moorhouse

With copies to: WINTHROP & WEINSTINE P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota 55402-4629  
Attention: John M. Stern, Esq.

CITIBANK, N.A.  
390 Greenwich Street, Second Floor  
New York, NY 10013  
Attention: Mark Sherman, Director

and

CITIBANK, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attention: Tom Carroll

The Guarantor shall forthwith notify the Trustee in writing of any change in its mailing address.

Section 3.6 Counterparts. This Guaranty may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 3.7 Separability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

Section 3.8 Defined Terms. Any capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture.

Section 3.9 Electronic Signatures. The parties agree that the electronic signature of a party to this Guaranty shall be as valid as an original signature of such party and shall be effective to bind such party to this Guaranty. For purposes hereof, (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

IN WITNESS WHEREOF, the Guarantor has executed this Subordinate Guaranty Agreement, dated as of the date and year first written above.

**DOMINIUM HOLDINGS II, LLC**, a Minnesota limited liability company

By: \_\_\_\_\_  
Name: Mark S. Moorhouse  
Its: Senior Vice President

Freddie Mac Loan Number: \_\_\_\_\_  
Property Name: \_\_\_\_\_

## SUBORDINATION AGREEMENT

### PRIVATE ENTITY

(Direct Purchase of Tax-Exempt Loans)  
(Revised 1-29-2018)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this [\_\_\_\_] day of September 2018, by and among **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as Fiscal Agent (as defined herein) under the Funding Loan Agreement (as defined herein) (“**Senior Tax-Exempt Mortgage**”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as Trustee for the City of Minnetonka, Minnesota pursuant to that certain Subordinate Indenture of Trust dated [September] 1, 2018 (“**Subordinate Mortgage**”).

### RECITALS

- A. Minnetonka Leased Housing Associates [II] [III], LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota (“**Borrower**”) is the owner of certain land located in Hennepin County, Minnesota, described in Exhibit A (“**Land**”). The Land is improved with a multifamily rental housing project (“**Improvements**”).
- B. The City of Minnetonka, Minnesota (“**Governmental Lender**”), the original holder of the Senior Tax-Exempt Note (as defined herein), has made a loan to Borrower in the original principal amount of \$[\_\_\_\_\_] (“**Senior Tax-Exempt Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of [September] 1, 2018 (“**Project Loan Agreement**”) among Governmental Lender, Senior Tax-Exempt Mortgagee (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) and Borrower in connection with the Mortgaged Property. The Senior Tax-Exempt Loan is secured by a [Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing] dated as of [September] 1, 2018 (“**Senior Tax-Exempt Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Tax-Exempt Mortgage as the “**Mortgaged Property**.”
- C. Pursuant to a Subordinate Loan Agreement dated as of [September 1], 2018 between the City of Minnetonka, Minnesota and Borrower (“**Subordinate Loan Agreement**”), the City of Minnetonka, Minnesota has issued its Subordinate Tax Increment Revenue and Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “**Subordinate Bonds**”) in the original principal amount of \$4,090,000 and will loan the proceeds of the Subordinate Bonds to the Borrower (“**Subordinate Loan**”). The

Subordinate Loan is or will be secured by a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents dated as of [September 1], 2018 (“**Subordinate Mortgage**”) encumbering all or a portion of the Mortgaged Property, which Subordinate Mortgage was assigned by the City of Minnetonka, Minnesota to Subordinate Mortgagee pursuant to that certain Assignment of Mortgage dated [September 1], 2018 (the “**Assignment of Subordinate Mortgage**”).

- D. The Senior Tax-Exempt Mortgage will be recorded in the Office of the [County Recorder] [Registrar of Titles] of Hennepin County, Minnesota (“**Recording Office**”) prior to recordation of this Agreement. The Subordinate Mortgage and Assignment of Subordinate Mortgage will be recorded in the Recording Office at following the recording of the Senior Tax-Exempt Mortgage.
- E. The Senior Tax-Exempt Note was assigned by the Governmental Lender to Senior Tax-Exempt Mortgagee as security for the loan made by the Initial Funding Lender (as defined below) to the Governmental Lender pursuant to the Funding Loan Agreement (the “**Tax-Exempt Funding Loan**”). The Senior Tax-Exempt Mortgage was assigned by the Governmental Lender to Senior Tax-Exempt Mortgagee as security for the Tax-Exempt Funding Loan pursuant to an Assignment of Security Instrument dated of even date herewith to be recorded contemporaneously herewith.
- F. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the “**Construction Phase Financing Agreement**”) dated as of [September] 1, 2018 between Borrower, U.S. Bank National Association, a national banking association, in its capacity as administrative agent (“**Administrative Agent**”) for [Construction Lender] (“**Initial Funding Lender**”), Federal Home Loan Mortgage Corporation and KeyBank National Association, a national banking association (“**Permanent Funding Lender**”), Administrative Agent and Initial Funding Lender shall subsequently assign and deliver the documents comprising the Tax-Exempt Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior Tax-Exempt Note and the Senior Tax-Exempt Mortgage will be amended and restated, and thereafter assigned to the Fiscal Agent (“**Conversion**”).
- G. Pursuant to the Senior Tax-Exempt Mortgage and Section 6.03 of the Funding Loan Agreement dated as of [September] 1, 2018 among Administrative Agent, Governmental Lender and Senior Tax-Exempt Mortgagee (the “**Funding Loan Agreement**”), the Funding Lender has the right to direct all actions of the Senior Tax-Exempt Mortgagee with respect to the Senior Tax-Exempt Mortgage, the Mortgaged Property and the Project Loan Agreement and, upon Conversion, shall have the right to amend and restate the Senior Tax-Exempt Note and the Senior Tax-Exempt Mortgage, as well as the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Tax-Exempt Loan Documents (as defined herein), without notice to or the consent or joinder of the Subordinate Mortgagee.
- G. The execution and delivery of this Agreement is a condition of Funding Lender’s consenting to Subordinate Mortgagee’s making of the Subordinate Loan and Borrower’s granting of the Subordinate Mortgage.

## AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.
  - (a) The terms “**Condemnation,**” “**Imposition Reserve Deposits,**” “**Impositions,**” “**Leases,**” “**Rents**” and “**Restoration,**” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Agreement.
  - (b) “**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.
  - (c) “**Borrower**” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Senior Tax-Exempt Mortgagee or Funding Lender if Senior Tax-Exempt Mortgagee or Funding Lender acquires title to the Mortgaged Property.
  - (d) “**Casualty**” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.
  - (e) “**Enforcement Action**” means any of the following actions taken by or at the direction of Subordinate Mortgagee: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon any of the Subordinate Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.
  - (f) “**Enforcement Action Notice**” means a written Notice from Subordinate Mortgagee to Funding Lender, given following one or more Subordinate Mortgage Default(s) and the expiration of any Notice or cure periods provided for

such Subordinate Mortgage Default(s) in the Subordinate Loan Documents, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Mortgagee.

- (g) “**Funding Lender**” shall mean Initial Funding Lender prior to Conversion and Permanent Funding Lender from and after Conversion, together with their respective successors and assigns.
- (h) “**Governmental Note**” means collectively (i) the Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 in the maximum principal amount of \$[\_\_\_\_\_] and (ii) the Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 in the maximum principal amount of \$[\_\_\_\_], both evidencing the Tax-Exempt Funding Loan, together with any amendments, supplements or modifications thereto.
- (i) “**Loss Proceeds**” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.
- (j) “**Notice**” is defined in Section 7(e).
- (k) “**Senior Indebtedness**” means the “Indebtedness” of Borrower as evidenced by the Senior Loan Documents.
- (l) “**Senior Loan Agreement**” collectively means, prior to Conversion, the Project Loan Agreement and the [Construction Continuing Covenant Agreement]. From and after Conversion, “Senior Loan Agreement” means the Project Loan Agreement and/or the Continuing Covenant Agreement to be executed by Borrower and Permanent Funding Lender at Conversion (“**Continuing Covenant Agreement**”).
- (m) “**Senior Loan Documents**” collectively means prior to Conversion, the “Project Loan Documents” as defined in the Construction Phase Financing Agreement, together with the “Loan Documents” as defined in the [Construction Continuing Covenant Agreement]. From and after Conversion, “Senior Loan Documents” shall mean the “Financing Documents” as defined in the Continuing Covenant Agreement.
- (n) “**Senior Mortgage Default**” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Continuing Covenant Agreement.
- (o) “**Senior Tax-Exempt Mortgagee**” means U.S. Bank National Association, a national banking association. When any other person or entity becomes the legal holder of the Senior Tax-Exempt Note, such other person or entity will automatically become Senior Tax-Exempt Mortgagee.

- (p) **“Senior Tax-Exempt Note”** means, prior to Conversion, the “Series A Project Note” as defined in the Construction Continuing Covenant Agreement. From and after Conversion, “Senior Tax-Exempt Note” means the Project Note as defined in the Continuing Covenant Agreement.
- (q) **“Subordinate Indebtedness”** means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Mortgagee pursuant to, the Subordinate Loan Documents.
- (r) **“Subordinate Loan Documents”** means the Subordinate Mortgage, the Subordinate Loan Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as the same may be amended, including, but not limited to, the Assignment, Pledge and Security Agreement between Borrower and Subordinate Mortgagee dated as of September 1, 2018 and that certain Subordinate Guaranty Agreement by Dominion Holdings I, LLC and Dominion Holdings II, LLC in favor of Subordinate Mortgagee dated September 1, 2018.
- (s) **“Subordinate Mortgage Default”** means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of Notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Mortgagee to take an Enforcement Action.
- (t) **“Subordinate Mortgagee”** means the person or entity named as such in the first paragraph of this Agreement together with its successors and/or assigns.

## **2. Subordination of Subordinate Indebtedness.**

- (a) The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness.
- (b) Until the occurrence of a Senior Mortgage Default, Subordinate Mortgagee will be entitled to retain for its own account all payments made on account of the principal of and interest on the Subordinate Indebtedness in accordance with the requirements of the Subordinate Loan Documents; provided no such payment is made more than 10 days in advance of its due date. However, immediately upon Subordinate Mortgagee’s receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Mortgagee will not accept any payments on account of the Subordinate Indebtedness, and the provisions of Section 2(c) of this Agreement will apply. Subordinate Mortgagee acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Mortgagee will be deemed to have actual knowledge of a Senior Mortgage Default.



- (c) If (i) Subordinate Mortgagee receives any payment, property, or asset of any kind or in any form on account of the Subordinate Indebtedness (including any proceeds from any Enforcement Action) after a Senior Mortgage Default of which Subordinate Mortgagee has actual knowledge (or is deemed to have actual knowledge as provided in 2(b) above) or has been given Notice, or (ii) Subordinate Mortgagee receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any Bankruptcy Proceeding, such payment, property, or asset will be received and held in trust for Funding Lender. Subordinate Mortgagee will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to Funding Lender. Funding Lender will apply any payment, asset, or property so received from Subordinate Mortgagee to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Funding Lender determines in its sole and absolute discretion. Subordinate Mortgagee designates and appoints, irrevocably and couple with an interest, Funding Lender (and all persons and entities designated by Funding Lender) as Subordinate Mortgagee's true and lawful attorney-in-fact with power to endorse the name of Subordinate Mortgagee upon any check or other instrument and to take any action necessary to collect any payment, property, or asset referred to in, or otherwise effectuate the provisions of, this Section 2(c).
- (d) Without limiting the complete subordination of the Subordinate Indebtedness to the payment in full of the Senior Indebtedness, in any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) the Senior Indebtedness will first be paid in full in cash before Subordinate Mortgagee will be entitled to receive any payment or other distribution on account of or in respect of the Subordinate Indebtedness, and (ii) until all of the Senior Indebtedness is paid in full in cash, any payment or distribution to which Subordinate Mortgagee would be entitled but for this Agreement (whether in cash, property, or other assets) will be made to Funding Lender.
- (e) The subordination of the Subordinate Indebtedness will continue if any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, any or all of the Senior Indebtedness originally intended to be satisfied will be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

### **3. Subordination of Subordinate Loan Documents.**

- (a) Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) The subordination of the Subordinate Loan Documents and of the Subordinate Indebtedness will apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of each of the Senior Loan Documents and of each of the Subordinate Loan Documents, (ii) the availability of any collateral to Senior Tax-Exempt Mortgagee or Funding Lender, including the availability of any collateral other than the Mortgaged Property and ((II) [III]) the amendment and restatement of the Senior Tax-Exempt Note and the Senior Tax-Exempt Mortgage at Conversion.
- (c) By reason of, and without in any way limiting, the full subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, all rights and claims of Subordinate Mortgagee under the Subordinate Loan Documents in or to all or any portion of the Mortgaged Property are expressly subject and subordinate in all respects to the rights and claims of Senior Tax-Exempt Mortgagee or Funding Lender under the Senior Loan Documents in or to the Mortgaged Property.
- (d) If Subordinate Mortgagee, by indemnification, subrogation or otherwise, acquires any lien, estate, right or other interest in any of the Mortgaged Property, then that lien, estate, right or other interest will be fully subject and subordinate to the receipt by Senior Tax-Exempt Mortgagee or Funding Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.

#### **4. Additional Representations and Covenants.**

- (a) Subordinate Mortgagee represents and warrants that each of the following is true:
  - (i) Subordinate Mortgagee is now the owner and holder of the Subordinate Loan Documents.
  - (ii) The Subordinate Loan Documents are now in full force and effect.
  - (iii) The Subordinate Loan Documents have not been modified or amended.
  - (iv) No Subordinate Mortgage Default has occurred.
  - (v) The current unpaid principal balance of the Subordinate Indebtedness is \$4,090,000.
  - (vi) No scheduled monthly payments under the Subordinate Loan Documents have been or will be prepaid.

- (vii) None of the rights of Subordinate Mortgagee under any of the Subordinate Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.
- (b) Without the prior written consent of Funding Lender in each instance, Subordinate Mortgagee will not do any of the following:
  - (i) Amend, modify, waive, extend, renew, or replace any provision of any of the Subordinate Loan Documents.
  - (ii) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
  - (iii) Accept any payment on account of the Subordinate Indebtedness other than a regularly scheduled payment of interest or principal and interest made not earlier than 10 days prior to its due date, or as expressly authorized in Section 4(i) below.
  - (iv) Take any action which has the effect of increasing the Subordinate Indebtedness.
  - (v) Appear in, defend or bring any action to protect Subordinate Mortgagee's interest in the Mortgaged Property.
  - (vi) Take any action concerning environmental matters affecting the Mortgaged Property.
- (c) Subordinate Mortgagee will deliver to Funding Lender a copy of each Notice received or delivered by Subordinate Mortgagee pursuant to the Subordinate Loan Documents or in connection with the Subordinate Indebtedness, simultaneously with Subordinate Mortgagee's delivery or receipt of such Notice. Funding Lender will deliver to Subordinate Mortgagee in the manner required in Section 5(b) a copy of each Notice of a Senior Mortgage Default delivered to Borrower by Funding Lender. Neither giving nor failing to give a Notice to Funding Lender or Subordinate Mortgagee pursuant to this Section 4(c) will affect the validity of any Notice given by Funding Lender or Subordinate Mortgagee to Borrower, as between Borrower and such of Funding Lender or Subordinate Mortgagee as provided the Notice to Borrower.
- (d) Without the prior written consent of Funding Lender in each instance, Subordinate Mortgagee will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Mortgagee will not vote affirmatively in favor of any plan of reorganization or liquidation unless Funding Lender has also voted affirmatively in favor of such plan. In the event of any Bankruptcy Proceeding, Subordinate Mortgagee will not contest the continued accrual of interest on the Senior Indebtedness, in accordance with and at the rates specified in the Senior

Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings.

- (e) Whenever the Subordinate Loan Documents give Subordinate Mortgagee approval or consent rights with respect to any matter, and a right of approval or consent with regard to the same or substantially the same matter is also granted to Senior Tax-Exempt Mortgagee or Funding Lender pursuant to the Senior Loan Documents or otherwise, Funding Lender's approval or consent or failure to approve or consent, as the case may be, will be binding on Subordinate Mortgagee. None of the other provisions of this Section 4 are intended to be in any way in limitation of the provisions of this Section 4(e).
- (f) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Funding Lender. All original policies of insurance required pursuant to the Senior Loan Documents will be held by Funding Lender. Nothing in this Section 4(f) will preclude Subordinate Mortgagee from requiring that it be named as a mortgagee and 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 Loss Proceeds, or that Subordinate Mortgagee be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.
- (g) In the event of a Condemnation or a Casualty, all of the following provisions will apply:
  - (i) The rights of Subordinate Mortgagee (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Tax-Exempt Mortgagee's and Funding Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Mortgagee will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Funding Lender.
  - (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Funding Lender in its sole discretion.
  - (iii) If Funding Lender applies or releases Loss Proceeds for the purposes of Restoration of the Mortgaged Property, then Subordinate Mortgagee will release for such purpose all of its right, title and interest, if any, in and to

such Loss Proceeds. If Funding Lender holds Loss Proceeds, or monitors the disbursement thereof, Subordinate Mortgagee will not do so. Nothing contained in this Agreement will be deemed to require Funding Lender to act for or on behalf of Subordinate Mortgagee in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Mortgagee, and all or any Loss Proceeds may be commingled with any funds of Funding Lender.

- (iv) If Funding Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Funding Lender will be paid to Subordinate Mortgagee unless another party has asserted a claim to the remaining Loss Proceeds.
- (h) Subordinate Mortgagee will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Tax-Exempt Mortgagee or Funding Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Tax-Exempt Mortgagee or Funding Lender.
- (i) Except as provided in this Section 4(i), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Mortgagee will not collect payments for the purpose of escrowing for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Mortgagee may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Mortgagee will be held in trust by Subordinate Mortgagee to be applied only to the payment of such Impositions.
- (j) Within 10 days after request by Funding Lender, Subordinate Mortgagee will furnish Funding Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Funding Lender may request.
- (k) Senior Tax-Exempt Mortgagee or Funding Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Mortgagee, and without affecting any of the provisions of this Agreement.

## **5. Default Under Loan Documents.**

- (a) Funding Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default, until such time, if ever, as Funding Lender delivers to Subordinate Mortgagee Funding Lender's Notice of written consent to an Enforcement Action described in an Enforcement Action Notice given by Subordinate Mortgagee as a consequence of a Subordinate Mortgage Default. Subordinate Mortgagee acknowledges that all amounts advanced or expended by Funding Lender to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Tax-Exempt Mortgage.
- (b) Funding Lender will deliver to Subordinate Mortgagee a copy of any Notice sent by Funding Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Funding Lender to send Notice to Subordinate Mortgagee will not prevent the exercise of Funding Lender's rights and remedies under the Senior Loan Documents. Subordinate Mortgagee will have the right, but not the obligation, to cure any Senior Mortgage Default during such period of time, if any, as Borrower is permitted by the terms of the Senior Loan Documents to cure a Senior Mortgage Default. Subordinate Mortgagee will not be subrogated to the rights of Senior Tax-Exempt Mortgagee or Funding Lender under the Senior Loan Documents by reason of Subordinate Mortgagee having cured any Senior Mortgage Default.
- (c) In the event of a Subordinate Mortgage Default, Subordinate Mortgagee will not commence any Enforcement Action until after (i) Subordinate Mortgagee has delivered to Funding Lender an Enforcement Action Notice with respect to such Enforcement Action, and (ii) Funding Lender has delivered to Subordinate Mortgagee Funding Lender's written consent to such Enforcement Action by Subordinate Mortgagee. Funding Lender will advise Subordinate Mortgagee whether Funding Lender consents to the Enforcement Action by Subordinate Mortgagee within 90 days following Funding Lender's receipt of the Enforcement Action Notice (failure of Funding Lender to provide written consent to the Enforcement Action within such 90-day period constitutes Funding Lender's refusal of such consent). Subordinate Mortgagee acknowledges that Funding Lender may grant or refuse consent to Subordinate Mortgagee's Enforcement Action in Funding Lender's sole and absolute discretion. Any Enforcement Action on the part of Subordinate Mortgagee will be subject to the provisions of this Agreement. Subordinate Mortgagee acknowledges that the provisions of this Section 5(c) are fair and reasonable under the circumstances, that Subordinate Mortgagee has received a substantial benefit from Senior Tax-Exempt Mortgagee having granted its consent to the Subordinate Mortgage, and that Senior Tax-Exempt Mortgagee would not have granted such consent without the inclusion of these provisions in this Agreement.
- (d) Senior Tax-Exempt Mortgagee or Funding Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Mortgagee. No action or failure to act on the part of Senior Tax-

Exempt Mortgagee or Funding Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Tax-Exempt Mortgagee or Funding Lender of any provision of the Senior Loan Documents or this Agreement.

- (e) If the Enforcement Action taken by Subordinate Mortgagee is the appointment of a receiver for any of the Mortgaged Property, all of the Rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver solely to and for the benefit of Senior Tax-Exempt Mortgagee or Funding Lender until the Senior Indebtedness will have been paid in full.
- (f) Subordinate Mortgagee consents to and authorizes the release by Senior Tax-Exempt Mortgagee or Funding Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Mortgagee waives to the fullest extent permitted by law, all equitable or other rights it may have (i) in connection with the release of all or any portion of the Mortgaged Property, (ii) to require the separate sale of any portion of the Mortgaged Property, ([II] [III]) to require Senior Tax-Exempt Mortgagee or Funding Lender to exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness, or (iv) to require Senior Tax-Exempt Mortgagee or Funding Lender to proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Tax-Exempt Mortgagee or Funding Lender determines. Subordinate Mortgagee consents to and authorizes, at the option of Senior Tax-Exempt Mortgagee or Funding Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Mortgagee acknowledges that without Notice to Subordinate Mortgagee and without affecting any of the provisions of this Agreement, Senior Tax-Exempt Mortgagee or Funding Lender may (i) extend the time for or waive any payment or performance under the Senior Loan Documents; (ii) modify or amend in any respect any provision of the Senior Loan Documents; and ([II] [III]) modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.
- (g) If any party other than Borrower (including Senior Tax-Exempt Mortgagee or Funding Lender) acquires title to any of the Mortgaged Property pursuant to a foreclosure of, or trustee's sale or other exercise of any power of sale under, the Senior Tax-Exempt Mortgage conducted in accordance with applicable law, the lien, operation, and effect of the Subordinate Mortgage and other Subordinate Loan Documents automatically will terminate with respect to such Mortgaged Property.

**6. Refinancing.** Subordinate Mortgagee agrees that its agreement to subordinate hereunder will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Tax-Exempt Mortgagee will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

**7. Miscellaneous Provisions.**

- (a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.
- (b) If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control.
- (c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. No other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise.
- (d) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (e) Each notice, request, demand, consent, approval or other communication (collectively, “**Notices**,” and singly, a “**Notice**”) which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or ([II] [III]) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

- (i) Notices intended for Senior Tax-Exempt Mortgagee will be addressed to:

U.S. Bank National Association



Corporate Trust Services  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Dan Sheff, Vice President  
Email: dan.sheff@usbank.com  
Telephone: 651-466-6302

- (ii) Notices intended for Subordinate Mortgagee will be addressed to:

U.S. Bank National Association  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Corporate Trust Services

- ([II] [III]) Notices intended for Funding Lender will be addressed to:

U.S. Bank National Association

[Address]  
Attention:  
Facsimile:  
Telephone:

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (f) Upon Notice from Funding Lender, Subordinate Mortgagee will execute and deliver such additional instruments and documents, and will take such actions, as are required by Funding Lender in order to further evidence or implement the provisions and intent of this Agreement.
- (g) This Agreement will be governed by the laws of the State in which the Land is located.
- (h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right,

power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.

- (j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (k) This Agreement shall inure to the benefit of any subsequent holder of the Senior Indebtedness.
- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument or written instruments signed by the parties to this Agreement or their successors or assigns.
- (m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (n) The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events: (i) the payment of all of the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Tax-Exempt Mortgagee or Funding Lender as described in Section 2(e) of this Agreement, (ii) the payment of all of the Subordinate Indebtedness other than by reason of payments which Subordinate Mortgagee is obligated to remit to Senior Tax-Exempt Mortgagee or Funding Lender pursuant to this Agreement, (III) [III] the acquisition by Senior Tax-Exempt Mortgagee or Funding Lender or by a third party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Tax-Exempt Mortgage; or (iv) with the prior written consent of Funding Lender, without limiting the provisions of Section 5(d), the acquisition by Subordinate Mortgagee of title to the Mortgaged Property subject to the Senior Tax-Exempt Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (o) This Agreement does not constitute an approval by Senior Tax-Exempt Mortgagee or Funding Lender of the terms of the Subordinate Loan Documents.
- (p) Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Tax-Exempt Mortgagee or Funding Lender as a joint venturer or partner of Subordinate Mortgagee.
- (q) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Mortgagee of its governmental powers

(including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

- (r) Notwithstanding anything herein to the contrary, pursuant to the Senior Tax-Exempt Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Tax-Exempt Mortgagee hereunder shall be solely at the written direction of the Funding Lender. The parties acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

**[Signature and acknowledgment pages follow]**













**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lot 1, Block 2, Dominion 2<sup>nd</sup> Addition, Hennepin County, Minnesota.

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**BOND PURCHASE AGREEMENT**

**BY AND BETWEEN**

**CITY OF MINNETONKA, MINNESOTA,  
as Issuer,**

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,  
as Borrower,**

**AND**

**DOUGHERTY & COMPANY LLC,  
as Underwriter**

**Dated August \_\_, 2018**

**City of Minnetonka, Minnesota  
Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds  
(Legends of Minnetonka Project)  
Series 2018C**

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This instrument drafted by:  
Barnes & Thornburg LLP (BWJ)  
225 South Sixth Street  
Minneapolis, Minnesota 55402

**BOND PURCHASE AGREEMENT**

August \_\_, 2018

City of Minnetonka, Minnesota  
14600 Minnetonka Road  
Minnetonka, Minnesota 55345-1502

Minnetonka Leased Housing Associates III, LLLP  
2905 Northwest Boulevard, Suite 150  
Plymouth, Minnesota 55441-7400

\$ \_\_\_\_\_

**City of Minnetonka, Minnesota  
Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds  
(Legends of Minnetonka Project)  
Series 2018C**

Ladies and Gentlemen:

The undersigned, Dougherty & Company LLC (the “Underwriter”) hereby proposes to enter into the following bond purchase agreement (this “Agreement” or “Bond Purchase Agreement”) concerning the above-captioned bonds (the “Series 2018C Bonds”), subject to the acceptance of this Bond Purchase Agreement by the City of Minnetonka, Minnesota (the “Issuer”), a home rule city and a municipal corporation duly organized and validly existing under its Charter and the laws of the State of Minnesota, and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”). This offer is made subject to acceptance by the Issuer, and the Borrower at or prior to 10:00 A. M. on August \_\_, 2018, Central Time, and upon such acceptance this Bond Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the Issuer, the Borrower, and the Underwriter. The Series 2018C Bonds are described in the Preliminary Official Statement, dated August \_\_, 2018 (the “Preliminary Official Statement”), prepared in connection with the issuance of the Series 2018C Bonds and the final Official Statement, to be dated on or about September \_\_, 2018 (together with the Appendices thereto), to be prepared in substantially the same form as the Preliminary Official Statement, together with the insertion of the underwriting details of the Series 2018C Bonds, including the interest rates thereon (the “Official Statement”). The terms of the Series 2018C Bonds shall be as set forth on Schedule I attached hereto. The Series 2018C Bonds are issued pursuant to a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”). The proceeds of the Series 2018C Bonds are being loaned to the Borrower pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower. If and when accepted by you, this document shall constitute the agreement of the Underwriter to purchase the Series 2018C Bonds on the terms and subject to the conditions herein set forth. Undefined terms used herein shall have the meaning assigned to such terms in the Indenture.

Section 1. Background. The Series 2018C Bonds are to be issued by the Issuer pursuant to, and will be secured as provided in, the Indenture, Minnesota Statutes, Chapters 462C and 474A, as amended, and a resolution of the Issuer on August 27, 2018 (the “Resolution”). The proceeds of the Series 2018C

Bonds will be loaned by the Issuer to the Borrower, to be used together with other available funds of the Borrower and proceeds of the Senior Notes, in order to: (i) finance a portion of the cost of the acquisition, construction and equipping of an affordable multifamily housing facility consisting of 262 dwelling units for occupancy by seniors, to be known as Legends of Minnetonka, located at or about 11001 Bren Road East, Minnetonka, Minnesota (the “Senior Housing Project”); (ii) fund capitalized interest for the Series 2018C Bonds through March 1, 2022; and (iii) pay the costs of issuance for the Series 2018C Bonds. The Series 2018C Bonds will be secured by and payable from (a) an assignment of the Borrower’s interest in that certain Tax Increment Revenue Note, Series 2018 (the “TIF Note”) issued by the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Minnetonka EDA”) in the original aggregate principal amount of \$4,161,000, under the terms of an Assignment, Pledge, and Security Agreement, dated as of September 1, 2018 (the “Pledge Agreement”, from the Borrower for the benefit of the Trustee, (b) amounts held under the Indenture that are derived from payments made by the Borrower under the Loan Agreement (“Basic Payments”), (c) a subordinate mortgage lien on and security interest in the Senior Housing Project granted under the terms of a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (the “Subordinate Mortgage”), by the Borrower in favor of the Issuer and assigned to the Trustee, and (d) a guaranty by Dominion Holdings II, LLC (the “Guarantor”) of the payment of debt service on the Series 2018C Bonds.

In order to provide for the tax exemption of the Series 2018C Bonds, the Issuer, the Borrower, the Fiscal Agent for the Senior Notes, and the Trustee are entering into a Regulatory Agreement (the “Regulatory Agreement”), dated the date of issuance of the Series 2018C Bonds. In order to provide certain ongoing, continuing disclosure with respect to the Series 2018C Bonds, the Borrower and U.S. Bank National Association, as dissemination agent, are entering into a Continuing Disclosure Agreement (the “Continuing Disclosure Agreement”) dated as of September 1, 2018.

## Section 2. Official Statement.

(a) The Issuer and the Borrower hereby ratify and consent to the use by the Underwriter of the Preliminary Official Statement and the Official Statement in connection with the sale of the Series 2018C Bonds. The Borrower shall deliver or cause to be delivered to the Underwriter, promptly upon the completion thereof, copies of the Official Statement. In connection with the offering and sale of the Series 2018C Bonds, the Issuer and the Borrower authorize the use by the Underwriter of copies of the Official Statement with respect to the Series 2018C Bonds, the Indenture, the Loan Agreement, and the other documents required for the issuance of the Series 2018C Bonds.

(b) The Borrower, on behalf of itself and any other “issuers” within the meaning of Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Rule”), agrees to deliver to the Underwriter, at such addresses as the Underwriter shall specify, as many copies of the Official Statement as the Underwriter shall reasonably request as necessary to comply with paragraph (b)(4) of the Rule and with Rule G-32 and all other applicable rules of the Municipal Securities Rulemaking Board (the “MSRB”). The Borrower agrees to deliver such Official Statement within seven (7) business days after the date of this Bond Purchase Agreement.

The Preliminary Official Statement and the Official Statement may be delivered in printed form and “designated electronic format” as defined in the MSRB’s Rule G-32 and as may be agreed by the Borrower and the Underwriter. If the Preliminary Official Statement or the Official Statement has been prepared in electronic form, the Borrower hereby confirms that it

does not object to distribution of the Preliminary Official Statement and the Official Statement in electronic form.

(c) The Underwriter agrees that it shall send or cause to be sent no later than the next business day, by first class mail, electronically, or other equally prompt means, to any potential customer, on request, one or more copies of the Official Statement, as most recently supplemented or amended (if at all).

(d) The Borrower shall not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without the prior written consent of the Underwriter, which consent shall not be unreasonably withheld. The Borrower covenants to notify the Underwriter promptly if, on or prior to the 25th day after the End of the Underwriting Period (as defined herein) (or such other period as may be agreed to by the Borrower and the Underwriter), any event shall occur, or information comes to the attention of the Borrower or the Issuer (with respect to the Issuer Portion, as defined herein), that is reasonably likely to cause the Official Statement (whether or not previously supplemented or amended) to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and if in the opinion of the Underwriter such event requires the preparation and distribution of a supplement or amendment to the Official Statement, to prepare and furnish to the Underwriter, at the Borrower's expense, such number of copies of the supplement or amendment to the Official Statement, in (i) a "designated electronic format" consistent with the requirements of the MSRB's Rule G-32 and (ii) a printed form in substance mutually agreed upon by the Borrower and the Underwriter, as the Underwriter may reasonably request. If such notification shall be given subsequent to the Closing Date (as defined in Section 7 below), the Borrower also shall furnish, or cause to be furnished, such additional certificates, instruments and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy of any such supplement or amendment to the Official Statement. For purposes of this Bond Purchase Agreement, the term "End of the Underwriting Period" means the later of (i) the Closing Date or (ii) when the Underwriter no longer retains an unsold balance of the Series 2018C Bonds.

Section 3. Issuer's and Minnetonka EDA's Lack of Participation. The Borrower and the Underwriter acknowledge that the Issuer assumes no responsibility for the sufficiency, accuracy or completeness of the Preliminary Official Statement or the Official Statement (other than with respect to information provided under the captions "THE ISSUER" and "ABSENCE OF MATERIAL LITIGATION – The Issuer" (together, the "Issuer Portion" of the Official Statement) as it relates to the Issuer). It is further understood and agreed that no obligations of the Issuer contained in this Bond Purchase Agreement shall give rise to any pecuniary liability of the Issuer. The Issuer and the Minnetonka EDA have not participated in the preparation of the Preliminary Official Statement or the Official Statement.

Section 4. Representations of Issuer. The Issuer represents to the Underwriter and the Borrower that:

(a) the Issuer is and will be at Closing a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the "State");

(b) the Issuer has duly authorized the action necessary to be taken by it or on its behalf for: (i) the issuance and delivery of the Series 2018C Bonds upon the terms set forth in the

Indenture; (ii) the execution and delivery of the (A) Indenture, (B) the Loan Agreement, (C) the Regulatory Agreement, (D) the Assignment of Mortgage related to the Subordinate Mortgage, (E) the Contract for Private Development, dated September \_\_, 2018 (the “Development Agreement”), between the Minnetonka EDA, the Issuer and the Borrower, and (F) this Bond Purchase Agreement (the documents listed in (A) through (F) above are collectively referred to herein as the “Issuer Documents”); (iii) the carrying out, giving effect to and consummation of the transactions described herein; and (iv) the use and distribution of the Official Statement,

(c) the execution and delivery of the Issuer Documents, and the performance by the Issuer of its obligations hereunder and thereunder, are within the powers of the Issuer and do not and will not conflict, in any material respect, with or constitute a material breach of or result in a material violation of (i) any material agreement or other instrument to which the Issuer is a party or by which it is bound, or (ii) any constitutional or statutory provision or order, rule regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Issuer or its property;

(d) there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the undersigned, threatened against or affecting the Issuer, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions described in this Bond Purchase Agreement or the Official Statement or would materially adversely affect the validity of the Series 2018C Bonds, the Issuer Documents, or any agreement or instrument to which the Issuer is a party and which is used or contemplated for use in the consummation of the transactions described herein; and

(e) any certificate authorized by resolution of the Issuer, signed by any authorized officer or officers of the Issuer and delivered to the Underwriter shall be deemed a representation by the Issuer to the Underwriter as to the statements made therein.

Section 5. Reserved.

Section 6. Representations of Borrower. The Borrower represents and warrants to the Underwriter and the Issuer that:

(a) the Borrower is and will be at the date of Closing a duly formed and validly existing Minnesota limited liability limited partnership, authorized to do business in the State, and in good standing under the laws of the State;

(b) the execution, delivery and performance by the Borrower of (i) the Loan Agreement, (ii) the Continuing Disclosure Agreement, (iii) the Regulatory Agreement, (iv) the Subordinate Mortgage, (v) the Pledge Agreement, (vi) the Minimum Assessment Agreement, dated as of September 1, 2018 (the “Minimum Assessment Agreement”), between the Borrower and the Minnetonka EDA, (vii) the Development Agreement, and (viii) this Bond Purchase Agreement (all such documents in (i) through (viii) are collectively referred to herein as the “Borrower Documents”), have been duly authorized by the Borrower, and compliance with the provisions hereof and thereof, under the circumstances contemplated herein and therein, will not in any material respect conflict with or constitute on the part of the Borrower a breach of or default (with due notice or the passage of time or both) under any indenture, mortgage, deed of trust, loan agreement, contract or other agreement or other instrument to which the Borrower is a party or, to the best of its knowledge, any existing law, administrative regulation, court order or

decree to which the Borrower is subject or by which it or any of its properties are otherwise subject or bound;

(c) there is no action, suit, litigation, proceeding, inquiry or investigation at law or in equity or by or before any judicial or administrative court, agency, body or other entity, pending or, to the best knowledge of the Borrower, threatened against the Borrower or any of its properties, wherein an unfavorable decision, ruling or finding (1) would adversely affect the issuance, delivery, validity or enforceability of any of the Borrower Documents, (2) would result in any materially adverse change in the corporate existence or powers of the Borrower, the business, properties, assets, liabilities or condition (financial or other) of the Borrower, or (3) would otherwise materially adversely affect the ability of the Borrower to comply with its obligations under the Borrower Documents, or adversely affect the transactions contemplated by the Indenture;

(d) no event or event which, with notice or lapse of time or both, would constitute an event of default or default under the Borrower Documents or any other material agreement or instrument to which the Borrower is a party or by which the Borrower or its properties is or may be bound has occurred and is continuing;

(e) the Borrower has, or will have when required, all necessary licenses, permits and approvals currently required to carry on and operate all of its properties;

(f) to the best of the knowledge of the Borrower, neither the Borrower nor the Senior Housing Project is in violation of, nor has the Borrower received any notice of any actual or alleged violation of, any environmental, zoning, land use or other similar laws or regulations applicable to the Borrower or the Senior Housing Project which has not otherwise been disclosed by the Borrower;

(g) all of the representations and warranties of the Borrower contained in the Borrower Documents are true and correct in all material respects as of this date, as if made on this date;

(h) The Preliminary Official Statement did not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein not misleading and the Borrower is not aware of any material omission or misstatement in any other information contained in the Official Statement, provided that the Borrower makes no representation as to the information in the Official Statement in the Issuer Portion and under the headings "TAX EXEMPTION AND RELATED CONSIDERATIONS" and "UNDERWRITING"; and

(i) The Borrower deems the Preliminary Official Statement final as of its date of distribution (August \_\_, 2018) within the meaning of the Rule, except for the omission of the following information: offering prices, interest rates, selling compensation, principal amount per maturity or other terms of the Series 2018C Bonds depending on such matters.

Section 7. Purchase, Sale and Delivery of the Series 2018C Bonds. On the basis of the representations and warranties and subject to the terms and conditions set forth herein, the Underwriter hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell to the Underwriter, all of the Series 2018C Bonds at a purchase price of \$\_\_\_\_\_ which amount represents the principal amount of the Series 2018C Bonds (\$\_\_\_\_\_), [plus/less] net original issue [premium/discount] of

\$\_\_\_\_. The Borrower will pay the Underwriter a fee of \$\_\_\_\_\_ plus miscellaneous expenses associated with the sale of the Series 2018C Bonds. Payment for the Series 2018C Bonds shall be made to the Issuer on its order in federal funds or other immediately available funds at 12:00 P.M. prevailing time on September \_\_, 2018, at the offices of Kennedy & Graven, Chartered, Minneapolis, Minnesota, or at such other time and place as shall be mutually agreeable to the parties hereto, against delivery of the Series 2018C Bonds as directed by the undersigned. The date and time of such payment and delivery are herein called the “Closing Date” or the “Closing.” The Series 2018C Bonds are to be delivered to The Depository Trust Company (“DTC”) for the respective accounts of the original purchasers thereof at DTC’s offices in New York, New York, and the Series 2018C Bonds shall be made available for inspection by the undersigned prior to the Closing Date.

It shall be a condition to the obligations of the Issuer to sell and deliver the Series 2018C Bonds to the Underwriter and to the obligations of the Underwriter to purchase and accept delivery of and to pay for the Series 2018C Bonds, that the entire aggregate principal amount of the Series 2018C Bonds to be sold and delivered by the Issuer in accordance with this Section 7 shall be sold and delivered simultaneously by the Issuer and be purchased, accepted and paid for simultaneously by the Underwriter.

The Issuer and the Borrower acknowledge and agree that (i) the purchase and sale of the Series 2018C Bonds pursuant to this Bond Purchase Agreement is an arm’s-length commercial transaction among the Issuer, the Borrower, and the Underwriter, (ii) in connection with such transaction, the Underwriter is acting solely as a principal and not as an agent or a fiduciary of the Issuer or the Borrower, (iii) the Underwriter has not assumed (individually or collectively) a fiduciary responsibility in favor of the Issuer or the Borrower with respect to (a) the offering of the Series 2018C Bonds or the process leading thereto or (b) any other obligation to the Issuer or the Borrower except the obligations expressly set forth in this Bond Purchase Agreement, and (iv) the Issuer and the Borrower have consulted with their own respective legal and other professional advisors to the extent they deemed appropriate in connection with the offering of the Series 2018C Bonds.

The Issuer and the Borrower acknowledge that the Underwriter, without regard to priority, may allocate the Series 2018C Bonds between customer orders and orders that could be considered to be from “related accounts” for purposes of MSRB Rule G-11. The Issuer and the Borrower hereby agree to the Underwriter’s allocation of the Series 2018C Bonds to the orders that the Underwriter received during the order period for the Series 2018C Bonds, regardless of priority between customer accounts and those accounts that could be considered “related accounts”.

Section 8. The Borrower’s Covenants. The Borrower shall:

(a) if at any time for a period of 90 days after the date of the Official Statement an event of which the Borrower has knowledge shall have occurred as a result of which it is necessary to amend or supplement the Official Statement in order to make the statements therein not untrue or misleading, notify the undersigned promptly thereof and furnish to the Underwriter an appropriate amendment or a supplement that will correct the statements in the Official Statement in order to make the statements therein not untrue or misleading;

(b) refrain from taking any action, or permitting any action to be taken with regard to which the Borrower may exercise control, that results in the loss of the tax-exempt status of the interest on the Series 2018C Bonds;

(c) furnish to the Underwriter so long as any Series 2018C Bonds remain outstanding copies of annual audited financial statements of the Borrower; and



(d) enter into the Continuing Disclosure Agreement, to which the Trustee shall be a party, under which the Borrower shall provide annual financial information, including audited financial statements of the Borrower prepared in accordance with generally accepted accounting principles, and all required event notices, all in accordance with and as required by the Rule.

Section 9. Conditions of Purchase Obligation of Underwriter. The respective obligations of the Underwriter to purchase and pay for the Series 2018C Bonds are subject to the following conditions:

(a) The representations and warranties of the Borrower shall be true and correct in all material respects as of the date hereof and the Closing Date.

(b) At the Closing Date the Borrower shall have performed all of its obligations in all material respects hereunder theretofore to have been performed.

(c) At the Closing Date, there shall be delivered to the Underwriter and dated as of the Closing Date:

(i) one or more opinions of Kennedy & Graven, Chartered, as Bond Counsel, in form and substance satisfactory to the Underwriter and its counsel, covering the validity of and the tax-exempt status of the interest on the Series 2018C Bonds, the valid execution and delivery of the Issuer Documents, and related matters, together with a supplemental opinion of Bond Counsel in form and substance satisfactory to the Underwriter and its counsel;

(ii) one or more opinions of Kennedy & Graven, Chartered, as counsel to the Minnetonka EDA, in form and substance satisfactory to the Borrower and the Underwriter and its counsel, covering the valid issuance of the TIF Note, the valid execution and delivery of the Development Agreement, the Minimum Assessment Agreement, and related matters (the TIF Note, the Development Agreement, the Minimum Assessment Agreement are collectively referred to herein as the “Minnetonka EDA Documents”);

(iii) one or more opinions of counsel to the Borrower and Guarantor, addressed to the Issuer, the Minnetonka EDA, the Underwriter, Bond Counsel, and the Trustee, in form and substance satisfactory to the Underwriter and its counsel;

(iv) an opinion of Barnes & Thornburg LLP, as counsel to the Underwriter, addressed solely to the Underwriter, and in form and substance satisfactory to the Underwriter;

(v) A certificate of the Issuer, signed by one or more authorized representatives of the Issuer, dated the date of the Closing, to the effect that, to the actual knowledge of the Issuer Representative that (A) the representations of the Issuer contained in this Bond Purchase Agreement and the Issuer Documents are true and correct in all material respects as of the date of the Closing; and (B) no litigation is pending or, to the actual knowledge of the Issuer, without investigation or inquiry, threatened, against the Issuer (1) seeking to restrain or enjoin the issuance or delivery of any of the Series 2018C Bonds or the collection of revenues or other security pledged under the Indenture, (2) in any way contesting any authority for the issuance of the

Series 2018C Bonds or the validity of the Series 2018C Bonds or the Issuer Documents, or (3) in any way contesting the existence or powers of the Issuer;

(vi) A certificate of the Minnetonka EDA, signed by one or more authorized representatives of the Minnetonka EDA, dated the date of the Closing, to the effect that, to the actual knowledge of the Minnetonka EDA Representative that (A) the representations of the Minnetonka EDA contained in the Minnetonka EDA Documents are true and correct in all material respects as of the date of the Closing; and (B) no litigation is pending or, to the actual knowledge of the Minnetonka EDA, without investigation or inquiry, threatened, against the Minnetonka EDA (1) seeking to restrain or enjoin the issuance or delivery of the TIF Note or the collection of tax increment revenues, (2) in any way contesting any authority for the issuance of the TIF Note or the validity of the TIF Note or the Minnetonka EDA Documents, or (3) in any way contesting the existence or powers of the Minnetonka EDA;

(vii) A certificate of the Borrower, signed by an authorized representative of the Borrower, dated the date of the Closing, to the effect that (A) the representations, warranties and agreements of the Borrower contained in this Bond Purchase Agreement and in the Borrower Documents are true and correct in all material respects as of the date of the Closing; (B) no litigation to which the Borrower is a party is pending or, to the knowledge of the Borrower, threatened, (1) seeking to restrain or enjoin the issuance or delivery of any of the Series 2018C Bonds or the collection of revenues or other security pledged under the Indenture, (2) in any way contesting or affecting any authority for the issuance of the Series 2018C Bonds or the validity of the Series 2018C Bonds, the TIF Note, the Resolution, the Indenture or any of the Borrower Documents, or (3) in any way contesting the existence or powers of the Borrower; (C) no event affecting the Borrower has occurred since the date of the Official Statement that should be disclosed in the Official Statement, for the purpose for which it is to be used or which should be disclosed therein in order to make the statements and information therein not misleading in any material respect; (D) the information in the Preliminary Official Statement and the Official Statement relating to the Borrower, the Senior Housing Project, and the proposed operation of the Senior Housing Project is true and correct in all material respects, and the information under the heading “BONDHOLDERS’ RISKS” is a fair description of the risk factors related to the Borrower’s Senior Housing Project; (E) all resolutions and other actions required to be approved or taken by or on behalf of the Borrower authorizing and approving the transactions described or contemplated in this Bond Purchase Agreement or in the Official Statement, the execution of or approval of the respective forms of, as the case may be, this Bond Purchase Agreement, the Indenture, the Borrower Documents and the Series 2018C Bonds have been duly approved by the Borrower, are in full force and effect and have not been modified, amended or repealed; and (F) the Borrower is a limited liability limited partnership organized and validly existing under the laws of the State with full power and authority to own its properties and conduct its business;

(viii) A certificate of the Guarantor, signed by an authorized representative of the Guarantor, dated the date of the Closing, to the effect that (A) no litigation is pending or to its knowledge threatened, (1) in any way contesting or affecting the Guaranty, or (3) in any way contesting the existence or powers of the Guarantor; (B) no event affecting the Guarantor has occurred since the date of the Official Statement that should be disclosed in the Official Statement, for the purpose for which it is to be used or which

should be disclosed therein in order to make the statements and information therein not misleading in any material respect; (C) the information under the headings “SUMMARY INFORMATION – The Guarantor and Security for the Series 2018C Bonds - *The Guaranty*,” “INTRODUCTORY STATEMENT – The Guarantor” and “– Security for the Series 2018C Bonds – *The Guaranty*,” “THE GUARANTOR,” and “SECURITY FOR THE SERIES 2018C BONDS – The Guaranty” (collectively, the “Guarantor Portion”) of the Preliminary Official Statement and the Official Statement is true and correct in all material respects; (D) all resolutions and other actions required to be approved or taken by or on behalf of the Guarantor authorizing and approving the transactions described or contemplated in this Bond Purchase Agreement and the Guaranty and the execution and delivery of the Guaranty have been duly approved by the Guarantor, are in full force and effect and have not been modified, amended or repealed; (E) the Guarantor is a limited liability company organized and validly existing under the laws of the State with full power and authority to own its properties and conduct its business.

In rendering the above opinions discussed in (c)(i)-(iv), counsel may rely upon customary certificates.

(d) The Issuer Documents, the Minnetonka EDA Documents, the Borrower Documents, and the Guaranty in substantially the forms existing on the date hereof, with such changes therein as may be mutually agreed upon by the parties thereto and the undersigned, and all instruments contemplated thereby, shall have been duly authorized, executed and delivered by the respective parties thereto and shall be in full force and effect on the Closing Date.

(e) All proceedings and related matters in connection with the authorization, issue, sale and delivery of the Series 2018C Bonds shall have been satisfactory to Bond Counsel, and Bond Counsel shall have been furnished with such papers and information as it may have reasonably requested to enable it to pass upon the matters referred to in this Section 9.

(f) The offer and sale of the Series 2018C Bonds and underlying securities shall be exempt from registration under the Securities Act of 1933, as amended; and the Indenture shall be exempt from qualification under the Trust Indenture Act of 1939, as amended.

(g) The Underwriter shall have been provided with such quantities of the Official Statement at such time or times as shall be necessary for it to comply with any applicable provision of law or regulation, including the Rule.

(h) An ALTA form of lender’s extended coverage policy of title insurance (or a binding commitment therefor), dated as of the Closing Date, payable to the Trustee, in an amount not less than the stated principal amount of the Series 2018C Bonds, stating that Borrower is the fee owner of the Land and insuring that the Trustee’s interest under the Subordinate Mortgage is a valid subordinate lien on the Borrower’s interest in the Land, subject only to Permitted Encumbrances (the “Title Insurance Policy”). In the Title Insurance Policy all standard exceptions for parties in possession, surveys, and mechanics’, contractors’, and materialmen’s liens shall be deleted. The Title Insurance Policy shall contain a standard ALTA Form 3.1 zoning endorsement, an ALTA Form 9 (or 100) comprehensive endorsement and an endorsement insuring that payment of a mortgage registration tax is not necessary in connection with the recording of the Subordinate Mortgage. The description of the Land therein shall conform to the legal description of the Land contained in the survey described below, and the Title Insurance

Policy shall contain other endorsements reasonably required by the Underwriter; title policy or policies, or a commitment therefor, indicating that the Subordinate Mortgage constitutes a valid subordinate lien on the Senior Housing Project.

(i) Evidence of the creation and perfection of the various security interests purported to be created by the documents herein referenced.

(j) A compilation of financing statements (“UCC Search”) on file with the Secretary of State of Minnesota indicating that the security interest created by the Subordinate Mortgage will have priority, upon execution, satisfactory to the Underwriter.

(k) A certificate of good standing of the Borrower, the General Partner, and their organizational documents, each certified by the proper authorities of the State and dated within thirty days of the Closing Date.

(l) A copy of resolutions of the Borrower and Guarantor, certified by the secretary and approving of the Borrower’s execution, delivery and performance of the Borrower Documents and the Guarantor’s execution, delivery and performance of the Guaranty.

(m) A survey of the Land prepared by a registered land surveyor containing a legal description of the site of the Senior Housing Project conforming to the legal description contained in the Subordinate Mortgage, detailing all easements, encroachments, and utility rights of way upon the Land, showing the location of adjoining public streets so as to show affirmatively rights of ingress and egress to and from the Land, including the site plan of the Senior Housing Project indicating that the location of the Senior Housing Project is within the boundary lines of the land described in the survey and the survey will be certified to the Underwriter and the Trustee.

(n) Payment (or evidence acceptable to the Underwriter that payment has been made), in immediately available funds, of all fees required to be paid on the Closing Date, the premium for the Title Policy, and the fees and expenses incurred by the Underwriter.

(o) The consent of Novogradac & Company LLP to the use of its market study in the Preliminary Official Statement and the Official Statement and to the references to its firm therein.

(p) Evidence of flood insurance or evidence satisfactory to the Underwriter that the Project site is not in a flood plain.

(q) Evidence that the Land is properly zoned or will be properly zoned for the operation of the Senior Housing Project.

(r) Evidence that Citi Community Capital, as the tax credit investor has made its initial capital contribution to the Borrower on the Closing Date as required by the Closing Memorandum prepared by the Underwriter.

All such opinions, certificates, letters and documents will be in compliance with the provisions hereof only if they are in all material respects satisfactory to the undersigned, as to which the undersigned shall act reasonably.

If any condition of the obligations of the undersigned hereunder to be satisfied prior to the Closing Date is not so satisfied, this Bond Purchase Agreement may be terminated by the Underwriter by notice in writing to the Borrower and the Issuer.

The Underwriter may waive in writing compliance by the Borrower or the Issuer with any one or more of the foregoing conditions or extend the time for their performance.

Section 10. Termination by Underwriter. This Bond Purchase Agreement may be terminated in writing by the Underwriter if any of the following shall occur: (i) this Bond Purchase Agreement shall not have been accepted by the Issuer or the Borrower within the time herein provided; (ii) the Series 2018C Bonds and all of the closing documents shall not have been delivered as provided herein as of 12:00 P.M., Minneapolis, Minnesota time on the date of Closing; (iii) legislation shall be enacted, or favorably reported out of committee to, either House of the Congress of the United States of America, or a decision by a court of the United States of America shall be rendered, or a regulation or ruling shall be issued or proposed by or on behalf of the Treasury Department of the United States, the Internal Revenue Service of the United States, or any other agency of the Federal government having jurisdiction, or a release or official statement shall be issued by the Treasury Department of the United States, the Internal Revenue Service of the United States, or any other agency of the Federal government having jurisdiction, with respect to Federal taxation upon interest received on obligations of the character of the Series 2018C Bonds to the effect that interest on obligations of the general character of the Series 2018C Bonds shall not be exempt from federal income taxes, or that securities of the general character of the Series 2018C Bonds shall not be exempt from registration under the Securities Act of 1933, as amended, or that the Indenture shall not be exempt from qualification under the Trust Indenture Act of 1939, as amended; (iv) there shall exist any event or circumstance which, in the reasonable opinion of the Underwriter, makes untrue, incorrect or misleading in any material respect any statement or information contained herein or in the Official Statement and such statement cannot, in the reasonable opinion of the Underwriter, be corrected with a supplement to the Official Statement; (v) there shall have occurred any outbreak of hostilities or material escalation thereof, or other national or international calamity or crisis, the effect of which outbreak, escalation, calamity or crisis on the financial markets of the United States of America being such as, in the reasonable opinion of the Underwriter, would render the Series 2018C Bonds incapable of being sold on terms acceptable to the Underwriter and the Borrower; (vi) there shall be in force a general suspension of trading on the New York Stock Exchange, or minimum or maximum prices for trading on the New York Stock Exchange shall have been fixed and be in force; (vii) in the reasonable judgment of the Underwriter the market price of the Series 2018C Bonds, or the market price generally of obligations of the general character of the Series 2018C Bonds, might be adversely affected because: (a) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, or (b) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Series 2018C Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, underwriters; (viii) a general banking moratorium shall have been declared by either federal, Minnesota or New York authorities having jurisdiction, and shall be in force; (ix) economic, market or other conditions occur or exist which, in the reasonable judgment of the Underwriter, render the Series 2018C Bonds incapable of being sold on terms acceptable to the Underwriter; (x) any suit, proceeding, litigation or other action shall be commenced, or, if commenced prior to the date hereof, shall be continuing or have been adjudicated, which, in any event, in the reasonable judgment of the Underwriter, adversely affects the market price or marketability of the Series 2018C Bonds; (xi) a default has occurred with respect to the obligations of, or proceedings have been instituted under the federal bankruptcy laws or any similar state laws by or against, any state of the United States or any city located in the United States having a population in excess of 500,000 persons or

against any entity issuing obligations for or on behalf of such a city or state, which in the reasonable opinion of the Underwriter adversely affects the market price or marketability of the Series 2018C Bonds; or (xii) the sovereign debt rating of the United States is downgraded by any major credit rating agency or a payment default occurs on United States Treasury obligations, which in the reasonable opinion of the Underwriter adversely affects the market price or marketability of the Series 2018C Bonds.

Section 11. Termination by Issuer or Borrower. This Bond Purchase Agreement may be terminated in writing by the Issuer or the Borrower in the event that the Underwriter shall fail to accept delivery of the Series 2018C Bonds on the Closing Date upon tender thereof to DTC by the Issuer and delivery to the Underwriter of all of the Closing Documents.

Section 12. Expenses. Except as hereinafter specifically provided, all expenses and costs of the Borrower and the Issuer incident to the performance of their obligations in connection with the authorization, issuance and sale of the Series 2018C Bonds, including (i) fees and expenses of the Trustee, Borrower's Counsel, Bond Counsel, and counsel to the Underwriter, (ii) the fee of the Underwriter referred to in Section 7 hereof, (iii) all costs and expenses with respect to the examination of, and registration of the Series 2018C Bonds under, the securities or "Blue Sky" laws of the various jurisdictions in which the Series 2018C Bonds are to be offered or sold, (iv) all costs of procuring a satisfactory survey and title insurance policy, and (v) the costs and expenses of preparing, printing and distributing the Preliminary Official Statement and the Official Statement, the Issuer Documents, the Borrower Documents, the Minnetonka EDA Documents, the Guaranty and related documents shall be payable by the Borrower or, if available and permitted by law, from Series 2018C Bond proceeds. The terms and provisions of this Section 12 shall survive and be binding upon the Borrower notwithstanding the termination of this Bond Purchase Agreement pursuant to Section 10 or Section 11 hereof, except that the fee of the Underwriter referred to in Section 7 hereof shall not be payable upon any such termination. In addition to the fee of the Underwriter referred to in Section 9 hereof, the Borrower shall reimburse the Underwriter for its direct out-of-pocket expenses incurred in connection with its performance of its obligations related to the Series 2018C Bonds.

Section 13. Offering by Underwriter. The Underwriter shall offer the Series 2018C Bonds in a bona fide public offering for sale in transactions exempt from registration under the applicable securities laws in the states in which the Series 2018C Bonds will be reoffered, or in compliance with such registration requirements, as set forth in the Official Statement. Concessions from the offering price may be allowed to selected dealers and special purchasers. The initial offering price and concessions set forth in the Official Statement may vary after the initial offering. The Borrower represents, warrants, certifies and confirms that the Preliminary Official Statement, as of its date, was in final form, within the meaning of the Rule, except for the omission of the following information: offering prices, interest rates, selling compensation, principal amount per maturity or other terms of the Series 2018C Bonds depending on such matters. The Borrower hereby confirms and the Issuer hereby consents to the authority and use by the Underwriter of the Official Statement.

Based on the covenant of the Borrower set forth in Section 6(d) hereof, the Underwriter hereby determines that the Borrower, as an obligated person for whom financial or operating data is presented in the final Official Statement, has undertaken, in a written agreement or contract for the benefit of the holders of the Series 2018C Bonds, to provide, through the Trustee, all information required under the pertinent provisions of the Rule.

Section 14. Establishment of Issue Price for Series 2018C Bonds.

OPTION 1

[(a) The Underwriter agrees to assist the Issuer in establishing the issue price of the Series 2018C Bonds and shall execute and deliver to the Issuer on the date of Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2018C Bonds.

(b) The Underwriter confirms that at least 10% of each maturity of the Series 2018C Bonds has been sold to the public at a single price (the “10% test”) (if different interest rates apply within a maturity, each separate CUSIP number within that maturity is evaluated separately). Schedule I attached to this Bond Purchase Agreement sets forth the first price at which the Underwriter has sold to the public 10% of each such maturity of Series 2018C Bonds.

(c) The Underwriter confirms that the Underwriter has offered the Series 2018C Bonds to the public on or before the date of this Bond Purchase Agreement (the “Sale Date”) at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in Schedule I attached hereto.

(d) The Underwriter confirms that it does not have any selling group agreement and any retail distribution agreement relating to the initial sale of the Series 2018C Bonds to the public.]

OPTION 2

[(a) The Underwriter agrees to assist the Issuer in establishing the issue price of the Series 2018C Bonds and shall execute and deliver to the Issuer on the date of Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2018C Bonds.

(b) Except as otherwise set forth in Schedule I attached hereto, the Issuer will treat the first price at which 10% of each maturity of the Series 2018C Bonds (the “10% test”) is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test). At or promptly after the execution of this Bond Purchase Agreement, the Underwriter shall report to the Issuer and Bond Counsel the price or prices at which it has sold to the public each maturity of Series 2018C Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Series 2018C Bonds, the Underwriter agrees to promptly report to the Issuer the prices at which it sells the unsold Series 2018C Bonds of that maturity to the public. That reporting obligation shall continue, whether or not the date of Closing has occurred, until the 10% test has been satisfied as to the Series 2018C Bonds of that maturity or until all Series 2018C Bonds of that maturity have been sold to the public.

(c) The Underwriter confirms that the Underwriter has offered the Series 2018C Bonds to the public on or before the date of this Bond Purchase Agreement (the “Sale Date”) at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in Schedule I attached hereto, except as otherwise set forth therein. Schedule I also sets forth, as of the date of this

Bond Purchase Agreement, the maturities, if any, of the Series 2018C Bonds for which the 10% test has not been satisfied and for which the Issuer and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the Issuer to treat the initial offering price to the public of each such maturity as of the Sale Date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Series 2018C Bonds, the Underwriter will neither offer nor sell unsold Series 2018C Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the Sale Date and ending on the earlier of the following:

- (1) the close of the fifth (5<sup>th</sup>) business day after the Sale Date; or
- (2) the date on which the Underwriter has sold at least 10% of that maturity of the Series 2018C Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the Issuer when it has sold 10% of that maturity of the Series 2018C Bonds to the public at a price that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5<sup>th</sup>) business day after the Sale Date.

(d) The Underwriter confirms that it does not have any selling group agreement and any retail distribution agreement relating to the initial sale of the Series 2018C Bonds to the public.]

(e) The Underwriter acknowledges that sales of any Series 2018C Bonds to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this Section. Further, for purposes of this Section:

- (i) “public” means any person other than an underwriter or a related party,
- (ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2018C Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Series 2018C Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Series 2018C Bonds to the public), and
- (iii) a purchaser of any of the Series 2018C Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

Section 15. Notices. Any notice or other communication to be given to the Borrower, the Minnetonka EDA and the Issuer under this Bond Purchase Agreement may be given by delivering the same in writing to their respective addresses set forth above; and any such notice or other communication



to be given to the Underwriter may be given by delivering the same in writing to the Underwriter at Dougherty & Borrower LLC, 90 South 7th Street, Suite 4300, Minneapolis, Minnesota, Attention: Frank J. Hogan, Senior Vice President.

Section 16. Indemnification. The Borrower and its general partner agrees to indemnify and hold harmless the Issuer and the Underwriter, and any person who controls the Underwriter within the meaning of the Securities Act of 1933, as amended, against any and all losses, claims, damages and liabilities arising out of any untrue statement or alleged untrue statement of a material fact in the Official Statement (other than the Issuer Portion and under the heading “TAX EXEMPTION AND RELATED CONSIDERATIONS” and “UNDERWRITING” therein), or omission or alleged omission of a material fact necessary in order to make the Official Statement or the statements therein not misleading (other than the Issuer Portion and under the headings “TAX EXEMPTION AND RELATED CONSIDERATIONS” and “UNDERWRITING” therein), and to the extent of the aggregate amount paid in settlement of any litigation commenced or threatened arising from a claim based upon any such statement or omission if such settlement is effected with the written consent of the Borrower. In case any claim shall be made or action brought against the Issuer or the Underwriter, or any controlling person (as aforesaid) based upon such statement or omission, in respect of which indemnity may be sought against the Borrower, then the Issuer or the Underwriter, or any controlling person, as the case may be, shall promptly notify the Borrower in writing setting forth the particulars of such claim or action and the Borrower shall assume the defense thereof including the retaining of counsel (who shall be satisfactory to the Issuer and the Underwriter) and the payment of all expenses. If the Issuer or the Underwriter is advised in an opinion of counsel that there may be legal defenses available to the Issuer or the Underwriter that are adverse to or in conflict with those available to the Borrower, or that the defense of the Issuer the Underwriter or the Borrower should be handled by separate counsel, the Borrower shall not have any right to assume such defense of the Issuer or the Underwriter, as the case may be, but shall be responsible for the reasonable fees and expenses of counsel retained by the Issuer or the Underwriter, as the case may be, in assuming its or their own defense, and provided also that if the Borrower shall have failed to assume the defense of such action or to retain counsel satisfactory to the Issuer or the Underwriter, as the case may be, within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Issuer or the Underwriter, as the case may be, shall be paid by the Borrower. Notwithstanding, and in addition to, any of the foregoing, the Issuer and the Underwriter or any such controlling person shall have the right to retain separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the party retaining such counsel unless the retaining of such counsel has been specifically authorized by the Borrower in writing. The Borrower shall not be liable to indemnify any person for the settlement of any such action effected without its written consent. This indemnity shall be in addition to any similar or other obligations which the Borrower may have under the Indenture or the Loan Agreement.

To the same extent as the foregoing indemnity contained in this Section from the Borrower to the Underwriter, and the Issuer and each person, if any, who controls the Underwriter and the Issuer, the Underwriter agrees to indemnify and hold harmless the Borrower and the Issuer and each person, if any, who controls the Borrower and the Issuer within the meaning of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended (hereinafter in this paragraph separately and collectively referred to as the “defendants”), with reference to any untrue statement, error, misstatement or omission or allegation thereof in the Official Statement, but only if furnished in writing specifically for use therein by the Underwriter. In case any such claim shall be presented in writing or any action shall be brought against any of the defendants in respect of which indemnity may be sought from the Underwriter on account of its agreement contained in this Section, the Underwriter shall have the rights

and duties given to the Borrower in the above paragraph and the defendants shall have the rights and duties given by the above paragraph to the persons therein referred to as “defendants.”

In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in the preceding part of this Section 16 is for any reason held to be unavailable to the Underwriter, the Borrower or the Issuer, then the Borrower shall contribute to the damages paid by the Underwriter, and the Underwriter shall contribute to the damages paid by the Borrower in such proportion that the Underwriter is responsible for the portion represented by the percentage that the underwriting fee set forth herein bears to the aggregate face amount of the Series 2018C Bonds and the Borrower is responsible for the balance; provided, however, that (i) in no case shall the Underwriter be responsible for any amount in excess of the underwriting fee applicable to the Series 2018C Bonds purchased by it pursuant to this Bond Purchase Agreement, and (ii) no person guilty of gross negligence, willful misconduct, fraudulent misrepresentation of a material fact, or failing to state a material fact shall be entitled to contribution as to any liability arising from such fraudulent misrepresentation or omission, from any person who was not guilty of such fraudulent misrepresentation or omission. In determining the amount of contribution to which the respective parties are entitled, there shall be considered the relative benefits received by each party from the offering of the Series 2018C Bonds (taking into account the portion of the proceeds of the offering realized by each), the parties’ relative knowledge and access to information concerning the matter with respect to which the claim was asserted the opportunity to correct and prevent any statement or omission, and any other equitable consideration appropriate in the circumstances. The Borrower and the Underwriter agree that it would not be equitable if the amount of such contribution were determined by pro rata or per capita allocation. For purposes of this Section, each person, if any, who controls the Underwriter or the Issuer within the meaning of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, shall have the same rights to contribution as the Underwriter, the Issuer or the Borrower, respectively.

Section 17. Parties and Interests; Borrower’s Undertakings; Survival of Representations. This Bond Purchase Agreement is made solely for the benefit of the Issuer, the Borrower and the Underwriter, and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements by the Issuer, the Underwriter and the Borrower in this Bond Purchase Agreement shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriter, and shall survive the delivery of and payment for the Series 2018C Bonds.

Section 18. Governing Law. This Bond Purchase Agreement shall be governed by the laws of the State.

Section 19. Counterparts. This Bond Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 20. Immunity of Officers, Employees and Members of the Issuer. No recourse shall be had for the payment of the principal of or premium or interest on the Series 2018C Bonds for any claim based thereon or upon any representation, obligation, covenant or agreement in this Bond Purchase Agreement contained against any past, present or future officer, member, employee, director or agent of the Issuer or of any successor public or private corporation thereto, as such, either directly or through the Issuer or any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents as such is hereby expressly waived and released

as a condition of and consideration for the execution of this Bond Purchase Agreement and the issuance of the Series 2018C Bonds.

Section 21. Electronic Signatures. The parties agree that the electronic signature of a party to this Bond Purchase Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Bond Purchase Agreement. For purposes hereof: (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

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**DOUGHERTY & COMPANY LLC**

By: \_\_\_\_\_  
Frank J. Hogan  
Its: Senior Vice President

(Signature Page of Dougherty & Company LLC to the Bond Purchase Agreement for Legends of Minnetonka)

Accepted by:

**CITY OF MINNETONKA, MINNESOTA**

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

By: \_\_\_\_\_  
Its: City Manager

(Signature Page of the Issuer to the Bond Purchase Agreement for Legends of Minnetonka)

Accepted by:

**MINNETONKA LEASED HOUSING  
ASSOCIATES III, LLLP**, a Minnesota limited liability  
limited partnership

By: Minnetonka Leased Housing Associates SPE III,  
LLC

Its: General Partner

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

Ryan J. Lunderby

Its: Vice President

(Signature Page of the Borrower to the Bond Purchase Agreement for Legends of Minnetonka)

**SCHEDULE I**

**TERMS OF BONDS**

\$ \_\_\_\_\_  
**City of Minnetonka, Minnesota**  
**Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds**  
**(Legends of Minnetonka Project)**  
**Series 2018C**

As more fully described in the Indenture, the Bonds are subject to the following redemption provisions.

Dated Date: September \_\_\_, 2018

**Serial Bonds**

<u>Maturity Date</u> <u>(____ 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>
-----------------------------------------	-----------------------------------	--------------------------------	--------------

\$ \_\_\_\_\_ % Term 2018A Bonds Due \_\_\_\_\_ 1, 20\_\_\_\_  
Price of \_\_\_\_\_% to Yield \_\_\_\_\_%

<u>Sinking Fund</u> <u>Redemption Date</u>	<u>Principal Amount</u>
-----------------------------------------------	-------------------------

\_\_\_\_\_  
*\*Stated Maturity.*

\$ \_\_\_\_\_ % Term 2018A Bonds Due \_\_\_\_\_ 1, 20\_\_\_\_  
Price of \_\_\_\_\_% to Yield \_\_\_\_\_%

<u>Sinking Fund</u> <u>Redemption Date</u>	<u>Principal Amount</u>
-----------------------------------------------	-------------------------

\_\_\_\_\_  
*\*Stated Maturity.*

**Optional Redemption.** The Series 2018C Bonds are subject to redemption prior to maturity upon request of the Borrower to the Trustee on \_\_\_\_\_ 1, 202\_, and on any Business Day thereafter, in whole or in part, and if in part, in inverse order of their maturity dates in principal increments of \$5,000 and by lot within any maturity, at a Redemption Price equal to the principal amount of the Series 2018C Bonds to be redeemed plus accrued interest thereon.



**EXHIBIT A**

**[Issue Price Certificate for General Rule Only]**

\$ \_\_\_\_\_  
**City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Bonds  
(Legends of Minnetonka Project)  
Series 2018C**

**CERTIFICATE OF UNDERWRITER**

**September \_\_, 2018**

The undersigned, for and on behalf of Dougherty & Company LLC (the “Underwriter”), certifies as follows with respect to the sale and issuance by the City of Minnetonka, Minnesota (the “Issuer”) of its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018 (the “Subordinate Bonds”), in the original aggregate principal amount of \$ \_\_\_\_\_:

1. **Sale of Subordinate Bonds.** As of the date of this Certificate of Underwriter (the “Certificate”), for each Maturity of the Subordinate Bonds, the first price at which at least ten percent (10%) of such Maturity of the Subordinate Bonds was sold to the Public is the respective price provided in EXHIBIT A attached hereto. Capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in Section 6 hereof.

2. **Purchase Price and Receipt.** The Subordinate Bonds were purchased by the Underwriter at a purchase price of \$ \_\_\_\_\_ (the principal amount of \$ \_\_\_\_\_, [plus an original issue premium of \$ \_\_\_\_\_,] [less an original issue discount of \$ \_\_\_\_\_,] less an Underwriter’s discount of \$ \_\_\_\_\_). Receipt of the executed and authenticated Subordinate Bonds from U.S. Bank National Association, a national banking association, as trustee, is hereby acknowledged by the Underwriter.

3. **Yield.** The Underwriter has calculated the yield on the Subordinate Bonds as the discount rate that, when used in computing the present value, as of September \_\_, 2018, of all unconditionally payable payments of principal of and interest on the Subordinate Bonds, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price of the Subordinate Bonds as of September \_\_, 2018. Based on the foregoing and any instructions that the Underwriter received from Kennedy & Graven, Chartered, as bond counsel, the Underwriter has calculated a yield on the Subordinate Bonds of \_\_\_\_\_%.

4. **Weighted Average Maturity.** For purposes of the Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038 (Rev. April 2011) (“Form 8038”), prepared with respect to the Subordinate Bonds, the Underwriter hereby certifies that the weighted average maturity of the Subordinate Bonds is \_\_\_\_\_ years.

5. **Defined Terms.** Capitalized terms used herein shall have the following meanings:

(a) “Maturity” means Subordinate Bonds with the same credit and payment terms. Subordinate Bonds with different maturity dates, or Subordinate Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(b) “Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this Certificate generally means any two or more persons who have greater than fifty percent (50%) common ownership, directly or indirectly.

(c) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Subordinate Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Subordinate Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Subordinate Bonds to the Public). The Underwriter of the Subordinate Bonds is Dougherty & Company LLC.

6. Representations. The representations set forth in this Certificate are limited to factual matters only. Nothing in this Certificate represents the interpretation by the Underwriter of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder. The undersigned understands that the foregoing information will be relied upon by: (i) the Issuer and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), with respect to certain of the representations set forth in a tax certificate of the Borrower executed on the date hereof with respect to compliance with the federal income tax rules affecting the Subordinate Bonds; and (ii) Kennedy & Graven, Chartered, in connection with rendering its opinion that the interest on the Subordinate Bonds is excluded from gross income for federal income tax purposes, the preparation of Form 8038, and other federal income tax advice that it may give to the Issuer and the Borrower from time to time relating to the Subordinate Bonds.

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IN WITNESS WHEREOF, the undersigned has executed this Certificate of Underwriter as of the date and year first written above.

**DOUGHERTY & COMPANY LLC**

By \_\_\_\_\_  
Its Senior Vice President

**EXHIBIT A**

**SALE PRICES OF THE SUBORDINATE BONDS**

[Insert table]

[Issue Price Certificate for General Rule and Hold-the-Offering Price Maturities]

\$ \_\_\_\_\_  
**City of Minnetonka, Minnesota**  
**Tax Increment Revenue and**  
**Subordinate Multifamily Housing Revenue Bonds**  
**(Legends of Minnetonka Project)**  
**Series 2018C**

**CERTIFICATE OF UNDERWRITER**

**September \_\_, 2018**

The undersigned, for and on behalf of Dougherty & Company LLC (the “Underwriter”), certifies as follows with respect to the sale and issuance by the City of Minnetonka, Minnesota (the “Issuer”) of its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018 (the “Subordinate Bonds”), in the original aggregate principal amount of \$ \_\_\_\_\_:

1. Sale of the General Rule Maturities. As of the date of this Certificate of Underwriter (the “Certificate”), for each Maturity of the General Rule Maturities, the first price at which at least ten percent (10%) of such Maturity was sold to the Public is the respective price listed in EXHIBIT A attached hereto. Capitalized terms used herein that are otherwise not defined shall have the meanings assigned to such terms in Section 6 hereof.

2. Initial Offering Price of the Hold-the-Offering-Price Maturities.

(a) The Underwriter offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in EXHIBIT B attached hereto (the “Initial Offering Prices”). A copy of the pricing wire or equivalent communication for the Subordinate Bonds is attached hereto as EXHIBIT B.

(b) As set forth in the Bond Purchase Agreement, dated August \_\_, 2018, between the Issuer, the Underwriter, and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability company (the “Borrower”), the Underwriter has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any of the Subordinate Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “Hold-the-Offering-Price Rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the Hold-the-Offering-Price Rule. Pursuant to such agreement, the Underwriter has not offered or sold any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Subordinate Bonds during the Holding Period.

3. Purchase Price and Receipt. The Subordinate Bonds were purchased by the Underwriter at a purchase price of \$ \_\_\_\_\_ (the principal amount of \$ \_\_\_\_\_, [plus an original issue premium of \$ \_\_\_\_\_,] [less an original issue discount of \$ \_\_\_\_\_,] less an Underwriter’s discount of \$ \_\_\_\_\_). Receipt of the executed and authenticated Subordinate Bonds from U.S. Bank National Association, a national banking association, as trustee, is hereby acknowledged by the Underwriter.

4. Yield. The Underwriter has calculated the yield on the Subordinate Bonds as the discount rate that, when used in computing the present value, as of October \_\_, 2018, of all unconditionally payable payments of principal of and interest on the Subordinate Bonds, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price of the Subordinate Bonds as of October \_\_, 2018. Based on the foregoing and any instructions that the Underwriter received from Kennedy & Graven, Chartered, as bond counsel, the Underwriter has calculated a yield on the Subordinate Bonds of \_\_\_\_\_%.

5. Weighted Average Maturity. For purposes of the Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038 (Rev. April 2011) (“Form 8038”), prepared with respect to the Subordinate Bonds, the Underwriter hereby certifies that the weighted average maturity of the Subordinate Bonds is \_\_\_\_\_ years.

6. Defined Terms.

(a) “General Rule Maturities” means those Maturities of the Subordinate Bonds listed in EXHIBIT A attached hereto as the “General Rule Maturities.”

(b) “Hold-the-Offering-Price Maturities” means those Maturities of the Subordinate Bonds listed in EXHIBIT B attached hereto as the “Hold-the-Offering-Price Maturities.”

(c) “Holding Period” means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which the Underwriter has sold at least ten percent (10%) of such Hold-the-Offering-Price Maturity to the Public at a price that is no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(d) “Maturity” means Subordinate Bonds with the same credit and payment terms. Subordinate Bonds with different maturity dates, or Subordinate Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(e) “Public” means any person (including an individual trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this Certificate generally means any two or more persons who have greater than fifty percent (50%) common ownership, directly or indirectly.

(f) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Subordinate Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Subordinate Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Subordinate Bonds to the Public). The Underwriter of the Subordinate Bonds is Dougherty & Company LLC.

7. Representations. The representations set forth in this Certificate are limited to factual matters only. Nothing in this Certificate represents the interpretation by the Underwriter of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder. The undersigned understands that the foregoing information will be relied upon by: (i) the Issuer and the Borrower with respect to certain of the representations set forth in a tax certificate of the Borrower executed on the date hereof with respect to compliance with the federal income tax rules affecting the Subordinate Bonds; and (ii) Kennedy & Graven, Chartered, in connection with rendering its opinion that the interest on the Subordinate Bonds is excluded from gross income for federal income tax purposes, the preparation of Form 8038, and other federal income tax advice that it may give to the Issuer and the Borrower from time to time relating to the Subordinate Bonds.

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

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Underwriter as of the date and year first written above.

**DOUGHERTY & COMPANY LLC**

By \_\_\_\_\_  
Its Senior Vice President

**EXHIBIT A**

**SALE PRICES OF THE GENERAL RULE MATURITIES**

[Insert table]



**EXHIBIT B**

**INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES AND  
PRICING WIRE OR EQUIVALENT COMMUNICATION**

[Insert copy of pricing wire]

65014 68 (BWJ)  
1298760v.4

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**SUBORDINATE INDENTURE OF TRUST**

**between**

**CITY OF MINNETONKA, MINNESOTA,  
as Issuer**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Dated as of September 1, 2018**

**Relating to:**

**\$3,570,000  
City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Refunding Bonds  
(Preserve at Shady Oak Project)  
Series 2018C**

---

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This instrument drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

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## SUBORDINATE INDENTURE OF TRUST

THIS SUBORDINATE INDENTURE OF TRUST, dated as of September 1, 2018 (the “Indenture”), is between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “Issuer”), and U.S. Bank National Association, a national banking association, authorized to accept and execute trusts of the character herein set out, with its principal office in Saint Paul, Minnesota (the “Trustee”).

### WITNESSETH

WHEREAS, the Issuer is authorized by Minnesota Statutes, Chapter 462C, as amended (the “Act”), to issue revenue obligations to finance the acquisition, construction, rehabilitation, and equipping of multifamily housing developments, including workforce housing developments; and

WHEREAS, on May 7, 2018, the Issuer issued its Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018 (the “Prior Note”), in the original aggregate principal amount of \$30,500,000, and loaned the proceeds thereof to Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), for the purpose of providing short-term financing for the acquisition, construction, and equipping of a 220-unit workforce housing rental development located at 10987 and 11015 Bren Road East, Minnetonka, Minnesota to be known as Preserve at Shady Oak (the “Project”); and

WHEREAS, the Borrower has requested that the Issuer issue its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C (the “Subordinate Bonds”), in the original aggregate principal amount of \$3,570,000, and the Issuer has authorized the issuance of the Subordinate Bonds pursuant to a resolution adopted by the City Council of the Issuer on August 27, 2018, the Act, and this Indenture; and

WHEREAS, the Issuer will loan the proceeds of the Subordinate Bonds to the Borrower (the “Loan”) pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower, and the Borrower will apply the proceeds of the Loan to (i) refund a portion of the Prior Note; (ii) finance a portion of the costs of the acquisition, construction, and equipping of the Project; (iii) finance capitalized interest on the Subordinate Bonds during the construction of the Project; and (iv) pay costs of issuance of the Subordinate Bonds; and

WHEREAS, in order to finance an additional portion of the costs of the acquisition, construction, and equipping of the Project, the Issuer has agreed to issue, pursuant to a separate plan of financing, its (i) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1 (the “Series A-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (ii) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2 (the “Series A-2 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (iii) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-1 (the “Series B-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; and (iv) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-2 (the “Series 2018B-2 Governmental Note,” and collectively with the Series A-1 Governmental Note, the Series A-2 Governmental Note, and the Series B-1 Governmental Note, the “Senior Notes”), in the maximum principal amount of \$\_\_\_\_; and

WHEREAS, a portion of the Series A-1 Governmental Note and the Series A-2 Governmental Note will also be used to refund the Prior Note; and

WHEREAS, the Senior Notes evidence loans (the “Funding Loans”) made to the Issuer by U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association, in their capacity as initial funding lenders (together, the “Funding Lender”), pursuant to a Funding Loan Agreement, dated as of September 1, 2018, between the Issuer, U.S. Bank National Association, a national banking association, as administrative agent for the Funding Lender, and U.S. Bank National Association, a national banking association, as fiscal agent with respect to the Senior Notes (the “Fiscal Agent”); and

WHEREAS, the Issuer will loan the proceeds of the Funding Loans to the Borrower pursuant to the terms of a Project Loan Agreement, dated as of September 1, 2018, between the Issuer, the Borrower, and the Fiscal Agent; and

WHEREAS, as security for the payment of the Subordinate Bonds, the Issuer has agreed to assign and pledge to the Trustee, among other things, all right, title and interest of the Issuer in and to the Loan Agreement (except certain rights reserved to the Issuer), including the Basic Payments (hereinafter defined); and

WHEREAS, as additional security for the Subordinate Bonds, the Borrower has agreed in the Loan Agreement and the Assignment, Pledge, and Security Agreement, dated as of September 1, 2018 (the “Security Agreement”), between the Borrower and the Trustee, to pledge to the Trustee the Borrower’s interest in payments due to it under the TIF Note (hereinafter defined) for repayment of the Loan; and

WHEREAS, as additional security for the Subordinate Bonds, the Borrower will execute and deliver to the Issuer a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (the “Subordinate Mortgage”), providing the Issuer with a subordinate mortgage lien on the property described therein, which the Issuer shall assign to the Trustee; and

WHEREAS, as additional security for the Subordinate Bonds, the Borrower will cause the execution and delivery of a Subordinate Guaranty Agreement, dated as of September 1, 2018 (the “Guaranty”), from Dominion Holdings II, LLC, a Minnesota limited liability company, in favor of the Trustee; and

WHEREAS, in connection with the issuance of the Senior Notes and the Subordinate Bonds, the Issuer, the Borrower, the Fiscal Agent, and the Trustee will enter into a Regulatory Agreement, dated September \_\_\_\_, 2018, pursuant to which the Borrower will agree to comply with certain federal and state requirements applicable to the Project; and

WHEREAS, all things necessary to make the Subordinate Bonds, when authenticated by the Trustee and issued as in this Indenture provided, valid, binding and legal limited obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid contract for the security of the Subordinate Bonds, have been done and performed; and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of said Subordinate Bonds, subject to the terms hereof, have in all respects been duly authorized; and

NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS INDENTURE WITNESSETH:

The Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Subordinate Bonds by the Holders (hereinafter defined) thereof, in order to secure the payment of the principal of and interest and premium, if any, on the Subordinate Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Subordinate Bonds, does hereby grant a security interest in, assign, transfer in trust, and pledge to the Trustee, and to its successors in trust, and to them and their assigns forever, the following:

#### FIRST

All rights, title, interest and privileges of the Issuer in, to and under the Loan Agreement, including but not limited to all sums which the Issuer is entitled to receive from the Borrower pursuant to the Loan Agreement and in particular the Basic Payments (but excluding the rights of the Issuer to indemnification and certain direct payments to be made to it pursuant to Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 of the Loan Agreement), and all other sums (including proceeds of the Subordinate Bonds) which are required to be deposited in the trust accounts in accordance with Article 5 hereof, including amounts paid under the Guaranty and payments on the TIF Note, except for the Rebate Fund which is not a part of the Trust Estate; and the earnings derived from the investment of any of the foregoing sums as provided herein;

#### SECOND

Any and all other property of every name and nature which may from time to time hereafter by delivery or by writing of any kind be subjected to the lien hereof by the Issuer, or by anyone on its behalf or with its written consent, including, but not limited to, the interests of the Issuer, if any, under the Collateral Documents, and the Trustee is hereby authorized to receive any and all such property at any and all times and to hold and apply the same as additional security hereunder subject to the terms hereof; and

#### THIRD

All property mortgaged, pledged, and assigned under the Subordinate Mortgage and the Security Agreement and any and all other property of every name and nature which may from time to time hereafter by delivery or by writing of any kind be subjected to the lien hereof by the Issuer or by anyone on its behalf or with its written consent, and the Trustee is hereby authorized to hold and apply the same as additional security hereunder subject to the terms hereof.

TO HAVE AND TO HOLD all the same (herein called the "Trust Estate") with all privileges and appurtenances hereby granted and assigned, or agreed or intended so to be, to the Trustee and its successors in trust and to them and their assigns forever;

SUBJECT TO the rights of the Borrower under the Loan Agreement and the Subordinate Mortgage;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all Holders from time to time of the Subordinate Bonds issued under and secured by this Indenture, without privilege, priority or distinction as to lien or otherwise of any of the Subordinate Bonds over any of the others except as otherwise provided herein;



PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, or provide fully for payment as herein provided of the principal of the Subordinate Bonds and the interest due or to become due thereon (together with premium, if any), at the time and in the manner set forth in the Subordinate Bonds according to the true intent and meaning thereof, and shall make the payments into the Bond Fund as required under Article 5 hereof or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient for payment of the entire amount due or to become due thereon as herein provided, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted shall cease, terminate and be void except as otherwise provided herein; otherwise, this Indenture shall be and remain in full force and effect.

UNDER THE PROVISIONS OF THE ACT, the Subordinate Bonds may not be payable from or be a charge upon any funds of the Issuer other than the revenue pledged to the payment thereof, nor shall the Issuer be subject to any pecuniary liability thereon, and no Holder or Holders of the Subordinate Bonds shall ever have the right to compel any exercise of the taxing power of the Issuer to pay any Subordinate Bonds or the interest and premium, if any, thereon, or to enforce payment thereof against any property of the Issuer, except as above provided; the Subordinate Bonds shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer, except as above provided; and no Subordinate Bond shall constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation, but nothing in the Act impairs the rights of the Holders of Subordinate Bonds issued under this Indenture to enforce the covenants made for the security thereof as provided in this Indenture and in the Act, and by authority of the Act the Issuer and the Trustee mutually covenant and agree, to the extent specifically provided herein, for the equal and proportionate benefit of all Holders of the Subordinate Bonds, as follows:

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

## ARTICLE 1

### DEFINITIONS, EXHIBITS AND GENERAL PROVISIONS

Section 1.1 Definitions. In this Indenture the following terms have the following meanings unless the context hereof clearly requires otherwise:

*Act*: Minnesota Statutes, Chapter 462C, as amended.

*Act of Bankruptcy*: any of the following events:

(i) If the Borrower shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like, or of all or a substantial part of their property, (b) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts; or

(ii) A proceeding or case shall be commenced, without the application or consent of the Borrower, in any court of competent jurisdiction, and shall not be dismissed, vacated, or stayed within ninety (90) days after commencement, seeking (a) the liquidation, reorganization, dissolution, winding-up, or the composition or adjustment of its debts, (b) the appointment of a trustee, receiver, custodian, liquidator or the like of the Borrower, or of all or any substantial part of its assets, or (c) similar relief in respect of the Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts.

*Additional Charges*: the payments required by Section 4.4 of the Loan Agreement.

*Administrative Agent*: U.S. Bank National Association, a national banking association, in its capacity as administrative agent for the Initial Funding Lender, its successors and assigns.

*Affiliated Party*: as to a particular Person, any Person directly and indirectly controlling or controlled by or under direct or indirect common control with such specified Person. "Control," when used with respect to a particular Person, means the possession, directly or indirectly, of the power to direct management and policies of such Person whether through the ownership of voting stock, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

*Assignment of Subordinate Mortgage*: the Assignment of Mortgage, dated as of September 1, 2018, by the Issuer in favor of the Trustee, as it may be amended from time to time.

*Authority*: the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic organized under the laws of the State.

*Authorized Denominations*: \$5,000 or any integral multiple of \$5,000 in excess thereof.

*Available Tax Increment*: has the meaning provided in the TIF Note.

*Basic Payments*: the payments required by Section 4.2 of the Loan Agreement.

*Beneficial Owner:* the Person for which a DTC Participant holds an interest in the Subordinate Bonds as shown on the books and records of the DTC Participant.

*Bond Counsel:* Kennedy & Graven, Chartered, or any other firm of nationally recognized bond counsel experienced in tax-exempt bond financing selected by the Issuer and acceptable to the Borrower.

*Bond Fund:* the fund so designated in Section 5.6 hereof from which the principal of and interest on the Subordinate Bonds are payable.

*Bond Purchase Agreement:* the Bond Purchase Agreement, dated \_\_\_\_\_, 2018, between the Issuer, the Borrower, and the Underwriter, pursuant to which the Underwriter will purchase the Subordinate Bonds.

*Bond Register:* the register maintained by the Trustee pursuant to Section 2.9 hereof

*Bond Registrar:* has the meaning provided in Section 2.9 hereof.

*Bondholder or Holder:* a Person in whose name a Subordinate Bond is registered in the Bond Register.

*Bond Year:* any twelve (12) month period ending on the anniversary of the Date of Issuance.

*Borrower:* Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, its successors and assigns or other Person which may assume its obligations under the Loan Agreement.

*Business Day:* any day on which the Trustee or the Federal Reserve Bank of New York is not authorized by law to close.

*Capitalized Interest Fund:* the fund so designated in Section 5.7 hereof from which interest on the Subordinate Bonds shall be paid.

*Cede & Co.:* initially, Cede & Co., as nominee of DTC and any successor or subsequent such nominee designated by DTC respecting DTC's functions as book-entry depository for any Subordinate Bond or Bonds.

*City:* the Issuer.

*Code:* the Internal Revenue Code of 1986, as amended, and all applicable Treasury Regulations.

*Collateral Documents:* collectively, the Guaranty, the Subordination Agreement, the Security Agreement, the Disbursing Agreement, and any other written instrument other than the Loan Agreement, the Subordinate Mortgage, and this Indenture, whereby any property or interest in property of any kind is granted, pledged, conveyed, assigned, or transferred to the Issuer or Trustee, or both, as security for payment of the Subordinate Bonds or performance by the Borrower of its obligations under the Loan Agreement.

*Completion Date:* the date the Borrower certifies the construction of the Project is complete pursuant to Section 3.7 of the Loan Agreement.

*Condemnation:* the word “Condemnation” or phrase “eminent domain” as used herein shall include the taking or requisition by governmental authority or by a Person, acting under governmental authority and a conveyance made under threat of Condemnation, and “Condemnation award” shall mean payment for property condemned or conveyed under threat of Condemnation;

*Continuing Disclosure Agreement:* the Continuing Disclosure Agreement, dated as of September 1, 2018, between the Borrower and the Dissemination Agent, as it may be amended from time to time.

*Costs of Issuance Fund:* the fund so designated in Section 5.9 hereof from which the Issuance Expenses are payable.

*County:* Hennepin County, Minnesota.

*Date of Issuance:* September \_\_\_\_, 2018, which is the date on which there is delivery by the Issuer of and payment by the Underwriter for the Subordinate Bonds.

*Date of Taxability:* the date as of which the interest on the Subordinate Bonds is deemed taxable under a Determination of Taxability.

*Defaulted Interest:* interest on any Subordinate Bond which is payable but which is not punctually paid or duly provided.

*Determination of Taxability:* a determination that the interest income on any Subordinate Bond is included in gross income for federal income tax purposes under Section 103 of the Code for any reason, other than that the Holder is a Substantial User of the Project or a Related Person thereto, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(i) the date on which any change in law or regulation becomes effective or on which the Internal Revenue Service has issued any private ruling, technical advice or any other written communication to the effect that the interest income on any of the Subordinate Bonds is included in gross income for federal income tax purposes; or

(ii) the date on which the Borrower shall receive notice from the Trustee or the Issuer in writing that the Internal Revenue Service has issued a thirty (30) day letter or other notice which asserts that the interest on such Subordinate Bond is included in gross income for federal income tax purposes.

*Development Agreement:* the Contract for Private Development, dated \_\_\_\_\_, 2018, between the Issuer, the Authority, and the Borrower, as it may be amended from time to time, with respect to the Project.

*Disbursing Agreement:* the \_\_\_\_\_ Agreement, dated as of September 1, 2018, between the Borrower, the Trustee, the Fiscal Agent, the Administrative Agent, and Title, specifying the conditions for the disbursement of the proceeds of the Senior Notes and Subordinate Bonds to pay Project Costs.

*Discharge Date:* the date on which all Outstanding Bonds are discharged under Article 7 hereof.

*Dissemination Agent:* U.S. Bank National Association, a national banking association, its successors and assigns.

*DTC:* The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York, or any successor book-entry securities depository for the Subordinate Bonds appointed pursuant to Section 2.13 hereof.

*DTC Participants:* those broker-dealers, banks and other financial institutions from time to time for which DTC holds bonds or securities as depository.

*Escrow Fund:* the fund so designated in Section 5.9 hereof.

*Event of Default:* any of the events set forth in Section 8.1 hereof or Section 9.1 of the Loan Agreement.

*Federal Bankruptcy Code:* the United States Bankruptcy Reform Act of 1978, as amended, or any similar or succeeding federal bankruptcy law.

*Final Maturity Date:* the Maturity Date, Discharge Date, or Redemption Date on which all Outstanding Bonds either mature, are redeemed or discharged, whichever is earliest.

*Fiscal Agent:* U.S. Bank National Association, a national banking association, acting as fiscal agent with respect to the Senior Notes under the provisions of the Funding Loan Agreement.

*Freddie Mac Commitment:* the commitment from Freddie Mac to the Freddie Mac Seller/Serviceer pursuant to which Freddie Mac has agreed to purchase the Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

*Funding Loans:* the loans in the maximum aggregate principal amount of \$\_\_\_\_\_ made to the Issuer pursuant to the Funding Loan Agreement by the Initial Funding Lender.

*Funding Loan Agreement:* the Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent for the Initial Funding Lender, the Issuer, and the Fiscal Agent, as it may be amended from time to time.

*Government Obligations:* SLGS and any other direct general obligations of, or obligations the prompt payment of the principal of and the interest on which are fully and unconditionally guaranteed by, the United States of America.

*Guarantor:* Dominion Holdings II, LLC, a Minnesota limited liability company, its successors and assigns.

*Guaranty:* the Subordinate Guaranty Agreement, dated as of September 1, 2018, from the Guarantor in favor of the Trustee, as it may be amended from time to time.

*Holder or Bondholder:* the Person in whose name a Subordinate Bond is registered in the Bond Register.

*Independent:* when used with reference to an attorney, engineer, architect, certified public accountant, consultant or other professional person, means a person who (a) is in fact independent;

(b) does not have any material financial interest in the Borrower or the transaction to which his or her certificate or opinion relates (other than payment to be received for professional services rendered); and  
(c) is not connected with the Issuer or the Borrower as an officer, director or employee.

*Independent Accountant:* a certified public accountant or firm of certified public accountants registered and qualified to practice as such under the laws of the State, who does not have any direct financial interest in the Borrower, other than the payment to be received under contract for services performed and who is not connected with the Borrower as an officer, employee, underwriter, partner, affiliate, subsidiary, or person performing similar functions and is not a trustee or director of the Borrower.

*Independent Counsel:* any attorney duly admitted to practice law before the highest court of any state, who may be counsel to the Borrower or the Issuer but who may not be an officer or a full-time employee of the Borrower or the Issuer.

*Independent Engineer:* an Independent engineer or engineering firm or an Independent architect or architectural firm qualified to practice the profession of engineering or architecture under the laws of the State.

*Indenture:* this Subordinate Indenture of Trust, dated as of September 1, 2018, between the Issuer and the Trustee, as the same may from time to time be amended or supplemented as herein provided.

*Initial Funding Lender:* together, U.S. Bank National Association, a national banking association, its successors and assigns, and BMO Harris Bank N.A., a national banking association, as initial funding lender under the Funding Loan Agreement with respect to the Senior Notes, their successors and assigns.

*Interest Payment Date:* March 1 and September 1 of each year, commencing March 1, 2019, and continuing until payment in full of the Subordinate Bonds.

*Issuance Expenses:* any and all costs and expenses relating to the issuance, sale and delivery of the Subordinate Bonds incurred or payable by the Borrower, including but not limited to underwriter's discount, all fees and expenses of legal counsel, the Trustee, financial consultants, feasibility consultants and accountants, any fee to be paid to the Issuer, the preparation and printing of this Loan Agreement, the Indenture, the Disbursing Agreement, the Subordinate Mortgage, any preliminary and final official statement or offering memorandum, the Subordinate Bonds and all other related closing documents, the costs of rating the Subordinate Bonds, and all other expenses relating to the issuance, sale and delivery of the Subordinate Bonds and any other costs which are treated as "issuance costs" within the meaning of Section 147(g) of the Code.

*Issuer:* the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State, its successors and assigns.

*Loan:* the loan of the proceeds of the Subordinate Bonds by the Issuer to the Borrower pursuant to Section 4.1 of the Loan Agreement.

*Loan Agreement:* the Subordinate Loan Agreement, dated as of September 1, 2018, between the Issuer and the Borrower, as the same may from time to time be amended.

*Mandatory Redemption Payments:* the payments which are required to be made under Section 3.1(2) hereof to redeem the Subordinate Bonds in accordance with the Mandatory Redemption Schedule after appropriate credits, if any, have been made.

*Mandatory Redemption Schedule:* the mandatory redemption schedule for the Subordinate Bonds set forth in Section 3.1(2) hereof.

*Maturity or Maturity Date:* any date on which principal of or interest or premium, if any, on the Subordinate Bonds is due, whether at maturity, on a scheduled Interest Payment Date, or upon redemption, defeasance, acceleration, or otherwise.

*Moody's:* Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a municipal securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized municipal securities rating agency designated by the Borrower (other than S&P).

*Mortgaged Property:* has the meaning assigned in the Subordinate Mortgage.

*Net Bond Proceeds:* proceeds of the Subordinate Bonds, including interest earnings thereon.

*Net Proceeds:* when used with respect to proceeds of insurance or a condemnation award, money received or receivable by the Borrower as owner or the Trustee as secured party of the Project, less the cost of recovery (including attorneys' fees) of such money from the insuring company or the condemning authority.

*Notice by Mail:* notice of any action or condition by mail shall mean a written notice meeting the requirements of this Indenture mailed by first-class mail, postage prepaid, to the Holders of specified Bonds at the addresses shown in the Bond Register.

*Original Purchaser:* the Underwriter, or any other financial institution, investment banker, bond dealer, registered investment company, or other person who purchases the Subordinate Bonds from the Issuer.

*Outstanding:* as of the date of determination, all Subordinate Bonds theretofore issued and delivered under this Indenture except:

(i) Subordinate Bonds theretofore cancelled by the Trustee or Paying Agent or delivered to the Trustee or Paying Agent cancelled or for cancellation;

(ii) Subordinate Bonds for which payment or redemption money or securities (as provided in Article 7 hereof) shall have been theretofore deposited with the Trustee in trust for the Holders of such Subordinate Bonds, provided, however, that if such Subordinate Bonds are to be redeemed, notice of such redemption shall have been duly given pursuant to this Indenture or irrevocable action shall have been taken to call such Subordinate Bonds for redemption at a stated Redemption Date; and

(iii) Subordinate Bonds in exchange for or in lieu of which other Subordinate Bonds shall have been issued and delivered pursuant to this Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the Borrower shall be disregarded and deemed not to be Outstanding Bonds, except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Subordinate Bonds which the Trustee knows to be owned by the Borrower shall be disregarded.

*Paying Agent:* the Trustee or any other entity designated pursuant to this Indenture as the agent of the Issuer and the Trustee to receive and disburse the principal of and premium, if any, and interest on the Subordinate Bonds.

*Payment Date:* any Interest Payment Date, any Principal Payment Date, any Stated Maturity, the Discharge Date or any Redemption Date.

*Permitted Investments:*

- (i) Government Obligations;
- (ii) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including:
  - Export-Import Bank
  - Farmers Home Administration
  - General Services Administration
  - U.S. Maritime Administration
  - Small Business Administration
  - Government National Mortgage Association (GNMA)
  - U.S. Department of Housing & Urban Development (PHA's)
  - Federal Housing Administration;
- (iii) bonds, notes or other evidences of indebtedness rated at the time of investment "AAA" by S&P and "Aaa" by Moody's issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;
- (iv) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P and "P-1" by Moody's and maturing no more than three hundred sixty (360) days after the date of purchase (ratings on holding companies are not considered as the rating of the bank);
- (v) commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's and "P-1" by Moody's and which matures not more than two hundred seventy (270) days after the date of purchase;
- (vi) investments in a money market fund rated at the time of investment "AAAm" or "AAAm-G" or better by S&P;
- (vii) Pre-refunded municipal obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to



maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(a) which are rated at the time of investment, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of S&P and Moody’s; or

(b) (1) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in clause (i) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (2) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the Subordinate Bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

(viii) investment agreements issued or guaranteed by any financial institution maintaining a rating at the time of investment of “A” or better by S&P or “A2” or better by Moody’s; or

(ix) fixed income securities issued by any state of the United States of America or any agency, instrumentality or political subdivision thereof which are rated at the time of investment not less than “A” by S&P or “A2” by Moody’s.

*Permitted Encumbrances:* those encumbrances set forth in Section 5 of the Subordinate Mortgage.

*Person:* any natural person, corporation, limited liability company, joint venture, cooperative, partnership, trust or unincorporated organization, government or governmental body or agency, political subdivision or other legal entity, as in the context may be appropriate.

*Principal Payment Date:* March 1 and September 1 of each year, commencing September 1, 2022.

*Prior Note:* the Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018, issued by the Issuer on May 7, 2018, in the original aggregate principal amount of \$30,500,000.

*Project:* the 220-unit workforce housing rental development to be located on the Project Premises and to be known as Preserve at Shady Oak, a portion of which will be acquired, constructed, and equipped with proceeds of the Subordinate Bonds.

*Project Costs:* the cost items enumerated in Section 3.2 of the Loan Agreement.

*Project Fund:* the fund so designated in Section 5.5 hereof from which the Project Costs are payable.

*Project Loan Agreement:* the Project Loan Agreement, dated as of September 1, 2018, between the Issuer, the Fiscal Agent, and the Borrower, as it may be amended from time to time.

*Project Loan Fund:* the fund established by the Fiscal Agent pursuant to Section 2.12 of the Funding Loan Agreement and the fund so designated in Section 5.2 hereof.

*Project Premises:* the real estate located at 10987 and 11015 Bren Road East in the City and legally described in Exhibit A attached to the Subordinate Mortgage, together with all additions to, replacements of and substitutions for the foregoing, but excluding any real estate released from the lien of the Subordinate Mortgage pursuant to the terms of the Subordinate Mortgage.

*Rating Agency:* S&P or Moody's.

*Rebatable Arbitrage:* has the meaning provided in Section 5.8 hereof.

*Rating Category:* one of the generic rating categories of a Rating Agency, without regard to any refinement or gradation of such Rating Category by a numerical or other modifier.

*Rebate Amounts:* the amount determined pursuant to Section 5.8 hereof and Section 7.7(13) of the Loan Agreement to be rebated to the United States.

*Rebate Analyst:* a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Issuer, to make the rebate computations required under this Indenture and the Loan Agreement.

*Rebate Fund:* the fund so designated in Section 5.8 hereof.

*Record Date:* the fifteenth day of the calendar month next preceding an Interest Payment Date, whether or not such day is a Business Day.

*Redemption Date:* when used with respect to any Subordinate Bond to be redeemed, the date on which it is to be redeemed pursuant hereto.

*Redemption Price:* when used with respect to any Subordinate Bond to be redeemed, the price at which it is to be redeemed pursuant hereto.

*Refunding Fund:* the fund so designated in Section 5.4 hereof.

*Regular Interest Payments:* all interest payments on the Subordinate Bonds, other than Special Interest Payments.

*Regulatory Agreement:* the Regulatory Agreement, dated the Date of Issuance, between the Issuer, the Borrower, the Fiscal Agent, and the Trustee, as the same may be amended from time to time.

*Related Person:* with reference to any Substantial User, means a "related person" within the meaning of Section 147(a)(2) of the Code.

*Related Loan Documents:* collectively, the Loan Agreement, the Subordinate Mortgage, the Collateral Documents, and the Disbursing Agreement.

*Representation Letter:* such Letter of Representations to DTC or other documentation required by DTC as a condition to its acting as book-entry depository for any bond or bonds together with any

replacement thereof or amendment or supplement thereto (and including any standard procedures or policies referenced therein or applicable thereto) respecting the procedures and other matters relating to DTC's role as book-entry depository for the Subordinate Bonds.

*Representative:* the Mayor, City Manager, and Finance Director of the Issuer or a general partner of the Borrower, or any other person at any time designated to act on behalf of the Issuer or the Borrower, as the case may be, as evidenced by a written certificate furnished to the other party and the Trustee containing the specimen signature of such person and signed for the Issuer by its Mayor, City Manager, or Finance Director or for the Borrower by a general partner of the Borrower.

*Responsible Officer:* when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

*Restricted Obligations:* an obligation the interest on which is included in gross income for federal income tax purposes under Section 103 of the Code.

*Security Agreement:* the Assignment, Pledge, and Security Agreement, dated as September 1, 2018, from the Borrower in favor of the Trustee, granting a security interest in the TIF Note, as it may be amended from time to time.

*Senior Mortgages:* together, (i) with respect to the Series A-1 Governmental Note and the Series A-2 Governmental Note, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated September \_\_, 2018, from the Borrower to the Issuer and assigned by the Issuer to the Fiscal Agent, as it may be amended from time to time; and (ii) with respect to the Series B-1 Governmental Note and the Series B-2 Governmental Note, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated September \_\_, 2018, from the Borrower to the Issuer and assigned by the Issuer to the Fiscal Agent, as it may be amended from time to time.

*Senior Notes:* collectively, the Series A-1 Governmental Note, the Series A-2 Governmental Note, the Series B-1 Governmental Note, and the Series B-1 Governmental Note.

*Series A-1 Governmental Note:* the Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$\_\_\_\_\_.

*Series A-2 Governmental Note:* the Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$\_\_\_\_\_.

*Series B-1 Governmental Note:* the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-1, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$\_\_\_\_\_.

*Series B-2 Governmental Note:* the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-2, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$\_\_\_\_\_.

*Single Purpose Entity:* a Person, other than an individual, which is formed or organized solely for the purpose of directly holding an ownership interest in the Project, does not engage in any business unrelated to the Project, does not have any assets other than those related to its interest in such Project, has its own separate books and records and has its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person, and holds itself out as being a Person, separate and apart from any other Person. In addition to the foregoing, with respect to the Borrower, a Single Purpose Entity shall also be as follows:

(i) a Person which is and at all times since its formation has been (a) a duly formed and existing Person which is either not treated as a taxpayer under the tax laws of any governmental authority or (i) treated as a taxpayer under any tax law of any governmental authority and (ii) has tax liability which is adequately provided for, and, (b) duly qualified as a foreign Person in each jurisdiction in which such qualification was or may be necessary for the conduct of its business;

(ii) a Person which is in compliance with, and at all times since its formation has complied with, the provisions of its organizational documents and the laws of its jurisdiction of formation;

(iii) a Person which has at all times since its formation observed all customary formalities regarding its existence;

(iv) a Person which (a) has at all times since its formation accurately maintained its financial statements, accounting records and other books and records separate from those of any Person, (b) has not at any time since its formation commingled its assets with those of any Person and (c) has at all times since its formation accurately maintained its own bank accounts, payroll and separate books of account;

(v) a Person which has at all times since its formation paid its own liabilities from its own separate assets or, if paid by another, provided for reimbursement thereof;

(vi) a Person which (a) has at all times since its formation identified itself in all dealings with the public, under its own name or under any “doing business as” name (provided such “doing business as” name is used exclusively by such Person) and as a separate and distinct entity and (b) has not at any time since its formation identified itself as being a division or a part of any other entity and (c) has not at any time since its formation identified any other Person as being a division or part of such Person;

(vii) a Person which has been at all times since its formation adequately capitalized in light of the nature of its business;

(viii) a Person which, except with respect to obligations and liabilities set forth in the Loan Agreement, the Subordinate Mortgage, and the Collateral Documents, has not at any time since its formation incurred, assumed or guaranteed any indebtedness (contingent or otherwise) or the liabilities of any Person or has not at any time since its formation acquired obligations or securities of any Person or has not at any time since its formation made loans or advances to any Person; and

(ix) a Person which has not at any time since its formation entered into and was not a party to any transaction with any affiliate, except in the ordinary course of business of such

Person on terms which are no less favorable to such Person than would be obtained in a comparable arm's-length transaction with an unrelated third party.

*SLGS*: United States Treasury Certificates of Indebtedness, Notes and Bonds – State and Local Government Series.

*S&P*: S&P Global Ratings, its successors and their assigns, and if such entity shall be dissolved or liquidated or shall no longer perform the functions of a municipal securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized municipal securities rating agency designated by the Borrower (other than Moody’s).

*Special Interest Payments*: all payments of (or with respect to) interest on the Subordinate Bonds made upon the acceleration of the Subordinate Bonds pursuant to Section 8.2 hereof.

*Special Record Date*: the date fixed by the Trustee pursuant to Section 2.2 hereof relating to the payment of any Defaulted Interest.

*State*: the State of Minnesota.

*Stated Maturity*: when used with respect to any Subordinate Bond or any installment of interest thereon, the date specified in such Subordinate Bond as the fixed date on which principal of such Subordinate Bond or such installment of interest is due and payable.

*Subordinate Bond Proceeds Subaccount*: with respect to the Subordinate Bonds, the Subordinate Bond Proceeds Subaccount of the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 of the Funding Loan Agreement and the subaccount so designated in Section 5.5 hereof.

*Subordinate Bonds*: the Issuer’s Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C, issued by the Issuer in the original aggregate principal amount of \$3,570,000.

*Subordinate Mortgage*: the Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018, by the Borrower in favor of the Trustee and assigned by the Issuer to the Trustee pursuant to the Assignment of Subordinate Mortgage, as it may be amended from time to time.

*Subordination Agreement*: the Subordination Agreement, dated the Date of Issuance, between the Issuer, the Borrower, the Fiscal Agent, the Trustee, and the Administrative Agent for the Initial Funding Lender, as it may be amended from time to time.

*Substantial User*: a “substantial user” within the meaning of Section 147(a)(1) of the Code.

*Surplus Cash*: has the meaning assigned to such term in the Subordination Agreement.

*Tax Certificate*: the Borrower Tax Certificate executed by the Borrower on the Date of Issuance with the endorsement of the Issuer.

*Taxable Note Proceeds Subaccount*: the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 of the Funding Loan Agreement and the subaccount so designated in Section 5.5 hereof.

*Tax-Exempt Note Proceeds Subaccount:* the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 of the Funding Loan Agreement and the subaccount so designated in Section 5.5 hereof.

*Term of Loan Agreement:* the period of time commencing on the date of execution of the Loan Agreement and terminating on the date set forth in Section 10.10 of the Loan Agreement or such earlier date as provided by Section 7.8 or 8.4 of the Loan Agreement.

*TIF Note:* the pay-as-you-go note designated as the Tax Increment Revenue Note, Series 2018, dated \_\_\_\_\_, 2018, issued by the Authority in the maximum principal amount of \$3,648,000 in favor of the Borrower and pledged by the Borrower to the Trustee, at the direction of the Borrower, pursuant to the Loan Agreement and the Security Agreement to secure the Subordinate Bonds.

*Title:* Commercial Partners Title, LLC, a Minnesota limited liability company, its successors and assigns.

*Treasury Regulations:* the regulations promulgated under the Code.

*Trust Estate:* the Trust Estate as defined and set forth in the Granting Clauses hereof.

*Trustee:* U.S. Bank National Association, a national banking association, and any co-trustee or successor trustee appointed, qualified and then acting as such under the provisions of this Indenture.

*Underwriter:* Dougherty & Company LLC, or any successor underwriter appointed and serving in such capacity pursuant to this Indenture.

*Unpaid Bonds:* all Outstanding Bonds and any other Bonds which have neither matured nor been redeemed or purchased and cancelled under this Indenture.

*Working Capital Expense:* any cost that is not properly chargeable to the Project's capital account within the meaning of the Code.

Section 1.2 Rules of Interpretation. This Indenture shall be interpreted in accordance with and governed by the laws of the State.

The words "herein," "hereof," and "hereunder" and words of similar import, without reference to any particular section or subdivision, refer to this Indenture as a whole rather than to any particular section or subdivision of this Indenture.

References in this Indenture to any particular article, section or subdivision hereof are to the designated article, section or subdivision of this Indenture as originally executed.

All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

The Table of Contents and titles of articles and sections herein are for convenience only and are not a part of this Indenture.

Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Indenture.

For purposes of this Indenture and the Loan Agreement, an Act of Bankruptcy shall be deemed no longer pending if the petition is dismissed by order of a court of competent jurisdiction and no further appeal rights exist from such order.

Any opinion of counsel called for herein shall be a written opinion of such counsel.

References to the Subordinate Bonds as “tax exempt” or to the “tax-exempt status of the Subordinate Bonds” are to the exclusion of interest from gross income pursuant to Section 103(a) of the Code, irrespective of such forms of taxation as the alternative minimum tax or branch profits tax on foreign corporations, as is consistent with the approach taken in Section 59(i) of the Code.

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## ARTICLE 2

### THE SUBORDINATE BONDS

Section 2.1 Special Obligations and Sources of Payment; Authorized Amount and Form of Bonds.

(1) The Subordinate Bonds are special, limited obligations of the Issuer, the principal of, premium, if any, and interest on which are payable solely from the Trust Estate, but if such amounts are not sufficient, the Borrower shall make such payments from funds realized from the sale or other disposition of the Mortgaged Property and net revenues of the Project available after payment of all amounts due with respect to the Senior Notes.

(2) Subordinate Bonds secured by this Indenture shall be issued in fully registered form, without coupons, in any Authorized Denominations, in substantially the form set forth in EXHIBIT A attached hereto with such appropriate variations, omissions and insertions as are permitted or required by this Indenture, and in accordance with the further provisions of this Article 2. The total principal amount of the Subordinate Bonds that may be outstanding hereunder is expressly limited to \$3,570,000.

Section 2.2 Initial Issue. The Subordinate Bonds shall be initially issued in the original aggregate principal amount of \$3,570,000 and shall:

(1) be dated as of their date of nominal original issuance, or the date of their registration as provided in Section 2.9 hereof;

(2) be issued and delivered to the Original Purchaser as fully registered bonds without coupons in any Authorized Denomination and shall be numbered R-1 upward;

(3) be subject to the provisions of Section 3.1 hereof, have Stated Maturities on the Principal Payment Dates of each of the following years, in the following respective principal amounts, and bear interest at the rates per annum for each Stated Maturity of the Subordinate Bonds until paid or discharged as herein provided, with interest computed on the basis of a three hundred sixty (360) day year composed of twelve (12) thirty (30) day months, as set forth below opposite the respective Stated Maturities:

<u>Stated Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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(4) bear interest payable semiannually on each Interest Payment Date and continuing until payment in full of the Subordinate Bonds;

(5) be subject to redemption upon the terms and conditions and at the prices specified in Article 3 hereof;



(6) be payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, at the principal trust office of the Trustee acting as the Paying Agent, or a duly appointed successor Paying Agent, except that interest on the Subordinate Bonds will be payable by check or draft mailed by the Trustee to the Holders of such Subordinate Bonds on the applicable Record Date (the “Record Date Holders”) at the last addresses thereof as shown in the Bond Register on the applicable Record Date, and principal of and any premium on any Subordinate Bonds shall be payable at the principal office of the Trustee, provided that any Defaulted Interest shall be payable, on a date selected by the Trustee, to the Person in whose name such Subordinate Bond is registered in the Bond Register at the close of business on a Special Record Date selected by the Trustee and which shall be at least ten (10) days but not more than thirty (30) days before the date selected by the Trustee for payment of such Defaulted Interest; the Trustee shall give Notice by Mail of the Special Record Date and date for payment of Defaulted Interest at least ten (10) days before the Special Record Date; and

(7) notwithstanding the foregoing, if the date for payment of the principal of, premium, if any, or interest on any Subordinate Bond shall be a day which is not a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment.

Notwithstanding the foregoing, any Record Holder of at least \$500,000 in principal amount of the Outstanding Subordinate Bonds may file with the Trustee an instrument satisfactory to the Trustee requesting the interest payable by the Trustee to such Holder be paid by transferring by wire transfer in immediately available funds, on the day such payment is due, the amount to be distributed to such Holder to a designated account maintained by such Holder at any bank in the United States. The Trustee shall pay all amounts payable by the Trustee hereunder to such Holder by transfer directly to said designated bank in accordance with the provisions of any such instrument, provided that if such amount represents a payment of the principal of any Subordinate Bond, such Subordinate Bond shall have been presented to the Trustee. All payments so made shall be valid and effectual to satisfy and discharge the liability upon such Subordinate Bonds.

Section 2.3 Execution. The Subordinate Bonds shall be executed on behalf of the Issuer by the signatures of its Mayor and City Manager and be sealed with the seal of the Issuer, provided, however, that the seal of the Issuer may be a printed facsimile or may be omitted, provided further that all of such signatures may be printed or photocopied facsimiles, in which event the Subordinate Bonds shall also be executed manually by the Trustee as authenticating agent as provided in Section 2.4 hereof and Minnesota Statutes, Section 475.55, as amended. In the event of disability or resignation or other absence of either such officer, the Subordinate Bonds may be signed by the manual or facsimile signature of that officer who may act on behalf of such absent or disabled officer. In case either such officer whose signature or facsimile of whose signature shall appear on the Subordinate Bonds shall cease to be such officer before the delivery of the Subordinate Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. The Subordinate Bonds may be issued and delivered as typewritten bonds or as printed bonds, provided that if the typewritten bonds are delivered, the facsimile signatures of the Issuer may be conformed signatures.

Section 2.4 Authentication. No Subordinate Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless a certificate of authentication signed by the Trustee (the “Certificate of Authentication”) on such Subordinate Bond, substantially in the form attached hereto as EXHIBIT A, shall have been duly executed manually by a Responsible Officer. Certificates of Authentication on different Subordinate Bonds need not be signed by the same person. The Trustee shall authenticate the signatures of officers of the Issuer on each Subordinate Bond by execution of the Certificate of Authentication on the Subordinate Bond, and the executed Certificate of

Authentication on each Subordinate Bond shall be conclusive evidence that it has been authenticated and delivered under this Indenture.

Section 2.5 Delivery of Initial Issue. Upon the execution and delivery of this Indenture the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate, the Subordinate Bonds in the original aggregate amount of \$3,570,000 and the Trustee shall deliver the Subordinate Bonds to the Original Purchaser as hereinafter provided after filing with the Trustee the following:

(1) original executed counterparts of the Loan Agreement, the Subordinate Mortgage, the Regulatory Agreement, the Assignment of Subordinate Mortgage, the Disbursing Agreement, the Guaranty, the TIF Note, the Security Agreement, the Subordination Agreement, the Continuing Disclosure Agreement, and this Indenture;

(2) a copy, duly certified by the Issuer's appropriate recording officer, of the resolutions adopted and approved by the governing body of the Issuer, authorizing the execution and delivery of this Indenture and the documents described in subsection (1) above to which the Issuer is a party;

(3) a request and authorization (which may be part of a certificate of the Issuer) to the Trustee on behalf of the Issuer, signed by its Mayor and City Manager to deliver the Subordinate Bonds to the Original Purchaser therein identified upon payment to the Trustee for the account of the Issuer of a specified sum plus accrued interest (the "Issuer Request");

(4) the opinion of the Borrower's counsel in the form required by Bond Counsel and counsel to the Original Purchaser;

(5) the opinion of Bond Counsel approving the legality and tax-exempt status of the Subordinate Bonds issued pursuant to this Indenture; and

(6) any other documents or opinions as Bond Counsel may require for purposes of rendering its opinion required under subsection (5) above.

Section 2.6 Mutilated, Lost, Stolen or Destroyed Subordinate Bonds.

(1) In case any Subordinate Bond issued hereunder shall become mutilated or be destroyed or lost, the Issuer shall, if not then prohibited by law, cause to be executed, and the Trustee shall authenticate and deliver, a new Subordinate Bond of like series, amount, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Subordinate Bond, or in lieu of and in substitution for any such Subordinate Bond destroyed or lost, upon the Holder's paying the reasonable expenses and charges of the Trustee and Issuer and, in the case of a Subordinate Bond destroyed or lost, the filing with the Trustee evidence satisfactory to the Trustee that such Subordinate Bond was destroyed or lost, and of the ownership thereof, and furnishing the Issuer and the Trustee with indemnity satisfactory to them. If the mutilated, destroyed or lost Subordinate Bond has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Subordinate Bond prior to payment.

(2) In executing a new Subordinate Bond and in furnishing the Trustee with the written authorization to authenticate and deliver a new Subordinate Bond as provided for in this Section, the Issuer may rely conclusively on a representation of the Trustee that the Trustee is satisfied with the adequacy of the evidence presented concerning the mutilation, loss, theft or destruction of any Subordinate Bond.

Section 2.7 Ownership of Subordinate Bonds. The Issuer, Trustee and Paying Agent may deem and treat the Holder of any Subordinate Bond, whether or not such Subordinate Bond shall be overdue, as the absolute owner of such Subordinate Bond for the purpose of receiving payment thereof and for all other purposes whatsoever, and the Issuer (or any agent thereof), Trustee and Paying Agent shall not be affected by any notice to the contrary.

Section 2.8 Preparation of Subordinate Bonds. The Subordinate Bonds shall be printed or typewritten bonds substantially in the form attached hereto as EXHIBIT A.

Section 2.9 Registration, Transfer and Exchange of Subordinate Bonds.

(1) The Issuer will cause to be kept at the principal corporate trust office of the Trustee a Bond Register in which, subject to such reasonable regulations as the Trustee may prescribe, the Issuer shall provide for the registration of Bonds and the registration of transfers of Subordinate Bonds, and the Trustee is hereby appointed “Bond Registrar” for the purpose of registering the Subordinate Bonds and transfers of the Subordinate Bonds as herein provided. The Bond Register shall contain a record of every Subordinate Bond at any time authenticated hereunder, together with the name and address of the Holder thereof, the date of authentication, the date of transfer or payment, and such other matters as are appropriate for the Bond Register in the estimation of the Trustee.

(2) Upon surrender for transfer of any Subordinate Bond at the principal corporate trust office of the Trustee, the Issuer shall execute (if necessary), and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees (but not registered in blank or to “bearer” or a similar designation), one or more new Subordinate Bonds of any Authorized Denomination, having the same Stated Maturity and interest rate, as requested by the transferor. The execution by the Issuer of any Subordinate Bond of any denomination shall constitute full and due authorization of such denomination and the Trustee shall thereby be authorized to authenticate and deliver such Subordinate Bond.

(3) At the option of the Holder, Subordinate Bonds may be exchanged for other Subordinate Bonds of the same series of any Authorized Denomination of a like aggregate principal amount and Stated Maturity, upon surrender of the Subordinate Bonds to be exchanged at the principal corporate trust office of the Trustee, and upon payment, if the Issuer shall so require, of the taxes, if any, hereinafter referred to. Whenever any Subordinate Bonds are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Subordinate Bonds which the Holder making the exchange is entitled to receive.

(4) All Subordinate Bonds surrendered upon any exchange or transfer provided for in this Indenture shall be promptly cancelled by the Trustee and thereafter disposed of as directed by the Issuer.

(5) All Subordinate Bonds delivered in exchange for or upon transfer of Subordinate Bonds shall be valid special obligations of the Issuer evidencing the same debt, and entitled to the same benefits under this Indenture, the Loan Agreement, the Subordinate Mortgage, and any Collateral Document, as the Subordinate Bonds surrendered for such exchange or transfer.

(6) Transfer of a Subordinate Bond may be made on the Issuer’s books by the registered owner in person or by the registered owner’s attorney duly authorized in writing. Every Subordinate Bond presented or surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument or instruments of transfer, in the form printed on the Subordinate Bond or in another form satisfactory to the Trustee, duly executed and with guaranty of signature of the Holder thereof or his attorney duly authorized in writing and shall include written instructions as to the details of the transfer of the Subordinate Bond.

(7) No service charge shall be made to the Holder for any registration, transfer or exchange, but the Trustee may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in connection with any transfer or exchange of Subordinate Bonds, other than exchanges expressly provided in this Indenture to be made without expense or without charge to Bondholders.

(8) Subject to the provisions of subsection (9) below, the Trustee as Bond Registrar shall endeavor to comply with rules applicable to transfer agents registered with the Securities and Exchange Commission as to the seventy-two (72) hour “turnaround” standard established for the transfer of registered corporate securities.

(9) The Trustee shall not be required (i) to transfer or exchange any Subordinate Bond during a period beginning at the opening of business ten (10) days before the day of the first publication or the mailing (if there is no publication) of a notice of redemption of Subordinate Bonds under this Indenture and ending at the close of business on the day of such publication or mailing, or (ii) to transfer or exchange any Subordinate Bond so selected for redemption in whole or in part.

(10) The Bond Registrar shall insert in each Subordinate Bond the date of registration which, for purposes of delivering the original Subordinate Bonds to the Original Purchaser, shall be the date of original issue, and which for all other events shall be the last Interest Payment Date preceding the date of authentication to which interest on the Subordinate Bond has been paid or made available for payment, unless the date of authentication is an interest payment date to which interest has been paid or made available for payment, in which case the Subordinate Bond shall be dated as of the date of authentication. Each Subordinate Bond shall be so dated that neither gain nor loss in interest shall result from any transfers, exchange or substitution provided for herein.

Section 2.10 Interest Rights Preserved. Each Subordinate Bond delivered upon transfer of or in exchange for or in lieu of any other Subordinate Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Subordinate Bond.

Section 2.11 Cancellation of Subordinate Bonds. Whenever any Outstanding Subordinate Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount and interest represented thereby or for replacement pursuant to Section 2.6 hereof or transfer pursuant to Section 2.9 hereof, such Subordinate Bond shall be cancelled and, subject to the Trustee’s business practices, destroyed by the Trustee.

Section 2.12 Book-Entry System. Upon request of a Holder any Subordinate Bond may be registered in the Bond Register in the name of Cede & Co., as the nominee of DTC, who will thereafter act as securities depository for such Subordinate Bond or Subordinate Bonds.

With respect to Bonds registered in the Bond Register in the name of Cede & Co., as nominee of DTC, neither the Issuer, the Borrower nor the Trustee shall have any responsibility or obligation to any DTC Participant or to any Beneficial Owner. Without limiting the immediately preceding sentence, neither the Issuer, the Borrower, nor the Trustee shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the Subordinate Bonds, (ii) the delivery to any DTC Participant, any Beneficial Owner or any other Person, other than DTC, of any notice with respect to the Subordinate Bonds, including any notice of redemption, (iii) the payment to any DTC Participant, any Beneficial Owner or any other Person, other than DTC, of any amount with respect to the principal of or premium, if any, or

interest on the Subordinate Bonds, or (iv) the failure of DTC to provide any information or notification on behalf of any DTC Participant or Beneficial Owner.

The Issuer, the Borrower and the Trustee may treat as and deem DTC to be the absolute owner of each Subordinate Bond for the purpose of payment of the principal of and premium and interest on such Subordinate Bond, for the purpose of giving notices of redemption and other matters with respect to such Subordinate Bond, for the purpose of registering transfers with respect to such Subordinate Bonds, and for all other purposes whatsoever (except for the giving of certain Bondholder consents). The Trustee shall pay all principal of and premium, if any, and interest on the Subordinate Bonds to the Bondholders as shown on the Bond Register, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of and premium, if any, and interest on the Subordinate Bonds to the extent of the sum or sums so paid.

Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the transfer provisions in Section 2.9 hereof, references to "Cede & Co." in this Section shall refer to such new nominee of DTC.

Notwithstanding the provisions of this Indenture to the contrary (including without limitation surrender of Subordinate Bonds, registration thereof, and Authorized Denominations), as long as the Subordinate Bonds are in book-entry form, full effect shall be given to the Representation Letter and the procedures and practices of DTC thereunder.

Section 2.13 Termination of Book-Entry Only System. DTC may determine to discontinue providing its services with respect to any Subordinate Bonds registered in the name of Cede & Co. at any time by giving written notice to the Trustee and discharging its responsibilities with respect thereto under applicable law. Upon the termination of the services of DTC as provided above, the Subordinate Bonds may be registered in whatever name or names the Bondholders shall designate at that time, in accordance with Section 2.9 hereof. To the extent that the Beneficial Owners are designated as the transferee by the Bondholders, in accordance with Section 2.9 hereof, the Subordinate Bonds will be delivered in appropriate form, content and Authorized Denomination to the Beneficial Owners.

So long as any Subordinate Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal of and premium, if any, and interest on such Subordinate Bond and all notices with respect to such Subordinate Bond shall be made and given, respectively, to DTC as provided in the Representation Letter.

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**ARTICLE 3**

**REDEMPTION OF BONDS BEFORE MATURITY**

Section 3.1 Redemption Provisions. The Subordinate Bonds are subject to redemption and prepayment as follows:

(1) Optional Redemption. The Subordinate Bonds are subject to redemption and prepayment upon request by the Borrower to the Trustee on \_\_\_\_\_ 1, 20\_\_\_\_, and on any Business Day thereafter, in whole or in part, and if in part, in inverse order of their maturity dates in principal increments of \$5,000 and by lot within any Maturity, at a Redemption Price equal to the principal amount of the Subordinate Bonds to be redeemed plus accrued interest thereon.

(2) Mandatory Redemption Upon Failure to Meet Disbursement Requirements. The Subordinate Bonds are subject to mandatory redemption in whole but not in part on September 1, 2019 if the conditions set forth in Section 3.6 of the Loan Agreement for disbursement are not met on or before August 1, 2019.

(3) Mandatory Sinking Fund Redemption. The Subordinate Bonds maturing \_\_\_\_\_ 1, 20\_\_\_\_, \_\_\_\_\_ 1, 20\_\_\_\_, and \_\_\_\_\_ 1, 20\_\_\_\_ are subject to mandatory redemption by lot in the principal increments of \$5,000, at par and accrued interest without premium, on the dates and in the principal amounts set forth below (unless and to the extent a credit against any such amount is applied as provided in the Funding Loan Agreement):

Subordinate Bonds Maturing _____ 1, 20____			
Year	Amount	Year	Amount

\_\_\_\_\_  
\* *Maturity*

Subordinate Bonds Maturing _____ 1, 20____			
Year	Amount	Year	Amount

\_\_\_\_\_  
\* *Maturity*

Subordinate Bonds Maturing 1, 20

Year	Amount	Year	Amount
------	--------	------	--------

\* *Maturity*

At the option of the Borrower exercised not less than forty-five (45) days prior to any Sinking Fund Redemption Date, the Borrower may (i) deliver to the Trustee for cancellation Subordinate Bonds in any aggregate principal amount desired, or (ii) receive a credit in respect of such sinking fund obligation for any Subordinate Bonds which prior to such date have been purchased or redeemed (other than through the operation of the sinking fund) and not otherwise previously applied as a credit against sinking fund payments.

(4) Extraordinary Redemption. In the events described in Section 8.4(1) of the Loan Agreement and exercise by the Borrower of its option to terminate the Loan Agreement, the Subordinate Bonds shall be redeemed in whole by the Issuer on the earliest date for which timely notice of call can be given after receipt of the Borrower's notice of exercise, at a Redemption Price equal to the principal amount to be redeemed, without any premium, plus accrued interest to the Redemption Date.

(5) Tax Redemption. The Subordinate Bonds are subject to mandatory redemption in whole on the first Business Day for which notice of redemption can properly be given as provided herein upon the occurrence of a Determination of Taxability at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Subordinate Bonds plus accrued interest thereon to the Redemption Date.

Section 3.2 Partial Redemption of Subordinate Bonds. In the case of any partial redemption of Subordinate Bonds of the same maturity pursuant to any provision of this Indenture, the particular Subordinate Bonds or portions thereof to be redeemed shall be selected by the Trustee by lot. In the case of any partial redemption of a Subordinate Bond in a denomination greater than \$5,000 then for all purposes in connection with such redemption, the first \$5,000 of face value of such Subordinate Bond shall be treated as though it were a separate Subordinate Bond in the denomination of \$5,000 and each remaining \$5,000 of face value of such Subordinate Bond shall be treated as though it were a separate Subordinate Bond in the denomination of \$5,000, and such Subordinate Bond shall be redeemed only in a principal amount sufficient to redeem one or more of such separate Subordinate Bonds in full. Any Subordinate Bond which is to be redeemed only in part shall be surrendered to the Trustee (i) for payment of the Redemption Price (including accrued interest thereon to the Redemption Date) of the portion thereof called for redemption and (ii) for exchange for Subordinate Bonds in any Authorized Denomination in aggregate principal amount equal to the unredeemed portion of such Subordinate Bond without charge therefor. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Subordinate Bonds shall relate, in the case of any Subordinate Bond redeemed or to be redeemed only in part, to the portion of the principal of such Subordinate Bond which has been or is to be redeemed.

Section 3.3 Procedure for Redemption. In the event the Borrower shall give notice to the Trustee of any redemption of the Subordinate Bonds under Section 3.1, the Trustee shall give notice, in the name of the Issuer, of the redemption of such Subordinate Bonds, which notice shall (1) specify the Subordinate Bonds (or portions thereof) to be redeemed, the Redemption Date, the Redemption Price and the place or places where or, if a partial redemption the manner in which the amounts due upon such

redemption will be payable and (2) state that on the Redemption Date the Subordinate Bonds (or portions thereof) to be redeemed shall cease to bear interest. Such notice may set forth any additional information relating to such redemption, including any conditions thereto. The Trustee shall give such Notice by Mail at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption, to the Holders of the Subordinate Bonds to be redeemed.

Notwithstanding the foregoing, notice of any redemption pursuant to Section 3.1(1) hereof may provide that the redemption is conditioned on the deposit of sufficient moneys for payment of the Redemption Price on or prior to the Redemption Date. If the notice is conditioned upon moneys being on deposit with the Trustee in an amount sufficient to pay the Redemption Price on the Redemption Date, the notice shall state such condition and that such redemption shall not be effective unless such condition is met.

Any Subordinate Bonds and portions of Subordinate Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with Article 7 hereof shall cease to bear interest on the specified Redemption Date.

Section 3.4 Payment of Subordinate Bonds Upon Redemption. The Redemption Price of Subordinate Bonds or portions thereof called for redemption in accordance with Section 3.3 hereof shall be payable on the date of redemption upon presentation and surrender of such Subordinate Bonds at the place or places of payment. If, on the Redemption Date, sufficient money shall have been deposited with the Trustee to effect such redemption in accordance with this Indenture, then interest shall cease to accrue on all Subordinate Bonds or portions thereof so called for redemption.

Section 3.5 No Partial Redemption After Default. Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and be continuing an Event of Default, there shall be no redemption of less than all of the Subordinate Bonds at the time Outstanding.

Section 3.6 Cancellation. All Subordinate Bonds which have been redeemed shall be cancelled by the Trustee as provided in Section 2.11 hereof and shall not be reissued.

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## ARTICLE 4

### GENERAL COVENANTS

Section 4.1 Payment of Principal, Premium and Interest. Solely from the money derived from the Loan Agreement (other than to the extent payable from proceeds of the Subordinate Bonds or temporary investments), the Issuer will duly and punctually pay the principal of, premium, if any, and interest on the Subordinate Bonds in accordance with the terms of the Subordinate Bonds and this Indenture. Money derived from the Loan Agreement include all money derived from the Granting Clauses set forth herein, including but not limited to Basic Payments under the Loan Agreement and trust funds deposited in the funds and accounts established under Article 5 herein to the extent and in the manner provided in said Article; provided, however, that the Rebate Fund shall not be a trust fund. Nothing in the Subordinate Bonds or in this Indenture shall be considered as assigning or pledging funds or assets of the Issuer other than those covered by the Granting Clauses set forth herein.

Section 4.2 Performance of and Authority for Covenants. The Issuer covenants that it is duly authorized under the Act to issue the Subordinate Bonds authorized hereby, to execute this Indenture, to loan the proceeds of the Subordinate Bonds to the Borrower and to assign and pledge the payments from the Loan Agreement in the manner and to the extent herein set forth; that all action on its part for the issuance of the Subordinate Bonds; and that the execution and delivery of this Indenture has been duly and effectively taken.

Section 4.3 Instruments of Further Assurance. The Issuer covenants that it has not made, done, executed or suffered, and will not make, do, execute or suffer, any act or thing whereby its interest in the Loan Agreement or any part thereof is now or at any time hereafter impaired, changed or encumbered in any manner whatsoever, except as may be expressly permitted herein; and that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such instruments supplemental hereto and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, pledging, assigning and confirming unto the Trustee all and singular the sums assigned and pledged hereby to the payment of the principal of and interest on the Subordinate Bonds.

Section 4.4 Recording and Filing. The Trustee requires that the Borrower cause this Indenture and all supplements thereto, to be kept, recorded and filed in such manner and in such places as may be required by law in order to preserve and protect fully the security of the Holders of the Subordinate Bonds and the rights of the Trustee hereunder and under any other instruments aforesaid.

Section 4.5 Books and Records. The Trustee covenants that so long as any Outstanding Subordinate Bonds issued hereunder and secured by this Indenture shall be unpaid, the Trustee will keep proper books or records and accounts, in which full, true and correct entries will be made of all its financial dealings or transactions in relation to the Project and the payments derived from the Loan Agreement and this Indenture. At reasonable times and under reasonable regulations established by the Trustee, such books shall be open to the inspection of Holders and such accountants or other agencies as the Trustee may from time to time designate.

Section 4.6 Bondholders' Access to Bond Register. Except as otherwise may be provided by law, the Bond Register shall not be deemed a public record and shall not be made available for inspection by the public, unless and until notice to the contrary is given to the Trustee by the Issuer.

Section 4.7 Rights Under Loan Agreement. The Loan Agreement sets forth covenants and obligations of the Issuer and the Borrower, and reference is hereby made to the same for a detailed statement of said covenants and obligations. The Issuer agrees to cooperate in the enforcement of all covenants and obligations of the Borrower under the Loan Agreement and agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Borrower under and pursuant to the Loan Agreement and on behalf of the Holders, whether or not the Issuer has undertaken to enforce such rights and obligations.

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## ARTICLE 5

### FUNDS AND ACCOUNTS

Section 5.1 “Trust Money” Defined. All money received by the Trustee (all such money being herein sometimes called “Trust Money”):

(1) as elsewhere herein provided to be held and applied under this Article 5, or required to be paid to the Trustee and whose disposition is not elsewhere herein otherwise specifically provided for, including but not limited to the investment income of all trust funds held by the Trustee under this Indenture; or

(2) as proceeds from the sale of the Subordinate Bonds; or

(3) as Basic Payments, or as otherwise payable under the Loan Agreement; or

(4) any payments received under the Guaranty; or

(5) any amounts received as a result of enforcement of the Security Agreement or the Subordinate Mortgage;

shall be held by the Trustee as a part of the Trust Estate, and, upon the exercise by the Trustee of any remedy specified in Article 8 hereof, such Trust Money shall be applied in accordance with Section 8.6 hereof, except to the extent that the Trustee is holding in Trust Money or Government Obligations, as the case may be, for the payment of any specified Subordinate Bonds which are no longer deemed to be Outstanding under the provisions of Article 7 hereof, which money or Government Obligations shall be applied only as provided in said Article 7. Prior to the exercise of any such remedy, all or any part of the Trust Money shall be held, invested, withdrawn, paid or applied by the Trustee, from time to time, as provided in this Article 5 or in Articles 6 and 7 hereof.

Section 5.2 Establishment of Funds. The Issuer hereby establishes as trust funds and creates the following funds and accounts:

(a) a Refunding Fund;

(b) a Project Fund;

(c) a Bond Fund;

(d) a Rebate Fund;

(e) a Capitalized Interest Fund; and

(f) an Escrow Fund.

Section 5.3 Application of Proceeds and Other Funds. On the Date of Issuance, \$\_\_\_\_\_ of the proceeds of the Subordinate Bonds will be deposited in the Costs of Issuance Fund and disbursed to pay Issuance Expenses and \$\_\_\_\_\_ of the proceeds of the Subordinate Bonds will be deposited to the Capitalized Interest Fund. On the Date of Issuance \$\_\_\_\_\_ of the proceeds of the Subordinate Bonds will be transferred to Bridgewater Bank, as the original purchaser of the Prior Note, to provide for

the refunding of a portion of the Prior Note on September \_\_\_\_, 2018. The remaining proceeds of the Subordinate Bonds received by the Trustee on the Date of Issuance in the amount of \$\_\_\_\_\_ will be held by the Trustee in the Escrow Fund until the conditions set forth in Section 3.6(1) of the Loan Agreement are satisfied. Upon satisfaction of the conditions set forth in Section 3.6(1) of the Loan Agreement, the Trustee shall deposit the proceeds of the Subordinate Bonds in the amount of \$\_\_\_\_\_ to the following funds:

- (i) \$\_\_\_\_\_ to the Project Fund; and
- (ii) \$\_\_\_\_\_ to the Bond Fund.

Section 5.4 Refunding Fund. There is hereby created a Refunding Fund. The Trustee shall deposit in the Refunding Fund proceeds of the Subordinate Bonds in the amount of \$\_\_\_\_\_, which shall be transferred to Bridgewater Bank, as the original purchaser of the Prior Note, to redeem and prepay a portion of the Prior Note on September \_\_\_\_, 2018. The remainder of the outstanding Prior Note will be repaid with proceeds of the Tax-Exempt Funding Loan (as defined in the Funding Loan Agreement) in accordance with the terms of the Funding Loan Agreement.

Section 5.5 Project Fund.

(1) Upon satisfaction of the conditions set forth in Section 3.6(1) of the Loan Agreement, proceeds of the Subordinate Bonds shall be deposited to the Bond Fund the amount provided in Section 5.3(a)(i) hereof. The proceeds of the Subordinate Bonds deposited in the Project Fund shall be disbursed pursuant to the provisions of the Construction Continuing Covenant Agreement (as defined in the Funding Loan Agreement) and the Disbursing Agreement (except the disbursement of Issuance Expenses of the Subordinate Bonds shall not be subject to the provisions of the Disbursing Agreement).

(2) Any sums in the Project Fund in excess of any amount required to pay Project Costs shall be transferred to the Bond Fund at the time or times and in the manner provided in Article 3 of the Loan Agreement.

(3) Any funds deposited in the Project Fund by the Borrower shall be disbursed before any proceeds of the Subordinate Bonds, including any earnings thereon, in accordance with the Construction Continuing Covenant Agreement (as defined in the Funding Loan Agreement) and the Disbursing Agreement.

(4) Any interest earned on sums held in the Project Fund prior to the Completion Date shall remain a part of the Project Fund.

(5) Any sums remaining in the Project Fund in excess of any amount required to pay Project Costs shall be transferred to the Bond Fund. Any sums remaining in the Subordinate Bond Proceeds Subaccount of the Project Account of the Project Loan Fund in excess of any amount required to pay Project Costs shall be transferred to the Bond Fund.

Section 5.6 Bond Fund.

(1) Upon satisfaction of the conditions set forth in Section 3.6(1) of the Loan Agreement, proceeds of the Subordinate Bonds shall be deposited to the Bond Fund the amount provided in Section 5.3(a)(ii) hereof. There shall be credited to the Bond Fund, as and when received, each payment received by the Trustee under and pursuant to any of the provisions of this Indenture or the Loan Agreement which is required to be paid into the Bond Fund, or which is accompanied by directions that

such payment is to be credited to the Bond Fund, and all payments received with respect to the TIF Note, together with all income derived from the investment of such amounts.

(2) The Trustee shall use amounts on deposit in the Bond Fund to pay the principal of and interest on the Subordinate Bonds as they become due and payable.

(3) If any Subordinate Bond shall not be presented for payment at Maturity, provided money sufficient to pay such Subordinate Bond shall have been made available to the Trustee and are held by the Trustee for the benefit of the Holder thereof, all liability of the Issuer to the Holder thereof for the payment of such Subordinate Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such money, without liability for interest thereon, for the benefit of the Holder of such Subordinate Bond, who shall thereafter be restricted exclusively to such money for any claim of whatever nature on his part hereunder or on, or with respect to, such Subordinate Bond.

(4) Any money remaining in the Bond Fund after payment in full of all Subordinate Bonds, and payment of the fees, charges and expenses of the Trustee, the Paying Agent, the Issuer and any Co-Paying Agent which have accrued and which will accrue and all other items required to be paid hereunder shall be paid to the Borrower.

(5) Money in the Bond Fund shall be invested as provided in Section 6.1 hereof.

(6) Any surplus money in the Project Fund transferred to the Bond Fund pursuant to Section 5.4(5) hereof shall be used by the Trustee (a) to redeem the largest number of Subordinate Bonds callable, without premium or penalty, under the terms of this Indenture at the first opportunity or (b) to pay principal due on the Subordinate Bonds.

Section 5.7 Capitalized Interest Fund. There is hereby created a Capitalized Interest Fund into which the Trustee shall deposit and hold proceeds of the Subordinate Bonds, in the amount provided in Section 5.3(a)(iii) hereof, to pay interest on the Subordinate Bonds (net of projected tax increment collections) through March 1, 2022.

Any interest earned on sums held in the Capitalized Interest Fund prior to \_\_\_\_\_ shall remain a part of the Capitalized Interest Fund. Any funds remaining in the Capitalized Interest Fund following \_\_\_\_\_ shall be transferred to the Bond Fund.

Section 5.8 Rebate Fund. The Trustee shall deposit in the Rebate Fund, upon receipt, all Rebate Amounts deposited with the Trustee in accordance with Section 7.7(13) of the Loan Agreement, and for purposes of making such deposits the Trustee shall, at the direction of the Borrower, transfer from the appropriate fund to the Rebate Fund a sum equal to any Rebate Amounts attributable to sums held in the Project Fund.

On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Issuer nor the Borrower shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and by the Tax Certificate. The Trustee shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Issuer, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the

manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Issuer, Bond Counsel or the Rebate Analyst.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall deliver to the Trustee and the Issuer a certificate that it has determined no Rebatable Arbitrage is due or shall cause the Rebate Analyst to calculate the amount of Rebatable Arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the Rebatable Arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the “Rebatable Arbitrage”). Pursuant to Section 7.7 of the Loan Agreement, the Borrower shall cause the Rebate Analyst to provide any such calculations to the Trustee and the Issuer. In the event that the Borrower fails to provide such information to the Trustee and the Issuer within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall select the Rebate Analyst, with the prior written approval of the Issuer, and shall cause the Rebate Analyst to calculate the amount of Rebatable Arbitrage as required herein.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, upon the written direction of the Issuer, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Trustee from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

The Trustee shall pay, as directed by the Issuer, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

(1) Not later than sixty (60) days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least ninety (90%) of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and

(2) Not later than sixty (60) days after the payment in whole of the Subordinate Bonds, an amount equal to one hundred percent (100%) of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Trustee.

Notwithstanding any provision of this Indenture to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Section 7.7 of the Loan Agreement and this Section 5.8, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Subordinate Bonds.

Any funds remaining in the Rebate Fund after payment in full of the Subordinate Bonds and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Trustee, shall be withdrawn and remitted to the Borrower.

The Trustee shall obtain and keep such records of the computations made pursuant to this Section 5.8 as are required under Section 148(f) of the Code to the extent furnished to the Trustee. The Borrower shall or shall cause the Rebate Analyst to provide to the Issuer and the Trustee copies of all rebate computations made pursuant to this Section 5.8. The Trustee shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Subordinate Bonds and the investments of earnings from those investments made by the Trustee as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebateable Arbitrage need not be made to the extent that neither the Issuer nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Subordinate Bonds, a copy of which shall be provided to the Trustee, at the expense of the Borrower.

Section 5.9 Escrow Fund. The Trustee shall maintain an Escrow Fund into which will be deposited proceeds of the Subordinate Bonds in the amount provided in Section 5.2 hereof. Upon satisfaction of the conditions set forth in Section 3.6(1) of the Loan Agreement, the Trustee shall disburse the funds in the Escrow Fund pursuant to Section 5.2 hereof.

Section 5.10 Costs of Issuance Fund. The Trustee shall maintain a Costs of Issuance fund into which will be deposited proceeds of the Subordinate Bonds in the amount provided in Section 5.3(a)() hereof. The Trustee shall disburse amounts in the Escrow Fund to pay Issuance Expenses.

Section 5.11 Deposit of Funds with Paying Agent.

(1) The Trustee shall transfer and remit sums from the Bond Fund to the Paying Agent in advance of each interest and principal due date and redemption date, from the balance then on hand in the Bond Fund, sufficient to pay all principal, interest and redemption premiums then due on the Subordinate Bonds. The Paying Agent shall hold in trust for the Holders of such Subordinate Bonds all sums so transferred to it until paid to such Holders or otherwise disposed of as herein provided.

(2) Interest on each Subordinate Bond including accrued interest to the date of deposit and interest, to the extent permitted by law, on overdue installments of interest at the rate borne by such Subordinate Bond, (a) shall cease on its Maturity Date, or on any prior date on which it shall have been duly called for redemption as herein provided, provided that funds sufficient for the payment thereof with accrued interest and any redemption premium have been deposited with the Paying Agent on or before the Maturity Date or Redemption Date, as the case may be, and in the case of redemption, that the requirements of Article 3 hereof have been complied with, or (b) shall cease on any date after Maturity on which such deposit has been made, and the Holder shall have no further rights with respect to the Subordinate Bonds or under this Indenture except to receive the payment so deposited.

(3) If any Subordinate Bond is not presented for payment when due and funds sufficient to pay such Subordinate Bond shall have been paid to the Trustee (or other Paying Agent, if any): (a) all liability of the Issuer for payment of such Subordinate Bond shall forthwith cease; (b) such Subordinate Bond shall forthwith cease to be entitled to any lien, benefit or security under this Indenture, the Loan Agreement, the Subordinate Mortgage, and any Collateral Document, and the Holder of such Subordinate Bond shall forthwith have no rights in respect thereof except to receive payment thereof; and (c) the Trustee (or other Paying Agent, if any) shall hold such funds, without liability for interest thereon, for the benefit of the Holder of such Subordinate Bond. Any money still held by the Trustee (or other Paying

Agent, if any) after two (2) years and eleven (11) months from the date on which the Subordinate Bond with respect to such amount was paid to the Trustee (or other Paying Agent, if any), shall, if and to the extent permitted by law, be paid by the Trustee (or other Paying Agent, if any) to the Borrower and shall be discharged from the trust and all liability of the Paying Agent or the Trustee with respect to such Trust Money shall cease, and the Bondholders shall thereafter be entitled to look only to the Borrower for payment, and the Borrower shall not be liable for any interest thereon.

(4) If there is any Paying Agent who is not the Trustee, the Trustee will cause such Paying Agent to execute and deliver to it an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 5.10, that such Paying Agent will:

(a) hold all sums held by it for the payment of principal of (and premium, if any) or interest on Subordinate Bonds in trust for the benefit of the Holders of such Subordinate Bonds until such sums shall be paid to such Holders or otherwise disposed of as herein provided; and

(b) at any time during the continuance of any default in the making of any such payment of principal (and premium, if any) or interest, upon the written request of the Trustee forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Trustee, acting as Paying Agent, shall be bound by the terms of the foregoing requirements.

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**ARTICLE 6**  
**INVESTMENTS**

Section 6.1     Investments by Trustee.

(1)     Except during the continuance of an Event of Default, and subject to the provisions of Section 8.2 hereof, money held for the credit of the funds established by Article 5 hereof shall be held by the Trustee as required by law and shall at the written request of the Representative of the Borrower, to the extent practicable and permitted by the Act, and except as provided below with respect to the money in the Bond Fund, be invested as received and reinvested by the Trustee as directed by the Borrower in Permitted Investments (including investments in securities through a common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of money contributed thereto by the bank in its capacity as trustee, certificates of deposit, and repurchase agreements).

Subject to applicable Minnesota Statutes as to the investment of sums (other than proceeds of the Subordinate Bonds) held in the Bond Fund, the type, amount and maturity of such investments shall be as specified by the Representative of the Borrower, provided that sums in the Bond Fund may in any event only be invested in securities which mature or are subject to redemption or repurchase at the option of the Trustee on or prior to the date or dates on which the Trustee anticipates that cash funds will be required.

(2)     The Trustee shall sell and reduce to cash funds a sufficient portion of investments under the provisions of this Section whenever the cash balance in the fund for which the investment was made is insufficient for its current requirements. Securities so purchased as an investment of money shall be held by the Trustee, shall be registered in the name of the Trustee if registration is required, and shall be deemed at all times a part of the applicable fund, and the interest accruing thereon and any profit realized from such investments shall be credited to the fund from which the investment was made, subject to any transfer to another fund as herein provided. The Trustee shall have no liability whatsoever for any loss, fee, tax or other charge incurred in connection with any investment, reinvestment, sale or liquidation of an investment hereunder. Any loss resulting from such investment shall be charged to the fund from which the investment was made. In no event shall the Trustee be deemed an investment manager or adviser in respect of any selection of investments hereunder. The Trustee shall be entitled to rely on any written direction of the Borrower as to the suitability and legality of the directed investments. The Trustee shall have no responsibility whatsoever to determine whether any investments made pursuant to this Indenture are or continue to be Permitted Investments.

(3)     The Trustee may purchase from or sell to itself, or through any affiliated company, as principal or agent, securities herein authorized so long as such purchase or sale is at fair market value.

Section 6.2     Return on Investments.

(1)     In directing investments pursuant to Section 8.3 of the Loan Agreement, the Borrower will not instruct the Trustee to use the proceeds of the Subordinate Bonds or other sums pledged to the payment of the Subordinate Bonds, directly or indirectly, to acquire any securities or obligations the acquisition of which would cause any of the Subordinate Bonds to be “arbitrage bonds” as defined in Section 148 of the Code, and for this purpose the Trustee, in order to restrict yield on investments, may invest in SLGS (and accordingly is hereby authorized to act as agent of the Issuer for such purpose). The Trustee shall be fully protected in relying on an opinion of Bond Counsel with respect to whether the acquisition of any securities or obligations would have the effect prohibited by this Section.

(2) No money in any fund or account shall be invested in investments which cause the Subordinate Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code. If at any time the money in all funds and accounts relating to the Subordinate Bonds exceed, within the meaning of Section 149(b) of the Code, (a) amounts invested for an initial temporary period until the money is needed for the purpose for which the Subordinate Bonds were issued, (b) investments of a bona fide debt service fund, and (c) investments of a reserve which meet the requirement of Section 148(d) of the Code, then money in excess of such amounts shall be invested at the direction of the Borrower pursuant to Section 8.3 of the Loan Agreement in (i) obligations issued by the United States Treasury, (ii) other investments permitted under regulations, or (iii) obligations which are (a) not issued by, or guaranteed by, or insured by, the United States or any agency or instrumentality thereof or (b) not federally insured deposits or accounts, all within the meaning of Section 149(b) of the Code. The Borrower shall not direct the Trustee to take any action or do anything the effect of which shall be to cause the Subordinate Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

(3) The provisions of this Section 6.2 shall survive discharge and release of the Funding Loan Agreement.

Section 6.3 Computation of Balances in Funds. In computing the assets of any fund established hereunder, investments and accrued but unpaid interest thereon shall be deemed a part thereof, and such investments shall be valued at par value, or at the redemption price thereof, if then redeemable at the option of the holder, provided that in any event for purposes of determining whether any balance in a fund may only be invested at a restricted yield to comply with Section 148 of the Code and the federal arbitrage regulations, any investments in the fund shall be valued at their par value or the price (less accrued interest) at which they were purchased, whichever is the greater.

Section 6.4 Rebate to United States. The Subordinate Bonds are subject to the rebate to the United States of earnings in excess of the yield on the Subordinate Bonds imposed by Section 148 of the Code and Section 1.148-3 of the Treasury Regulations. The Trustee shall have no obligation to calculate the amount of, or make, any required rebate as provided in Section 5.8 hereof. The Trustee shall cooperate with the Borrower in the Borrower’s efforts to determine the amount of any rebate.

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## ARTICLE 7

### DISCHARGE OF LIEN

Section 7.1 Payment of Subordinate Bonds; Satisfaction and Discharge of Indenture. Whenever the conditions specified in either clause (a) or clause (b) of the following subsection (1) and the conditions specified in the following subsections (2) and (3) to the extent applicable, shall exist, namely:

(1) either:

(a) all Subordinate Bonds have been cancelled by the Trustee or delivered to the Trustee for cancellation, excluding, however,

(i) Subordinate Bonds for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Trustee and thereafter repaid to the Borrower or discharged from such trust, and

(ii) Subordinate Bonds alleged to have been destroyed, lost or stolen which have been replaced or paid as provided in Section 2.6 hereof, and (a) which, prior to the satisfaction and discharge of this Indenture as hereinafter provided, have not been presented to the Trustee with a claim of ownership and enforceability by the Holder thereof, or (b) whose enforceability by the Holder thereof has been determined adversely to the Holder by a court of competent jurisdiction or other competent tribunal; or

(b) the Issuer or the Borrower has deposited or caused to be deposited as trust funds:

(i) with the Trustee, cash which shall be sufficient, or

(ii) with the Trustee cash and/or Government Obligations, which do not permit the redemption thereof at the option of the issuer thereof, the principal of, premium, if any, and interest on which when due (or upon the redemption thereof at the option of the holder), will, without reinvestment, provide cash which together with the cash, if any, deposited with the Trustee at the same time, shall be sufficient,

to pay and discharge the entire indebtedness on Subordinate Bonds not theretofore cancelled by the Trustee or delivered to the Trustee for cancellation by the payment of interest on and principal (and premium, if any) of the Subordinate Bonds which have become due and payable or which shall become due at their stated Maturity or Redemption Date, as the case may be, and which are to be discharged under the provisions hereof, and has made arrangements satisfactory to the Trustee for the giving of notice of redemption, if any, by the Trustee in the name, and at the expense, of the Borrower in the same manner as is provided by Section 3.2 hereof; and

(2) the Borrower has paid, caused to be paid or made arrangements satisfactory to the Trustee for the payment of all other sums payable hereunder and under the Loan Agreement, and the Related Loan Documents by the Trustee or the Borrower until the Subordinate Bonds are so paid; and

(3) if the funds for payment are provided under subsection (1)(b)(ii) above, the Borrower has delivered to the Trustee a report of an Independent Accountant or other nationally recognized verification agent stating that the payments to be made on the security referred to in subsection (1)(b) above will be sufficient to pay when due the principal of, premium, if any, and interest on the Subordinate Bonds to be

defeased; provided, however, when a defeasance escrow is gross funded or when the Subordinate Bonds mature or will be redeemed within ninety (90) days of the deposit referred to in subsection (1)(b)(ii) above, a report of an Independent Accountant shall not be required; and

(4) if discharge is to be effected under subsection (1)(b) above, an opinion of Bond Counsel is delivered to the Trustee stating in effect that such discharge will not impair the tax-exempt status of the Subordinate Bonds;

then, except as otherwise provided in Article 7 and Sections 8.2 and 9.3 hereof, the rights of the Bondholders shall be limited to the cash or cash and securities deposited as provided in subsection (1)(a) or (b) above, and upon the Borrower's request the rights and interest hereby granted or granted by the Loan Agreement, the Subordinate Mortgage, and the Collateral Documents to or for the benefit of the Trustee or Bondholders shall cease, terminate and become null and void, and the Issuer and the Trustee shall, at the expense of the Borrower, execute and deliver such instruments of satisfaction and transfer as may be necessary, and forthwith the estate, right, title and interest of the Trustee in and to all of the Project and in and to all rights under the Loan Agreement and this Indenture (except the money or securities or both deposited as required above and except as may otherwise be provided in Article 7 and Sections 8.2 and 9.3 hereof shall thereupon be discharged and satisfied); except that in any event the obligations of the Borrower under Sections 7.4, 7.7, 7.8, 10.10, 10.11, 10.12, and 10.13 of the Loan Agreement shall survive.

Section 7.2 Discharge of the Indenture. Notwithstanding the fact that the lien of this Indenture upon the Trust Estate may have been discharged and cancelled in accordance with Section 7.1 hereof, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Trust Estate may have been discharged and cancelled, shall nevertheless continue and subsist until the principal of and the interest on, all of the Subordinate Bonds shall have actually been paid in full and the Trustee shall have applied all funds theretofore held by the Trustee for payment of any Subordinate Bonds not theretofore presented for payment or purchase, as the case may be, which funds shall be held in trust solely for the Holders of such Subordinate Bonds pending their application in accordance herewith.

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## ARTICLE 8

### DEFAULT PROVISIONS AND REMEDIES

Section 8.1 Events of Default. Each of the following events is hereby defined as, and declared to be and to constitute, an “Event of Default” hereunder:

- (1) default in the due and punctual payment of any interest on any Subordinate Bond; or
- (2) default in the due and punctual payment of the principal of any Subordinate Bond at its Maturity; or
- (3) default in the due and punctual payment of any other money required to be paid to the Trustee under the provisions hereof and such default shall have continued for a period of thirty (30) days after written notice thereof, specifying such default, shall have been given by the Trustee to the Issuer and the Borrower, or to the Issuer, the Borrower and the Trustee by the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the then Outstanding Subordinate Bonds; or
- (4) default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer contained in this Indenture or in the Subordinate Bonds, and such default shall have continued for a period of thirty (30) days after written notice thereof given in the manner provided in clause (3) above; notwithstanding the foregoing, if the default reasonably requires more than thirty (30) days to cure, such default shall not constitute an Event of Default, provided that the curing of the default is promptly commenced upon receipt by the Issuer of the notice of the default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that the Issuer informs the Trustee at all times of its progress in curing the default, provided in no event shall such additional cure period extend beyond sixty (60) days; or
- (5) the occurrence of an Act of Bankruptcy; or
- (6) the occurrence of an “Event of Default” under the Loan Agreement or the Subordinate Mortgage.

The investor limited partner or the special limited partner in the Borrower shall have the right, but not the obligation, to cure Events of Default on behalf of the Borrower.

Section 8.2 Acceleration.

(1) Upon the occurrence of an Event of Default referred to in Section 8.1 hereof, the Trustee may, and at the written request of the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Subordinate Bonds shall, by notice in writing delivered to the Issuer and the Borrower declare the principal of all Subordinate Bonds immediately due and payable, whereupon the same shall become immediately due and payable any time herein or in the Subordinate Bonds to the contrary notwithstanding.

(2) Upon any declaration of acceleration, or occurrence resulting in acceleration under this Section 8.2, the Trustee shall immediately declare the Basic Payments required to be made by the Borrower under the Loan Agreement to be immediately due and payable in accordance with Section 9.2 of the Loan Agreement.

(3) Upon any acceleration required under this Section 8.2, interest shall cease to accrue on the Subordinate Bonds as of the date of declaration of such acceleration.

(4) Except as provided in this Section 8.2, under no other circumstances may the Trustee accelerate the payment of the Subordinate Bonds.

Section 8.3. Remedies. The following remedies are all subject to the terms of the Subordination Agreement.

(1) Subject to the provisions of Section 8.2 hereof, upon the occurrence of an Event of Default and acceleration of the Subordinate Bonds, the Trustee may, subject to the terms of the Subordination Agreement, proceed to pursue any available remedy by suit at law or in equity to enforce all rights of the Bondholders, including without limitation the right to the payment of the principal or premium, if any, and interest on the then Outstanding Subordinate Bonds. Upon the occurrence of an Event of Default under the Loan Agreement, the Guaranty, the Security Agreement, or the Subordinate Mortgage (subject to the terms of the Subordination Agreement), the Trustee may also enforce any and all rights, if any, of the Issuer thereunder. The Issuer may also exercise any of its rights under the Loan Agreement.

(2) If any Event of Default shall have occurred, and if it shall have been requested to do so by the Holders of a majority in aggregate principal amount of the then Outstanding Subordinate Bonds, and if it shall have received an indemnity bond as provided in Section 9.1 hereof, the Trustee shall be obliged to exercise such rights and powers conferred on the Trustee by this Section and Section 8.2 hereof as the Trustee (being advised by Independent Counsel) shall deem most expedient in the interests of the Bondholders, provided, however, that the Trustee shall have the right to decline to comply with any such request if the Trustee shall be advised by Independent Counsel that the action so requested may not lawfully be taken or if the Trustee in good faith shall determine that such action would be unjustly prejudicial to the Bondholders not parties to such request.

(3) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy (i) given to the Trustee or to the Holders hereunder or (ii) now or hereafter existing at law or in equity or by statute.

(4) No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

(5) No waiver of any Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent Event of Default or impair any rights or remedies consequent thereon.

Section 8.4 Direction of Proceedings By Bondholders. The Holders of a majority in aggregate principal amount of the then Outstanding Subordinate Bonds shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, the Loan Agreement, the Subordinate Mortgage, and the Collateral Documents or for the appointment of a receiver or any other proceedings hereunder, provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 8.5 Waiver of Stay or Extension Laws. Upon the occurrence of an Event of Default, to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through it or under it shall or will set up, claim, or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture, but the Issuer, for itself and all who may claim through or under it, hereby waives to the extent that it lawfully may do so the benefit of all such laws and all right of appraisal and redemption to which it may be entitled under the laws of the State.

Section 8.6 Priority of Payment and Application of Money. All money received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such other money and of the related expenses, liabilities and advances incurred or made by the Issuer or the Trustee, including attorneys' and agent's fees and expenses, be deposited in the Bond Fund. All money in the Bond Fund shall be applied, subject to the provisions of Article 5 hereof, as follows:

(1) Unless the principal of all the Subordinate Bonds shall have become or shall have been declared due and payable, all such money shall be applied:

FIRST: To the payment to the Persons entitled thereto of all installments of interest then due on the Subordinate Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

SECOND: To the payment to the Persons entitled thereto the unpaid principal of any of the Subordinate Bonds which shall have become due in the order of their due dates with interest on such Subordinate Bonds at the applicable rate and, if the amount available shall not be sufficient to pay in full the unpaid principal on Subordinate Bonds due on any particular due date, then to the payment ratably, according to the amount of principal and premium, if any, due on such date, to the Persons entitled thereto, without any discrimination or privilege; and

(2) If the principal of all Subordinate Bonds shall have become due or shall have been declared due and payable, all such money shall be applied to the payment of the principal and interest then due and unpaid upon the Subordinate Bonds, without preference or priority of principal or any redemption premium over interest or of interest over principal or any redemption premium, or of any installment of interest over any other installment of interest, or of any Subordinate Bond over any other Subordinate Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Subordinate Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of subsection (2) above in the event that the principal of all the Subordinate Bonds shall later become due or be declared due and payable, the money shall be applied in accordance with the provisions of subsection (1) above.

Whenever money is to be applied by the Trustee pursuant to the provisions of this Section, such money shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such money available for application and the likelihood of additional money becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall (i) fix the date (which shall be an Interest Payment Date unless it shall deem another date more

suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue and (ii) on or before such date set aside the money necessary to effect such application. The Trustee shall give to the Bondholders mailed notice of the deposit with it of any such money and of the fixing of any such date. Neither the Trustee nor any Paying Agent shall be required to make payment to the Holder of any Subordinate Bond until such Subordinate Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Subordinate Bonds and interest thereon have been paid under the provisions of this Section 8.6, and all expenses and charges of the Trustee and the Issuer have been paid, any balance remaining shall be paid to the person entitled to receive the same pursuant to Section 12.9 hereof.

Section 8.7 Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Subordinate Bonds may be enforced by the Trustee without the possession of any of the Subordinate Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Subordinate Bonds, and any recovery or judgment shall be for the equal benefit of the Holders of the Outstanding Subordinate Bonds to the extent and in the manner provided herein. The Issuer and the Trustee hereby agree, without in any way limiting the effect and scope thereof, that the pledge and assignment hereunder to the Trustee of all rights included within the Trust Estate shall constitute an agency appointment coupled with an interest on the part of the Trustee which, for all purposes of this Indenture, shall be irrevocable and shall survive and continue in full force and effect notwithstanding the bankruptcy or insolvency of the Issuer or its default hereunder or on the Subordinate Bonds.

Section 8.8 Rights and Remedies of Holders. No Holder of any Subordinate Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture, the Loan Agreement, or for the execution of any trust hereof or any remedy hereunder or thereunder or for the appointment of a receiver, unless: (1) a default thereunder shall have become an Event of Default and the Holders of a majority in aggregate principal amount of the Subordinate Bonds then Outstanding shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereunder granted or to institute such action, suit or proceeding in its own name; (2) such Holders shall have offered to indemnify the Trustee as provided in Section 9.1(11) hereof; and (3) the Trustee shall thereafter fail or refuse to exercise within a reasonable period of time the remedies hereunder granted, or to institute such action, suit or proceeding in its own name. Such notification, request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, the Loan Agreement, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Subordinate Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture, by its, his, her, or their action or to enforce any right thereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Holders of all Subordinate Bonds then Outstanding, provided, however, that nothing herein shall be construed to preclude any Bondholder from enforcing, or impair the right of any Bondholder to enforce, the payment by the Trustee of principal of, and interest and premium, if any, on any Subordinate Bond of such Bondholder at or after its date of Maturity, if and to the extent that such payment is required to be made to such Bondholder by the Trustee from available funds in accordance with the terms hereof.

Section 8.9 Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture or the Loan Agreement by the appointment of a receiver, by entry and possession or otherwise, and such proceedings shall have been discontinued or abandoned for any reason,



or shall have been determined adversely to the Trustee, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder with respect to the property herein conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 8.10 Waiver of an Event of Default. The Trustee may waive any Event of Default and its consequences and shall do so upon written request of the Holders of a majority in aggregate principal amount of the Subordinate Bonds then Outstanding. No Event of Default giving rise to mandatory acceleration may be waived. No such waiver or rescission shall extend to any subsequent or other Events of Default, or impair any right consequent thereon.

Section 8.11 Borrower as Agent of Issuer.

(1) No default under Section 8.1(4) hereof shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given by the Trustee to the Issuer, the Borrower, and the Issuer and the Borrower shall have had the time permitted by the applicable subsection after receipt of such notice to correct said default or cause said default to be corrected and the Issuer or Borrower shall not have corrected said default or caused said default to be corrected within said time.

(2) With regard to any alleged default concerning which notice is given to the Borrower under the provisions of this Section 8.11, the Issuer hereby names and appoints the Borrower as its attorney-in-fact and agent with full authority to perform any covenant or obligation of the Issuer alleged in said notice to constitute a default, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts and with power of substitution, provided that the Borrower shall give the Issuer notice of its intention so to perform on behalf of the Issuer, and provided further that the Issuer may at any time, by a writing addressed to the Borrower withdraw, limit or modify the appointment hereby made.

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## ARTICLE 9

### THE TRUSTEE

Section 9.1 Acceptance of the Trustee. The Trustee, prior to the occurrence of an Event of Default, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations should be read into this Indenture against the Trustee. In case an Event of Default has occurred, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person ordinarily would exercise and use under the circumstances in the conduct of their own affairs. The Trustee shall not be liable for any action taken or omitted by it in the performance of its duties under this Indenture except for its own negligence or willful misconduct, but in any such event, only upon and subject to the following express terms and conditions:

(1) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers, or employees, but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such reasonable compensation to any attorney, agent, receiver or employee retained or employed by it in connection herewith. The Trustee may act upon the opinion or advice of any attorney, surveyor, engineer or accountant selected by it in the exercise of reasonable care or, if selected or retained by the Issuer, approved by the Trustee in the exercise of such care, provided that the only legal advice or opinion that the Trustee may rely upon for purposes of securing advice or an opinion relating to the tax-exempt status of the Subordinate Bonds is given by Bond Counsel. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction in good faith in reliance upon such opinion or advice.

(2) The Trustee shall not be responsible for any recital herein, or in the Subordinate Bonds (except with respect to the certificate of the Trustee endorsed on the Subordinate Bonds) or for the investment of money as herein provided, except as may be provided in Section 6.1 hereof, or for the validity of the execution by the Issuer of this Indenture, or of any supplemental indentures or instruments of further assurance, or for the sufficiency of any security for the Subordinate Bonds issued hereunder or intended to be secured hereby, or for the value of title of the property herein conveyed, if any, or otherwise as to the maintenance of the security hereof; except as otherwise provided in Section 4.4 and except that in the event the Trustee enters into possession of a part or all of the property conveyed pursuant to any provisions of this Indenture, it shall use due diligence in preserving such property. The Trustee may, but shall be under no duty to, require of the Borrower full information and advice as to the performance of the covenants, conditions and agreements in the Loan Agreement as to the condition of the Project and the performance of all other obligations thereunder and shall use its best efforts, but without any obligation, to advise the Issuer and the Borrower of any impending Event of Default known to the Trustee.

(3) The Trustee shall not be accountable for the use or application by the Issuer or the Borrower of any of the Subordinate Bonds or the proceeds thereof (except as herein expressly provided) or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or for the use and application of money received by any Paying Agent. The Trustee may become the owner of Subordinate Bonds secured hereby with the same rights it would have if not Trustee.

(4) The Trustee shall be protected in acting upon any written notice, order, requisition, request, consent, certificate, opinion (including an opinion of Independent Counsel or Bond Counsel), affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct

and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Subordinate Bond, shall be conclusive and binding upon all future Holders of the same Subordinate Bond and upon Subordinate Bonds issued in exchange therefor, upon transfer thereof, or in place thereof.

(5) As to the existence or non-existence of any fact or as to the sufficiency or authenticity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate of the Issuer signed by its Representative as sufficient evidence of the facts stated therein as the same appear from the books and records under the Representative's custody or control or are otherwise known to him or her. The Trustee may accept a certificate of the City Clerk of the Issuer under the seal of the Issuer, provided, however, that the seal of the Issuer may be a printed facsimile or may be omitted, to the effect that a motion, resolution or ordinance in the form therein set forth has been adopted by the governing body of the Issuer as conclusive evidence that such motion, resolution or ordinance has been duly adopted, and is in full force and effect, and may accept such motion, resolution or ordinance as sufficient evidence of the facts stated therein and the necessity or expediency of any particular dealing, transaction or action authorized or approved thereby, but may at its discretion, secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(6) The Trustee shall not be answerable except for its own negligence, willful misconduct, or willful default.

(7) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which they may be in possession of or managing the real and tangible personal property as in this Indenture provided.

(8) At any and all reasonable times, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property comprising the Project, including all books, papers and records of the Issuer pertaining to the Project and the Subordinate Bonds, and to take such memoranda from and with regard thereto as may be desired.

(9) The Trustee shall not be required to give any bond or surety with respect to the execution of said trusts and powers or otherwise in respect to the premises.

(10) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Subordinate Bonds, the withdrawal of any cash, the release of any property or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions (including opinions of Independent Counsel), appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Subordinate Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(11) Before taking any action under this Indenture, the Trustee may require that it be furnished with an indemnity bond satisfactory to the Trustee for the reimbursement of all expenses to which it may be put and to protect it against all liability except liability which is adjudicated to have resulted from the negligence, willful misconduct, or willful default of the Trustee, by reason of any action so taken by the Trustee.

(12) All money received by the Trustee, the Paying Agent or any Co-Paying Agent for the Subordinate Bonds shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required herein or by law. The Trustee, the Paying Agent, and any Co-Paying Agent shall not be under any liability for interest on any money received hereunder except such as may be agreed upon.

(13) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if the Trustee shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(14) The Trustee shall make no representation as to the validity or adequacy of this Indenture or the Subordinate Bonds, shall not be accountable for the Issuer's use of the proceeds of the Subordinate Bonds or any money paid to the Issuer or upon the Issuer's direction under any provision hereof, shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and shall not be responsible for any statement or recital herein or any statement in the Subordinate Bonds or any other document in connection with the sale of the Subordinate Bonds or pursuant to this Indenture other than its Certificate of Authentication.

(15) In no event shall the Trustee be liable for incidental, indirect, special, consequential or punitive damages or penalties (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such damages or penalty and regardless of the form of action.

(16) The Trustee shall not be required to take notice or be deemed to have notice of any default, except an Event of Default under Section 8.01(1) and (2) hereof, unless the Responsible Officer shall be notified of such default in writing by the Issuer, the Borrower or by the holders of a majority in aggregate principal amount of the Subordinate Bonds then Outstanding and all notices required to be delivered to the Trustee must, in order to be effective, be delivered at the designated corporate trust office of the Trustee and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

Section 9.2 Trustee's Fees, Charges and Expenses. The Trustee and any Paying Agent shall be entitled to payment and/or reimbursement for reasonable fees for services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in and about the execution of the trusts created by this Indenture and in and about the exercise and performance of the powers and duties of the Trustee hereunder and for the reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence, willful misconduct, or willful default of the Trustee). In this regard the Issuer has made provisions in Section 4.4 of the Loan Agreement for the payment of said fees, advances, counsel fees, costs and expenses and reference is hereby made to the Loan Agreement for the provisions so made, and the Issuer shall not otherwise be liable for the payment of such sums. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment on account of interest on or principal or premium, if any, of any Subordinate Bond and upon the money received by it hereunder, for said fees, advances, counsel fees, costs and expenses incurred by it.

Section 9.3 Notice to Holders of Default. The Trustee shall give to the Bondholders written notice of all Events of Default known to the Trustee, within ninety (90) days after the occurrence of an Event of Default, provided that, except in the case of an Event of Default in the payment of the principal of or interest on any of the Subordinate Bonds, the Trustee shall be protected in withholding such notice if and so long as the Board of Directors, the executive committee or a trust committee of directors or chief

executive officer of the Trustee in good faith determine that the withholding of such notice is in the interest of the Holders.

Section 9.4 Intervention by Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders of Subordinate Bonds, the Trustee may intervene on behalf of Holders and shall do so if requested in writing by the Holders of at least twenty-five percent (25%) of the aggregate principal amount of Outstanding Subordinate Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction in the premises.

Section 9.5 Successor Trustee. Any corporation, association or agency into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor trustee and paying agent under this Indenture and vested with all of the title to the Trust Estate, and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9.6 Resignation by Trustee. The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving thirty (30) days' written notice to the Issuer and to the Borrower and by first class mail to each Holder of Subordinate Bonds as shown on the Bond Register, and such resignation shall take effect upon the appointment of a successor trustee by the Holders or by the Issuer. Such notice to the Issuer and the Borrower may be served personally or sent by registered mail. If no successor trustee is appointed within sixty (60) days of the Trustee's resignation, the Trustee may petition a court of competent jurisdiction to appoint a replacement.

Section 9.7 Removal of Trustee. The Trustee may be removed at any time upon thirty (30) days' written notice by an instrument or concurrent instruments in writing delivered to the Trustee, to the Borrower and to the Issuer, and signed by the Holders of a majority in aggregate principal amount of then Outstanding Subordinate Bonds. Such removal shall only take effect upon the appointment of a successor trustee.

Section 9.8 Appointment of Successor Trustee. In case the Trustee shall resign or be removed, or be dissolved or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Holders of a majority in aggregate principal amount of the then Outstanding Subordinate Bonds, by an instrument or concurrent instruments in writing signed by such Holders, or by their attorney-in-fact, duly authorized. Nevertheless, in case of such vacancy the Issuer by resolution of its governing body may appoint a temporary trustee to fill such vacancy until a successor trustee shall be appointed by the Holders in the manner above provided, and any such temporary trustee so appointed by the Issuer shall immediately and without further act be superseded by the trustee so appointed by such Holders. Every such Trustee appointed pursuant to the provisions of this Section 9.8 shall be a trust company or bank having trust powers and having a reported capital and surplus not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Section 9.9 Acceptance by Successor Trustees. Every successor trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor, to the Borrower and also to the Issuer, an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any

further act, deed or conveyance shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors as Trustee and Paying Agent, but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor trustee, execute and deliver an instrument transferring to such successor trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder, and every predecessor Trustee shall deliver all securities and money held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor trustee for more fully and certainly vesting in such successor the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor trustee, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be forthwith filed or recorded or both by the successor trustee in each recording office where this Indenture shall have been filed or recorded or both.

Section 9.10 Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon any part of the Trust Estate is not paid as required herein, the Trustee may pay such tax, assessment or charge, without prejudice, however, to any rights of the Trustee or the Bondholders hereunder arising in consequence of such failure, and any amount at any time so paid under this Section, or under the Loan Agreement, with interest thereon (to the extent permitted by law) from the date of such payment until paid to the Trustee in full at a rate per annum equal to the prime rate, shall become so much additional indebtedness secured hereby, and the same shall be given a preference in payment over the principal of and the interest on, the Subordinate Bonds and shall be paid out of the revenues and receipts from the Trust Estate, if not otherwise caused to be paid. The Trustee shall not be under an obligation to make any such payment unless it shall have been requested to do so by the Holders of at least twenty-five percent (25%) in principal amount of the Subordinate Bonds then Outstanding and shall have been provided with sufficient money for the purpose of making such payment.

Section 9.11 Trustee Protected in Relying Upon Resolutions. The resolutions, orders, requisitions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee.

Section 9.12 Successor Trustee as Custodian of Bond Fund and Paying Agent. In the event of a change in the office of the Trustee, the predecessor trustee which has resigned or been removed shall cease to be custodian of the funds described in Article 5 hereof and shall cease to act as the Paying Agent for principal and interest on the Subordinate Bonds, and the successor trustee shall be and become such custodian and Paying Agent.

Section 9.13 Co-Trustee. At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located, the Issuer and the Trustee shall have the power to appoint, and, upon the request of the Trustee or of the Holders of at least fifty-one percent (51%) in aggregate principal amount of the then Outstanding Subordinate Bonds, the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint one or more persons approved by the Trustee either to act as co-trustee or co-trustees, jointly with the Trustee, of all or any part of the Trust Estate, or to act as separate trustee or separate trustees of all or any part of the Trust Estate, and to vest in such person or persons, in such capacity, such right to the Trust Estate or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable subject to the remaining provisions of this Section 9.13.

If the Issuer shall not have joined in such appointment within fifteen (15) days after the receipt by it of a request so to do, or in case an Event of Default shall have occurred and be continuing, the Trustee alone shall have power to make such appointment.

The Issuer shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

Every co-trustee or separate trustee shall, to the extent permitted by law but to such extent only, be appointed subject to the following terms, namely:

(1) The Subordinate Bonds shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Trustee.

(2) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees or separate trustee or separate trustees jointly, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(3) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.

(4) Any co-trustee or separate trustee may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(5) The Trustee at any time, by an instrument in writing, with the concurrence of the Issuer, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 9.13, and, in case of a continuing Event of Default the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section 9.13.

(6) No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(7) Any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing delivered to the Trustee shall be deemed to have been delivered to each co-trustee or separate trustee.

(8) Any money, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with such interest in and to the Trust Estate or any part thereof, and with such rights, powers, duties or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as local law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee. Any co-trustee or separate trustee may, at any time by an instrument in writing, constitute the Trustee its or his attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its or his behalf and in its or his name.

In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Estate and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the manner herein provided.

Section 9.14 Obligation to Trustee as to Reporting. The Trustee shall, at the request of the Borrower, cause to be filed any reports lawfully required by any public agency to be filed under any applicable security laws and any other reports lawfully required by any public agency to be filed under the Act or any other applicable state law. For this purpose the Trustee is entitled to require the Borrower to cause to be furnished to the Trustee whatever information is necessary to comply with such reporting requirements at the Borrower's sole expense.

Section 9.15 Successor Paying Agent. The provisions of Sections 9.5 through 9.9 hereof with respect to removal, resignation and appointment of a successor trustee shall be equally applicable to resignation, removal and appointment of a successor to the Paying Agent. The Trustee shall be eligible for appointment as successor to the Paying Agent.

Section 9.16 Confirmation of the Trustee.

(1) At any time while Subordinate Bonds remain Outstanding under this Indenture and in any of the following circumstances, to the extent permitted by law, to-wit:

(a) The Trustee is in doubt as to whether or not the Indenture or any Related Loan Document or instrument requires Bondholders' consent or the consent of the Borrower, any guarantor, or the Issuer in connection with any proposed action;

(b) The Trustee has substantial doubt as to whether its consent to a proposed action, although authorized, should in the particular circumstances be given;

(c) The Trustee's consent is sought or deemed necessary in connection with a proposed action which is not specifically dealt with or contemplated by the Indenture or any other Related Loan Document, or it is unclear whether the Indenture or other Related Loan Document is intended to deal with the proposed action;

(d) There is a disagreement between any of the parties to the Indenture or any other Related Loan Document as to whether a proposed action may be taken or is required to be taken;

(e) There appears to be a conflict, ambiguity or inconsistency between or among the provisions of the Indenture and any other Related Loan Document other than as provided for in Sections 10.1 and 11.1 hereof;



(f) There is doubt as to whether or not a proposed action falls within one of the provisions of Sections 10.1 and 11.1 hereof authorizing such action without Bondholders' consent;

(g) Bondholders' consent is required by this Indenture or Related Loan Document but consent cannot be obtained because:

(i) it is not possible to comply with requirements of this Indenture or any other Related Loan Document as to the notice to be given to Bondholders with respect to the proposed matter requiring consent, or

(ii) if action is to be taken at a meeting of Bondholders, the requisite number of Bondholders (the quorum) necessary to be present at a meeting in order for a proposed action to be taken was not present at such meeting or any adjourned meeting;

(h) The Trustee wishes to depart from the procedures set forth in Section 12.3 hereof for purposes of calling or conducting a meeting of the Bondholders; or in any other eventuality in which it shall be necessary to determine a question arising under or to construe this Indenture or any other Related Loan Document, the Trustee may, and upon request of the Issuer, the Borrower or the Holders of twenty-five percent (25%) or more in principal amount of Outstanding Subordinate Bonds shall, proceed in accordance with the provisions of Minnesota Statutes, Sections 501.33 through 501.38, as amended.

If Bondholder's consent cannot be obtained because of the circumstances described in clause (g) above, a court of competent jurisdiction may amend or supplement the Loan Agreement or Indenture or any Related Loan Document upon a proper showing of the necessity therefor.

(2) In construing and interpreting the Indenture and any other Related Loan Document, the objective shall always be to ascertain and effectuate the intention of the parties. So far as possible and appropriate, and to the extent that it does not conflict with the provisions of the Indenture or the other Related Loan Documents, the principles of statutory construction enunciated in Minnesota Statutes, Sections 645.16 through 645.20, as amended, shall be applied in the interpretation and construction of the Indenture and other Related Loan Documents.

(3) The Trustee or successor trustee shall not be answerable for actions taken in compliance with any final order of the court. The Trustee or successor trustee shall not be entitled to require an indemnity bond pursuant to Section 9.1(11) hereof prior to taking any action directed by final order of the court.

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## ARTICLE 10

### SUPPLEMENTAL INDENTURES

Section 10.1 Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may, from time to time and at any time, without the consent of, or notice to, any of the Holders, and when so required by this Indenture shall, enter into an indenture or indentures supplemental to this Indenture as shall not be inconsistent with the terms and provisions hereof (which supplemental indenture or indentures shall thereafter form a part hereof), so as to thereby (1) cure any ambiguity or formal defect or omission in this Indenture or in any supplemental indenture; (2) grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Holders or the Trustee; (3) more precisely identify the Trust Estate, or any other property which may become a part of the Trust Estate; (4) subject to the lien and pledge of this Indenture additional revenues, properties or collateral; (5) evidence the appointment of a separate trustee or a co-trustee or the succession of a new Trustee and/or Paying Agent hereunder; (6) modify, eliminate and/or add to the provisions of this Indenture to such extent as shall be necessary to prevent any interest on the Subordinate Bonds from becoming taxable under the federal income tax laws or to effect the qualification of this Indenture under the Trust Indenture Act of 1939, as then amended, or under any similar Federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by said Trust Indenture Act of 1939, excluding however the provisions referred to in Section 316(a)(2) of said Trust Indenture Act of 1939; (7) make any other change which is required by any provision of this Indenture or which is necessary to reconcile the Indenture with the Related Loan Documents, or any amendments thereto; or (8) make any other change which is necessary or desirable and will not materially prejudice any non-consenting Holder of a Subordinate Bond.

Section 10.2 Supplemental Indentures Requiring Consent of Holders. Exclusive of supplemental indentures covered by Section 10.1 hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Trustee, upon receipt of an instrument evidencing the consent to the below-mentioned supplemental indenture by the Holders of not less than a majority of the aggregate principal amount of the then Outstanding Subordinate Bonds, shall join with the Issuer in the execution of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture, provided, however, that nothing herein contained shall permit or be construed as permitting (1) an extension of the maturity of the principal or of the interest on any Subordinate Bond issued hereunder; (2) a reduction in the principal amount of any Subordinate Bond or the rate of interest thereon or any premium thereon; (3) a privilege or priority of any Subordinate Bond or Subordinate Bonds over any other Subordinate Bond or Subordinate Bonds except as may be otherwise expressly provided herein; (4) a reduction in the aggregate principal amount of the Subordinate Bonds required for consent to such supplemental indenture; or (5) modifying any of the provisions of this Section without the consent of the Holders of one hundred percent (100%) of the principal amount of all Subordinate Bonds adversely affected thereby (“100% Bondholders’ Consent”).

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section which does not require 100% Bondholders’ Consent, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed by first class mail, postage prepaid, to the Holders of the Subordinate Bonds at the addresses shown on the Bond Register. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal office of the Trustee for inspection by all Bondholders. The Trustee shall not, however, be

subject to any liability to any Bondholder by reason of its failure to mail such notice to any particular Bondholder if notice was generally mailed to Bondholders, and any such failure shall not affect the validity of such supplemental indenture when consented to and approved as provided in this Section. If the Holders of not less than a majority in aggregate principal amount of the then Outstanding Subordinate Bonds at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Holder of any Subordinate Bond shall have any right to object to any of the terms and provisions contained herein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and is deemed to be modified and amended in accordance herewith.

Anything herein to the contrary notwithstanding, a supplemental indenture under this Article 10 which adversely affects the right of the Borrower under the Loan Agreement shall not become effective unless and until the Borrower shall have consented (either in writing or by inaction as provided below) to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture, together with a copy of the proposed supplemental indenture, to be mailed by certified or registered mail to the Borrower, the investor limited partner and the special limited partner at least thirty (30) days prior to the proposed date of execution and delivery of any such supplemental indenture. The Borrower shall be deemed to have consented to the execution and delivery of any such supplemental indenture if the Trustee does not receive (i) a letter signed by a Representative of the Borrower of protest or objection thereto or (ii) a letter signed by a representative of the investor limited partner of protest or objection thereto on or before 4:30 P.M., Minnesota time of the fifteenth day after the mailing of said notice and a copy of the proposed supplemental indenture to the Borrower unless such fifteenth day falls on a day which is not a Business Day, in which event the letter of objection must be received on the next succeeding Business Day.

Section 10.3 Rights of Trustee. If, in the opinion of the Trustee, any supplemental indenture provided for in this Article affects the rights, duties or immunities of the Trustee under this Indenture or otherwise, the Trustee may, in its discretion, decline to execute such supplemental indenture, except to the extent that this may be required in the case of a supplemental indenture entered into under Section 10.1 hereunder. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an opinion of Independent Counsel as conclusive evidence that any such supplemental indenture conforms to the requirements of this Indenture.

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## ARTICLE 11

### AMENDMENTS TO RELATED LOAN DOCUMENTS

Section 11.1 Amendments Not Requiring Bondholder Consent. The Issuer and/or the Trustee may, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of the Related Loan Documents:

- (1) which may be required or permitted without Bondholder consent by the provisions of the Related Loan Documents or this Indenture;
- (2) for the purpose of curing any ambiguity or formal defect or omission;
- (3) to reconcile the Collateral Documents or Related Loan Documents with any amendment or supplement to the Indenture; or
- (4) to effect any other change to the Related Loan Documents which will not materially prejudice any non-consenting Holder of a Subordinate Bond.

Section 11.2 Amendments Requiring Bondholder Consent. Except for amendments, changes or modifications as provided in Section 11.1 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Related Loan Documents, without the giving of notice and the written approval or consent of the Holders of not less than a majority in aggregate principal amount of the Subordinate Bonds then Outstanding given and procured as provided in this Section; provided that in no event shall such amendment, change or modification relieve the Borrower of the obligation under the Related Loan Documents to make when and as due any payments required for the payment of principal, interest and any premium due or to become due on the Subordinate Bonds unless the consent of the Holders of all Subordinate Bonds adversely affected thereby is first secured.

If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of any Related Loan Document, the Borrower shall request consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided in Section 10.2 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of the Trustee for inspection by all Holders. The Trustee shall not, however, be subject to any liability to any Holder by reason of its failure to mail such notice to any particular Bondholder if notice was generally mailed to Bondholders, and any such failure shall not affect the validity of such amendment, change or modification when consented to and approved as provided in this Section. If the Holders of not less than a majority in aggregate principal amount of the Subordinate Bonds then Outstanding at the time of the execution of any such amendment shall consent to the execution thereof as herein provided, no Holder of any Subordinate Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment, the affected Related Loan Document shall be deemed to be modified and amended in accordance therewith. Nothing in this Section contained shall permit or be construed as permitting any reduction in the payments required to be made (i) by Section 4.2 of the Loan Agreement or (ii) permitting a reduction or change in the Stated Maturities of the Subordinate Bonds.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

Section 12.1 Consent of Holders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Holders may be in any number of concurrent writings of similar tenor and must be signed or executed by such Holders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Subordinate Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

(1) The fact and date of the execution by any Person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such writing acknowledged before him or her the execution thereof, or by an affidavit of any witness to such execution.

(2) The fact of the ownership by any Person of Subordinate Bonds and the amounts and numbers of such Subordinate Bonds, and the date of the holding of the same, may be proved only by reference to the Bond Register.

Section 12.2 Rights Under Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Subordinate Bonds is intended or shall be construed to give any person or company other than the parties hereto, and the Bondholders, any legal or equitable right, remedy, or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Holders of the Subordinate Bonds hereby secured as herein provided.

Section 12.3 Meetings of Bondholders.

(1) A meeting of Bondholders may be called at any time and from time to time pursuant to this Section to facilitate any of the following purposes:

(a) to give any notice to the Issuer, the Borrower or the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any default under this Indenture, or to take any other action authorized to be taken by the Bondholders under this Indenture;

(b) to remove the Trustee or to appoint a successor trustee pursuant to Sections 9.7 and 9.8 hereof;

(c) to consent to the execution of a supplemental indenture pursuant to Section 10.2 hereof, or to consent to the execution of an amendment, change or modification of any Related Loan Document pursuant to Section 11.2 hereof; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Subordinate Bonds under any other provision of this Indenture or under applicable law.

(2) Meetings of Bondholders may be held at such place or places as the Trustee or, in case of its failure to act, the Bondholders calling the meeting, shall from time to time determine.

(3) The Trustee may at any time call a meeting of Bondholders to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of Bondholders setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed by first class mail, postage prepaid, to the Holders of the Subordinate Bonds at the address shown on the Bond Register. Any failure of the Trustee to mail such notice to a particular Bondholder, or any defect therein shall not, however, in any way impair or affect the validity of any such meeting if notice was generally mailed to Bondholders. In the event that the Holders of at least ten percent (10%) in aggregate principal amount of the Outstanding Subordinate Bonds shall have requested the Trustee to call a meeting of the Bondholders by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have accomplished the mailing of notice of such meeting within twenty (20) days after receipt of such request, then such Bondholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in subsection (1) above by giving notice of such meeting in accordance with the provisions of this subsection (3).

(4) To be entitled to vote at any meeting of Bondholders, a person shall be a Holder of one or more Subordinate Bonds Outstanding, or a person appointed by an instrument in writing as proxy for a Bondholder by such Bondholder. The only persons who shall be entitled to be present or to speak at any meeting of Bondholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee, Borrower, and Issuer and their counsel.

(5) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Bondholders in regard to proof of the ownership of Subordinate Bonds and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the ownership of Subordinate Bonds shall be proved in the manner specified in Section 12.1 hereof and the appointment of any proxy shall be proved in the manner specified in said Section or by having the signature of the person executing the proxy witnessed or guaranteed by any bank, banker or trust company authorized by said Section to certify to the ownership of Subordinate Bonds:

(a) The Trustee or, if the Bondholders have called the meeting, the Bondholders shall, by an instrument in writing, appoint a temporary chairperson of the meeting. A permanent chairperson and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority of the Subordinate Bonds represented at the meeting and entitled to vote.

(b) At any meeting such Bondholder or proxy shall be entitled to one vote for each \$5,000 of principal amount of Outstanding Subordinate Bonds owned or represented by him or her, provided, however, that no vote shall be cast or counted at any meeting in respect of any Subordinate Bond challenged as not Outstanding and ruled by the chairperson of the meeting to be not Outstanding. The chairperson of the meeting shall have no right to vote, except as a Bondholder or proxy.

(c) At any meeting of Bondholders, the presence of persons owning or representing Subordinate Bonds in an aggregate principal amount sufficient under the appropriate provision of this Indenture to take action upon the business for the transaction of which such meeting was called shall constitute a quorum. Any meeting of Bondholders duly called pursuant to this Section may be adjourned from time to time by vote of the Holders (or proxies for the Holders) of

a majority of the Subordinate Bonds represented at the meeting and entitled to vote, whether or not a quorum shall be present, and the meeting may be held as so adjourned without further notice.

(6) The vote upon any resolution submitted to any meeting of Bondholders shall be by written ballots on which shall be subscribed the signatures of the Bondholders or of their proxies and the number or numbers of the Subordinate Bonds Outstanding held or represented by them. The permanent chairperson of the meeting shall appoint two (2) inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Bondholders shall be prepared by the secretary of the meeting. The original reports of the inspectors of votes on any vote by ballot taken at such meeting, and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was published or mailed as provided in this Section shall be attached to such record. Each copy shall be signed and verified by the affidavits of the permanent chairperson and secretary of the meeting and one (1) such copy shall be delivered to the Issuer, another to the Borrower and another to the Trustee to be preserved by the Trustee, which copy shall have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

(7) At any time prior to the preparation of the record of the meeting in accordance with the terms of this Section for delivery to the Trustee evidencing the taking of any action by the Holders of the percentage in aggregate principal amount of the Subordinate Bonds specified in this Indenture in connection with such action, any Holder of a Subordinate Bond the number of which is included in the Subordinate Bonds, the Holders of which have consented to such action, may, by filing written notice with the Trustee at its principal corporate trust office and upon proof of holding as provided in Section 12.1 hereof, revoke such consent so far as it concerns such Subordinate Bond. Except as aforesaid, any such consent given by the Holder of any Subordinate Bond shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Subordinate Bond and of any Subordinate Bond issued in exchange therefor, upon transfer thereof, or in lieu thereof, irrespective of whether or not any notation in regard thereto is made upon such Subordinate Bond. Any action taken by the Holders of the percentage in aggregate principal amount of the Subordinate Bonds specified in this Indenture in connection with such action shall be conclusively binding upon the Issuer, the Borrower, the Trustee and the Holders of all the Subordinate Bonds.

(8) Nothing in this Section 12.3 is intended to limit or prevent the Trustee from taking any action permitted under Section 9.16 hereof, including but not limited to the Trustee's right to apply to a court of competent jurisdiction for confirmation of appointment, or for instructions in accordance with the provisions of Minnesota Statutes, Sections 501C.0201 through 501C.0208, as amended.

Section 12.4 Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any phrase, sentence, clause or paragraph in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

Section 12.5 Notices. All notices, certificates or other communications hereunder shall be in writing (except as otherwise expressly provided herein) and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower, the Bondholders and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Indenture. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Issuer: City of Minnetonka, Minnesota  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502  
Attention: Community Development Director

To the Borrower: Minnetonka Leased Housing Associates II, LLLP  
c/o Dominion Development and Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400  
Attention: Ryan Lunderby

with copies to: Winthrop & Weinstine P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota 55402-4629  
Attention: John M. Stern, Esq.

and:

Citibank, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attention: Mark Sherman

and:

Nixon Peabody LLP  
779 Ninth Street, NW, Suite 500  
Washington, DC 20001-4501  
Attention: Matthew W. Mullen, Esq.

and:

TCAM  
186 Lincoln Street  
Boston, MA 02111-2408  
Attention: Jenny Netzer

To the Trustee: U. S. Bank National Association  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attention: Corporate Trust Services



To Underwriter :           Dougherty & Company LLC  
                                  90 South Seventh Street, Suite 4300  
                                  Minneapolis, MN 55402  
                                  Attention: Frank J. Hogan

Section 12.6 Required Approvals. Consents and approvals required by this Indenture to be obtained from the Borrower, the Issuer or the Trustee shall be in writing and shall not be unreasonably withheld or delayed.

Section 12.7 Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.8 Limitation of Liability of Issuer and Its Officers, Employees and Agents. No covenant, provision or agreement of the Issuer herein or in the Subordinate Bonds or in any other document executed by the Issuer in connection with the issuance, sale and delivery of the Subordinate Bonds, or any obligation herein or therein imposed upon the Issuer or breach thereof, shall give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers or shall obligate the Issuer financially in any way except with respect to this Indenture and the application of revenues therefrom and the proceeds of the Subordinate Bonds. No failure of the Issuer to comply with any term, condition, covenant or agreement therein shall subject the Issuer to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Indenture or revenues therefrom or proceeds of the Subordinate Bonds. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the Issuer. In making the agreements, provisions and covenants set forth herein, the Issuer has not obligated itself except with respect to this Indenture and the application of revenues hereunder as hereinabove provided. The Subordinate Bonds constitute special obligations of the Issuer, payable solely from the revenues pledged to the payment thereof pursuant to this Indenture, and does not now and shall never constitute an indebtedness or a loan of the credit of the Issuer or the State of Minnesota or any political subdivision thereof or a charge against general taxing powers within the meaning of any constitutional or statutory provision whatsoever. It is further understood and agreed by the Borrower and the Holders that the Issuer shall not incur any pecuniary liability hereunder nor shall it be liable for any expenses related hereto, all of which the Borrower agrees to pay. If, notwithstanding the provisions of this Section, the Issuer incurs any expense, or suffers any losses, claims or damages or incurs any liabilities, the Borrower will indemnify and hold harmless the Issuer from the same and will reimburse the Issuer for any legal or other expenses incurred by the Issuer in relation thereto, and this covenant to indemnify, hold harmless and reimburse the Issuer shall survive delivery of and payment for the Subordinate Bonds. The liability of the Issuer is further restricted as provided in the Act.

Section 12.9 Amounts Remaining in Funds. Upon expiration or sooner termination of the Loan Agreement as provided therein and after adequate provision has been made to discharge the Subordinate Bonds in accordance with Article 7 hereof and make all other payments required hereunder and under the Loan Agreement, the Trustee forthwith shall, pay all remaining amounts in the funds established in Article 5 hereof to the Borrower.

Section 12.10 Electronic Signatures. The parties agree that the electronic signature of a party to this Indenture shall be as valid as an original signature of such party and shall be effective to bind such party to this Indenture. For purposes hereof, (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.



IN WITNESS WHEREOF, the Issuer and the Trustee have executed this Subordinate Indenture of Trust as of the date and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

Execution page of the Trustee to the Subordinate Indenture of Trust, dated as of the date and year first written above.

**U. S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

**EXHIBIT A**

**FORM OF SUBORDINATE BOND**

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
CITY OF MINNETONKA

No. R-\_\_\_\_\_

\$\_\_\_\_\_

TAX INCREMENT REVENUE AND  
SUBORDINATE MULTIFAMILY HOUSING REVENUE REFUNDING BOND  
(PRESERVE AT SHADY OAK PROJECT)  
SERIES 2018C

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP Number</u>
_____ %	_____ 1, 20__	September __, 2018	

REGISTERED HOLDER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

(1) KNOW ALL PERSONS BY THESE PRESENTS that the City of Minnetonka, Minnesota, in the County of Hennepin and the State of Minnesota (the "Issuer"), for value received, promises to pay to the registered holder named above, or registered assigns, but only from the Bond Fund, and upon presentation and surrender hereof at the principal corporate trust office of the Trustee named below, the principal sum specified above, on the maturity date specified above, or, if this Bond is prepayable as stated below, or a prior date on which it shall have been duly called for redemption, and to pay interest on said principal sum to the Record Date Holder hereof, as defined below, semiannually on March 1 and September 1 (each an "Interest Payment Date") commencing March 1, 2019, solely from the Bond Fund, until the principal sum is paid or discharged at the rates per annum specified above on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months.

This Bond shall bear interest from the Date of Original Issue set forth above, or in the case of transfer or exchange, from the most recent Interest Payment Date to which interest has been paid or provided for. The "Record Date Holder" is the person in whose name this Bond is registered in the Bond Register maintained by the Trustee named below or its successor in trust (the "Registered Holder" or "Holder" hereof) on the fifteenth day of the calendar month next preceding an Interest Payment Date, whether or not such day is a Business Day. Interest shall be payable by check or draft mailed to the Registered Holder at his or her address as it appears on the Bond Register on the Record Date, except as otherwise provided in the Indenture (hereinafter defined).

The principal of and interest and premium, if any, on this Bond are payable in lawful money of the United States of America. Upon notice to the Trustee accompanied by proper wire instructions, any Holder of Bonds in an aggregate principal amount equal to or greater than \$500,000 may elect to be paid

the interest on such Bonds payable on any Interest Payment Date by Federal Reserve wire transfer in immediately available funds to any bank in the United States specified by such Holder.

Interest not timely paid or duly provided for will be paid by check mailed to the person in whose name this Bond is registered on the Bond Register at the close of business on a date (the “Special Record Date”) fixed by the Trustee, notice of which is to be mailed to all Bondholders.

Capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture.

(2) This Bond is one of an issue designated as the “Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C (the “Bonds”), in the original aggregate principal amount of \$3,570,000, all of like nominal date of original issue and tenor, except as to number, amount, rate, and redemption privilege, issued in accordance with a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), between the Issuer and U.S. Bank National Association, a national banking association (the “Trustee”), setting forth the terms upon which the Bonds are issued. The Bonds are equally and ratably secured and entitled to the protection of the Indenture. The Bonds are issued for the purpose of refunding a portion of the Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018, issued by the Issuer on May 7, 2018, to provide short-term financing for the acquisition, construction, and equipping of a 220-unit workforce housing project (the “Project”), and financing a portion of the costs of the acquisition, construction, and equipping of the Project, in accordance with Minnesota Statutes, Chapter 462C, as amended (the “Act”), to be owned by Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”). The Borrower has agreed under a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower, to repay all amounts necessary to repay the Bonds, together with interest thereon, in amounts and at times sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable (the “Basic Payments”). Pursuant to the Indenture, the Issuer has assigned and pledged to the Trustee, for the equal and ratable benefit of the Holders of the Bonds, the Basic Payments due under the Loan Agreement. The Borrower has assigned to the Trustee the Borrower’s interest in the pay-as-you-go tax increment revenue note issued by the Economic Development Authority in and for the City of Minnetonka, Minnesota in the maximum principal amount of \$3,648,000 (the “TIF Note”). By a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (the “Subordinate Mortgage”), from the Borrower in favor of the Issuer and assigned by the Issuer to the Trustee, the Borrower has granted to the Trustee a subordinate mortgage lien on and security interest in substantially all of the real and personal property comprising the Project (the “Mortgaged Property”). The Borrower, the Issuer, the Trustee, and U.S. Bank National Association, as fiscal agent (the “Fiscal Agent”) with respect to the Senior Notes, have entered into a Regulatory Agreement of even date herewith (the “Regulatory Agreement”) requiring the Borrower to comply with certain requirements of federal and state law relating to the operation of the Project as a multifamily rental housing project. Proceeds of the Bonds will be disbursed to or for the benefit of the Borrower pursuant to the Disbursing Agreement.

(3) Reference is hereby made to the Loan Agreement, the Indenture, the Subordinate Mortgage, the Regulatory Agreement, the TIF Note, and the Disbursing Agreement, including all indentures supplemental thereto, for a description of the Mortgaged Property, the provisions, among others, with respect to the nature and extent of the security, the rights of the Issuer, and the rights, duties and obligations of the Borrower, the Trustee and the Holders of the Bonds and the terms upon which the Bonds are issued and secured.

(4) The term “Business Day” shall mean any day on which the Trustee or the Federal Reserve Bank of New York is not authorized by law to close. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Bond, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day.

(5) The Bonds are subject to redemption prior to maturity as provided in the Indenture as follows:

(a) Optional Redemption. The Bonds are subject to redemption and prepayment upon request by the Borrower to the Trustee on \_\_\_\_\_ 1, 20\_\_ and on any Business Day thereafter, in whole or in part, and if in part, in inverse order of maturity date, in principal increments of \$5,000 and by lot within a maturity, at a Redemption Price equal to the principal amount of the Bonds to be redeemed, plus accrued interest thereon.

(b) Mandatory Redemption Upon Failure to Meet Disbursement Requirements. The Bonds are subject to mandatory redemption in whole but not in part on September 1, 2019 if the conditions set forth in Section 3.6 of the Loan Agreement for disbursement are not met on or before August 1, 2019.

(c) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory redemption by lot in the principal increments of \$5,000, at par and accrued interest without premium, on the dates and in the principal amounts set forth in the Indenture.

(d) Extraordinary Redemption. In the event of damage to or destruction of the Project or any part thereof or Condemnation of the Project or any part thereof to the extent provided in Section 8.4 of the Loan Agreement, or in the event of any changes in the Constitution or laws of the United States of America or the State as provided in Section 8.4 of the Loan Agreement and termination of the Loan Agreement upon the occurrence of one of those events, all Bonds shall be redeemed by the Issuer on the earliest date for which timely notice of call can be given, at a Redemption Price equal to the principal amount to be redeemed, without any premium, plus accrued interest to the Redemption Date.

(e) Tax Redemption. The Bonds are subject to mandatory redemption in whole on the first Business Day for which notice of redemption can properly be given as provided herein upon the occurrence of a Determination of Taxability (as such term is defined in the Indenture) at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Bonds plus accrued interest thereon to the Redemption Date.

(6) In the case of any partial redemption of the Bonds of the same maturity, the particular Bonds to be redeemed shall be selected by the Trustee by lot and the Bonds shall be redeemed in the principal amounts specified in the Indenture. Any Bond which is to be redeemed only in part shall be surrendered to the Trustee (i) for payment of the Redemption Price (including accrued interest thereon to the Redemption Date) of the portion thereof called for redemption and (ii) for exchange for Bonds in any authorized denomination or denominations in aggregate principal amount equal to the unredeemed portion of such Bond.

(7) Notice of redemption shall be mailed at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption to each Registered Holder of a Bond to be redeemed. All Bonds so called for redemption, provided funds for their redemption have been duly deposited, will cease to bear interest on the specified Redemption Date and (except for the purpose of payment) shall no longer

be protected by the Indenture and shall not be deemed Outstanding under the Indenture, and shall thereafter be payable solely from the funds provided for payment.

Notwithstanding the foregoing, notice of any redemption pursuant to subsection (a) above may provide that the redemption is conditioned on the deposit of sufficient moneys for payment of the Redemption Price on or prior to the Redemption Date. If the notice is conditioned upon moneys being on deposit with the Trustee in an amount sufficient to pay the Redemption Price on the Redemption Date, the notice shall state such condition and that such redemption shall not be effective unless such condition is met.

(8) In addition to the foregoing, if under certain circumstances an Event of Default, as defined in the Indenture, shall occur, the principal of all the Bonds and all interest accrued thereon may, without prior notice to the Bondholders, be declared due and payable in the manner and with the effect provided in the Loan Agreement and Indenture.

(9) This Bond and the series of which it forms a part are issued pursuant to and in full compliance with the Constitution and laws of the State, including the Act, and pursuant to a resolution adopted and approved by the governing body of the Issuer on August 27, 2018, which resolutions authorized the financing of the Project and the execution and delivery of the Indenture, and the issuance of the Bonds as special, limited obligations payable solely from revenues derived from the Loan Agreement except that under certain circumstances the Bonds may be payable from Bond proceeds. The loan repayments under the Loan Agreement are scheduled to be sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable and are to be paid to the Trustee for the account of the Issuer and credited to the Bond Fund as a special trust fund account created by the Issuer and have been and are hereby pledged for that purpose.

(10) The Bonds, including principal, premium and any other payments however designated, and the interest due thereon do not and shall never constitute a general indebtedness of the Issuer within the meaning of any state constitutional or statutory provision and do not and shall not constitute or give rise to a pecuniary liability or moral obligation of the Issuer, the State or any of its political subdivisions, or a charge against its general credit or taxing powers, or to the extent permitted by law, any pecuniary liability of any officer, employee or agent of the Issuer. The provisions of this paragraph are controlling notwithstanding anything herein to the contrary.

(11) The Registered Holder of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. Modifications or alterations of the Indenture, or of any indenture supplemental thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

(12) With the consent of the Issuer, the Borrower and the Trustee, as appropriate, and to the extent permitted by and as provided in the Indenture, the terms and provisions of the Indenture, the Loan Agreement, or of any instrument supplemental thereto relating to the Bonds, may be modified or altered by the consent of the Registered Holders of at least a majority in aggregate principal amount of the Bonds then Outstanding thereunder.

(13) The Indenture also contains provisions permitting Holders of a majority in aggregate principal amount of the Bonds at the time Outstanding, on behalf of all the Holders of all the Bonds, to waive compliance by the Issuer with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Registered Holder of this Bond



shall be conclusive and binding upon such Registered Holder and on all future Registered Holders of this Bond and of any Bond issued in lieu hereof whether or not notation of such consent or waiver is made upon this Bond.

(14) The Bonds are issued as fully registered Bonds without coupons in the Authorized Denominations. The Bonds are interchangeable for one or more Bonds in Authorized Denominations and of the same series, aggregate principal amount, interest rate and maturity date, upon surrender thereof by the Holder at the principal office of the Trustee, in the manner and subject to the limitations provided in the Indenture. The Issuer, the Trustee and any additional paying agents may deem and treat the Registered Holder hereof as the absolute owner hereof (whether or not this Bond shall be overdue) for the purpose of receiving payment of or on account of principal hereof and interest (except as otherwise hereinabove provided with respect to the Record Date) due hereon and for all other purposes, and the Issuer, the Trustee and any additional paying agents shall not be affected by any notice to the contrary.

(15) Subject to the limitations provided in the Indenture, this Bond is only transferable by the Registered Holder hereof upon surrender of this Bond for transfer at the principal corporate trust office of the Trustee, duly endorsed or accompanied by a written instrument or instruments of transfer in the form printed on this Bond or in another form satisfactory to the Trustee and executed and with guaranty of signature by the Registered Holder hereof or his attorney duly authorized in writing, containing written instructions as to the details of the transfer of the Bond. Thereupon the Issuer shall execute (if necessary) and the Trustee shall authenticate and deliver, in exchange for this Bond, one or more new Bonds in the name of the transferee (but not registered in blank or to “bearer” or a similar designation), of an authorized denomination, in aggregate principal amount equal to the principal amount of this Bond, of the same maturity, and bearing interest at the same rate.

(16) No service charge shall be made to the Registered Holder for any registration, transfer or exchange hereinbefore referred to, but the Trustee may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, other than exchanges expressly provided in the Indenture to be made without charge to Bondholders.

(17) IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner, as required by law, and that the issuance of this Bond and the series of which it forms a part, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation.

(18) This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture unless the Certificate of Authentication hereon shall have been executed by the Trustee.

IN WITNESS WHEREOF, the City of Minnetonka, Minnesota, by its governing body, has caused this Bond to be executed in its name by the facsimile signatures of its Mayor and City Manager and by the manual signature of a Responsible Officer of the Trustee acting as authenticating agent.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

\_\_\_\_\_  
**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

Date of Authentication: \_\_\_\_\_, 2018

**U.S. BANK NATIONAL ASSOCIATION, as Trustee**

By \_\_\_\_\_  
Responsible Officer

\_\_\_\_\_  
**ASSIGNMENT**

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the Bond on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

Signature Guaranteed:

\_\_\_\_\_

Signature(s) must be guaranteed by a member of a Medallion Signature Program.

The Trustee will not effect transfer of this Bond unless the information concerning the transferee requested below is provided.

Name and Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Include information for all joint owners if the  
Bond is held by joint account)

Insert social security or  
other identifying number of  
Transferee

\_\_\_\_\_

\_\_\_\_\_

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**SUBORDINATE LOAN AGREEMENT**

**between**

**CITY OF MINNETONKA, MINNESOTA,  
as Issuer**

**and**

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,  
as Borrower**

**Dated as of September 1, 2018**

**Relating to:**

**\$3,570,000  
City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Refunding Bonds  
(Preserve at Shady Oak Project)  
Series 2018C**

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With the exception of certain reserved rights, the interest of the City of Minnetonka, Minnesota in this Subordinate Loan Agreement, dated as of September 1, 2018, has been assigned to U.S. Bank National Association.

This instrument drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

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## **SUBORDINATE LOAN AGREEMENT**

THIS SUBORDINATE LOAN AGREEMENT, dated as of September 1, 2018 (the “Loan Agreement”), is between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “Issuer”), and MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”).

### WITNESSETH:

Reference is hereby made to the Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), between the Issuer and U.S. Bank National Association, a national banking association (the “Trustee”), for the recitals and the definitions of various terms used herein.

In consideration of the premises, the respective representations and agreements contained herein, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to secure the payments to be made by the Borrower pursuant to Article 4 hereof and the performance of all the covenants of the Borrower contained herein, the parties hereto agree as follows:

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



## ARTICLE 1

### DEFINITIONS AND MISCELLANEOUS

Section 1.1 Definitions. The terms defined in Section 1.1 of the Indenture, when used in this Loan Agreement, shall have the meanings specified in that Section.

Section 1.2 Legal Description of Project Premises. The Project Premises are legally described in Exhibit A attached to the Subordinate Mortgage.

Section 1.3 Borrower's Acts. Where the Borrower is permitted or required to do or accomplish any act or thing hereunder, the Borrower may cause the same to be done or accomplished by a third party selected by the Borrower with the same force and effect as if done or accomplished by the Borrower.

Section 1.4 Rules of Interpretation.

(1) This Loan Agreement shall be interpreted in accordance with and governed by the laws of the State.

(2) The words "herein," "hereof" and "hereunder" and words of similar import, without reference to any particular section or subdivision, refer to this Loan Agreement as a whole rather than to any particular section or subdivision of this Loan Agreement.

(3) References in this instrument to any particular article, section or subdivision hereof are to the designated article, section or subdivision of this instrument as originally executed.

(4) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

(5) The Table of Contents and titles of articles and sections herein are for convenience of reference only and are not a part of this Loan Agreement, and shall not define or limit the provisions hereof.

(6) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

(7) Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Loan Agreement.

(8) For purposes of this Loan Agreement and the Indenture, an Act of Bankruptcy shall be deemed no longer in effect if the petition initiating the Act of Bankruptcy is dismissed by order of a court of competent jurisdiction and no further appeal rights exist from such order.

(9) Any opinion of counsel required hereunder shall be a written opinion of such counsel.

(10) References to the Subordinate Bonds as “tax exempt” or to the “tax-exempt status of the Bonds” are to the exclusion of interest on the Subordinate Bonds from gross income pursuant to Section 103(a) of the Code, irrespective of such forms of taxation as the alternative minimum tax or branch profits tax on foreign corporations, as is consistent with the approach taken in Section 59(i) of the Code.

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

## ARTICLE 2

### REPRESENTATIONS OF ISSUER AND BORROWER

Section 2.1 Representations of the Issuer. The Issuer makes the following representations and warranties as the basis for its covenants herein:

(1) The Issuer is a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State and is authorized to issue the Subordinate Bonds to finance the Project pursuant to the Act.

(2) In authorizing the Project, the Issuer's purpose is, and in its judgment the effect thereof will be, to promote the public welfare by providing a multifamily rental housing development within the meaning of the Act and assisting individuals and their families within the City to obtain decent, safe and sanitary housing at rentals they can afford, and facilitating the development of rental housing opportunities for residents of the City.

(3) A public hearing on the proposal to finance the Project was called and held on August 27, 2018, at which time all persons who appeared were given an opportunity to express their views with respect to the proposal to undertake and finance the Project.

(4) The issuance and sale of the Subordinate Bonds, the execution and delivery of this Loan Agreement, the Indenture, the Regulatory Agreement, the Bond Purchase Agreement, and the Assignment of Subordinate Mortgage, and the performance of all covenants and agreements of the Issuer contained in this Loan Agreement, the Regulatory Agreement, the Bond Purchase Agreement, the Assignment of Subordinate Mortgage, and the Indenture and of all other acts and things required under the Constitution and laws of the State to make this Loan Agreement, the Indenture and the Subordinate Bonds valid and binding obligations of the Issuer in accordance with their terms, are authorized by the Act and have been duly authorized by a resolution of the governing body of the Issuer adopted at a meeting thereof duly called and held on August 27, 2018 by the affirmative vote of not less than a majority of the governing body's members.

(5) Under the provisions of the Indenture, the Issuer's interest in this Loan Agreement (except for certain reserved or unassigned rights) and certain payments due hereunder are pledged and assigned to the Trustee as security for the payment of the principal and purchase price of, interest, and premium, if any, on the Subordinate Bonds.

Section 2.2 Representations of the Borrower. The Borrower makes the following representations and warranties as the basis for its covenants herein:

(1) The Borrower is a limited liability limited partnership duly organized under the laws of the State, is duly authorized to conduct its business in the State, has power to enter into the Related Loan Documents to which it is a party, and to use the Project for the purpose set forth in this Loan Agreement and by proper action has authorized the execution and delivery of the Related Loan Documents to which it is a party.

(2) The execution and delivery of the Related Loan Documents to which it is a party, and the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the partnership agreement of the Borrower, any restriction or any agreement or instrument to which the

Borrower is now a party or by which it is bound or to which any property of the Borrower is subject, and do not and will not constitute a default under any of the foregoing, or cause the Borrower to be in violation of any order, decree, statute, rule or regulation of any court or any state or federal regulatory body having jurisdiction over the Borrower or its properties, including the Project, and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound.

(3) The design and plan of the Project comprise a multifamily rental housing development as contemplated by the Act, and subject to the other provisions of this Loan Agreement, it is presently intended and reasonably expected that the equipment purchased from the proceeds of the Subordinate Bonds will be permanently located and exclusively used on the Project Premises and that the Borrower will own and operate the Project on the Project Premises throughout the Term of Loan Agreement in the normal conduct of the Borrower's business.

(4) There is public access to the Project Premises, and, as of the date of completion of the Project, the use of the Project will comply, in all material respects, with all presently applicable development, pollution control, water conservation and other laws, regulations, rules and ordinances of the federal government and the State and the respective agencies thereof and the political subdivisions in which the Project is located. The Borrower has obtained or will obtain all necessary and material approvals of and licenses, permits, consents and franchises from federal, state, county, municipal or other governmental authorities having jurisdiction over the Project to construct, equip, and operate the Project and to enter into, execute and perform its obligations under the Related Loan Documents to which it is a party.

(5) The sum of the proceeds of the Subordinate Bonds and the proceeds of the Senior Notes, together with any other funds to be contributed to the Project by the Borrower or otherwise in accordance with this Loan Agreement, will be sufficient to pay the cost of constructing the Project in a manner suitable for operation as a multifamily housing development as required in Article 3 hereof.

(6) The Subordinate Bonds are issued within the exemption provided under Section 142(d) of the Code with respect to residential rental property, and "substantially all" of the proceeds of the Subordinate Bonds will be used for expenditures chargeable to the capital account of the Project.

(7) A major inducement to the Borrower to construct and equip the Project was the source of financing provided under the Act and the assurance the Borrower received from the Issuer that such financing would be made available to the Borrower; all Project Costs heretofore incurred by the Borrower for which the Borrower will seek reimbursement from the proceeds of the Subordinate Bonds were incurred in anticipation of reimbursement from the proceeds of the Subordinate Bonds, if such proceeds should become available on terms acceptable to the Borrower; the Borrower investigated the possibility of such financing prior to incurring such Project Costs; and the Borrower did not commence construction of the Project more than sixty (60) days prior to December 18, 2017, which is the date on which the City Council of the Issuer gave preliminary approval to the Project and the financing thereof in whole or part through the Subordinate Bonds, and adopted a statement of official intent to reimburse an original expenditure pursuant to Section 1.150-2 of the Treasury Regulations.

(8) The Borrower is not in the trade or business of selling properties such as the Project and the Borrower is acquiring the Project for investment purposes only or otherwise for use by the Borrower in its trade or business; therefore, the Borrower has no intention, now or in the foreseeable future to voluntarily sell, surrender or otherwise transfer, in whole or part, its interest in the Project, except as contemplated by the partnership agreement of the Borrower.

(9) There are no actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower or any property of the Borrower in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to the Borrower, would have a material adverse effect upon the Borrower or upon the business or properties of the Borrower or upon the validity or enforceability of the instruments referred to in subsection (1) above, or the ability of the Borrower to perform its obligations thereunder, and the Borrower is not in default with respect to any order of any court or governmental agency.

(10) The Borrower is not in default in the payment of the principal of or interest on any indebtedness for borrowed money nor in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued.

(11) The Borrower has filed all federal and state income tax returns which, to the knowledge of the Borrower, are required to be filed and has paid all taxes shown on said returns and all assessments and governmental charges received by it to the extent that they have become due.

(12) To the best of the Borrower's knowledge, no public official of the Issuer has either a direct or indirect financial interest in this Loan Agreement nor will any public official either directly or indirectly benefit financially from this Loan Agreement within the meaning of Minnesota Statutes, Sections 412.311 and 471.87, as amended.

(13) No other obligations have been or will be issued under Section 103 of the Code which are sold at substantially the same time as the Subordinate Bonds, pursuant to the same plan of financing, which are reasonably expected to be paid out of substantially the same source of funds as the Subordinate Bonds.

(14) The Project will be eligible for low income housing tax credits under Section 42 of the Code.

(15) The Development Agreement is in full force and effect and has not been amended or revised and there is no litigation pending or threatened with respect to the TIF Note or the Development Agreement.

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## ARTICLE 3

### COMPLETION OF PROJECT

Section 3.1 Construction and Equipping of Project by Borrower. In connection with the acquisition, construction, and equipping of the Project, the Borrower represents and covenants as follows:

(1) Construction and Equipping. The Borrower will construct and equip the Project within the boundary lines of the Project Premises and will provide all other improvements, access roads, utilities, parking facilities, and other items required for a facility fully operable for use as a multifamily residential rental property.

(2) Completion. The Borrower will construct the Project as promptly as practicable with all reasonable dispatch and in any event no later than \_\_\_\_\_, 20\_\_\_\_, except only as completion may be delayed by strikes, riots or acts of God or the public enemy, shortages of materials or supplies or any other reason beyond the reasonable control of the Borrower for which a reasonable extension of the time of completion shall be granted as determined by the Issuer, provided that if the Project is not completed by that date there shall be no resulting liability on the part of the Issuer and no abatement or diminution in the payments required to be made by the Borrower under Article 4 hereof.

Section 3.2 Payment of Project Costs by Borrower. The Borrower agrees that it will provide any and all money required for the prompt and full payment of all sums required to complete the Project, including all of the following items (the "Project Costs") which the Issuer agrees will be payable or reimbursable from available money in the Project Fund from and to the extent and in the manner provided in Sections 3.5 and 3.6 hereof and subject to the provisions of the Act and the Code:

(1) all expenses incurred and to be incurred in connection with the construction and equipping of the Project, the contract price of all labor, services, materials, supplies and equipment furnished under any contract for construction of the Project, any developer fee or construction management fee or other amounts incurred in connection therewith, including the cost of all equipment and all appurtenances thereto, and of all rights-of-way for access and utility connections to and from the Project, and all fees required for recording all financing statements and any real estate documents;

(2) the expense of preparation of the plans and specifications for the Project, including utilities, and all other facilities necessary or desirable in connection therewith, and all other architectural, engineering and supervisory services incurred and to be incurred in the planning, construction and completion of the Project;

(3) all legal (including Bond Counsel and counsel to the Issuer, Borrower, Original Purchaser, and Trustee), abstractors', financial and accounting fees and expenses, administrative and rating agency fees (if any), printing and engraving costs and other expenses incurred and to be incurred on or before or in connection with the Completion Date with respect to (i) the establishment of title to the Project Premises, (ii) the authorization, sale and issuance of the Subordinate Bonds, (iii) the preparation of this Loan Agreement, the Indenture, the Regulatory Agreement, and all other documents necessary to the Date of Issuance or required by this Loan Agreement or the Indenture, (iv) the establishment of the Completion Date, including compliance with any governmental or administrative rules or regulations on or before such date, or (v) the administrative charges imposed by the Issuer pursuant to Section 4.4(2) hereof in connection with the issuance of the Subordinate Bonds;

- (4) premiums on all insurance (including any title insurance) required to be taken out and maintained during the period before the Completion Date;
- (5) all expenses incurred in seeking to enforce any remedy against any contractor, or any subcontractor or any supplier in respect of any default under any contract with such Person;
- (6) all deed taxes, mortgage registry taxes, recording fees and other taxes, charges and assessments and license and registration fees of every nature whatsoever incurred and to be incurred in connection with construction or completion of the Project including the financing thereof;
- (7) the cost of all other labor, services, materials, supplies and equipment necessary to complete the construction and equipping of the Project;
- (8) all fees and expenses of the Trustee and Paying Agent under the Indenture that become due on or before the Completion Date or in connection with the establishment of the Completion Date; and
- (9) without limitation by the foregoing, all other expenses which under accepted accounting practice constitute necessary capital expenditures for the completion of the Project or issuance of the Subordinate Bonds, not including Working Capital Expenses (all of which are nevertheless to be supplied by the Borrower from its own funds without reimbursement).

All Project Costs may be paid or reimbursed from available money in the Project Fund to the extent and in the manner permitted in Sections 3.5 and 3.6 hereof. If, however, such money is insufficient to pay in full Project Costs payable therefrom or are otherwise unavailable to pay any Project Costs, the Borrower shall nevertheless promptly pay so much of such Project Costs as may be in excess of such available money in the Project Fund or shall, at the request of the Trustee, forthwith pay over to the Trustee such money as is necessary to pay such Project Costs. The Borrower shall not by reason of the payment of such excess Project Costs be entitled to any reimbursement from the Issuer in excess of any money available therefor in the Project Fund or for any abatement or diminution of the Basic Payments or Additional Charges.

Section 3.3 Authorization by Issuer. In accordance with the Act, the Borrower is authorized by the Issuer, and the Borrower, pursuant to such authorization, agrees:

- (1) to construct and equip the Project as provided in Section 3.1 hereof, upon the Project Premises;
- (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, with any other Persons, and in general to do all things which may be requisite or proper for constructing and equipping the Project;
- (3) pursuant to the provisions of this Loan Agreement, to pay all fees, costs and expenses incurred in the construction and equipping of the Project from funds made available therefor in accordance with this Loan Agreement or otherwise subject to the right to contest such fees, costs and expenses;
- (4) so long as the Borrower is not in default under any of the provisions of this Loan Agreement to exercise all authority hereby conferred, which is granted and conferred irrevocably to the Completion Date and thereafter until all activities in connection with the construction and equipping of the Project shall have been completed.

Neither the authorization granted in this Section nor any other provision of this Loan Agreement shall be construed as making the Borrower an agent or joint venturer with the Issuer.

Section 3.4 Issuance of Subordinate Bonds. The Issuer and Borrower have contracted for the sale of the Subordinate Bonds authorized by the Indenture, and the Borrower has and does approve the terms of the Indenture. Forthwith upon execution of the Indenture, the Related Loan Documents, and all other documents required to be executed by the aforementioned documents, or as soon thereafter as practicable, the Issuer will execute the Subordinate Bonds and cause them to be authenticated by the Trustee and delivered to the Original Purchaser upon payment of the purchase price of the Subordinate Bonds and filing with the Trustee the opinion of Bond Counsel as to the legality of the Subordinate Bonds and the furnishing of all other documents required by this Loan Agreement, the Disbursing Agreement, the Bond Purchase Agreement and the Indenture to be furnished before delivery.

If for any reason such documents are not furnished and the approving opinion of Bond Counsel in customary form cannot be obtained, then this Loan Agreement shall be terminated and be void and of no effect and the Borrower shall be obligated to pay all costs and expenses enumerated in Section 3.2 hereof and incurred on or before the date of such termination.

Section 3.5 Proceeds of Subordinate Bonds. On the Date of Issuance, \$\_\_\_\_\_ of the proceeds of the Subordinate Bonds will be disbursed to pay Issuance Expenses and \$\_\_\_\_\_ of the proceeds of the Subordinate Bonds will be deposited to the Capitalized Interest Fund. On the Date of Issuance \$\_\_\_\_\_ of the proceeds of the Subordinate Bonds will be deposited to the Refunding Fund for the purposes of refunding a portion of the Prior Note. The remaining proceeds of the Subordinate Bonds (including proceeds of the Prior Notes) received by the Trustee on the Date of Issuance in the amount of \$\_\_\_\_\_ will be held by the Trustee in the Escrow Fund until the conditions set forth in Section 3.6(1) hereof are satisfied.

Section 3.6 Conditions of Second and Subsequent Disbursements of Proceeds of Subordinate Bonds.

(1) Following the initial advance of proceeds of the Subordinate Bonds described in Section 3.5 hereof, no further disbursements of the proceeds of the Subordinate Bonds from the Project Fund shall be made until the Borrower provides the Trustee with the following:

- (a) A fully executed Freddie Mac Commitment.
- (b) Evidence of a rate lock with regard to the Permanent Phase Interest Rate (as defined in the Funding Loan Agreement).
- (c) Evidence that all of requirements of the Initial Funding Lender to fund the Funding Loan have been satisfied.
- (d) Evidence that the Regulatory Agreement has been recorded in the land records of the County.

(2) Upon satisfaction of the conditions set forth in Section 3.6(1) hereof, the Trustee will cause the proceeds of the Subordinate Bonds (including proceeds of the Prior Notes) to be deposited as follows: the amount of \$\_\_\_\_\_ to the Project Fund and the amount of \$\_\_\_\_\_ to the Bond Fund.



(3) Upon satisfaction of the conditions set forth in Section 3.6(1) hereof, the funds in the Project Fund shall be disbursed in accordance with the Construction Continuing Covenant Agreement (as defined in the Funding Loan Agreement) and the Disbursing Agreement (except the disbursement of Issuance Expenses of the Subordinate Bonds shall not be subject to the provisions of the Disbursing Agreement), to or upon the order of the Borrower, in payment or reimbursement of Project Costs.

Section 3.7 Establishment of Completion Date. Within \_\_\_\_\_ days of the Completion Date, any balance remaining in the Project Fund in excess of the amount retained therein pursuant to the Disbursing Agreement shall be transferred to the Bond Fund held by the Trustee and established under the Indenture and shall be used by the Trustee (a) to redeem the largest number of Subordinate Bonds callable, without premium or penalty, under the terms of the Indenture at the first opportunity or (b) to pay principal due on the Subordinate Bonds, in accordance with Sections 5.5(2) and 5.6(2) of the Indenture.

Section 3.8 Payment and Performance Bond. The Borrower shall have a payment and performance bond for the construction of the Project as required by the financing documents for the Senior Notes.

Section 3.9 Enforcement of Contract. In the event of default of any contractor or subcontractor under any construction contract or in the event of a breach of warranty with respect to any materials, workmanship or performance, the Borrower will promptly proceed, either separately or in conjunction with others, to exhaust its remedies against the contractor, subcontractor or vendor in default and against any surety on a bond securing the performance of such contract, provided, however, that the Borrower may on the advice of its counsel and with the Trustee's consent refrain from exhausting such remedies if determined by the Borrower not to be in its best interests and not necessary to complete the Project. The Borrower will promptly advise the Trustee of the steps it intends to take in connection with any such default. Any amounts recovered pursuant to any bond or by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, other than any amounts resulting from the loss of income, shall be paid into the Project Loan Fund if received before the Completion Date, and otherwise shall be paid into the Bond Fund, provided that the Borrower may obtain reimbursement for any payments made by the Borrower in connection with such action as an item of Project Cost as provided in Section 3.6 hereof.

Section 3.10 Title Insurance. In connection with the issuance of the Subordinate Bonds, the Borrower agrees to furnish the Trustee with a commitment for a mortgagee's policy of title insurance and a title insurance policy issued by Title in an amount not less than the original principal amount of the Subordinate Bonds, insuring the following:

- (1) that fee title to the Project Premises in in the name of the Borrower;
- (2) that the Subordinate Mortgage is a subordinate mortgage lien upon the Project Premises subject to the Senior Mortgages and the other Permitted Encumbrances; and
- (3) that the Project and its use do not violate any zoning or other use restrictions covering the Project Premises and provides the coverage included within the standard zoning endorsement.

Such commitment must also waive and insure over the following standard exceptions: (a) facts which would be disclosed by a comprehensive survey of the premises; (b) mechanics', contractors', or materialmen's liens and lien claims; and (c) right of parties in possession other than Digi International, as the seller of the premises.

Notwithstanding the foregoing, the Trustee shall have no duty to review or analyze such commitment or the insurance policy.

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## ARTICLE 4

### THE LOAN, BASIC PAYMENTS, ADDITIONAL CHARGES AND ADDITIONAL FINANCING

Section 4.1 The Loan. The Issuer agrees, upon the terms and conditions herein specified, to lend to the Borrower the proceeds received by the Issuer from the sale of the Subordinate Bonds, by causing such proceeds to be deposited with the Trustee for disposition as provided herein and in the Indenture. The amount of the Loan shall be deemed to include any “discount” or any other amount by which the aggregate price at which the Issuer sells the Subordinate Bonds to the Underwriter is less than the aggregate principal amount of the Subordinate Bonds, and the obligation of the Issuer to make the Loan shall be deemed fully discharged upon so depositing the proceeds of the Subordinate Bonds with the Trustee.

Section 4.2 Basic Payments. Subject to the Borrower’s right of prepayment granted in Section 8.2 hereof, the Borrower agrees to repay the Loan in installments of Basic Payments as follows:

(1) During the Term of Loan Agreement, and subject to the prior pledge by the Borrower to make payments under the Project Loan Agreement, the Borrower shall make Basic Payments under this Loan Agreement in immediately available funds as follows:

(a) On or before the twentieth day of each month, the Borrower shall make Basic Payments in an amount which, (i) commencing on October 20, 2018 and continuing through February 20, 2019, will equal one-fifth of the total interest due on all Outstanding Subordinate Bonds on the next Interest Payment Date net of the anticipated regularly scheduled semiannual payment on the TIF Note; (ii) commencing on March 20, 2019 and continuing thereafter, will equal one-sixth of the total interest due on all Outstanding Subordinate Bonds on the next Interest Payment Date net of the anticipated regularly scheduled semiannual payment on the TIF Note; and (iii) commencing on March 20, 2022 and continuing thereafter, will equal one-sixth of the total principal due on all Outstanding Subordinate Bonds on the next principal payment date (including principal due pursuant to the Mandatory Redemption Schedule after taking into account any credit to which the Borrower may be entitled under Section 3.1(2) of the Indenture net of the anticipated regularly scheduled semiannual payment on the TIF Note). There shall be credited against such payments amounts deposited in the Bond Fund interest earnings retained in or credited to the Bond Fund. Interest payments shall be made from funds in the Capitalized Interest Fund until those funds are depleted.

(b) In any event the sum of the Basic Payments payable under this Section and amounts deposited in the Bond Fund shall be sufficient to pay all principal, interest and premium, if any, on the Subordinate Bonds as such principal, interest and premium become due, at maturity, upon redemption, acceleration or otherwise, and accordingly if on the Business Day immediately preceding each Maturity Date the balance in the Bond Fund is not sufficient for this purpose, the Borrower will make a Basic Payment on such Business Day to cure the deficiency.

(2) All payments of Basic Payments shall be made directly to the Trustee at its corporate trust office, for the account of the Issuer and shall be deposited by the Trustee in the Bond Fund. In the event the Borrower should fail to make any of the payments required in this Section 4.2, the item so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon (including to the extent permitted by

law, interest on overdue installments of interest) at the rate borne by the respective Subordinate Bonds as to which such default exists.

(3) Except during the continuance of an Event of Default, all available remaining sums on deposit in the Bond Fund not credited against currently payable installments of Basic Payments or applied as provided in Section 7.8, 8.2 or 8.4 hereof shall be credited against the last installments of Basic Payments.

(4) In no event shall any purchase of any Subordinate Bonds made by or on behalf of the Borrower result in the discharge of either (a) the Subordinate Bonds so purchased; (b) the obligations under this Section 4.2 to make Basic Payments relating to the Subordinate Bonds so purchased; or (c) the Loan made hereunder to the extent of the Subordinate Bonds so purchased, unless and to the extent the Subordinate Bonds so purchased are surrendered to the Trustee and canceled.

Section 4.3 [Intentionally Omitted].

Section 4.4 Additional Charges. The Borrower agrees to pay, when due, each and all of the following:

(1) to or upon the order of the Trustee, when due, all reasonable fees of the Trustee for services rendered under the Indenture and all reasonable fees and charges of the Paying Agent, registrars, legal counsel, accountants, engineers, public agencies and others incurred in the performance on request of the Trustee of services required under the Indenture for which the Trustee and such other Persons are entitled to payment or reimbursement, provided that the Borrower may, without creating a default hereunder, contest in good faith the necessity or reasonableness of any such services, fees or expenses;

(2) the reasonable fees and expenses of counsel for the Issuer and an administrative fee equal to one-eighth of one percent (0.125%) of the original aggregate principal amount of the Subordinate Bonds due on Date of Issuance (\$\_\_\_\_\_);

(3) to the Trustee, the amount of all advances made by the Trustee, with interest thereon, as provided in Section 5.4 hereof;

(4) to the Issuer or Trustee, as the case may be, interest at the rate equal to one percent (1%) over the prime rate on each payment commencing on the date when due and required in this Section to be made to the Issuer or Trustee, if not made when due and if not advanced by the Trustee under the Indenture; and

(5) any costs incurred by the Trustee or Original Purchaser in the preparation of printed bonds.

Section 4.5 Borrower's Obligations Unconditional. All Basic Payments and Additional Charges and all other payments required of the Borrower hereunder shall be paid without notice or demand and without setoff, counterclaim, or defense for any reason and without abatement or deduction or defense (except as provided in Sections 8.2 and 9.13 hereof). The Borrower will not suspend or discontinue any such payments, and will perform and observe all of its other agreements in this Loan Agreement, and, except as expressly permitted in Sections 7.8 and 8.4 hereof, will not terminate this Loan Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction or damage to the Project or the Borrower's business, the taking of the Project or the Borrower's business by Condemnation or otherwise, the lawful prohibition of the Borrower's use of the Project or the Borrower's business, the interference with such use by any Person,

the invalidity or unenforceability or lack of due authorization or other infirmity of this Loan Agreement, the lack of right, power or authority of the Issuer to enter into this Loan Agreement, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer or Trustee, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State or any political subdivision thereof, or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Basic Payments and other amounts payable by the Borrower hereunder shall be paid in full when due without any delay or diminution whatever. Pursuant to the Guaranty, the Guarantor has guaranteed the payments of the Borrower required under Sections 4.2 and 4.4 hereof.

Section 4.6 Assignment of Issuer's Rights. As security for the payment of the Subordinate Bonds, the Issuer will pledge the amounts payable hereunder and assign, without recourse or liability, to the Trustee, the Issuer's rights under this Loan Agreement, including the right to receive payments hereunder (except the right to receive payments, if any, under Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 hereof) and hereby directs the Borrower to make said payments directly to the Trustee. The Borrower herewith assents to such assignment and will make payments under this Loan Agreement directly to the Trustee without defense or setoff by reason of any dispute between the Borrower and the Trustee.

Section 4.7 Borrower's Remedies. Nothing contained in this Article shall be construed to release the Issuer from the performance of any of its agreements herein, and if the Issuer should fail to perform any such agreements, the Borrower may institute such action against the Issuer as the Borrower may deem necessary to compel such performance so long as such action shall not violate the Borrower's agreements in Section 4.4 hereof or diminish or delay the amounts required to be paid by the Borrower pursuant to Section 4.2 hereof. The Borrower acknowledges, however, and agrees that any pecuniary obligation of the Issuer created by or arising out of this Loan Agreement shall be payable solely out of the proceeds derived from this Loan Agreement and the sale of the Subordinate Bonds.

Section 4.8 Compliance with Issuer's Private Activity Bond Policy. The Borrower agrees to comply with the Issuer's Policy Number 2.5 related to Tax Exempt Financing.

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## ARTICLE 5

### PROJECT COVENANTS

#### Section 5.1 Project Operation and Maintenance.

(1) The Borrower shall pay all expenses of the operation and maintenance of the Project, including but without limitation adequate insurance thereon and insurance against all liability for injury to Persons or property arising from the operation thereof, and all taxes and special assessments levied upon or with respect to the Project and payable during the Term of Loan Agreement and further described in this Article 5.

(2) At the request of the Trustee or the Underwriter, the Borrower shall prepare and deliver to the Trustee and to the Underwriter, on January 1, 2037, and on every fifth anniversary thereafter, a needs assessment for the ensuing five (5) year period with respect to the Project (the "Capital Needs Assessment"). The Capital Needs Assessment will include the projected costs of the required capital expenditures for such period identified in the Capital Needs Assessment.

Section 5.2 Sale or Lease of Project. So long as any Subordinate Bonds are Outstanding, the Borrower will not lease the Project (except tenant leases in the normal course of business), in whole or in part, nor sell, mortgage or otherwise encumber its interests in the Project, in whole or part, except as provided in Sections 7.5 and 8.1 hereof, provided that in no event shall such lease, assignment or sale be permitted if (1) the effect thereof would be to impair the validity or the exclusion from gross income under Section 103 of the Code of the interest on the Subordinate Bonds, or (2) if any such transaction should release the Borrower of any of its obligations under this Loan Agreement (except as otherwise provided in Section 8.1 hereof). Before any such lease, sale or assignment, the Borrower shall deliver to the Trustee an opinion of Bond Counsel, addressed to the Trustee and in form and substance satisfactory to the Trustee, stating in effect that such lease, sale or assignment will not cause interest on the Subordinate Bonds to be included in gross income for purposes of federal income taxation. The Borrower shall give at least thirty (30) days' notice to the Trustee and the Issuer of any such sale, assignment or lease, unless such thirty (30) day notice is waived by the Trustee and the Issuer.

Section 5.3 Subordinate Mortgage and Security Agreement. In consideration of the Loan, and as security for the Basic Payments to be made by the Borrower for the payment of the Subordinate Bonds, and as security for the performance of all of the other obligations, agreements, and covenants of the Borrower to be performed and observed hereunder, the Borrower shall execute and cause to be delivered and recorded in the real estate records of the County the Subordinate Mortgage, shall execute and deliver the Security Agreement, and shall keep, perform, and observe each of its obligations thereunder.

Section 5.4 Advances. The Borrower acknowledges and agrees that under the Indenture, the Trustee may take certain action and make certain advances relating to the Project or to certain other matters as expressly provided therein, and the Borrower shall be obligated to repay all such advances on demand, with interest from the date of each such advance, at the rate and under the conditions set forth in the Indenture.

Section 5.5 Alterations to the Project and Removal of Equipment. The Borrower shall have the right from time to time, at its cost and expense, to remodel and make such additions, modifications, alterations, improvements and changes (collectively referred to as "alterations") in or to the Project or to remove any equipment therefrom as the Borrower, in its discretion, may deem to be desirable for its uses

and purposes, provided such alterations or removal do not impair the character of the Project as a “project” within the meaning of the Act or otherwise impair the exclusion from gross income under Section 103 of the Code of the interest on the Subordinate Bonds.

Section 5.6 Insurance. The Borrower shall maintain, or cause to be maintained, at its cost and expense, insurance as follows:

(1) Insurance against loss and/or damage to the Project under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire and extended coverage in an amount not less than one hundred percent (100%) of the full insurable replacement cost of the Project but any such policy may have a deductible amount of not more than \$100,000. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior consent thereto in writing by the Trustee. The term “full insurable replacement cost” shall mean the actual replacement cost of the Project (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items) and equipment, and shall be determined from time to time at the request of the Trustee, every five (5) years, commencing September 1, 2023, by an insurance consultant or insurer, selected and paid for by the Borrower. Unless otherwise required by the financing documents with respect to the Senior Notes, all policies evidencing insurance required by this subsection (1) with respect to the Project shall be carried in the names of the Borrower and the Trustee as their respective interests may appear and shall contain standard mortgage clauses which provide for Net Proceeds of insurance resulting from claims per casualty thereunder to the Project which are less than \$100,000 for loss or damage covered thereby to be made payable directly to the Borrower, and Net Proceeds from such claims which are equal to or in excess of \$100,000 to be made payable directly to the Trustee. Unless otherwise required by the financing documents with respect to the Senior Notes, the Net Proceeds of such insurance required by this subsection (1) with respect to the Project shall be applied as provided in Sections 5.7 and 5.8 hereof. Unless otherwise required by the financing documents with respect to the Senior Notes, the Net Proceeds of such insurance required by this subsection (1) with respect to the facilities of the Borrower other than the Project shall be payable to the Borrower.

(2) Comprehensive general public liability insurance, including personal injury liability, and, if the Borrower owns or leases any automobiles, automobile insurance, including owned, non-owned and hired automobiles, against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$1,000,000, for public liability not arising from ownership or operation of automobiles (or other motor vehicles), and in the minimum amount of \$500,000 for each occurrence and for each year for liability arising out of ownership or operation of automobiles (or other motor vehicles) and shall be endorsed to show the Trustee and the Issuer as additional insureds.

(3) Business interruption insurance or rental loss insurance covering actual losses in gross operating earnings of the Borrower resulting directly from necessary interruption of business caused by damage to or destruction (resulting from fire and lightning; accident to a fired-pressure vessel or machinery; and other perils, including windstorm and hail, explosion, civil commotion, aircraft and vehicles, sprinkler leakage, smoke, vandalism and malicious mischief, and accident) to real or personal property constituting part of the Project, less charges and expenses which do not necessarily continue during the interruption of business, for such length of time as may be required with the exercise of due diligence and dispatch to rebuild, repair or replace such properties as have been damaged or destroyed, with limits equal to at least the sum of twelve (12) months’ operating expenses of the Project, plus the combined maximum amount of principal of and interest payable on the Outstanding Senior Notes and the Subordinate Bonds in the current or any future calendar year.

(4) Such other insurance, including workers' compensation insurance respecting all employees of the Borrower, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure, provided that the Borrower may be self-insured with respect to all or any part of its liability for workers' compensation.

All insurance required in this Section shall be taken out and maintained in responsible insurance companies selected by the Borrower which are authorized under the laws of the State to assume the risks covered thereby. The Borrower will annually provide to the Trustee a certificate of the authorized Borrower representative stating that the insurance required by this Section is in full force and effect in the amounts required above, and the Trustee shall be authorized to conclusively rely on such certificate. The Trustee has no duty or obligation to determine the sufficiency of such insurance requirements. Each policy shall contain a provision that the insurer shall not cancel nor modify it without giving written notice to the Borrower and the Trustee at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Borrower may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

Section 5.7 Damage or Destruction. The Borrower agrees to notify the Trustee immediately in the case of damage exceeding \$250,000 in amount to, or destruction of, the Project or any portion thereof resulting from fire or other casualty. In the event that any such damage or destruction does not exceed \$250,000, the Borrower shall forthwith repair, reconstruct and restore the Project to substantially the same or an improved condition or value as existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Borrower will apply the Net Proceeds of any insurance relating to such damage received by the Borrower to the payment or reimbursement of the costs thereof. Net Proceeds of any insurance relating to such damage up to \$250,000 shall be paid directly to the Borrower.

In the event the Project or any portion thereof is destroyed by fire or other casualty and the damage or destruction is estimated to exceed \$50,000, then the Borrower shall within one hundred twenty (120) days after such damage or destruction elect one (1) of the following options by written notice of such election to the Trustee:

(1) Option A - Repair and Restoration. The Borrower may elect to repair, reconstruct and restore the damaged Project. In such event, the Borrower shall proceed forthwith to repair, reconstruct and restore the damaged or destroyed Project to substantially the same condition or value as existed prior to the event causing such damage or destruction and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Borrower will apply the Net Proceeds of any insurance relating to such damage or destruction received by the Borrower from the Trustee to the payment or reimbursement of the costs thereof. So long as no Event of Default exists, any Net Proceeds of insurance relating to such damage or destruction received by the Trustee shall be released from time to time by the Trustee to the Borrower upon the receipt of:

(a) A certificate of the Borrower Representative specifying the expenditures made or to be made or the indebtedness incurred in connection with such repair, reconstruction and restoration and stating that such Net Proceeds, together with any other money legally available for such purposes, will be sufficient to complete such repair, reconstruction and restoration; and

(b) The written approval of such certificate by an Independent Engineer.

In the event the Borrower shall elect this Option A, the Borrower shall complete the repair, reconstruction and restoration of the Project, whether or not the Net Proceeds of insurance received by the Borrower for such purposes are sufficient to pay for the same. Net Proceeds not required for the repair,



reconstruction and restoration of the Project or prepayment of the Senior Notes shall be applied to the prepayment of the Subordinate Bonds or used for such other purpose as the Trustee, based upon an opinion of Bond Counsel, determines will not cause interest on the Subordinate Bonds to be included in gross income for purposes of federal income taxation.

(2) Option B - Redemption of the Subordinate Bonds. In the event that the Borrower shall determine that it is not practical or desirable to rebuild, repair or restore the Project, or, in case the Borrower is unable to deliver the certificates or reports necessary under Option A of this Section, this Loan Agreement shall be terminated in accordance with Section 8.4 hereof and the Subordinate Bonds shall be redeemed. If the Net Proceeds of insurance, together with all amounts then held by the Trustee under the Indenture available to redeem or retire the Subordinate Bonds, shall be insufficient to so redeem the Subordinate Bonds (including the expenses of redemption), the Borrower shall pay such deficiency to the Trustee as a Basic Payment and the Net Proceeds of insurance, together with such Basic Payment and amounts held by the Trustee under the Indenture, shall be applied to such redemption of the Subordinate Bonds in accordance with Section 8.4 hereof and Section 3.1 of the Indenture. If the Subordinate Bonds have been fully paid and all obligations of the Borrower hereunder have been paid or provided for, all Net Proceeds shall be paid to the Borrower.

Section 5.8 Condemnation. If the Project or any material portion thereof is condemned or taken for any public or quasi-public use and title thereto vests in the party condemning or taking the same, the Borrower hereby irrevocably assigns to the Trustee, subject to the terms of the Project Loan Documents (as defined in the Funding Loan Agreement) and the Funding Loan Agreement providing for the utilization of such Net Proceeds, all the Borrower's right, title and interest in and to any Net Proceeds of any award, compensation or damages (hereinafter referred to as an "award"), payable in connection with any such condemnation or taking. The Trustee shall cooperate fully with the Borrower in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any material part thereof. The Borrower shall, within one hundred twenty (120) days after the date on which the Net Proceeds are finally determined, elect one of the following options by written notice of such election to the Trustee.

(1) Option A - Repairs and Improvements. The Borrower may elect to use the Net Proceeds of the award made in connection with such condemnation or taking for additions, repairs and improvements to the Project. In such event, so long as no Event of Default exists, the Borrower shall have the right to receive such Net Proceeds from the Trustee from time to time upon receipt by the Trustee of:

(a) A Certificate of the Borrower Representative specifying the expenditures made or to be made or the indebtedness incurred in connection with such repairs and improvements and stating that such Net Proceeds, together with any of the money legally available for such purposes, will be sufficient to complete such repairs and improvements; and

(b) If such Net Proceeds equal or exceed \$500,000 in amount, the written approval of such Certificate by an Independent Engineer.

The Borrower agrees to apply any such Net Proceeds so received solely to the purposes specified in such Certificate. Net Proceeds not required for the repairs and improvements or prepayment of the Senior Notes shall be applied to the prepayment of the Subordinate Bonds or in such other manner as the Trustee, based upon an opinion of Bond Counsel, determines will not cause interest on the Subordinate Bonds to be included in gross income for purposes of federal income taxation.

(2) Option B - Redemption of the Subordinate Bonds. The Borrower may elect that this Loan Agreement shall be terminated in accordance with Section 8.4 hereof and the Subordinate Bonds shall be redeemed. If the Net Proceeds of condemnation, together with the amount then held by the Trustee under the Indenture available to redeem the Subordinate Bonds shall be insufficient to redeem the Subordinate Bonds (including principal, accrued interest, and expenses of redemption), the Borrower shall pay such deficiency to the Trustee as a Basic Payment, and the Net Proceeds of condemnation, together with such Basic Payment and amounts held by the Trustee under the Indenture shall be applied to such redemption of the Subordinate Bonds in accordance with Section 8.4 hereof and Section 3.1 of the Indenture. If the Subordinate Bonds have been duly paid and all other obligations of the Borrower hereunder have been paid or provided for, any remaining Net Proceeds shall be paid to the Borrower.

Section 5.9 [Intentionally Omitted].

Section 5.10 Hazardous Materials. The Borrower shall not use the Project in any manner so as to violate in any material respect any applicable law, rule, regulation or ordinance of any governmental body or in such manner as to vitiate insurance upon the Project. The Borrower shall not commit or permit any waste upon the Project which would materially decrease the value of the Project. The Borrower shall comply in all material respects with all regulations concerning the environment, health and safety relating to the generation, use, handling, production, disposal, discharge and storage of Hazardous Materials, as defined herein, in, on, under, or about the Project. The Borrower shall promptly take any and all necessary action in response to the presence, storage, use, disposal, transportation or discharge of any Hazardous Materials in, on, under or about the Project by the Borrower or Persons acting on behalf of or at the direction of the Borrower as all applicable laws, rules, regulations, or ordinances may require, provided, however, that the Borrower shall not, without the Trustee's prior written consent, which consent shall not be unreasonably withheld, take any remedial action in response to the presence of any Hazardous Materials in, on, under or about the Project, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims, proceedings, lawsuits or actions, completed or threatened pursuant to any Hazardous Materials laws or in connection with any third party, if such remedial action, settlement, consent or compromise might, in the Trustee's sole determination, impair the value of the Project; the Trustee's prior consent shall not, however, be necessary in the event that the presence of Hazardous Materials in, on, under, or about the Project either (1) poses an immediate threat to the health, safety, welfare or property right of any individual, or (2) is of such a nature that an immediate remedial response is necessary under applicable laws, rules, regulations, or ordinances, and it is not possible to obtain the Trustee's consent prior to undertaking such action.

In the event the Borrower undertakes any remedial action with respect to any Hazardous Materials on, under or about the Project, the Borrower shall immediately notify the Trustee of any such remedial action, and shall conduct and complete such remedial action (a) in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies, (b) to the reasonable satisfaction of the Trustee and (c) in accordance with the orders and directives of all federal, state and local governmental authorities. As used herein, the term "Hazardous Materials" shall mean (unless, and only to the extent that, being used in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies): (1) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other substances, materials or pollutants which (A) pose a hazard to the Project, to adjacent premises or to Persons on or about the Project or adjacent premises, (B) cause the Project to be in violation of any local, state or federal law, rule, regulation or ordinance, or (C) are defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations, policy guidelines or other publications adopted or promulgated pursuant thereto, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42

U.S.C. § 9601, et seq.; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1601, et seq.; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; (iv) the Clean Air Act, 42 U.S.C. § 7412; (v) the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq.; (vi) the Clean Water Act, 33 U.S.C. § 1317 and 1321(b)(2)A and (vii) rules, regulations, ordinances and other publications adopted or promulgated pursuant to the aforesaid laws; (2) asbestos in any form which is or could become friable, (3) urea formaldehyde foam insulation, and (4) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety or property interests of the Borrower or its employees, the occupants of the Project or the owners or occupants of property adjacent to or surrounding the Project.

Section 5.11 Release of Real Property. The Borrower shall have the right, at any time and from time to time, to a release of any portion of the Project Premises from the Subordinate Mortgage, but only as follows:

(1) Project Premises not containing any permanent structure necessary for the total operating unity and efficiency of the Project may be released for the purpose of selling the same to a third person or to facilitate the construction or financing of additions to the Project or additional structures not related to the Project on such portion of the Project Premises, but only upon receipt by the Trustee of the following:

(a) Certificate of a Borrower Representative setting forth in substance as follows:

(i) The address and legal description of the portion of the Project to be released;

(ii) The number of square feet of the property to be released,

(iii) A certification that (a) the portion of the Project to be released is not needed for the operation of the Project and is not necessary for the total operating unity and efficiency of the Project, and the release will not cause a reduction in the net revenues of the Project; (b) the release will not impair the structural integrity of the Project or the usefulness of the Project; and (c) the release will not inhibit adequate means of ingress to or egress from the Project;

(iv) No Default exists under this Loan Agreement, and

(v) All conditions precedent herein provided for relating to such release have been complied with;

(b) An ALTA survey prepared by a registered land surveyor describing and showing the Project Premises, after giving effect to such release; and

(c) An opinion of counsel stating that the certificates, opinions and other instruments which have been or are therewith delivered to and deposited with the Trustee conform to the requirements of this Loan Agreement and that, upon the basis of such application, the property may be released from the lien of the Subordinate Mortgage, and that all conditions precedent herein provided for relating to such release have been complied with.

(d) If the Senior Notes are outstanding, evidence that the Initial Funding Lender or Freddie Mac, as applicable, has consented in writing to the release of such real property and evidence of such written approvals provided to the Trustee.

(2) The Borrower may at any time or times grant easements, licenses, rights of way and other rights or privileges in the nature of easements with respect to the Project Premises, free from the lien of the Subordinate Mortgage, or the Borrower may release existing easements, licenses, rights of way and other rights or privileges with or without consideration, and the Trustee will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right of way or privilege, provided, however, that prior to any such grant or release, there shall have been supplied to the Trustee a certificate of the Borrower Representative and, if requested by the Trustee, of an Independent Engineer to the effect (i) that such grant or release is not detrimental to the proper operation of the Facilities and (ii) such grant or release will not impair the operating unity or the efficiency of the Facilities on such Project Premises or materially and adversely affect the character thereof.

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## ARTICLE 6

### DAMAGE, DESTRUCTION AND CONDEMNATION

Section 6.1 Damage and Destruction. Pursuant to Section 5.7 hereof, if there are any Outstanding Subordinate Bonds when the Project is damaged or destroyed by fire or other casualty, the Borrower shall either restore the Project to the extent permitted or required by this Loan Agreement, the Indenture, the Subordinate Mortgage, or, if Section 8.4 hereof is applicable, exercise its option to prepay the Loan pursuant to said Section.

Section 6.2 Condemnation. Pursuant to Section 5.8 hereof, if there are any Outstanding Subordinate Bonds when the Project or any part thereof is taken by Condemnation, the Borrower shall either restore the Project to the extent permitted or required by this Loan Agreement, the Indenture, the Subordinate Mortgage, or, if Section 8.4 hereof is applicable, exercise its option to prepay the Loan pursuant to said Section.

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## ARTICLE 7

### BORROWER'S COVENANTS

Section 7.1 Covenant for the Benefit of the Trustee and Bondholders. The Borrower recognizes the authority of the Issuer to assign its interest in and pledge money receivable under this Loan Agreement (other than certain payments required to be made to the Issuer under Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 hereof) to the Trustee as security for the payment of the principal and purchase price of and interest and redemption premiums, if any, on the Subordinate Bonds, and the payment of all fees and expenses of the Trustee, and hereby agrees to be bound by, and joins with the Issuer in the grant of, a security interest to the Trustee in any right and interest the Borrower may have in sums held in the funds described in Article 5 of the Indenture, pursuant to the terms and conditions thereof, to secure payment of the Subordinate Bonds. Each of the terms and provisions of this Loan Agreement is a covenant for the use and benefit of the Trustee and Holders of the Subordinate Bonds, so long as any thereof shall remain Outstanding, but upon payment in full of the Subordinate Bonds in accordance with Article 7 of the Indenture and of all fees and charges of the Trustee and Paying Agent, all references in this Loan Agreement to the Subordinate Bonds, the Holders thereof and the Trustee shall be ineffective, and neither the Trustee nor the Holders of any of the Subordinate Bonds shall thereafter have any rights hereunder, save and except those that shall have theretofore vested or that arise from provisions hereunder which survive termination of this Loan Agreement.

Section 7.2. Inspection and Access. The Borrower agrees that the Trustee and its duly authorized agents shall have the right at all reasonable times upon prior written notice to examine and inspect, and for that purpose to enter upon, the Project Premises, and shall also have such right of access thereto as may be reasonably necessary to cause the Project to be properly maintained in accordance with Article 5 hereof and the applicable provisions of the Subordinate Mortgage in the event of failure by the Borrower to perform these obligations.

Section 7.3 Annual Statement, Audit, Certificate of Compliance and Other Reports.

(1) Commencing with the fiscal year ending December 31, 2018 and continuing thereafter, the Borrower shall furnish to the Trustee by no later than one hundred twenty (120) days after the close of each fiscal year of the Borrower during the term hereof, a copy of annual financial statements of the Borrower for the preceding fiscal year, including a balance sheet and operating statements (such statements are required to be audited by an Independent Accountant commencing with the fiscal year ending December 31, 2020). The Borrower also agrees to furnish to the Trustee by no later than forty-five (45) days after the close of each fiscal quarter, commencing with the fiscal quarter ending December 31, 2018, a copy of unaudited, internally prepared financial statements of the Borrower presented in a manner similar to the annual audited financial statements, as well as physical and economic occupancy statistics for such quarter.

(2) At the time the Borrower causes to be furnished the annual financial statements, the Borrower shall also furnish the Trustee a certificate executed by the Borrower Representative, declaring that during the same fiscal year covered by the statements and continuing to the date of execution of the certificate, the Borrower has fully complied with the terms and conditions of this Loan Agreement.

(3) The Borrower will furnish the Issuer and the Trustee all reports required pursuant to law and regulations of the Act.

(4) The Borrower will, and at the request of the Issuer or Trustee at the Borrower's expense, furnish to the Trustee and the Issuer at such times and in such form as the Issuer and Trustee, may reasonably require (A) a copy of such other reports containing such information as is necessary to comply with any lawful reporting or continuing registration requirements imposed by any agency of the State under the Act, the Minnesota Blue Sky Laws or any other applicable state law as it now exists or may hereafter be amended or by any agency of any other state in which the Subordinate Bonds have been sold, or (B) such information as is necessary to comply with federal securities law.

(5) The Trustee shall have no duty to review or analyze any such financial statements or reports. The Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed in any manner therein.

Section 7.4 Indemnity by Borrower. The Borrower will, to the fullest extent permitted by law, protect, indemnify and save the Issuer and Trustee and their officers, agents, directors, and employees and any Person who controls the Issuer or Trustee within the meaning of the Securities Act of 1933, as amended, harmless from and against all liabilities, losses, damages, reasonable costs, and expenses (including reasonable attorneys' fees and expenses of the Trustee and the Issuer), taxes, causes of action, suits, claims, demands and judgments of any nature arising from:

(1) except for any gross negligence or willful misconduct of the Issuer or Trustee, any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the use, non-use, condition or occupancy of the Project or any part thereof, including any and all acts or operations relating to the construction or installation of property or improvements. The foregoing indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Borrower, customers, suppliers or affiliated organizations under any Workers' Compensation Acts, Disability Benefit Acts or other employee benefit acts;

(2) violation of any agreement, provision or condition of this Loan Agreement, except by the Issuer or the Trustee, unless the Issuer or Trustee acts pursuant to direction of the Borrower;

(3) violation by the Borrower of any contract, agreement or restriction, which shall have existed at the commencement of the Term of Loan Agreement or shall have been approved by the Borrower;

(4) violation of any law, ordinance, court order or regulation affecting the Project or a part thereof or the ownership, occupancy or use thereof;

(5) any statement or information relating to the expenditure of the proceeds of the Subordinate Bonds contained in the Tax Certificate or similar document furnished by the Borrower to the Issuer or Trustee which, at the time made, is misleading, untrue or incorrect in any material respect; and

(6) any untrue statement or alleged untrue statement by the Borrower of a material fact contained in the Official Statement or any other offering material approved by the Borrower relating to the sale of the Subordinate Bonds (as from time to time amended or supplemented) or arising out of or based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading, or failure to properly register or otherwise qualify the sale or reoffering of the Subordinate Bonds or failure to comply with any licensing or other law or regulation which would affect the manner whereby or to whom the Subordinate Bonds could be sold.

Promptly after receipt by the Issuer or Trustee or any such other indemnified person, as the case may be, of notice of the commencement of any action with respect to which indemnity may be sought against the Borrower under this Section, such person will notify the Borrower in writing of the commencement thereof, and, subject to the provisions hereinafter stated, the Borrower shall assume the defense of such action (including the employment of counsel, who shall be counsel satisfactory to the Issuer, Trustee or such other person as the case may be, and the payment of expenses). Insofar as such action shall relate to any alleged liability with respect to which indemnity may be sought against the Borrower, the Issuer, Trustee or any such other indemnified person shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the Borrower unless the employment of such counsel has been specifically authorized by the Borrower. The Borrower shall not be liable to indemnify any person for any settlement of any such action effected without the Borrower's consent.

The provisions of this Section 7.4 shall survive the payment and discharge of the Subordinate Bonds.

Section 7.5 Status of Borrower. Throughout the Term of Loan Agreement, the Borrower will maintain its existence as a limited liability limited partnership organized under the laws of the State and a Single Purpose Entity and will not wind up or otherwise dispose of all or substantially all of its assets, provided that subject to the sale restrictions in Section 5.2 hereof and the assignment and transfer conditions in Section 8.1 hereof, the Borrower may, sell or otherwise transfer to another Person all or substantially all of its assets in its entirety and thereafter wind up if the transferee Person assumes all of the obligations of the Borrower under the Related Loan Documents to which it is a party by written instrument delivered to the Issuer and the Trustee. Every such transferee shall be bound by all of the covenants and agreements of the Borrower herein with respect to any further sale or transfer.

Upon any change in the identity of its general partner by way of substitution, sale or otherwise of the Borrower, the Trustee shall be promptly informed and, if requested, each and every general partner of the Borrower as newly constituted shall deliver to the Trustee for the benefit of the Issuer and Bondholders an instrument in form satisfactory to the Trustee affirming the joint and several liability of all then existing general partners for the obligations of the Borrower hereunder for which the general partners are liable (subject in all instances, to Section 9.13 hereof).

The Issuer and Borrower agree that, upon any change in the status of the Borrower, including a change in the identity of its general partner, so long as the requirements, restrictions and conditions of Sections 5.2 and 8.1 hereof and the Regulatory Agreement with respect to such change have been satisfied as provided therein, the general partner involved shall be discharged from liability hereunder. The Trustee by execution of the Indenture shall be deemed to have agreed to execute such documents as may be necessary or desirable to indicate such discharge upon receipt of evidence satisfactory to said parties that the requirements for this Section, Sections 5.2 and 8.1 hereof, and the Regulatory Agreement have been satisfied, and provided that no Event of Default under this Loan Agreement shall have happened and be continuing on the date of the discharge.

The Borrower shall not effect such transfer or change if the result thereof would be to violate any sale restrictions set forth in Section 5.2 hereof, or to subject the interest payable on the Subordinate Bonds (in the hands of any Person who is not a Substantial User of the Project or a Related Person) to federal income taxes under Section 103 of the Code.

Notwithstanding anything to the contrary contained herein or in any other loan document (1) the assignment of administrative limited partner, class B limited partner, or investor limited partner interests in the Borrower, or (2) the removal of the general partner pursuant to the terms of the limited partnership



agreement of the Borrower, shall not be deemed an Event of Default hereunder or under any other loan document and shall not require the consent of the Issuer or the Trustee.

Section 7.6 Filing of Financing Statements. The Borrower agrees that it will, at its sole expense, file any financing statements required to perfect the security interest granted to the Trustee under the Indenture in this Loan Agreement and the payments. The Trustee shall not be responsible for filing or for the sufficiency or accuracy of any financing statements initially filed to perfect security interests granted under the Indenture or this Loan Agreement. The Trustee shall file continuation statements with respect to each UCC financing statement relating to the Trust Estate filed by the Borrower at the time of the issuance of the Subordinate Bonds; provided that a copy of the filed initial financing statement is timely delivered to the Trustee. In addition, unless the Trustee shall have been notified in writing by the Issuer or the Borrower that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (a) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this section and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the customary fees charged by the Trustee for the preparation and filing of continuation statements and for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "Extraordinary Services" fees.

Section 7.7 Assurance of Tax Exemption. In order to assure that the interest on the Subordinate Bonds shall at all times be excluded from gross income for the purposes of federal income taxation, the Borrower represents and covenants with the Issuer, Trustee and all Holders of the Subordinate Bonds as follows:

(1) The Borrower will fulfill all continuing conditions specified in Section 142 of the Code and Section 1.103-8(b) of the Regulations, to qualify the Subordinate Bonds as residential rental property bonds thereunder.

(2) The Borrower will not use (or permit to be used) the Project or use or invest (or permit to be used or invested) the proceeds of the Subordinate Bonds, or any other sums treated as "bond proceeds" under Section 148 of the Code and applicable federal income tax regulations, including "investment proceeds," "invested sinking funds" and "replacement proceeds," in such a manner as to cause the Subordinate Bonds to be classified "arbitrage bonds" under Section 148 of the Code or "federally guaranteed obligations" under Section 149(b) of the Code.

(3) At least ninety-five percent (95%) of Net Bond Proceeds will be used to finance costs properly chargeable to the capital account of a qualified residential rental project within the meaning of Section 142(d) and functionally related and subordinate property thereto.

(4) The Borrower has not permitted and will not permit any obligation or obligations to be issued within the meaning of Section 103(b) of the Code so as to cause such obligations to become part of the same "issue of obligations" as the Subordinate Bonds, so as to impair the tax-exempt status of the Subordinate Bonds.

(5) No portion of the proceeds of the Subordinate Bonds will to be used to provide any airplanes, skybox, or other private luxury box, health club facility, facility primarily used for gambling or liquor store.

(6) No portion of the proceeds of the Subordinate Bonds will be used to acquire (a) property to be leased to the government of the United States of America or to any department, agency or

instrumentality of the government of the United States of America, (b) any property not part of the residential rental housing portion of the Project, or (c) any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice-skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility or racetrack.

(7) No portion of the proceeds of the Subordinate Bonds (including investment earnings) shall be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes, and less than twenty-five percent (25%) of the proceeds of the Subordinate Bond (including investment earnings) shall be used (directly or indirectly) for the acquisition of land to be used for purposes other than farming purposes.

(8) The Borrower understands that the Code imposes a penalty for failure to file with the Secretary of the Treasury an annual certification of compliance with low income occupancy requirements, and if the requirements for a “qualified residential rental project” are not met, does not allow deduction for interest paid on the Subordinate Bonds which accrues during the period beginning on the first day of the taxable year in which the Project ceases to meet such requirements and ending on the date the Project again meets such requirements.

(9) The Borrower shall provide the Issuer on or prior to the Date of Issuance with all information required to satisfy the informational requirements set forth in Section 149(e) of the Code including the information necessary to complete IRS Form 8038.

(10) No money in the Bond Fund or the Project Fund shall be invested in investments which cause the Subordinate Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code. If at any time the moneys in such funds exceed, within the meaning of Section 149(b) of the Code, (i) amounts invested for an initial temporary period until the moneys are needed for the purpose for which the Subordinate Bonds were issued, (ii) investments of a bona fide debt service fund, and (iii) investments of a reserve which meet the requirement of Section 148(c) and (d) of the Code, such excess moneys shall be invested in only those Permitted Investments or Government Obligations, as otherwise appropriate, which are (a) obligations issued by the United States Treasury, (b) other investments permitted under regulations, or (c) obligations which are (a) not issued by, or guaranteed by, or insured by, the United States or any agency or instrumentality thereof or (b) not federally insured deposits or accounts, all within the meaning of Section 149(b)(3)(B) of the Code.

(11) The Borrower on behalf of the Issuer shall pay to the United States, as a rebate, an amount equal to the sum of (a) the excess of (i) the aggregate amount earned on all nonpurpose investments (other than investments attributable to an excess described in this clause), over (ii) the amount which would have been earned if all nonpurpose investments were invested at a rate equal to the yield on the Subordinate Bonds, plus (b) any income attributable to the excess described in clause (a), at the times and in the amounts required by Section 148(f) of the Code, all within the meaning of Section 148(f) of the Code. The Borrower and the Trustee shall maintain detailed records of the interest rate borne by the Subordinate Bonds and the investments of the Project Fund and the Bond Fund (and any other fund created under the Indenture) and earnings thereon. The Borrower shall comply with Section 5.8 of the Indenture.

(12) The Borrower will not permit more than two percent (2%) of the proceeds of the Subordinate Bonds to be expended (or to be used to reimburse any person for an expenditure) to pay Issuance Expenses as provided by Section 147(g) of the Code.

(13) In order to qualify the Subordinate Bonds and this Loan Agreement under the “program investment” provisions of Section 1.148-2(d)(2)(iii) of the Treasury Regulations, the Borrower (and any Related Person thereto) will take no action the effect of which would be to disqualify this Loan Agreement as a “program investment” as defined in Section 1.148-1(b) of the Treasury Regulations, including but not limited to entering into any arrangement, formal or informal, for the Borrower to purchase bonds or notes of the Issuer in an amount related to the amount of the Subordinate Bonds.

(14) The Borrower will not otherwise use proceeds of the Subordinate Bonds, including expenses, earnings, or take, or permit or cause to be taken, any action that would adversely affect the exclusion from gross income of the interest on the Subordinate Bonds, nor otherwise omit to take or cause to be taken any action necessary to maintain such exclusion from gross income, and if it should take or permit, or omit to take or cause to be taken, as appropriate, any such action, the Borrower shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(15) All of the proceeds of the Subordinate Bonds, except those portions of the proceeds used to pay for Issuance Expenses, if applicable, shall, for federal income tax purposes, be (i) allocated to the Project and the land on which the building is located and (ii) be used to pay costs of the acquisition and construction of the Project which are includible in the aggregate basis of the building and the land on which the building is located, in a manner such that the Project satisfies the requirements of Section 42(h)(4)(B) of the Code.

(16) The Borrower will at all times comply with the terms of the Tax Certificate, the Regulatory Agreement, and the Development Agreement.

In the event of a conflict between the terms and requirements of this Section 7.7 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

#### Section 7.8 Determination of Taxability.

(1) Promptly after the occurrence of a Determination of Taxability, the Borrower shall give written notice to the Issuer and Trustee of the Determination of Taxability and the Borrower shall provide to the Trustee in immediately available funds, an amount which when added to the amounts on deposit in the funds, will equal the principal amount of all the Unpaid Bonds plus accrued interest thereon to the Redemption Date, and the Subordinate Bonds shall be redeemed pursuant to Article 3 of the Indenture.

(2) Upon a Determination of Taxability the Borrower shall also pay to the Trustee an amount equal to the Paying Agent’s and Trustee’s fees, accrued and to accrue until final payment and redemption of the Subordinate Bonds, and all other advances, fees, costs and expenses reasonably incurred by the Trustee, the Issuer and the Paying Agent, including Bond Counsel and legal fees.

(3) If this Loan Agreement has not been terminated under Section 8.4 hereof prior to the Redemption Date for the Subordinate Bonds, this Loan Agreement shall be terminated on said Redemption Date and the closing for the termination of this Loan Agreement shall be completed otherwise as provided for termination of this Loan Agreement upon exercise of the Borrower’s options under Section 8.4 hereof.

(4) Neither the Borrower nor any Holder shall be required to contest or appeal any notice of deficiency, ruling, decision or legislative enactment which may give rise to a Determination of Taxability, and the expenses of any such contest or appeal shall be paid by the party initiating the contest or appeal.

Section 7.9 Subordination of Management Fees. As long as Dominion Management Services, LLC (including its successors and assigns), or an affiliate thereof, is the manager of the Project, any management fees payable by the Borrower with respect to the Project will be wholly subordinate and junior in right of payment to all sums payable under this Loan Agreement with respect to the Subordinate Bonds. Without limiting the foregoing, during the continuance of an Event of Default hereunder, no payment of such management fees shall be made by the Borrower. Further, the Borrower will not pay any such management fees if such payment will cause an Event of Default hereunder.

Section 7.10 Pledge of TIF Note. The Borrower hereby pledges to repayment of the Loan its interest in the TIF Note, which is secured by Available Tax Increment generated from the real property legally described as Exhibit A to the Development Agreement, which consists of a portion of the real property within the Dominion Housing Tax Increment Financing District, a housing district, within the Opus Redevelopment Project. The Borrower represents that it has not previously assigned and covenants that it will not further assign its interest in the TIF Note. To further evidence the Borrower's pledge of the TIF Note to the repayment of the Subordinate Bonds created by this Section 7.10, the Borrower agrees to execute and deliver the Security Agreement.

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## ARTICLE 8

### BORROWER'S OPTIONS

Section 8.1 Assignment and Transfer. The Borrower may assign its rights and obligations under this Loan Agreement and, as an incident thereto, transfer its interest in the Project without prior consent of the Issuer or the Trustee, but subject to the provisions of Sections 5.2 and 7.5 hereof.

Section 8.2 Prepayment.

(1) The Borrower shall have the option to direct the Trustee to call for redemption and prepayment of the Outstanding Subordinate Bonds in whole or in part to the extent and upon the terms provided in Section 3.1 of the Indenture. The Subordinate Bonds to be redeemed shall be redeemed at a price equal to their principal amount plus accrued interest set forth in Section 3.1 of the Indenture. In the event the Subordinate Bonds are called for redemption in whole or in part, the Borrower shall make a Basic Payment as provided in Section 4.2 hereof on such Redemption Date.

(2) If, after the Borrower exercises its option to redeem all Subordinate Bonds, no Subordinate Bonds remain Outstanding, the Indenture is discharged, and the Borrower has satisfied all of its obligations hereunder, the Trustee and the Issuer shall execute and deliver to the Borrower such release and other instruments as the Borrower reasonably determines are necessary to terminate this Loan Agreement. All further obligations of the Borrower hereunder, except as set forth in Section 10.10 hereof, shall thereupon terminate.

Section 8.3 Direction of Investments. Except during the continuance of an Event of Default, the Borrower shall have the right during the Term of Loan Agreement to direct the Trustee to invest or reinvest all money held for the credit of funds established by Article 5 of the Indenture in such securities as are authorized by law for such funds, subject, however, to the further conditions of Article 6 of the Indenture and Section 7.7 hereof.

The Borrower acknowledges that regulations of the Comptroller of the Currency grant the Borrower the right to receive brokerage confirmations of security transactions as they occur. The Borrower specifically waives such right to notification to the extent permitted by law and acknowledges that they will receive periodic transaction statements that will detail all investment transactions.

Section 8.4 Termination of Loan Agreement. Except during the continuance of an Event of Default, the Borrower shall have the option of terminating this Loan Agreement subject to the following conditions:

(1) Such option may be exercised if one of the events described in Section 5.7 or 5.8 hereof shall have occurred or if as a result of any changes in the Constitution of the State or the Constitution of the United States of America, or of any legislative or administrative action, whether state or federal, or of any final decree, judgment or order of any court or administrative body, whether state or federal, entered after the contest thereof by the Borrower in good faith, the agreements contained in this Loan Agreement shall have become impossible of performance in accordance with the intent and purposes of the parties as expressed herein, or unreasonable burdens or excessive liabilities shall have been imposed upon the Borrower, including but not limited to the imposition of new state or local ad valorem, property, income or other taxes not imposed on the date of this Loan Agreement, other than ad valorem taxes upon privately owned property and for the same general purpose as the Project and special assessments levied

in amounts proportionate to and not exceeding the benefits of future public improvements to the land included in the Project.

(2) With respect to any of the events stated in subsection (1), if the Borrower determines to exercise its option to terminate this Loan Agreement it must give written notice to the Issuer and Trustee of its decision to exercise its option within one hundred twenty (120) days after such event.

(3) The Borrower shall give written notice to the Issuer and Trustee of its intention to exercise the option, stating therein a termination date not less than forty-five (45) nor more than ninety (90) days after the date the notice is mailed, but in no event prior to the date on which all Outstanding Subordinate Bonds shall be deemed discharged under Article 9 of the Indenture, and the Borrower shall make arrangements satisfactory to the Trustee for the giving of any notice required for redemption of all of the Outstanding Subordinate Bonds on the date on which the Subordinate Bonds are to be redeemed.

(4) The Borrower shall make a Basic Payment as provided in Section 4.2 hereof on the Redemption Date.

(5) The Borrower shall pay to the Trustee at least five (5) days prior to the Discharge Date, an amount equal to the Trustee's and Paying Agent's fees and expenses under the Indenture, accrued and to accrue until final payment and redemption of the Subordinate Bonds and all other advances, fees, costs and expenses reasonably incurred and to be incurred on or before the termination date by the Trustee and Paying Agent under the Indenture and by the Issuer under this Loan Agreement.

(6) On the termination date, a closing shall be held at the principal office of the Trustee, or any other office mutually agreed upon. At the closing the Issuer and Trustee shall, upon acknowledgment of receipt of the sum set forth in subsection (4) above, execute and deliver to the Borrower such release and other instruments as the Borrower reasonably determines are necessary to terminate this Loan Agreement. All further obligations of the Borrower hereunder, except under Sections 7.4, 7.7, 7.8, 10.10, 10.11, 10.12, and 10.13 shall thereupon terminate, provided, however, that the Borrower shall also remain obligated to pay or reimburse the Issuer and Trustee for the payment of all other fees, costs and expenses unaccounted for in the sum paid in accordance with subsection (4) above and reasonably incurred before or subsequent to such closing in connection with the Subordinate Bonds.

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## ARTICLE 9

### EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default. Any one or more of the following events is an Event of Default under this Loan Agreement, and the term “Event of Default,” wherever used herein, means any one of the following events, whatever the reason for such default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

(1) if the Borrower shall fail to pay any Basic Payments on the date due under this Loan Agreement;

(2) if the Borrower shall fail to pay any Additional Charges on or before the date that the payment is due, and shall continue to be in arrears for thirty (30) days after mailing of a notice to it by the Issuer or the Trustee that said Additional Charges have not been received on the due date;

(3) if the Borrower shall fail to observe and perform or shall breach any other covenant, condition or agreement on its part under this Loan Agreement for a period of forty-five (45) days after mailing of a notice to it by the Issuer or the Trustee, stating that it is a “Notice of Default” hereunder and specifying such default or breach and requesting that it be remedied;

(4) if the Borrower shall be dissolved or liquidated (other than when a new entity assumes the obligations of the Borrower under the conditions permitting such action contained in Section 7.5 hereof);

(5) if any representation or warranty made by the Borrower herein, or by a general partner or Representative of the Borrower in any document or certificate furnished to the Trustee or the Issuer or the Underwriter in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to be, in any material respect, incorrect or misleading as of the date made; or

(6) if an event of default occurs and is continuing under the Indenture or any Related Loan Document, subject to applicable notice and cure periods.

The investor limited partner, administrative limited partner or class B limited partner in the Borrower shall have the right, but not the obligation, to cure Events of Default on behalf of the Borrower, and the Issuer and Trustee shall accept such cure as if it were made by the Borrower itself.

Section 9.2 Remedies. The following remedies are all subject to the terms of the Subordination Agreement.

(1) Whenever any Event of Default shall have happened and be subsisting the Trustee may by written notice to the Borrower, declare all the Basic Payments payable for the remainder of the Term of Loan Agreement (an amount equal to that necessary to pay in full all Outstanding Subordinate Bonds and the interest thereon assuming acceleration of the Subordinate Bonds under the Indenture and to pay all other indebtedness thereunder) to be immediately due and payable whereupon the same shall become immediately due and payable by the Borrower. The provisions of this Section 9.2 do not limit the application of Section 9.1 hereof.

(2) Upon the occurrence of an Event of Default, but subject to the terms of the Subordination Agreement, the Trustee may also take whatever action at law or in equity may appear necessary or appropriate to collect all sums then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the Borrower, under this Loan Agreement, or any Collateral Documents, or to otherwise compensate the Issuer, Trustee or Bondholders for any damages on account of such Event of Default. The Subordination Agreement does not restrict the Trustee from proceeding to collect revenues derived from the TIF Note.

(3) The Issuer (without the prior written consent of the Trustee if the Trustee is not enforcing the Issuer's right in a manner to protect the Issuer or is otherwise taking action that brings adverse consequences to the Issuer) may take whatever action at law or in equity may appear necessary or appropriate to enforce its rights of indemnification under Section 7.4 and to collect all sums then due and thereafter to become due to the Issuer under Sections 3.2, 4.4, 7.4, 9.5, 10.11, 10.12, and 10.13 hereof. Notwithstanding the foregoing, the Issuer is not precluded from exercising any of its rights reserved to it as set forth in this Section, even if the Trustee is exercising the rights of the Issuer hereunder.

Section 9.3 Disposition of Funds. Any amounts collected pursuant to action taken under Section 9.2 hereof (other than sums collected for the Issuer on account of its rights to indemnification and certain direct payments to be made to the Issuer under Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 hereof which sums shall be paid directly to the Issuer) shall be applied in accordance with the provisions of the Indenture.

Section 9.4 Nonexclusive Remedies. No remedy herein conferred upon or reserved to the Issuer or Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer (or Trustee) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or as may be required by law.

Section 9.5 Attorneys' Fees and Expenses. If an Event of Default shall exist under this Loan Agreement and the Issuer or Trustee should employ attorneys or incur other expenses for the collection of any amounts due hereunder, or for the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower will upon demand pay to the Issuer or Trustee the reasonable fees of such attorneys and such other expenses so incurred.

Section 9.6 Effect of Waiver. In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 9.7 Waiver of Stay or Extension. The Borrower covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any appraisal, valuation, stay, or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants in, or the performance of, this Loan Agreement, and the Borrower (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Issuer or Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.



Section 9.8 Issuer May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower or the property of the Borrower, the Trustee, or the Issuer with the prior consent of the Trustee, shall be entitled and empowered, by intervention in such proceeding or otherwise:

(1) to file and prove a claim and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Issuer and Trustee (for themselves and on behalf of Bondholders) (including any claim for the reasonable compensation, expenses, disbursements and advances of the Issuer and Trustee, their agents and counsel) allowed in such judicial proceeding; and

(2) to collect and receive any money or other property payable or deliverable on any such claims, and to distribute the same.

Section 9.9 Restoration of Positions. If the Issuer or Trustee have instituted any proceeding to enforce any right or remedy under this Loan Agreement, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Issuer or Trustee, then and in every such case the Borrower, Trustee and the Issuer shall, subject to any determination in the proceeding, be restored to the positions they held prior to commencement of such proceedings, and thereafter all rights and remedies of the Issuer shall continue as though no such proceeding had been instituted.

Section 9.10 Suits to Protect the Project. If the Borrower shall fail to do so after thirty (30) days' prior written notice from the Issuer or Trustee, the Issuer shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Project or any portion thereof, by any acts which may be unlawful or in violation of this Loan Agreement, and such suits and proceedings as the Issuer may deem expedient to protect its interests in the Project or any portion thereof, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule or order would impair or adversely affect the Project or be prejudicial to the interests of the Bondholders.

Section 9.11 Performance by Third Parties. The Issuer may permit third parties to perform any and all acts or take such action as may be necessary for and on behalf of the Borrower to cure any Event of Default hereunder. The acceptance by the Issuer or the Trustee of any such performance by third parties shall not in any way diminish or absolve the Borrower of primary liability hereunder.

Section 9.12 Exercise of the Issuer's Remedies by Trustee. Whenever any Event of Default shall have happened and be subsisting the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the Issuer under this Article 9, without notice to the Issuer.

Section 9.13 Limited Recourse. Notwithstanding any provision or obligation to the contrary set forth in this Loan Agreement, (1) the liability of the Borrower and any partner, trustee, director, officer, employee, or agent thereof (collectively, "Borrower Parties") under this Loan Agreement or the Subordinate Mortgage shall be limited to the Mortgaged Property or to such other security as may from time to time be given or have been given for payment of the Borrower's obligations under this Loan Agreement and Subordinate Bonds, and any judgment rendered against the Borrower Parties under this Loan Agreement or the Subordinate Mortgage and the Subordinate Bonds shall be limited to the Mortgaged Property and any other security so given for satisfaction thereof; and (2) no deficiency or other personal judgment nor any order or decree of specific performance shall be sought or rendered against the Borrower Parties, their successors, transferees or assigns, in any action or proceeding arising out of this

Loan Agreement, the Subordinate Mortgage, the Subordinate Bonds, or any judgment, order or decree rendered pursuant to any such action or proceeding, provided, however, that nothing in this Loan Agreement, the Subordinate Mortgage, or the Subordinate Bonds shall limit the Issuer's or Trustee's ability to exercise any right or remedy that it may have with respect to any property pledged or granted to the Issuer or the Trustee, or both of them, or to exercise any right against the Borrower Parties or any other person or entity on account of any damage caused by fraud or intentional misrepresentation by the Borrower or any intentional damage of the property subject to the Subordinate Mortgage. Furthermore, the Borrower shall be fully liable for the misapplication of (a) proceeds paid prior to any foreclosure under any and all insurance policies, under which the Trustee and/or the Issuer is named as insured, by reason of damage, loss or destruction to any portion of the property subject to the Subordinate Mortgage, to the full extent of such misapplied proceeds and awards, (b) proceeds or awards resulting from the condemnation, or other taking in lieu of condemnation, prior to any foreclosure of the property subject to the Subordinate Mortgage, to the full extent of such misapplied proceeds and awards (c) rents, issues, profits and revenues received or applicable to a period subsequent to the occurrence of a default under this Loan Agreement, the Subordinate Mortgage, and the Subordinate Bonds but prior to foreclosure, and (d) proceeds from the sale of all or any part of the property subject to the Subordinate Mortgage and any other proceeds that, under the terms hereof, should have been paid to the Issuer or the Trustee. Furthermore, the Borrower shall be fully liable for the breach of the Borrower's covenants contained in Sections 3.2, 4.4(1), (2) and (3), 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 of this Loan Agreement, provided, however, in no event shall the Borrower or any Borrower Parties be personally liable for payment of the principal of, premium, if any, or interest on the Subordinate Bonds. The limit on the Borrower's liability set forth in this paragraph shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of the Borrower's obligations under this Loan Agreement or a release, in whole or in part, or an impairment of the lien and security interest of this Loan Agreement, the Subordinate Mortgage, and the Subordinate Bonds upon the properties described therein, or to preclude the Issuer or the Trustee from foreclosing the Subordinate Mortgage in case of any default or enforcing any other right of the Issuer or the Trustee, or to alter, limit or affect the liability of any person or party who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Borrower under this Loan Agreement, the Subordinate Mortgage, and the Subordinate Bonds.

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## ARTICLE 10

### GENERAL PROVISIONS

Section 10.1 Amounts Remaining in Funds. Except during the continuance of an Event of Default, any amounts remaining in the funds created under Article 5 of the Indenture upon expiration or earlier termination of this Loan Agreement, as provided herein, and after adequate provision has been made for payment in full of the Subordinate Bonds, in accordance with Article 7 of the Indenture, any Additional Charges payable to the Trustee and the Issuer, including Paying Agent's fees and expenses, and all other amounts required to be paid under this Loan Agreement and the Indenture, shall, forthwith be paid to the Borrower.

Section 10.2 Notices. All notices, certificates or other communications hereunder shall be in writing (except as otherwise expressly provided herein) and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower, and Trustee may, by written notice given by each of them to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Loan Agreement. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Issuer: CITY OF MINNETONKA, MINNESOTA  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502  
Attn: Julie Wischnack, Community Development Director

To the Trustee: U.S. BANK NATIONAL ASSOCIATION  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Corporate Trust Services

To the Borrower: MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP  
c/o Dominion Development & Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400  
Attn: Ryan Lunderby

With copies to:

WINTHROP & WEINSTINE, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Attn: John M. Stern, Esq.

and:

CITIBANK, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attention: Mark Sherman

and:

NIXON PEABODY LLP  
779 Ninth Street, NW, Suite 500  
Washington, DC 20001-4501  
Attention: Matthew W. Mullen, Esq.

and:

TCAM  
186 Lincoln Street  
Boston, MA 02111-2408  
Attention: Jenny Netzer

Section 10.3 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer and Borrower and their respective successors and assigns.

Section 10.4 Severability. In the event any provisions of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.5 Amendments, Changes, and Modifications. Except as otherwise provided in this Loan Agreement or in the Indenture, subsequent to the issuance of the Subordinate Bonds and before the lien of the Indenture is satisfied and discharged in accordance with its terms, this Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee.

Section 10.6 Execution Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.7 Required Approvals. Consents and approvals required by this Loan Agreement to be obtained from the Borrower, the Issuer or the Trustee shall be in writing and shall not be unreasonably withheld or delayed.

Section 10.8 Limitation on Issuer's Liability. No agreements or provisions contained in this Loan Agreement nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project shall give rise to any pecuniary liability of the Issuer or a charge against its general credit or taxing powers, or shall obligate the Issuer financially in any way

except with respect to the Project and the application of revenues therefrom and the proceeds of the Subordinate Bonds. No failure of the Issuer to comply with any term, condition, covenant or agreement herein shall subject the Issuer to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the Project or revenues therefrom or from proceeds of the Subordinate Bonds, and no execution of any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the Issuer. Nothing herein shall preclude a proper party in interest from seeking and obtaining specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement herein, provided that no costs, expenses or other monetary relief shall be recoverable from the Issuer except as may be payable from the Project or its revenues.

Section 10.9 Representations of Borrower. All representations made in this Loan Agreement by the Borrower are based on the best of the Borrower's knowledge of the facts and law, and no such representations are made in reliance upon any representations made or legal advice given by the Issuer, its Bond Counsel, or any of its agents, officers or employees.

Section 10.10 Termination. At any time when no Subordinate Bonds remain Outstanding and arrangements satisfactory to the Issuer and Trustee have been made for the discharge of all liabilities under this Loan Agreement, this Loan Agreement shall terminate. All obligations of the Borrower under Sections 7.4, 7.7, 7.8, 10.11, 10.12, and 10.13 hereof shall survive termination of this Loan Agreement.

Section 10.11 Administrative Fees, Attorneys' Fees and Costs. The Borrower shall reimburse the Issuer, upon demand, for all costs and expenses, including without limitation attorneys' fees, paid or incurred by the Issuer in connection with (i) the discussion, negotiation, preparation, approval, execution and delivery of the Subordinate Bonds, the Indenture, this Loan Agreement, and the documents and instruments related hereto or thereto; (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the discussion, negotiation, preparation, approval, execution and delivery of any and all documents necessary or desirable to effect such amendments or modifications; (iii) the servicing and administration of the Loan during the Term of Loan Agreement or thereafter; and (iv) the enforcement by the Issuer during the term hereof or thereafter of any of the rights or remedies of the Issuer hereunder or under the foregoing documents, or any document, instrument or agreement related hereto or thereto, including, without limitation, costs and expenses of collection in the Event of Default, whether or not suit is filed with respect thereto.

Section 10.12 Release. The Borrower hereby acknowledges and agrees that the Issuer, its officers, employees and agents shall not be liable to the Borrower, and hereby releases and discharges the Issuer, its officers, employees and agents from any liability, for any and all losses, costs, expenses (including attorneys' fees), damages, judgments, claims and causes of action, paid, incurred or sustained by the Issuer or the Borrower as a result of or relating to any action, or failure or refusal to act, on the part of the Trustee or any other party with respect to the Subordinate Bonds, the Indenture, this Loan Agreement, or the documents and transactions related hereto or thereto or contemplated hereby or thereby, including, without limitation, the exercise by the Trustee or any third party of any of its rights or remedies pursuant to any of such documents.

Section 10.13 Audit Expenses. The Borrower agrees to pay any costs incurred by the Issuer as a result of the Issuer's compliance with an audit or inquiry, random or otherwise, by the Internal Revenue Service, the Minnesota Department of Revenue, the Minnesota Office of the State Auditor, or any other governmental agency with respect to the Subordinate Bonds or the Project.

Section 10.14 Electronic Signatures. The parties agree that the electronic signature of a party to this Loan Agreement shall be as valid as an original signature of such party and shall be effective to bind

such party to this Loan Agreement. For purposes hereof, (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Subordinate Loan Agreement to be executed by their duly authorized officers as of the date and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

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

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE III, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President



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**SUBORDINATE COMBINATION MORTGAGE, SECURITY AGREEMENT,  
FIXTURE FINANCING STATEMENT, AND ASSIGNMENT OF LEASES AND RENTS**

by

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,  
as Mortgagor**

in favor of

**CITY OF MINNETONKA, MINNESOTA,  
as Mortgagee**

**Dated as of September 1, 2018**

**Relating to:**

**\$3,570,000**

**City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Refunding Bonds  
(Preserve at Shady Oak Project)  
Series 2018C**

**THIS SUBORDINATE MORTGAGE IS EXEMPT FROM MORTGAGE REGISTRATION TAX IMPOSED BY MINNESOTA STATUTES §287.035, PURSUANT TO MINNESOTA STATUTES §287.04(f), BECAUSE THE PRINCIPAL AMOUNT OF THE ORIGINAL MORTGAGE LOAN REFERRED TO HEREIN IS MADE UNDER A LOW AND MODERATE INCOME OR OTHER AFFORDABLE HOUSING PROGRAM AND THE MORTGAGEE IS THE CITY OF MINNETONKA, MINNESOTA, A MUNICIPAL CORPORATION ORGANIZED AND EXISTING UNDER THE CONSTITUTION AND LAWS OF THE STATE OF MINNESOTA.**

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This Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents contains after-acquired property provisions and constitutes a fixture financing statement under Minnesota Statutes, Section 336.9-502. The maximum principal indebtedness secured hereby is \$3,570,000 and matures on March 1, 2046.

This instrument was drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402

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**SUBORDINATE COMBINATION MORTGAGE, SECURITY AGREEMENT,  
FIXTURE FINANCING STATEMENT, AND ASSIGNMENT OF LEASES AND RENTS**

THIS SUBORDINATE COMBINATION MORTGAGE, SECURITY AGREEMENT, FIXTURE FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS, dated as of September 1, 2018 (the “Subordinate Mortgage”), is by MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (the “Mortgagor”), in favor of CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “Mortgagee”).

WITNESSETH:

WHEREAS, on May 7, 2018, the Mortgagee issued its Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018 (the “Prior Note”), in the original aggregate principal amount of \$30,500,000, and loaned the proceeds thereof to the Mortgagor to provide short-term financing for the acquisition, construction, and equipping of a 220-unit workforce housing rental development located at 10987 and 11015 Bren Road East, Minnetonka, Minnesota to be known as Preserve at Shady Oak (the “Project”); and

WHEREAS, the Mortgagee will issue and deliver its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C (the “Subordinate Bonds”), in the original aggregate principal amount of \$3,570,000; and

WHEREAS, the Subordinate Bonds are being issued pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Act”), and a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), between the Mortgagee and the Trustee; and

WHEREAS, proceeds of the Subordinate Bonds will be loaned to the Mortgagor pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Mortgagee and the Mortgagor, for the purposes of (i) refunding a portion of the Prior Note; (ii) financing a portion of the costs of the acquisition, construction, and equipping of the Project; (iii) financing capitalized interest on the Subordinate Bonds during the construction of the Project; and (iv) paying costs of issuance of the Subordinate Bonds; and

WHEREAS, in order to finance an additional portion of the costs of the acquisition, construction, and equipping of the Project, the Mortgagee has agreed to issue, pursuant to a separate plan of financing, its (i) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1 (the “Series A-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (ii) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2 (the “Series A-2 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (iii) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-1 (the “Series B-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; and (iv) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-2 (the “Series 2018B-2 Governmental Note,” and collectively with the Series A-1 Governmental Note, the Series A-2 Governmental Note, and the Series B-1 Governmental Note, the “Senior Notes”), in the maximum principal amount of \$\_\_\_\_; and

WHEREAS, a portion of the Series A-1 Governmental Note and the Series A-2 Governmental Note will also be used to refund the Prior Note; and

WHEREAS, the Senior Notes evidence loans (the “Funding Loans”) made to the Mortgagee by U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association, in their capacity as initial funding lenders (together, the “Funding Lender”), pursuant to a Funding Loan Agreement, dated as of September 1, 2018, between the Mortgagee, U.S. Bank National Association, a national banking association, as administrative agent for the Funding Lender, and U.S. Bank National Association, a national banking association, as fiscal agent with respect to the Senior Notes (the “Fiscal Agent”); and

WHEREAS, the Mortgagee will loan the proceeds of the Funding Loans to the Mortgagor pursuant to the terms of a Project Loan Agreement, dated as of September 1, 2018, between the Mortgagee, the Mortgagor, and the Fiscal Agent; and

WHEREAS, in connection with the issuance of the Senior Notes, the Mortgagor has executed and delivered to the Mortgagee, as assigned by the Mortgagee to the Fiscal Agent, the following mortgages (together, the “Senior Mortgages”), which will provide the Fiscal Agent, as assignee thereunder, with a first mortgage lien on and security interest in the Project: (i) with respect to the Series A-1 Governmental Note and the Series A-2 Governmental Note, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated September \_\_, 2018; and (ii) with respect to the Series B-1 Governmental Note and the Series B-2 Governmental Note, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated September \_\_, 2018; and

WHEREAS, by the Loan Agreement, the Mortgagor has covenanted, among other things, to make Basic Payments (as defined in the Indenture), sufficient to pay the principal of, premium, if any, and interest on the Subordinate Bonds when due; and

WHEREAS, pursuant to the Act, the Mortgagee may assign the Basic Payments to the Trustee to secure the Subordinate Bonds; and

WHEREAS, the Mortgagee accordingly has, by the Indenture, pledged and granted to the Trustee a security interest in all of the Mortgagee’s right, title and interest in the Loan Agreement (except for certain rights for payment of fees, legal expenses and indemnification), including but not limited to such Basic Payments, in order to secure the full and prompt payment of the principal of, premium, if any, and interest on the Subordinate Bonds; and

WHEREAS, the Mortgagee has required as an express condition precedent to making a loan to the Mortgagor pursuant to the Loan Agreement that the Mortgagor provide this Subordinate Mortgage as security for repayment of the Basic Payments, which are due and payable in full on March 1, 2046; and

WHEREAS, this Subordinate Mortgage will be subordinate, junior, and subject to the Senior Mortgages; and

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged; in consideration of the purchase and acceptance of the Subordinate Bonds by the persons who, from time to time, may become the owners thereof; and to secure the due and punctual payment of any and all liabilities of the Mortgagor under the Loan Agreement and all covenants and agreements of the Mortgagor therein, including (without limitation) all Basic Payments payable thereunder in respect of the Subordinate Bonds, and the payment

of all fees and expenses and advances of the Mortgagee and the Trustee under the Loan Agreement, the Indenture and this Subordinate Mortgage, the Mortgagor does hereby grant, bargain, sell, convey, and warrant and assign to the Mortgagee, its permitted successors and assigns a lien on and security interest in, and does hereby mortgage and pledge unto the Mortgagee, its successors and assigns, forever, with power of sale, the following:

I.

All of its right, title and interest in and to the tracts, parcels and interests in land described in EXHIBIT A attached hereto (the "Land") and the buildings, structures and other improvements now standing or at any time hereafter constructed or placed upon the Land (the "Buildings"), including but not limited to (i) all building materials, supplies and equipment now or hereafter located on the Land and suitable or intended to be incorporated in any building, structure, or other improvement located or to be erected on the Land, (ii) all heating, plumbing and lighting apparatus, motors, engines and machinery, electrical equipment, incinerator apparatus, air conditioning equipment, water and gas apparatus, pipes, faucets, and all building service equipment and other fixtures of every description which are now or may hereafter be placed or used upon the Land or in any building or improvement now or hereafter located thereon, (iii) all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to and of any and all of the foregoing, and (iv) all hereditaments, easements, appurtenances, estates, and other rights and interests now or hereafter belonging to or in any way pertaining to the Land or to any building or improvement now or hereafter located thereon.

II.

All furnishings, furniture, equipment and all other tangible personal property of any nature whatever now or hereafter located in the Buildings or elsewhere on the Land (the "Equipment"), including all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to and of any and all such property, excluding any items released or disposed of in accordance with the Loan Agreement and excluding personal property owned by tenants occupying rental units in the Buildings.

III.

All rents, issues, condemnation awards, insurance proceeds, and similar revenues and income arising from the ownership of the Land, the Buildings and the Equipment and all proceeds and products thereof (collectively, the "Revenues and Income").

To have and to hold, the Land, Buildings and Equipment (the "Mortgaged Property"), and the Revenues and Income thereof, together with all privileges, hereditaments and appurtenances thereunto now or hereafter belonging, or in any way appertaining, and the proceeds thereof, unto the Mortgagee, its successors and assigns forever,

In trust nevertheless, upon the terms and trust as part of the Trust Estate set forth in the Indenture, for the equal and proportionate benefit, security and protection of all owners of the Subordinate Bonds, without preference, priority or distinction as to lien or otherwise of any of the Subordinate Bonds over any of the others,

Provided, nevertheless, that these presents are upon the express condition that if the Mortgagor shall pay all Basic Payments under the Loan Agreement and cause to be paid the principal of, premium (if any) on and interest on the Subordinate Bonds, and if the Mortgagor shall strictly observe and perform all of the terms, covenants and conditions contained in the Loan Agreement and this Subordinate Mortgage,

then this Subordinate Mortgage and the estate, right and interest of the Mortgagee in and to the Mortgaged Property, and the Revenues and Income thereof, shall cease and be and become void and of no force and effect, and shall be satisfied at the Mortgagor's expense, otherwise to remain in full force and effect.

The Mortgagor and the Mortgagee further agree as follows:

1. Definitions. Capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture.

2. Amount and Maturity of Subordinate Bonds; Basic Payments. The parties represent and agree as follows:

(a) The Subordinate Bonds shall be in the aggregate principal amount of \$3,570,000 and the final maturity thereof shall be March 1, 2046, subject to the optional or mandatory redemption of the Subordinate Bonds, including mandatory sinking fund redemption, all as further set forth in the Indenture.

(b) Basic Payments are required to be made monthly by the Mortgagor in order to pay principal of, premium (if any) and interest on the Subordinate Bonds when and as the same shall become due, or when required to be redeemed, as more fully provided in the Loan Agreement and Indenture.

3. Additional Payments. Under the Loan Agreement, the Mortgagor will be obligated, in addition to the Basic Payments described above, to pay all required rebate payments to the United States in respect of the Subordinate Bonds, the reasonable fees and expenses of the Trustee and any paying agent of the Subordinate Bonds, fees and expenses of the Mortgagee and any advances by the Mortgagee or the Trustee to meet obligations of the Mortgagor for (among other things) taxes, special assessments, utility charges, insurance premiums, and liens in connection with the Mortgaged Property and also to provide indemnity to the Mortgagee, all as more fully provided in the Loan Agreement, which obligations are additional indebtedness intended to be secured by this Subordinate Mortgage.

4. Release of Property. Property included in the Mortgaged Property may be released from the lien of this Subordinate Mortgage as provided in the Loan Agreement and Indenture.

5. Warranty of Title; Permitted Encumbrances. The Mortgagor does hereby covenant, represent and warrant that it is the lawful owner of and has good right and lawful authority to grant, bargain, sell, convey, warrant, mortgage, assign and pledge the Mortgaged Property and Revenues and Income thereof as provided herein; that the Mortgagor is and will continue to be well and truly seized of good and marketable title to the Mortgaged Property; that the Mortgaged Property and Revenues and Income thereof are and shall remain free and clear of all mortgages, liens, pledges, charges and encumbrances, excepting, with respect to the Land, Permitted Encumbrances, and excepting, with respect to any equipment, furnishings or other personal property, liens or security interests existing on the date hereof or hereafter arising with respect to any security interest granted in connection with purchase money acquisitions of such personal property the lien of which extends only to such purchased personal property; and that the Mortgagor does warrant and will defend the title to the Mortgaged Property and Revenues and Income thereof against all claims and demands whatsoever not permitted hereunder or under the Loan Agreement. "Permitted Encumbrances" shall mean the following:

(a) liens for taxes and special assessments which are not then delinquent;

(b) utility, access and other easements and rights-of-way, restrictions, restrictive covenants and exceptions that the Mortgagor certifies to the Mortgagee will not interfere with or impair the operation of the Mortgaged Property, or, if it is not being operated, the operation for which it was designed or last modified;

(c) any mechanic's, laborer's, materialman's, supplier's, or vendor's lien or right in respect thereof if payment is not yet due under the contract in question;

(d) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Land and which the Mortgagor certifies to the Mortgagee do not materially impair the property affected thereby for the purpose for which it was intended;

(e) zoning laws;

(f) liens arising in connection with workers' compensation, unemployment insurance, taxes, assessments, statutory obligations or liens, social security legislation, undetermined liens and charges incidental to construction, or other similar charges arising in the ordinary course of operation and not overdue, and such other liens and charges at the time required by law as a condition precedent to the transaction of the multifamily housing activities of the Mortgagor or the exercise of any privileges or licenses necessary to the Mortgagor;

(g) purchase money liens on personalty as provided above in this Section 5;

(h) the Senior Mortgages; and

(i) exceptions, easements, restrictions and encumbrances shown as of the date of this Subordinate Mortgage on EXHIBIT B attached hereto.

6. Events of Default; Remedies. If any Event of Default as defined in the Loan Agreement shall occur and be continuing, or if any Event of Default as defined in the Indenture shall occur and be continuing, the Mortgagee shall have authority (i) to accelerate the Basic Payments and to declare the Subordinate Bonds immediately due and payable as provided in the Loan Agreement and Indenture, and (ii) to pursue one or more of the remedies provided for in the Loan Agreement and Indenture respectively, and in lieu thereof or addition thereto, one or more of the following remedies and provisions for foreclosure or enforcement of this Subordinate Mortgage:

(a) The Mortgagee may proceed to protect and enforce its rights by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted, or for the foreclosure of this Subordinate Mortgage, or for the enforcement of any other appropriate legal or equitable remedy.

(b) The Mortgagee shall have and may exercise with respect to all personal property and fixtures which are part of the Mortgaged Property all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code, as in effect in the State of Minnesota (the "State"). If notice to the Mortgagor of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given (in the manner specified in the Loan Agreement and Indenture) at least ten (10) calendar days prior to the date of intended disposition.

(c) The Mortgagee shall be entitled, without notice, except that which is required by law, and without any showing of waste of the Mortgaged Property, inadequacy of the Mortgaged Property as security, or insolvency of the Mortgagor, to the appointment of a receiver of the rents and profits of the Mortgaged Property including those past due, as permitted by State law. The Mortgagee or any receiver shall be entitled to receive and dispose of the Revenues and Income of the Mortgaged Property and to sue for and recover any account or other item of Revenues and Income from the Mortgagor or any account debtor or other third person. Subject to any order of a court appointing a receiver or otherwise having jurisdiction of the Trust Estate, the Mortgagee in its discretion may apply the Revenues and Income received by it as provided in State law, as follows:

(i) To payment of all reasonable fees (if any) of the receiver approved by the court.

(ii) To payment of all tenant security deposits then owing to tenants under any of the Leases (as defined in Section 12 hereof) pursuant to the provisions of Minnesota Statutes, Section 504B.178.

(iii) To payment of all prior or current real estate taxes and special assessments with respect to the Mortgaged Property, or if this Subordinate Mortgage requires periodic escrow payments for such taxes and assessments, to the escrow payments then due.

(iv) To payment of all premiums then due for the insurance required by this Subordinate Mortgage, or if this Subordinate Mortgage requires periodic escrow payments for such premiums, to the escrow payments then due.

(v) To keeping of the covenants of a landlord or licensor pursuant to Minnesota Statutes, Section 504B.161, subdivision 1.

(vi) To payment of expenses incurred for normal maintenance of the Mortgaged Property.

(vii) If received prior to any foreclosure sale of the Mortgaged Property, to the Mortgagee for payment of the indebtedness secured hereby in such order as the Mortgagee determines but no such payment made after acceleration of the indebtedness secured hereby shall affect such acceleration.

(viii) If received during or with respect to the period of redemption after a foreclosure sale of the Mortgaged Property:

(1) If the purchaser at the foreclosure sale is not the Mortgagee, first to the Mortgagee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured hereby, second to the purchaser as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to the Mortgagor.

(2) If the purchaser at the foreclosure sale is the Mortgagee, to the Mortgagee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured hereby and the balance to be retained by the Mortgagee as a



credit to the redemption price, but if the Mortgaged Property is not redeemed, then to the Mortgagee, whether or not any such deficiency exists.

The rights and powers of the Mortgagee under this Subordinate Mortgage and the application of Rents under this Section 6(c) shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

(d) Subject to the rights of the Fiscal Agent under the Senior Mortgages, the Mortgagee may (and is hereby authorized and empowered to) foreclose this Subordinate Mortgage by action or advertisement, pursuant to the statutes of the State in such case made and provided, power being expressly granted to sell the Mortgaged Property at public auction and convey the same to the purchaser in fee simple and to apply the proceeds arising from such sale, first, as provided in the Indenture, to the payment of the indebtedness secured thereby and hereby, including all reasonable expenses, liabilities and advances of the Mortgagee and the Subordinate Bonds and interest thereon and Basic Payments relating thereto, and all legal costs and charges of such foreclosure, which costs, charges and fees the Mortgagor agrees to pay, and, second, to the payment of any obligations of the Mortgagor to the Mortgagee under the Loan Agreement, and, third, to return any surplus to the Mortgagor or such other person as may be entitled thereto. Such sale shall be made at public auction and at such place or places and at such time or times and upon such notice as the Mortgagee may be advised by counsel to be consistent with the laws applicable thereto, and upon such terms as the Mortgagee or the public officer conducting such sale may fix. Any such sale made pursuant to judicial proceedings or advertisement shall be made either as an entirety or in such parcels as may be directed by the court or as the Mortgagee in its sole discretion may determine. The Mortgagor, for it and all persons and corporations hereafter claiming through or under it, does hereby expressly waive and release all right to have the properties and rights comprised in the Mortgaged Property or in the Trust Estate marshaled upon any foreclosure or other enforcement hereof. The Mortgagee or public officer conducting such sale from time to time may adjourn any such sale to be made by it by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication it may make such sale at the time to which the same shall be so adjourned, but in the event of such adjournment or adjournments, sale shall be made within any limitation of time or number of adjournments prescribed by law and, in any event, within six months from the date of sale fixed in the advertisement or court order, unless notice of sale on some later date shall be given again in the manner provided by law.

(e) Upon any foreclosure sale, the owners of any Subordinate Bonds outstanding, or the Trustee, may bid for and purchase the Trust Estate or any part thereof and upon compliance with the terms of sale may hold, retain and possess and dispose of such property in their or its own absolute right without further accountability, and any purchaser at any such sale may, in paying the purchase money, turn in any of such Subordinate Bonds or claims for interest in lieu of cash to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

(f) Upon the completion of any sale or sales made under or by virtue of this Subordinate Mortgage and the Indenture, the Mortgagee shall execute and deliver, or cause to be executed and delivered, to the accepted purchaser or purchasers the property sold with good and sufficient transfers, assigning and transferring all its right, title and interest in and to the properties sold. The Mortgagee and its successor or successors are hereby appointed the true and lawful attorney or attorneys irrevocable of the Mortgagor in its name and stead or in the name of the Mortgagee to make all necessary assignments, transfers and deliveries of the property thus sold, and for that purpose, the Mortgagee and its successors may execute all necessary

instruments of assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that said attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor, if so requested in writing by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for the purpose and as may be designated in such request.

(g) Upon any sale made under the power of sale hereby granted or under judgment or decree in any judicial proceedings for the foreclosure or otherwise for the enforcement of this Subordinate Mortgage or the Indenture, the receipt of the Mortgagee or of the officer making such sale shall be a sufficient discharge to the purchaser or purchasers at any sale for the purchase money, and such purchaser or purchasers, their assigns or personal representatives shall not, after paying such purchase money and receiving such receipt of the Mortgagee or of such officer therefor, be obliged to see to the application of such purchase money, or be in anyway answerable for any loss, misapplication, or nonapplication thereof.

(h) The Mortgagor does hereby expressly consent to sale of the Mortgaged Property by advertisement pursuant to Minnesota Statutes, Chapter 580, which provides for sale after service of notice thereof upon the occupant of the Mortgaged Property and publication of said notice for six (6) weeks in the county in which the Mortgaged Property is located, notwithstanding that service might not be made upon the Mortgagor personally, and that no hearing of any type is required in connection with the sale. Except as required by the aforesaid statutory provision, the Mortgagor hereby expressly waives any and all rights to notice of sale of the Mortgaged Property and any and all rights to a hearing of any type in connection with the sale of the Mortgaged Property.

(i) In case of any Event of Default as aforesaid, to the extent that such rights may then lawfully be waived, neither the Mortgagor nor anyone claiming through or under it shall or will set up, claim, or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property may be situated, in order to prevent or hinder the enforcement or foreclosure of this Subordinate Mortgage or the Indenture, or the absolute sale of the Mortgaged Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat.

(j) Any sale made under the power of sale granted hereby or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this Subordinate Mortgage or the Indenture shall, if and to the extent then permitted by law, operate to divest all right, title, interest, claims and demand whatsoever, either at law or in equity, of the Mortgagor of, in and to the property so sold, and be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons, firms or corporations claiming or who may claim the property sold, or any part thereof, from, through or under the Mortgagor.

(k) The Mortgagee may also exercise its remedies under Section 19 below.

7. Possession of Mortgagor. Unless a default on the part of the Mortgagor shall exist under the Loan Agreement or an Event of Default shall exist under the Indenture, the Mortgagor shall be entitled to the possession and disposition of the Mortgaged Property and the Revenues and Income thereof subject, however, to the rights of the Trustee to the possession and disposition of the funds and accounts provided for in the Loan Agreement and Indenture.

8. Further Assurances. As provided in the Loan Agreement, the Mortgagor shall execute, deliver, file and record at its expense such supplements to this Subordinate Mortgage, financing statements or other documents as may be required in the opinion of counsel, including (without limitation) any supplement to this Subordinate Mortgage to particularly describe any properties which have been or are intended to become subject to the lien hereof.

9. Amendments. This Subordinate Mortgage may be amended only as provided in the Loan Agreement and Indenture.

10. Loan Agreement and Indenture Control. Any provision in this Subordinate Mortgage which is inconsistent with the Loan Agreement or the Indenture or any provision thereof shall be interpreted as if such provision were not contained herein and as if the provisions of the Loan Agreement and Indenture had been fully incorporated herein. In all cases of inconsistency, and in case of any amendment of or supplement to the Loan Agreement or Indenture, entered into in accordance with the provisions thereof, the provisions of the Loan Agreement (as amended and supplemented) and Indenture (as amended and supplemented) shall control. Reference is hereby made to copies of the Loan Agreement and Indenture to be placed on file at the offices of the Mortgagor and the Trustee.

11. Fixture Filing. From the date of its recording, this Subordinate Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein on EXHIBIT A. For this purpose, the following information is set forth:

- |     |                                                                                         |                                                                                                                                                             |
|-----|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) | Name and address of Debtor:                                                             | Minnetonka Leased Housing Associates II, LLLP<br>c/o Dominion Development and Acquisition, LLC<br>2905 Northwest Boulevard, Suite 150<br>Plymouth, MN 55441 |
| (2) | Name and address of Secured Party:                                                      | City of Minnetonka, Minnesota<br>14600 Minnetonka Boulevard<br>Minnetonka, MN 55345-1502                                                                    |
| (3) | Description of the types (or items) of property covered by this Financing Statement:    | The Fixtures as defined herein.                                                                                                                             |
| (4) | Description of real estate to which collateral is attached or upon which it is located: | See EXHIBIT A attached hereto.                                                                                                                              |

Some of the above-described collateral is or is to become fixtures upon or minerals and mineral rights located upon the Land, and this financing statement is to be filed for record in the public real estate records.

12. Assignment of Leases and Rents. The Assignor does hereby grant, transfer and assign to the Assignee (the "Assignment") all of the right, title and interest of the Assignor in and to (i) any and all present or future leases or tenancies, whether written or oral, covering or affecting any or all of the Mortgaged Property (all of which, together with any and all extensions, modifications and renewals

thereof, are hereinafter collectively referred to as the “Leases” and each of which is referred to as a “Lease”), and (ii) all rents, profits and other income or payments of any kind due or payable or to become due or payable to or by the Assignor as the result of any use, possession or occupancy of all or any portion of the Mortgaged Property or as the result of the use of or lease of any personal property constituting a part of the Mortgaged Property (all of which are hereinafter collectively referred to as “Rents”), but not including any general revenues, income or accounts receivable of the Assignor, and whether the Rents accrue before or after foreclosure of this Subordinate Mortgage or during the periods of redemption thereof, all for the purpose of securing:

(a) All indebtedness under the Loan Agreement and all other sums secured by this Subordinate Mortgage and Assignment pertaining to the Subordinate Bonds; and

(b) Performance and discharge of each and every obligation, covenant and agreement of the Assignor contained herein and in the Loan Agreement.

13. Covenant. The Assignor warrants and covenants that it is and will remain the absolute owner of the Rents and Leases free and clear of all liens and encumbrances other than the lien granted herein and Permitted Encumbrances; that it has not heretofore assigned or otherwise encumbered its interest in any of the Rents or Leases to any person other than as set forth in the Permitted Encumbrances; that it has the right under applicable law, under the Leases, and otherwise to execute and deliver this Assignment and keep and perform all of its obligations hereunder; that it will warrant and defend the Leases and Rents against all adverse claims, whether now existing or hereafter arising.

14. Performance of Leases. The Assignor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which it is now or hereafter becomes liable to observe or perform under any present or future Lease, and, at its sole cost and expense, enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the tenant under each and every Lease, subject to such waivers or extensions of time as may be granted by Assignee, provided that Assignee shall have the right, at any time, to rescind any such waiver or extension of time. The Assignor will observe and comply with all provisions of law applicable to the operation and ownership of the Mortgaged Property. The Assignor will at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of the Assignor or any tenant thereunder.

15. Collection of Rents. Unless permitted by the Mortgagee, the Assignor will not collect or accept any Rents for the use or occupancy of the Mortgaged Property for more than one (1) month in advance. Security deposits shall not be deemed Rents for purposes of this paragraph.

16. Protecting the Security of This Assignment. Should the Assignor fail to perform or observe any covenant or agreement contained in this Assignment, then the Assignee, but without obligation to do so and without releasing the Assignor from any obligation hereunder, may make or do the same in such manner and to such extent as the Assignee may deem appropriate to protect the security hereof, including, specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Assignor contained in the Leases and in exercising any such powers to pay necessary costs and expenses, employ counsel and pay reasonable attorneys’ fees. The Assignor will pay immediately upon demand all sums expended by the Assignee under the authority of this Assignment, together with interest thereon, and the same shall be added to said indebtedness and shall be secured hereby.

17. Present Assignment. This Assignment shall constitute a perfected, absolute and present assignment, provided that the Assignor shall have the right to collect, but not prior to accrual (except as permitted by Section 15 above), all of the Rents, and to retain, use and enjoy the same unless and until an Event of Default shall occur under the Loan Agreement, this Subordinate Mortgage or the Indenture or the Assignor shall have breached any warranty or covenant in this Assignment. Any Rents which accrue prior to an Event of Default under the Loan Agreement or this Subordinate Mortgage or the Indenture but are paid thereafter shall be paid to the Assignee.

18. Survival of Obligation to Comply with Subordinate Mortgage and This Assignment. All of the Assignor's obligations under this Subordinate Mortgage and Assignment shall survive foreclosure of this Subordinate Mortgage and the Assignor covenants and agrees to observe and comply with all terms and conditions of this Subordinate Mortgage and Assignment and to preclude any Event of Default from occurring under the Loan Agreement, this Subordinate Mortgage or Indenture throughout any period of redemption after foreclosure of this Subordinate Mortgage.

19. Additional Remedies. Upon the occurrence of any Event of Default specified in the Loan Agreement, the Indenture or herein, the Assignee may, at its option, in addition to any remedies set forth in Section 6 hereof, at any time:

(a) in the name, place and stead of the Assignor and without becoming a mortgagee in possession (i) enter upon, manage and operate the Mortgaged Property or retain the services of one or more independent contractors to manage and operate all or any part of the Mortgaged Property; (ii) make, enforce, modify and accept surrender of the Leases; (iii) obtain or evict tenants, collect, sue for, fix or modify the Rents and enforce all rights of the Assignor under the Leases; and (iv) perform any and all other acts that may be necessary or proper to protect the security of this Assignment;

(b) with or without exercising the rights set forth in subsection (a) above, give or require the Assignor to give, notice to any or all tenants under the Leases authorizing and directing the tenants to pay all Rents under the Leases directly to the Assignee; and

(c) without regard to waste, adequacy of the security or solvency of the Assignor, apply for, and the Assignor hereby consents to, the appointment of a receiver of the Mortgaged Property, whether or not foreclosure proceedings have been commenced under this Subordinate Mortgage, and if such proceedings have been commenced, whether or not a foreclosure sale has occurred.

The exercise of any of the foregoing rights or remedies and the application of the rents, profits and income pursuant to Section 20 hereof shall not cure or waive any Event of Default (or notice of default) under this Subordinate Mortgage or invalidate any act done pursuant to such notice.

20. Application of Rents, Profits and Income. All Rents collected by the Assignee or the receiver each month pursuant to Section 19(b) hereof shall be applied for the purposes referred to in Section 19(a) hereof. The rights and powers of the Assignee under this Assignment and the application of Rents under this Section 20 shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

21. No Liability for Assignee. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of the Assignor under the Leases. This Assignment shall not operate to place upon the Assignee responsibility for the

control, care, management or repair of the Mortgaged Property or for the carrying out of any of the terms and conditions of the Leases. The Assignee shall not be responsible or liable for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, for any negligence in the management, upkeep, repair or control of said Mortgaged Property or for failure to collect the Rents.

22. Assignor's Indemnification. The Assignor shall and does hereby agree to indemnify and to hold the Assignee harmless of and from any and all claims, demands, liability, loss or damage (including all costs, expenses, and reasonable attorney's fees in the defense thereof) asserted against, imposed on or incurred by the Assignee in connection with or as a result of this Assignment or the exercise of any rights or remedies under this Assignment or under the Leases or by reason of any alleged obligations or undertakings of the Assignee to perform or discharge any of the terms, covenants or agreements contained in the Leases which do not result from Assignee's own gross negligence or willful misconduct. Should the Assignee incur any such liability, the amount thereof, together with interest thereon, shall be secured hereby and the Assignor shall reimburse the Assignee therefor immediately upon demand.

23. Authorization to Tenants. Upon notice from the Assignee that it is exercising the remedy set forth in Section 19(b) hereof, the tenants under the Leases are hereby irrevocably authorized and directed to pay to the Assignee all sums due under the Leases, and the Assignor hereby consents and directs that said sums shall be paid to the Assignee without the necessity for a judicial determination that an Event of Default has occurred hereunder or that the Assignee is entitled to exercise its rights hereunder, and to the extent such sums are paid to the Assignee, the Assignor agrees that the tenant shall have no further liability to the Assignor for the same. The signature of the Assignee alone shall be sufficient for the exercise of any rights under this Assignment and the receipt of the Assignee alone for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Mortgaged Property. Checks for all or any part of the Rents collected under this Assignment shall upon notice from the Assignee be drawn to the exclusive order of the Assignee.

24. Assignee an Attorney-In-Fact. The Assignor hereby irrevocably appoints the Assignee, and its successors and assigns, as its agent and attorney-in-fact, which appointment is coupled with an interest, with the right but not the duty to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as the Assignee may deem appropriate to make this Assignment and any further assignment effective, including without limiting the generality of the foregoing, the right to endorse on behalf and in the name of the Assignor all checks from tenants in payment of Rents that are made payable to the Assignor.

25. Assignee Not a Mortgagee in Possession. Nothing herein contained and no actions taken pursuant to this Assignment shall be construed as constituting the Assignee a mortgagee in possession.

26. Specific Assignment of Leases. The Assignor will transfer and assign to the Assignee, upon written notice by Assignee, any and all specific Leases that the Assignee requests. Such transfer or assignment by the Assignor shall be upon the same or substantially the same terms and conditions as are herein contained, and the Assignor will properly file or record such assignments, at the Assignor's expense, if requested by the Assignee.

27. Unenforceable Provisions Severable. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof

shall in no way be affected thereby. It is the intention of the parties hereto, however, that this Assignment shall confer upon the Assignee the fullest rights, remedies and benefits available pursuant to Minnesota Statutes, Sections 559.17 and 576.01, subdivision 2.

28. Limited Recourse. Notwithstanding any provision or obligation to the contrary set forth in this Subordinate Mortgage, (a) the liability of the Mortgagor and any partner, trustee, director, officer, employee, or agent thereof (collectively, "Mortgagor Parties") under this Subordinate Mortgage or the Loan Agreement shall be limited to the property subject to this Subordinate Mortgage or to such other security as may from time to time be given or have been given for payment of the Mortgagor's obligations under the Loan Agreement and Subordinate Bonds, and any judgment rendered against the Mortgagor Parties under this Subordinate Mortgage or the Loan Agreement and Subordinate Bonds shall be limited to the property subject to this Subordinate Mortgage and any other security so given for satisfaction thereof; and (b) no deficiency or other personal judgment nor any order or decree of specific performance shall be sought or rendered against the Mortgagor Parties, their successors, transferees or assigns, in any action or proceeding arising out of this Subordinate Mortgage, the Loan Agreement, the Subordinate Bonds, or any judgment, order or decree rendered pursuant to any such action or proceeding; provided, however, that nothing in this Subordinate Mortgage, the Loan Agreement or the Subordinate Bonds shall limit the Mortgagee's ability to exercise any right or remedy that it may have with respect to any property pledged or granted to the Mortgagee, or to exercise any right against the Mortgagor or any other person or entity on account of any damage caused by fraud or intentional misrepresentation by the Mortgagor or any intentional damage of the property subject to this Subordinate Mortgage. Furthermore, the Mortgagor shall be fully liable for the misapplication of (i) proceeds paid prior to any foreclosure under any and all insurance policies, under which the Mortgagee is named as insured, by reason of damage, loss or destruction to any portion of the property subject to this Subordinate Mortgage, to the full extent of such misapplied proceeds and awards, (ii) proceeds or awards resulting from the condemnation, or other taking in lieu of condemnation, prior to any foreclosure of the property subject to this Subordinate Mortgage, to the full extent of such misapplied proceeds and awards (iii) rents, issues, profits and revenues received or applicable to a period subsequent to the occurrence of a default under this Subordinate Mortgage, the Loan Agreement and the Subordinate Bonds but prior to foreclosure, and (iv) proceeds from the sale of all or any part of the property subject to this Subordinate Mortgage and any other proceeds that, under the terms hereof, should have been paid to the Mortgagee. Furthermore, the Mortgagor shall be fully liable for the breach of the Mortgagor's covenants contained in Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 of the Loan Agreement; provided, however in no event shall the Mortgagor Parties be personally liable for payment of the principal of, premium, if any, or interest on the Subordinate Bonds. The limit on the Mortgagor's liability set forth in this paragraph shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of the Mortgagor's obligations under the Loan Agreement or a release, in whole or in part, or an impairment of the lien and security interest of this Subordinate Mortgage, the Loan Agreement and the Subordinate Bonds upon the properties described therein, or to preclude the Mortgagee from foreclosing this Subordinate Mortgage in case of any default or enforcing any other right of the Mortgagee, or to alter, limit or affect the liability of any person or party who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Mortgagor under this Subordinate Mortgage, the Loan Agreement and the Subordinate Bonds.

29. Tax Credit Requirements. The Mortgagor and Mortgagee agree, notwithstanding any other provision herein to the contrary, that in the event of a foreclosure, that no tenant may be evicted for the three year period following foreclosure if such eviction would be contrary to the provisions of Section 42(h)(6)(E) of the Internal Revenue Code of 1986, as amended, and that this Subordinate Mortgage, the Loan Agreement, and the Subordinate Bonds are expressly subordinate to this provision.

30. Assignment. The Mortgagor acknowledges that this Subordinate Mortgage will be assigned to the Trustee by the Mortgagee, and that the Trustee will have all the rights, obligations and interests of the Mortgagee herein. After such assignment, references to the Mortgagee herein shall be deemed to refer to the Trustee.

31. Mortgage Registry Tax. This Subordinate Mortgage is exempt from the tax imposed under Minnesota Statutes, Section 287.035 for the privilege of recording a mortgage, pursuant to Minnesota Statutes, Section 287.04(f), as amended.

32. Successors and Assigns. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of the Assignor and the Assignee, including any purchaser at a foreclosure sale.

33. Captions. The captions and headings of the paragraphs of this Subordinate Mortgage are for convenience only and shall not be used to interpret or define the provisions of this Subordinate Mortgage.

34. Subordination. Pursuant to the Subordination Agreement, dated September \_\_\_\_, 2018, between the Borrower, the Trustee, and the Fiscal Agent, the lien of mortgage created hereunder shall be subordinate and junior to the lien of the Senior Mortgages.

35. Waiver of Setoff. The Mortgagor represents and agrees that no rent has been or will be paid in advance by any persons in possession of all or any portion of the Mortgaged Property for a period of more than one (1) month and that the payment of none of the rents to accrue for all or any portion of the Mortgaged Property has or will be waived, released, reduced or discounted, or otherwise discharged or compromised, by the Mortgagor. The Mortgagor waives any right of setoff against any person in possession of all or any portion of the Mortgaged Property. The Mortgagor represents that it has not assigned any of said rents or profits to any third party and agrees that it will not so assign any of said rents or profits without the prior written consent of the Mortgagee.

36. Electronic Signatures. The parties agree that the electronic signature of a party to this Subordinate Mortgage shall be as valid as an original signature of such party and shall be effective to bind such party to this Subordinate Mortgage. For purposes hereof, (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

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IN WITNESS WHEREOF, the Mortgagor has executed this Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents as of the date and year first written above.

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE II, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates SPE II, LLC, a Delaware limited liability company, the general partner of Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, on behalf of the Mortgagor.

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

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lot 2, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota

**EXHIBIT B**  
**PERMITTED ENCUMBRANCES**

[Insert Permitted Encumbrances]

**ASSIGNMENT OF MORTGAGE**  
By Corporation or Partnership

Form No. 47-M

Miller-Davis Co., Minneapolis (10-3-86)  
Minnesota Uniform Conveyancing Blanks (1986)

**ASSIGNMENT OF MORTGAGE**

Date: September 1, 2018

(reserved for recording data)

FOR VALUABLE CONSIDERATION, the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the "Assignor"), hereby sells, assigns, and transfers to U.S. Bank National Association, a national banking association, whose mailing address is 60 Livingston Avenue, Third Floor, EP-MN-WS3C, Saint Paul, Minnesota 55107-2292, as trustee (the "Assignee") under the Subordinate Indenture of Trust, dated as of September 1, 2018 (the "Indenture"), between the Assignor and the Assignee, the Assignor's interest in the Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018, by Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the "Borrower"), in favor of the Assignor, as mortgagee, and filed for record on \_\_\_\_\_, 2018, as Document Number \_\_\_\_\_ in the Office of the Registrar of Titles of Hennepin County, Minnesota, together with all right and interest in the bonds and obligations therein specified and the debt thereby secured. Assignor covenants with Assignee, its successors and assigns, that there is due and unpaid of the debt secured by the Mortgage the sum of \_\_\_\_\_ Dollars, with the interest thereon from September \_\_\_\_, 2018, and that Assignor has good right to sell, assign and transfer the same.

**ASSIGNOR:**

**CITY OF MINNETONKA, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

STATE OF MINNESOTA        )  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under the its charter and the Constitution and laws of the State of Minnesota, on behalf of the Assignor.

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

STATE OF MINNESOTA        )  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under the its charter and the Constitution and laws of the State of Minnesota, on behalf of the Assignor.

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

THIS INSTRUMENT WAS DRAFTED BY

KENNEDY & GRAVEN, CHARTERED (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300

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**ASSIGNMENT, PLEDGE, AND SECURITY AGREEMENT**

**between**

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,  
as Borrower**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Dated as of September 1, 2018**

**Relating to:**

**\$3,570,000**

**City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Bonds  
(Preserve at Shady Oak Project)  
Series 2018C**

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This instrument drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

## ASSIGNMENT, PLEDGE, AND SECURITY AGREEMENT

THIS ASSIGNMENT, PLEDGE, AND SECURITY AGREEMENT, dated as of September 1, 2018 (the “Security Agreement”), is between MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as trustee (together with its successors and assigns, the “Trustee”) under the Indenture (hereinafter defined).

### Recitals

The Borrower, as developer, entered into a Contract for Private Development, dated \_\_\_\_\_, 2018 (the “Development Agreement”), with the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) and the City of Minnetonka (the “City”), pursuant to which the Borrower agreed to develop a 220-unit workforce housing rental development to be known as Preserve at Shady Oak (the “Project”) located at 10987 and 11015 Bren Road East, Minnetonka, Minnesota, on the property legally described in Exhibit A attached to the Development Agreement (the “Development Property”). In consideration for the development of the Project, the Authority agreed to reimburse the Borrower for certain land acquisition costs, site improvement costs, and costs of constructing housing related to the Project which are eligible to be reimbursed with tax increment.

In order to provide for the reimbursement to the Borrower, the Authority issued to the Borrower a pay-as-you-go note designated as the Tax Increment Revenue Note, Series 2018 (the “TIF Note”), dated \_\_\_\_\_, 2018, in the maximum principal amount of \$3,648,000. The TIF Note is payable solely from Available Tax Increment, as defined and described in the Development Agreement.

On May 7, 2018, the Issuer issued its Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018 (the “Prior Note”), in the original aggregate principal amount of \$30,500,000, and loaned the proceeds thereof to the Borrower to provide short-term financing for the acquisition, construction, and equipping of the Project.

The Borrower has requested that the City of Minnetonka, Minnesota (the “Issuer”) provide assistance in financing the acquisition, construction, and equipping of the Project. For the purpose of financing the costs of the construction and equipping of the Project, the Issuer is issuing the following obligations: (i) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Legends of Minnetonka Project), Series 2018A-1 (the “Series A-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (ii) Multifamily Note with designation as Multifamily Housing Revenue Refunding Note (Legends of Minnetonka Project), Series 2018A-2 (the “Series A-2 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (iii) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Legends of Minnetonka Project), Series 2018B-1 (the “Series B-1 Governmental Note”), in the maximum principal amount of \$\_\_\_\_; (iv) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Refunding Note (Legends of Minnetonka Project), Series 2018B-2 (the “Series 2018B-2 Governmental Note,” and collectively with the Series A-1 Governmental Note, the Series A-2 Governmental Note, and the Series B-1 Governmental Note, the “Senior Notes”), in the maximum principal amount of \$\_\_\_\_; and (v) Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Legends of Minnetonka Project), Series 2018C (the “Subordinate Bonds”), in the original aggregate principal amount of \$3,570,000. A portion of the proceeds of the Series A-1 Governmental Note, the Series A-2 Governmental Note, and the Subordinate Bonds will be used to refund the Prior Note, and the remainder of the proceeds thereof and the proceeds of the Series B-1 Governmental Note and the Series B-2 Governmental Note will be used to finance the Project.

The Senior Notes evidence loans (the “Funding Loans”) made to the Issuer by U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association, in their capacity as initial funding lenders (together, the “Funding Lender”), pursuant to a Funding Loan Agreement, dated as of September 1, 2018, between the Issuer, U.S. Bank National Association, a national banking association, as administrative agent for the Funding Lender, and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent with respect to the Senior Notes (the “Fiscal Agent”). The Issuer will loan the proceeds of the Funding Loans to the Borrower pursuant to the terms of a Project Loan Agreement, dated as of September 1, 2018, between the Issuer, the Borrower, and the Fiscal Agent.

The Issuer will issue the Subordinate Bonds under the terms of a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), between the Issuer and the Trustee. The Issuer will loan the proceeds of the Subordinate Bonds (the “Loan”) to the Borrower pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower.

By the terms of the Loan Agreement and this Security Agreement, the Borrower has pledged its interest in the TIF Note to the repayment of the Loan, and by the terms of the Indenture, the Issuer has assigned to the Trustee its interest in the Loan Agreement.

In order to further evidence such pledge and assignment, and as a condition to the issuance of the Subordinate Bonds and the making of the Loan, the execution and delivery of this Security Agreement is necessary and desirable.

NOW, THEREFORE, in consideration of the premises, the truth and correctness of which are hereby confirmed by the Borrower, and intending to be legally bound hereby, the Borrower and the Trustee hereby agree as follows:

1. The Agreement.

(a) Pledge, Assignment and Grant of Security Interest. As security for the payment and performance by the Borrower of all of its covenants, agreements and obligations under the Loan Agreement, the Borrower hereby grants, bargains, pledges, assigns, transfers conveys and sets over to the Trustee a first and prior security interest in all of its rights, titles and interests in, to and under (i) the TIF Note and all payments of any and every kind due and payable thereunder, including but not limited to principal and interest and (ii) all proceeds of any of the foregoing, in each case whether now or hereafter owned, existing or acquired (collectively, the “Collateral”). A true and correct copy of the TIF Note is attached hereto as EXHIBIT A.

(b) Enforcement. Upon the occurrence of an Event of Default under the Loan Agreement, the Trustee may declare all indebtedness evidenced and/or secured thereby to be immediately due and payable as therein provided and shall also have all of the rights, remedies and recourses with respect to the Collateral afforded a secured party under the Minnesota Uniform Commercial Code or otherwise existing at law. In addition to, and not in limitation of, the other rights, remedies and recourses afforded the Trustee under the Loan Agreement, the Collateral may, in the discretion of the Trustee, be held by the Trustee as collateral for, or then or at any time thereafter be applied in whole or in part by the Trustee against, any amount due and payable under the Loan Agreement. Mere delay or failure to act shall not preclude the exercise or enforcement of any rights and remedies available to the Trustee. All rights and remedies of the Trustee shall be cumulative and may be exercised singly in any order or sequence, or



concurrently, at the Trustee's option, and the exercise or enforcement of any such right or remedy shall neither be a condition to, nor bar the exercise or enforcement of, any other.

(c) Waiver of Notice and Hearing. THE BORROWER HEREBY WAIVES ALL RIGHTS TO A JUDICIAL HEARING OF ANY KIND PRIOR TO THE EXERCISE BY THE AGENT OF ITS RIGHTS TO POSSESSION OF THE COLLATERAL, TO RECEIVE ALL PAYMENTS UNDER AND PROCEEDS OF THE COLLATERAL, AND/OR TO SELL OR OTHERWISE DISPOSE OF THE COLLATERAL, ALL WITHOUT JUDICIAL PROCESS, OR OF ITS RIGHTS TO REPLEVY, ATTACH, OR LEVY UPON THE COLLATERAL WITHOUT PRIOR NOTICE OR HEARING. THE BORROWER ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY COUNSEL OF ITS CHOICE WITH RESPECT TO THIS PROVISION AND THIS SECURITY AGREEMENT. If notice of intended disposition of all or any of the Collateral, or of any other intended action hereunder, is required by law in any particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) calendar days prior to the date of intended disposition or other action.

(d) Perfection. To perfect the Trustee's security interest in the TIF Note, the Borrower shall endorse and deliver the TIF Note to the Trustee to be held pursuant to the terms of this Security Agreement. The Borrower will not change any of its name, its principal place of business, its chief executive office, the place where its records relating to the Collateral are kept or located or its jurisdiction of organization without first giving the Trustee thirty (30) days' prior written notice of any such change. The Borrower will at all times and at the Borrower's expense cause appropriate financing statements describing the rights and interests subject to this Section 1 to be filed in such manner and in such places deem necessary or advisable to establish, preserve and protect the interests granted hereunder as a perfected security interest in the rights and interests covered thereby. The Borrower hereby authorizes the Trustee to file one or more financing statements or continuation statements in respect thereof, and amendments thereto, relating to all or any part of the Collateral, without the signature of the Borrower, where permitted by law. A photocopy or other reproduction of this Security Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law. The Borrower shall, at any time, at its expense and upon request from the Trustee, execute any documentation assigning or endorsing the Collateral to the Trustee that may be requested by the Trustee and take all further action that may be necessary or desirable, or that the Trustee may request, in order to perfect and protect the security interest granted hereby or to enable the Trustee to exercise and enforce its rights and remedies under this Security Agreement, including but not limited to delivering physical possession and control of the Collateral to the Trustee. The Trustee may, at any time or times hereafter, place upon the Borrower's books and records relating to the Collateral notations or legends evidencing the Trustee's security interest. The Collateral shall be subject to the Trustee's exclusive dominion and control. ALL PAYMENTS OF PRINCIPAL OF AND INTEREST ON THE TIF NOTE SHALL BE MADE DIRECTLY TO THE TRUSTEE WHILE THIS SECURITY AGREEMENT IS IN EFFECT. The Trustee shall not be responsible for and makes no representations as to the legality, effectiveness, or sufficiency of any security document for the creation, perfection, priority, or protection of any lien securing the TIF Note.

(e) Negative Pledge. The Borrower will not sell, abandon, release, waive, pledge, mortgage, grant any other security interest in, encumber, assign or otherwise dispose of its interest in the Collateral or any of its rights therein without the Trustee's prior written consent.

(f) Appointment of the Trustee as Attorney-in-Fact. The Borrower hereby appoints the Trustee as the Borrower's attorney-in-fact in its name, place and stead to exercise and perform

to the exclusion of the Borrower all of the Borrower's rights and privileges with respect to the Collateral, to perform the obligations of the Borrower hereunder and under the Loan Agreement, if the Borrower fails to do so in a timely fashion, and to apply the Collateral to repay any amounts expended and/or loaned under the Loan Agreement or the Indenture. Said appointment is given as security for the prompt payment and performance, when due, of the obligations of the Borrower hereunder and under the Loan Agreement, and is irrevocable until such time as this Security Agreement is terminated in accordance with its terms. All payments made under the TIF Note shall be applied in the same manner as payments made under the Loan Agreement.

2. Representations and Warranties of the Borrower. The Borrower represents and warrants to the Trustee and agrees as follows:

(a) The Development Agreement and the TIF Note are valid and enforceable agreements against the Borrower and the Borrower is not in default thereunder, and all covenants, conditions, and agreements of the Borrower required by the Development Agreement have been performed as required therein.

(b) The Borrower will keep the TIF Note free from any lien, encumbrance, assignment or security interest whatsoever, other than this assignment and security interest.

(c) There have been no defaults on the part of the Borrower under the Development Agreement.

3. Covenants of the Borrower. The Borrower covenants and agrees that:

(a) It shall perform each and every of its duties and obligations under the Development Agreement and observe and comply with each and every term, covenant, condition, agreement, requirement, restriction and provision of the Development Agreement.

(b) It shall give prompt notice to the Trustee of any claim of or notice of default under the Development Agreement, the Indenture, the Loan Agreement, the Subordinate Mortgage, the Regulatory Agreement or the Disbursing Agreement known or given to it together with a copy of any such notice or claim if in writing.

(c) At the sole cost and expense of the Borrower it will enforce the full and complete performance of each and every duty and obligation to be performed by the other party to the Development Agreement.

(d) It will appear in and defend any action arising out of or in any manner connected with the Development Agreement and the duties and obligations of the Borrower thereunder.

(e) The Borrower will not without the prior written consent of the Trustee modify, amend, supplement, terminate, surrender or change in any manner whatsoever the Development Agreement and will not release or discharge the obligations of any party thereto or modify or extend the time of performance thereunder or the scope of the work thereunder.

(f) It reasonably expects to incur Public Development Costs (as defined in the Development Agreement) in an aggregate principal amount not less than \$4,161,000 and has delivered to the Trustee (i) a sworn construction statement duly executed by the Borrower and the general contractor for the Project, showing estimates of all anticipated contractors' contracts or subcontracts for specific portions of the work on the Project and the amounts anticipated to

become due each such contractor, including all costs and expenses of any kind incurred and to be incurred in constructing the Project and (ii) a total project cost statement, incorporating estimates of the construction costs as shown on the sworn construction statement and setting forth all other costs and expenses of any kind anticipated to be incurred in completion of the Project and sworn to by the Borrower to be a true, complete and accurate account of all costs actually incurred and a reasonably accurate estimate of all costs to be incurred in the future both showing Public Development Costs in an aggregate principal amount not less than \$4,161,000.

(g) It will submit invoices or cancelled checks evidencing the payment of Public Development Costs as required by Section 3.4 of the Development Agreement, as promptly as possible, subject to the limitations provided in the Development Agreement, and in any event not later than December 31, 2019.

4. Costs and Expenses; Indemnity. The Borrower will pay or reimburse the Trustee on demand for all out-of-pocket expenses (including in each case all filing and recording fees and taxes and all reasonable fees and expenses of counsel and of any experts and agents) incurred by the Trustee in connection with the creation, perfection, protection, satisfaction, foreclosure or enforcement of the security interest granted hereunder and the preparation, administration, continuance, amendment or enforcement of this Security Agreement, all of which shall be secured hereby. The Borrower shall indemnify and hold the Trustee and its officers, directors, employees, agents, and representatives harmless from and against any and all claims, losses and liabilities (including reasonable attorneys' fees) growing out of or resulting from this Security Agreement and the security interest hereby created (including enforcement of this Security Agreement) or the Trustee's actions pursuant hereto, except claims, losses or liabilities resulting from the Trustee's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction. Any liability of the Borrower to indemnify and hold the Trustee harmless pursuant to the preceding sentence shall be the personal obligation of the Borrower to the Trustee and shall be secured hereby. The obligations of the Borrower under this Section 3 shall survive any termination of this Security Agreement.

5. Waivers. This Security Agreement can be waived, modified, amended, terminated or discharged, and the security interest granted hereunder can be released, only explicitly in a writing signed by the Trustee. A waiver so signed shall be effective only in the specific instance and for the specific purpose given. Execution of this Security Agreement by the Trustee constitutes acceptance hereof, and the Borrower hereby waives any other notice of acceptance hereof by the Trustee.

6. Notices. Unless otherwise required by the specific provisions hereof or by law in respect to any matter, any demand, notice or other communication to any party in connection with this Security Agreement shall be in writing and shall be sent by manual delivery, overnight courier or United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

To the Trustee: U. S. Bank National Association  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attention: Corporate Trust Services

To the Borrower: Minnetonka Leased Housing Associates II, LLLP  
c/o Dominion Development and Acquisition, LLC  
2905 Northwest Boulevard, Suite 150  
Plymouth, MN 55441-7400  
Attention: Ryan Lunderby

with copies to: Winthrop & Weinstine P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota 55402-4629  
Attention: John M. Stern

and

Citibank, N.A.  
390 Greenwich Street, Second Floor  
New York, NY 10013  
Attention: Mark Sherman, Director

and

Citibank, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attention: Tom Carroll

or addressed to any such party at such other address in the United States of America as such party shall hereafter furnish by written notice to the other party hereto, at least ten (10) days prior to the effective date of said change in address, and all periods of notice shall be measured from the date of delivery thereof if manually delivered, from the first business day after the date of sending if sent by overnight courier, or from four (4) days after the date of mailing if mailed.

7. Governing Law; Waiver of Jury Trial; Consent to Jurisdiction. This Security Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota, without giving effect to conflict of laws principles thereof, but giving effect to federal laws of the United States applicable to national banks. The Borrower and the Trustee irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Security Agreement. At the option of the Trustee, this Security Agreement may be enforced in any federal court or Minnesota state court sitting in Minnetonka or Hennepin County, Minnesota; and the Borrower consents to the jurisdiction and venue of any such court and waives any argument that venue in such forums is not convenient. In the event the Borrower commences any action in another jurisdiction or venue under any tort or contract theory arising directly or indirectly from the relationship created by this Security Agreement, the Trustee, at its option, shall be entitled to have the case transferred to one of the jurisdictions and venues above-described, or if such transfer cannot be accomplished under applicable law, to have such case dismissed without prejudice, but any statute of limitation shall continue to be tolled for a period of six (6) months after such dismissal.

8. Headings. The section headings in this Security Agreement are included herein for convenience of reference only and shall not constitute a part of this Security Agreement for any other purpose.

9. Defined Terms. Any capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture.

10. Term of Agreement; Successors and Assigns. This Security Agreement shall remain in full force and effect from the date hereof until such time as all amounts owing by the Borrower to the Trustee under the Loan Agreement have been fully repaid, at which time the TIF Note shall be reassigned, re-endorsed and redelivered, by the Trustee to the Borrower, and any financing statement filed pursuant hereto shall be terminated. This Security Agreement shall (a) be binding upon the Borrower and its successors and assigns, and (b) inure to the benefit of and be enforceable by the Trustee and its successors, transferees and assigns.

11. Electronic Signatures. The parties agree that the electronic signature of a party to this Guaranty shall be as valid as an original signature of such party and shall be effective to bind such party to this Guaranty. For purposes hereof, (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

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

IN WITNESS WHEREOF, the Borrower and the Trustee have caused this Assignment, Pledge, and Security Agreement to be duly executed as of the date and year first written above.

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP**, a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates SPE II, LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Ryan J. Lunderby  
Its: Vice President

Execution page of the Trustee to the Assignment, Pledge, and Security Agreement, dated as of the date and year first written above.

**U. S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Vice President

The Economic Development Authority in and for the City of Minnetonka, Minnesota, as the issuer of the TIF Note, hereby consents to and acknowledges the Assignment, Pledge, and Security Agreement, dated as of the date and year first written above.

**ECONOMIC DEVELOPMENT AUTHORITY IN  
AND FOR THE CITY OF MINNETONKA,  
MINNESOTA**

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

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



**EXHIBIT A**

**TIF NOTE**

[Insert executed copy of TIF Note]

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**SUBORDINATE GUARANTY AGREEMENT**

by

**DOMINIUM HOLDINGS II, LLC,  
as Guarantor**

in favor of

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Dated as of September 1, 2018**

**Relating to:**

**\$3,570,000  
City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Bonds  
(Preserve at Shady Oak Project)  
Series 2018C**

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This instrument drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

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## SUBORDINATE GUARANTY AGREEMENT

THIS SUBORDINATE GUARANTY AGREEMENT, dated as of September 1, 2018 (the “Guaranty”), is by DOMINIUM HOLDINGS II, LLC, a Minnesota limited liability company (the “Guarantor”), in favor of U.S. BANK NATIONAL ASSOCIATION, a national banking association, as trustee (together with its successors and assigns, the “Trustee”) under the Indenture (hereinafter defined).

### RECITALS

WHEREAS, on May 7, 2018, the City of Minnetonka, Minnesota (the “Issuer”) issued its Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018 (the “Prior Note”), in the original aggregate principal amount of \$30,500,000, and loaned the proceeds thereof to Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), to provide short-term financing for the acquisition, construction, and equipping of a 262-unit senior housing rental development located at 10987 and 11015 Bren Road East, Minnetonka, Minnesota to be known as Preserve at Shady Oak (the “Project”); and

WHEREAS, the Issuer and the Trustee are entering into a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), in connection with the issuance by the Issuer of its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C (the “Subordinate Bonds”), in the original aggregate principal amount of \$3,570,000; and

WHEREAS, the proceeds of the Subordinate Bonds are to be loaned by the Issuer to the Borrower under a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower; and

WHEREAS, the proceeds of the Subordinate Bonds are to be applied to (i) refund a portion of the Prior Note; (ii) finance a portion of the costs of the acquisition, construction, and equipping the Project; (iii) finance capitalized interest on the Subordinate Bonds during the construction of the Project; and (iv) pay costs of issuance of the Subordinate Bonds; and

WHEREAS, as security for the Subordinate Bonds, the Borrower will execute and deliver to the Issuer a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (the “Subordinate Mortgage”), providing the Issuer with a subordinate mortgage lien on the property described therein, which the Issuer shall assign to the Trustee; and

WHEREAS, the Trustee is authorized by the Indenture to receive any and all other property conveyed, mortgaged, assigned or transferred, or in which a security interest is granted, by (among others) the Borrower, and to hold and apply for the security and payment of the Subordinate Bonds, pursuant to the provisions of the Indenture; and

WHEREAS, the Guarantor desires that the Issuer issue the Subordinate Bonds and apply the proceeds thereof as described above and further proposes to execute this Guaranty to permit or enhance the marketability and security of the Subordinate Bonds and thereby achieve the most favorable terms thereof; and

NOW, THEREFORE, the Guarantor hereby, subject to the terms hereof, covenants and agrees with the Trustee, for the benefit of the Trustee, the Issuer and all who at any time become registered owners (the “Holders”) of the Subordinate Bonds, as follows:

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

## ARTICLE I

### REPRESENTATIONS AND COVENANTS OF GUARANTOR

Section 1.1     Representations and Covenants of Guarantor.

(a)     The Guarantor has duly executed and delivered and, by proper corporate action, has duly authorized the execution and delivery of this Guaranty.

(b)     The assumption by the Guarantor of the obligations hereunder will result in a direct financial benefit to Borrower and the Guarantor and to the financial and operational success of the Project.

(c)     As to itself, at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of the liability of the Guarantor to the Trustee, or the immediate taking effect of this Guaranty.

(d)     As to itself, this Guaranty is a valid, legal and binding obligation of the Guarantor subject only to the application of bankruptcy laws and general principles of equity.

(e)     The Guarantor is a limited liability company duly formed, existing and in good standing under the laws of the State of Minnesota and the execution and delivery by the Guarantor of this Guaranty does not, and the performance of the agreements contained herein will not, contravene or constitute a default under any agreement, indenture, commitment, provision of its organizational and governing documents, or other requirement of law to which the Guarantor is a party or by which the Guarantor is or may be bound; the Guarantor shall preserve and maintain its duly organized existence.

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

## ARTICLE II

### COVENANTS AND AGREEMENTS

Section 2.1 Obligation. Subject to the limitations set forth in Section 2.2 hereof, the Guarantor hereby absolutely and unconditionally guarantees to the Trustee for the benefit of all persons who may become the owners from time to time of the Subordinate Bonds (i) the full and prompt payment of all principal of and premium, if any, on the Subordinate Bonds when and as the same shall become due, whether at the stated maturity thereof, by acceleration, call for redemption or otherwise; (ii) the full and prompt payment of all interest on the Subordinate Bonds when and as the same shall become due; and (iii) the performance of all other obligations of Borrower under the Loan Agreement, including but not limited to the obligation to provide for the full and prompt payment of all other amounts owing by Borrower under the Loan Agreement, including but not limited to Basic Payments payable under Section 4.1 thereof, the payment of any rebate payments owing in respect of the Subordinate Bonds to the United States under Section 148(f) of the Internal Revenue Code of 1986, as amended, and any advances or expenses of the Trustee under the Indenture and all additional charges owing under Section 4.4 of the Loan Agreement.

Section 2.2 Term.

(a) *General*. The obligations of the Guarantor under this Guaranty shall arise absolutely and unconditionally upon the execution and delivery of the Loan Agreement by the Borrower and shall, subject to the provisions of subsection (b) below, remain in full force and effect until all obligations of the Borrower under the Loan Agreement have been satisfied in full and payment has been made of all principal of, premium, if any, and interest on the Subordinate Bonds, when due.

(b) *Termination of Guaranty*. Notwithstanding the foregoing, this Guaranty shall terminate and the Guarantor's obligations hereunder shall be extinguished upon (i) defeasance of the Subordinate Bonds in accordance with Article 7 of the Indenture; or (ii) the payment in full of the principal of and interest on the Subordinate Bonds.

Section 2.3 Obligations Unconditional. The Guarantor's obligations under this Guaranty shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following:

(a) the compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the Borrower under the Loan Agreement or of the Issuer under the Indenture;

(b) the failure to give notice to the Borrower or the Guarantor of the occurrence of any default or event of default under the terms and provisions of this Guaranty, the Loan Agreement, the Indenture, or the Subordinate Mortgage;

(c) the waiver of the payment, performance or observance by the Borrower or the Guarantor of any of the obligations, covenants or agreements of any of them contained in the Indenture, the Loan Agreement, the Subordinate Mortgage, or this Guaranty;

(d) the extension of the time for payment of principal of, premium, if any, or interest on any Subordinate Bond or of the time for performance of any other obligations, covenants or agreements under or arising out of the Indenture, the Loan Agreement, the Subordinate Mortgage, or this Guaranty or the extension or the renewal of any thereof;

(e) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Indenture, the Loan Agreement, or the Subordinate Mortgage;

(f) the taking or omission of any of the actions referred to in the Indenture, the Loan Agreement, or the Subordinate Mortgage or any actions under this Guaranty;

(g) any failure, omission, delay or lack on the part of the Issuer or Trustee to enforce, assert or exercise any rights, power or remedy conferred on the Issuer or Trustee in this Guaranty, the Indenture, the Loan Agreement, or the Subordinate Mortgage;

(h) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors or readjustment of or other similar proceedings affecting the Guarantor or the Borrower, or any of the assets of any of them, or any allegation or contest of the validity of this Guaranty in any such proceeding;

(i) to the extent permitted by law, the release or discharge of the Borrower or of the Issuer from the performance or observance of any obligations, covenants or agreements contained in the resolution adopted by the City Council of the Issuer on August 27, 2018 with respect to the Subordinate Bonds (the "Bond Resolution"), the Indenture, the Loan Agreement, the Subordinate Mortgage, or the Subordinate Bonds by operation of law;

(j) the default or failure of the Guarantor to perform any of its obligations set forth in this Guaranty;

(k) the default or failure of the Borrower, the Trustee or the Issuer to fully perform any of their obligations to the Guarantor; or

(l) the invalidity or unenforceability of the Indenture, the Loan Agreement, the Subordinate Mortgage, or the Bond Resolution.

Notwithstanding the provisions of this Section 2.3, the Guarantor shall not be obligated to make any payment under Section 2.1 hereof if the obligation of the Borrower to make such payment has been effectively waived, modified or amended by action of the Trustee or Bondholders under the applicable provisions of the Indenture.

Section 2.4 No Set-Offs, Counterclaims. No set-off, counterclaim, reduction, or diminution of the obligation, or any defense of any kind or nature which the Guarantor has or may have against the Issuer, the Borrower, the Trustee or any Bondholder shall be available hereunder to the Guarantor against the Trustee.

Section 2.5 Borrower Default. In the event of a default in the payment of principal of any Subordinate Bond when and as the same shall become due, whether at the stated maturity thereof, by acceleration, call for redemption or otherwise, or of a default in the payment of any interest on any Subordinate Bond when and as the same shall become due, or in the event of a failure of the Borrower to make any other payment due and owing under the Loan Agreement or Indenture, the Trustee, in its sole discretion, shall have the right to proceed first and directly against the Guarantor under this Guaranty without proceeding against the Borrower under the Indenture, the Loan Agreement, or the Subordinate Mortgage or exhausting any other remedies which it may have and without resorting to any other security held by the Trustee.



(a) The Trustee shall not be obligated to expend or risk its own funds or otherwise incur any financial liability in the taking of any action hereunder except liability which is adjudicated to have resulted from its negligence or willful default by reason of any action so taken.

(b) The Guarantor agrees to pay all the costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Trustee in enforcing or attempting to enforce this Guaranty following any default on the part of either Borrower or the Guarantor, whether the same shall be enforced by suit or otherwise.

Section 2.6 Waiver of Acceptance. The Guarantor hereby expressly waives notice from the Trustee or any of the Holders from time to time of the Subordinate Bonds of their acceptance of and reliance on this Guaranty.

Section 2.7 Guarantor Events of Default. Each of the following shall constitute an event of default (an "Event of Default") under this Guaranty, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any governmental or non-governmental body:

(a) Failure to make any payment due under this Guaranty within ten (10) days of written demand therefor (a "Payment Default").

(b) Any representation or warranty made by the Guarantor under this Guaranty or any other agreement, report, certificate, financial statement or other instrument referred to herein and furnished to the Trustee or the Underwriter in connection herewith shall prove incorrect or misleading in any material respect when made or when deemed to have been made.

(c) Default in the performance or observance of any agreement or covenant contained in this Guaranty (other than a covenant, agreement, or default that is otherwise specifically addressed in this Guaranty) and the continuance of such default for a period of thirty (30) days following written notice from the Trustee.

(d) The filing by the Guarantor of a petition for the appointment of a trustee with respect to itself or any of its property.

(e) The making by the Guarantor of an assignment for the benefit of creditors.

(f) The insolvency of the Guarantor or the commencement by the Guarantor of a case in bankruptcy or for compromise, adjustment or other relief under the laws of the United States or of any state relating to the relief of debtors.

(g) The failure of the Guarantor to obtain the dismissal, within ninety (90) days after service upon the Guarantor of any case commenced against the Guarantor (i) for the appointment of a trustee for Guarantor or any of its property; or (ii) in bankruptcy or for declaration of insolvency or for compromise, adjustment or other relief under the laws of the United States or of any state relating to the relief of debtors.

(h) The failure of the Guarantor to generally pay its material debts as such debts become due.

(i) The making, or the attempted making, by the Guarantor of a fraudulent conveyance within the meaning of the Uniform Fraudulent Conveyances Act.

Section 2.9 Consequences of Event of Default. If a Payment Default or other Event of Default relating to payment shall have occurred and be continuing, either the Borrower or the Trustee may proceed hereunder against the Guarantor, and the Borrower and the Trustee shall have, in their discretion, the right to proceed first and directly against the Guarantor under this Guaranty without exhausting any other remedies it may have or without resorting to any security held by the Borrower. In the event an Event of Default other than a Payment Default shall have occurred and be continuing, the Trustee may require the Guarantor to provide security for the obligations guaranteed, which security shall be sufficient, in the Trustee's sole reasonable discretion, to protect the obligations guaranteed hereunder. The provisions of this Section 2.8 are intended to supplement any remedies available to the Trustee under Article III hereof or any other provision of the Loan Agreement, the Security Agreement, or the Subordinate Mortgage.

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## ARTICLE III

### MISCELLANEOUS

Section 3.1 Remedies. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any provision contained in this Guaranty should be breached by the Guarantor and thereafter duly waived by Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 3.2 Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, bankruptcy reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the rights of creditors of the Guarantor, the Trustee shall be entitled and empowered by intervention in such proceeding or otherwise,

(i) Subject to the limitation set forth in Section 2.1(b) hereof, to file and prove a claim for the whole amount of principal, premium, if any, and interest owing and unpaid (whether at stated maturity or by acceleration, call for redemption or otherwise) in respect of the Subordinate Bonds and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Bondholders allowed in such judicial proceeding, and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Bondholders, to pay to the Trustee any amount due to it for the reasonable expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 2.5 hereof.

Section 3.3 Trustee May Enforce Claims without Possession of Subordinate Bonds. All rights of action and claims under this Guaranty may be prosecuted and enforced by the Trustee without the possession of any of the Subordinate Bonds or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of any express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Subordinate Bonds in respect of which such judgment has been recovered.

Section 3.4 Waiver, Amendment. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the Trustee. The Trustee shall not consent to any amendment or modification of this Guaranty without the approval or consent of the Holders of not less than a majority in aggregate

principal amount of the Subordinate Bonds. Nothing contained herein shall permit or be construed as permitting, without the approval or consent of the Holders of all the Subordinate Bonds, any amendment, change or modification of this Guaranty which would (a) reduce the amount payable by the Guarantor hereunder, (b) change the time for payment of the amounts payable by the Guarantor hereunder, or (c) change the unconditional nature of this Guaranty herein contained.

Section 3.5 Addresses. The current mailing addresses of the Guarantor are set forth below:

DOMINIUM HOLDINGS II, LLC  
2905 Northwest Blvd., Suite 150  
Plymouth, MN 55441  
Attention: Mark S. Moorhouse

With copies to: WINTHROP & WEINSTINE P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota 55402-4629  
Attention: John M. Stern, Esq.

CITIBANK, N.A.  
390 Greenwich Street, Second Floor  
New York, NY 10013  
Attention: Mark Sherman, Director

and

CITIBANK, N.A.  
388 Greenwich Street, Eighth Floor  
New York, NY 10013  
Attention: Tom Carroll

The Guarantor shall forthwith notify the Trustee in writing of any change in its mailing address.

Section 3.6 Counterparts. This Guaranty may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 3.7 Separability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

Section 3.8 Defined Terms. Any capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture.

Section 3.9 Electronic Signatures. The parties agree that the electronic signature of a party to this Guaranty shall be as valid as an original signature of such party and shall be effective to bind such party to this Guaranty. For purposes hereof, (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

IN WITNESS WHEREOF, the Guarantor has executed this Subordinate Guaranty Agreement, dated as of the date and year first written above.

**DOMINIUM HOLDINGS II, LLC**, a Minnesota limited liability company

By: \_\_\_\_\_  
Name: Mark S. Moorhouse  
Its: Senior Vice President

Freddie Mac Loan Number: \_\_\_\_\_  
Property Name: \_\_\_\_\_

## SUBORDINATION AGREEMENT

### PRIVATE ENTITY

(Direct Purchase of Tax-Exempt Loans)  
(Revised 1-29-2018)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this [\_\_\_\_] day of September 2018, by and among **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as Fiscal Agent (as defined herein) under the Funding Loan Agreement (as defined herein) (“**Senior Tax-Exempt Mortgage**”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as Trustee for the City of Minnetonka, Minnesota pursuant to that certain Subordinate Indenture of Trust dated [September] 1, 2018 (“**Subordinate Mortgage**”).

### RECITALS

- A. Minnetonka Leased Housing Associates [II] [III], LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota (“**Borrower**”) is the owner of certain land located in Hennepin County, Minnesota, described in Exhibit A (“**Land**”). The Land is improved with a multifamily rental housing project (“**Improvements**”).
- B. The City of Minnetonka, Minnesota (“**Governmental Lender**”), the original holder of the Senior Tax-Exempt Note (as defined herein), has made a loan to Borrower in the original principal amount of \$[\_\_\_\_\_] (“**Senior Tax-Exempt Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of [September] 1, 2018 (“**Project Loan Agreement**”) among Governmental Lender, Senior Tax-Exempt Mortgagee (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) and Borrower in connection with the Mortgaged Property. The Senior Tax-Exempt Loan is secured by a [Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing] dated as of [September] 1, 2018 (“**Senior Tax-Exempt Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Tax-Exempt Mortgage as the “**Mortgaged Property**.”
- C. Pursuant to a Subordinate Loan Agreement dated as of [September 1], 2018 between the City of Minnetonka, Minnesota and Borrower (“**Subordinate Loan Agreement**”), the City of Minnetonka, Minnesota has issued its Subordinate Tax Increment Revenue and Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “**Subordinate Bonds**”) in the original principal amount of \$4,090,000 and will loan the proceeds of the Subordinate Bonds to the Borrower (“**Subordinate Loan**”). The

Subordinate Loan is or will be secured by a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents dated as of [September 1], 2018 (“**Subordinate Mortgage**”) encumbering all or a portion of the Mortgaged Property, which Subordinate Mortgage was assigned by the City of Minnetonka, Minnesota to Subordinate Mortgagee pursuant to that certain Assignment of Mortgage dated [September 1], 2018 (the “**Assignment of Subordinate Mortgage**”).

- D. The Senior Tax-Exempt Mortgage will be recorded in the Office of the [County Recorder] [Registrar of Titles] of Hennepin County, Minnesota (“**Recording Office**”) prior to recordation of this Agreement. The Subordinate Mortgage and Assignment of Subordinate Mortgage will be recorded in the Recording Office at following the recording of the Senior Tax-Exempt Mortgage.
- E. The Senior Tax-Exempt Note was assigned by the Governmental Lender to Senior Tax-Exempt Mortgagee as security for the loan made by the Initial Funding Lender (as defined below) to the Governmental Lender pursuant to the Funding Loan Agreement (the “**Tax-Exempt Funding Loan**”). The Senior Tax-Exempt Mortgage was assigned by the Governmental Lender to Senior Tax-Exempt Mortgagee as security for the Tax-Exempt Funding Loan pursuant to an Assignment of Security Instrument dated of even date herewith to be recorded contemporaneously herewith.
- F. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the “**Construction Phase Financing Agreement**”) dated as of [September] 1, 2018 between Borrower, U.S. Bank National Association, a national banking association, in its capacity as administrative agent (“**Administrative Agent**”) for [Construction Lender] (“**Initial Funding Lender**”), Federal Home Loan Mortgage Corporation and KeyBank National Association, a national banking association (“**Permanent Funding Lender**”), Administrative Agent and Initial Funding Lender shall subsequently assign and deliver the documents comprising the Tax-Exempt Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior Tax-Exempt Note and the Senior Tax-Exempt Mortgage will be amended and restated, and thereafter assigned to the Fiscal Agent (“**Conversion**”).
- G. Pursuant to the Senior Tax-Exempt Mortgage and Section 6.03 of the Funding Loan Agreement dated as of [September] 1, 2018 among Administrative Agent, Governmental Lender and Senior Tax-Exempt Mortgagee (the “**Funding Loan Agreement**”), the Funding Lender has the right to direct all actions of the Senior Tax-Exempt Mortgagee with respect to the Senior Tax-Exempt Mortgage, the Mortgaged Property and the Project Loan Agreement and, upon Conversion, shall have the right to amend and restate the Senior Tax-Exempt Note and the Senior Tax-Exempt Mortgage, as well as the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Tax-Exempt Loan Documents (as defined herein), without notice to or the consent or joinder of the Subordinate Mortgagee.
- G. The execution and delivery of this Agreement is a condition of Funding Lender’s consenting to Subordinate Mortgagee’s making of the Subordinate Loan and Borrower’s granting of the Subordinate Mortgage.

## AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- 1. Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.
- (a) The terms “**Condemnation,**” “**Imposition Reserve Deposits,**” “**Impositions,**” “**Leases,**” “**Rents**” and “**Restoration,**” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Agreement.
  - (b) “**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.
  - (c) “**Borrower**” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Senior Tax-Exempt Mortgagee or Funding Lender if Senior Tax-Exempt Mortgagee or Funding Lender acquires title to the Mortgaged Property.
  - (d) “**Casualty**” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.
  - (e) “**Enforcement Action**” means any of the following actions taken by or at the direction of Subordinate Mortgagee: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon any of the Subordinate Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.
  - (f) “**Enforcement Action Notice**” means a written Notice from Subordinate Mortgagee to Funding Lender, given following one or more Subordinate Mortgage Default(s) and the expiration of any Notice or cure periods provided for



such Subordinate Mortgage Default(s) in the Subordinate Loan Documents, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Mortgagee.

- (g) “**Funding Lender**” shall mean Initial Funding Lender prior to Conversion and Permanent Funding Lender from and after Conversion, together with their respective successors and assigns.
- (h) “**Governmental Note**” means collectively (i) the Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 in the maximum principal amount of \$[\_\_\_\_\_] and (ii) the Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 in the maximum principal amount of \$[\_\_\_\_], both evidencing the Tax-Exempt Funding Loan, together with any amendments, supplements or modifications thereto.
- (i) “**Loss Proceeds**” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.
- (j) “**Notice**” is defined in Section 7(e).
- (k) “**Senior Indebtedness**” means the “Indebtedness” of Borrower as evidenced by the Senior Loan Documents.
- (l) “**Senior Loan Agreement**” collectively means, prior to Conversion, the Project Loan Agreement and the [Construction Continuing Covenant Agreement]. From and after Conversion, “Senior Loan Agreement” means the Project Loan Agreement and/or the Continuing Covenant Agreement to be executed by Borrower and Permanent Funding Lender at Conversion (“**Continuing Covenant Agreement**”).
- (m) “**Senior Loan Documents**” collectively means prior to Conversion, the “Project Loan Documents” as defined in the Construction Phase Financing Agreement, together with the “Loan Documents” as defined in the [Construction Continuing Covenant Agreement]. From and after Conversion, “Senior Loan Documents” shall mean the “Financing Documents” as defined in the Continuing Covenant Agreement.
- (n) “**Senior Mortgage Default**” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Continuing Covenant Agreement.
- (o) “**Senior Tax-Exempt Mortgagee**” means U.S. Bank National Association, a national banking association. When any other person or entity becomes the legal holder of the Senior Tax-Exempt Note, such other person or entity will automatically become Senior Tax-Exempt Mortgagee.

- (p) **“Senior Tax-Exempt Note”** means, prior to Conversion, the “Series A Project Note” as defined in the Construction Continuing Covenant Agreement. From and after Conversion, “Senior Tax-Exempt Note” means the Project Note as defined in the Continuing Covenant Agreement.
- (q) **“Subordinate Indebtedness”** means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Mortgagee pursuant to, the Subordinate Loan Documents.
- (r) **“Subordinate Loan Documents”** means the Subordinate Mortgage, the Subordinate Loan Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as the same may be amended, including, but not limited to, the Assignment, Pledge and Security Agreement between Borrower and Subordinate Mortgagee dated as of September 1, 2018 and that certain Subordinate Guaranty Agreement by Dominion Holdings I, LLC and Dominion Holdings II, LLC in favor of Subordinate Mortgagee dated September 1, 2018.
- (s) **“Subordinate Mortgage Default”** means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of Notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Mortgagee to take an Enforcement Action.
- (t) **“Subordinate Mortgagee”** means the person or entity named as such in the first paragraph of this Agreement together with its successors and/or assigns.

## **2. Subordination of Subordinate Indebtedness.**

- (a) The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness.
- (b) Until the occurrence of a Senior Mortgage Default, Subordinate Mortgagee will be entitled to retain for its own account all payments made on account of the principal of and interest on the Subordinate Indebtedness in accordance with the requirements of the Subordinate Loan Documents; provided no such payment is made more than 10 days in advance of its due date. However, immediately upon Subordinate Mortgagee’s receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Mortgagee will not accept any payments on account of the Subordinate Indebtedness, and the provisions of Section 2(c) of this Agreement will apply. Subordinate Mortgagee acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Mortgagee will be deemed to have actual knowledge of a Senior Mortgage Default.

- (c) If (i) Subordinate Mortgagee receives any payment, property, or asset of any kind or in any form on account of the Subordinate Indebtedness (including any proceeds from any Enforcement Action) after a Senior Mortgage Default of which Subordinate Mortgagee has actual knowledge (or is deemed to have actual knowledge as provided in 2(b) above) or has been given Notice, or (ii) Subordinate Mortgagee receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any Bankruptcy Proceeding, such payment, property, or asset will be received and held in trust for Funding Lender. Subordinate Mortgagee will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to Funding Lender. Funding Lender will apply any payment, asset, or property so received from Subordinate Mortgagee to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Funding Lender determines in its sole and absolute discretion. Subordinate Mortgagee designates and appoints, irrevocably and couple with an interest, Funding Lender (and all persons and entities designated by Funding Lender) as Subordinate Mortgagee's true and lawful attorney-in-fact with power to endorse the name of Subordinate Mortgagee upon any check or other instrument and to take any action necessary to collect any payment, property, or asset referred to in, or otherwise effectuate the provisions of, this Section 2(c).
- (d) Without limiting the complete subordination of the Subordinate Indebtedness to the payment in full of the Senior Indebtedness, in any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) the Senior Indebtedness will first be paid in full in cash before Subordinate Mortgagee will be entitled to receive any payment or other distribution on account of or in respect of the Subordinate Indebtedness, and (ii) until all of the Senior Indebtedness is paid in full in cash, any payment or distribution to which Subordinate Mortgagee would be entitled but for this Agreement (whether in cash, property, or other assets) will be made to Funding Lender.
- (e) The subordination of the Subordinate Indebtedness will continue if any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, any or all of the Senior Indebtedness originally intended to be satisfied will be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

### **3. Subordination of Subordinate Loan Documents.**

- (a) Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) The subordination of the Subordinate Loan Documents and of the Subordinate Indebtedness will apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of each of the Senior Loan Documents and of each of the Subordinate Loan Documents, (ii) the availability of any collateral to Senior Tax-Exempt Mortgagee or Funding Lender, including the availability of any collateral other than the Mortgaged Property and ([II] [III]) the amendment and restatement of the Senior Tax-Exempt Note and the Senior Tax-Exempt Mortgage at Conversion.
- (c) By reason of, and without in any way limiting, the full subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, all rights and claims of Subordinate Mortgagee under the Subordinate Loan Documents in or to all or any portion of the Mortgaged Property are expressly subject and subordinate in all respects to the rights and claims of Senior Tax-Exempt Mortgagee or Funding Lender under the Senior Loan Documents in or to the Mortgaged Property.
- (d) If Subordinate Mortgagee, by indemnification, subrogation or otherwise, acquires any lien, estate, right or other interest in any of the Mortgaged Property, then that lien, estate, right or other interest will be fully subject and subordinate to the receipt by Senior Tax-Exempt Mortgagee or Funding Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.

#### **4. Additional Representations and Covenants.**

- (a) Subordinate Mortgagee represents and warrants that each of the following is true:
  - (i) Subordinate Mortgagee is now the owner and holder of the Subordinate Loan Documents.
  - (ii) The Subordinate Loan Documents are now in full force and effect.
  - (iii) The Subordinate Loan Documents have not been modified or amended.
  - (iv) No Subordinate Mortgage Default has occurred.
  - (v) The current unpaid principal balance of the Subordinate Indebtedness is \$4,090,000.
  - (vi) No scheduled monthly payments under the Subordinate Loan Documents have been or will be prepaid.

- (vii) None of the rights of Subordinate Mortgagee under any of the Subordinate Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.
- (b) Without the prior written consent of Funding Lender in each instance, Subordinate Mortgagee will not do any of the following:
  - (i) Amend, modify, waive, extend, renew, or replace any provision of any of the Subordinate Loan Documents.
  - (ii) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
  - (iii) Accept any payment on account of the Subordinate Indebtedness other than a regularly scheduled payment of interest or principal and interest made not earlier than 10 days prior to its due date, or as expressly authorized in Section 4(i) below.
  - (iv) Take any action which has the effect of increasing the Subordinate Indebtedness.
  - (v) Appear in, defend or bring any action to protect Subordinate Mortgagee's interest in the Mortgaged Property.
  - (vi) Take any action concerning environmental matters affecting the Mortgaged Property.
- (c) Subordinate Mortgagee will deliver to Funding Lender a copy of each Notice received or delivered by Subordinate Mortgagee pursuant to the Subordinate Loan Documents or in connection with the Subordinate Indebtedness, simultaneously with Subordinate Mortgagee's delivery or receipt of such Notice. Funding Lender will deliver to Subordinate Mortgagee in the manner required in Section 5(b) a copy of each Notice of a Senior Mortgage Default delivered to Borrower by Funding Lender. Neither giving nor failing to give a Notice to Funding Lender or Subordinate Mortgagee pursuant to this Section 4(c) will affect the validity of any Notice given by Funding Lender or Subordinate Mortgagee to Borrower, as between Borrower and such of Funding Lender or Subordinate Mortgagee as provided the Notice to Borrower.
- (d) Without the prior written consent of Funding Lender in each instance, Subordinate Mortgagee will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Mortgagee will not vote affirmatively in favor of any plan of reorganization or liquidation unless Funding Lender has also voted affirmatively in favor of such plan. In the event of any Bankruptcy Proceeding, Subordinate Mortgagee will not contest the continued accrual of interest on the Senior Indebtedness, in accordance with and at the rates specified in the Senior

Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings.

- (e) Whenever the Subordinate Loan Documents give Subordinate Mortgagee approval or consent rights with respect to any matter, and a right of approval or consent with regard to the same or substantially the same matter is also granted to Senior Tax-Exempt Mortgagee or Funding Lender pursuant to the Senior Loan Documents or otherwise, Funding Lender's approval or consent or failure to approve or consent, as the case may be, will be binding on Subordinate Mortgagee. None of the other provisions of this Section 4 are intended to be in any way in limitation of the provisions of this Section 4(e).
- (f) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Funding Lender. All original policies of insurance required pursuant to the Senior Loan Documents will be held by Funding Lender. Nothing in this Section 4(f) will preclude Subordinate Mortgagee from requiring that it be named as a mortgagee and 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 Loss Proceeds, or that Subordinate Mortgagee be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.
- (g) In the event of a Condemnation or a Casualty, all of the following provisions will apply:
  - (i) The rights of Subordinate Mortgagee (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Tax-Exempt Mortgagee's and Funding Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Mortgagee will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Funding Lender.
  - (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Funding Lender in its sole discretion.
  - (iii) If Funding Lender applies or releases Loss Proceeds for the purposes of Restoration of the Mortgaged Property, then Subordinate Mortgagee will release for such purpose all of its right, title and interest, if any, in and to

such Loss Proceeds. If Funding Lender holds Loss Proceeds, or monitors the disbursement thereof, Subordinate Mortgagee will not do so. Nothing contained in this Agreement will be deemed to require Funding Lender to act for or on behalf of Subordinate Mortgagee in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Mortgagee, and all or any Loss Proceeds may be commingled with any funds of Funding Lender.

- (iv) If Funding Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Funding Lender will be paid to Subordinate Mortgagee unless another party has asserted a claim to the remaining Loss Proceeds.
- (h) Subordinate Mortgagee will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Tax-Exempt Mortgagee or Funding Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Tax-Exempt Mortgagee or Funding Lender.
- (i) Except as provided in this Section 4(i), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Mortgagee will not collect payments for the purpose of escrowing for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Mortgagee may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Mortgagee will be held in trust by Subordinate Mortgagee to be applied only to the payment of such Impositions.
- (j) Within 10 days after request by Funding Lender, Subordinate Mortgagee will furnish Funding Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Funding Lender may request.
- (k) Senior Tax-Exempt Mortgagee or Funding Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Mortgagee, and without affecting any of the provisions of this Agreement.

## **5. Default Under Loan Documents.**

- (a) Funding Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default, until such time, if ever, as Funding Lender delivers to Subordinate Mortgagee Funding Lender's Notice of written consent to an Enforcement Action described in an Enforcement Action Notice given by Subordinate Mortgagee as a consequence of a Subordinate Mortgage Default. Subordinate Mortgagee acknowledges that all amounts advanced or expended by Funding Lender to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Tax-Exempt Mortgage.
- (b) Funding Lender will deliver to Subordinate Mortgagee a copy of any Notice sent by Funding Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Funding Lender to send Notice to Subordinate Mortgagee will not prevent the exercise of Funding Lender's rights and remedies under the Senior Loan Documents. Subordinate Mortgagee will have the right, but not the obligation, to cure any Senior Mortgage Default during such period of time, if any, as Borrower is permitted by the terms of the Senior Loan Documents to cure a Senior Mortgage Default. Subordinate Mortgagee will not be subrogated to the rights of Senior Tax-Exempt Mortgagee or Funding Lender under the Senior Loan Documents by reason of Subordinate Mortgagee having cured any Senior Mortgage Default.
- (c) In the event of a Subordinate Mortgage Default, Subordinate Mortgagee will not commence any Enforcement Action until after (i) Subordinate Mortgagee has delivered to Funding Lender an Enforcement Action Notice with respect to such Enforcement Action, and (ii) Funding Lender has delivered to Subordinate Mortgagee Funding Lender's written consent to such Enforcement Action by Subordinate Mortgagee. Funding Lender will advise Subordinate Mortgagee whether Funding Lender consents to the Enforcement Action by Subordinate Mortgagee within 90 days following Funding Lender's receipt of the Enforcement Action Notice (failure of Funding Lender to provide written consent to the Enforcement Action within such 90-day period constitutes Funding Lender's refusal of such consent). Subordinate Mortgagee acknowledges that Funding Lender may grant or refuse consent to Subordinate Mortgagee's Enforcement Action in Funding Lender's sole and absolute discretion. Any Enforcement Action on the part of Subordinate Mortgagee will be subject to the provisions of this Agreement. Subordinate Mortgagee acknowledges that the provisions of this Section 5(c) are fair and reasonable under the circumstances, that Subordinate Mortgagee has received a substantial benefit from Senior Tax-Exempt Mortgagee having granted its consent to the Subordinate Mortgage, and that Senior Tax-Exempt Mortgagee would not have granted such consent without the inclusion of these provisions in this Agreement.
- (d) Senior Tax-Exempt Mortgagee or Funding Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Mortgagee. No action or failure to act on the part of Senior Tax-



Exempt Mortgagee or Funding Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Tax-Exempt Mortgagee or Funding Lender of any provision of the Senior Loan Documents or this Agreement.

- (e) If the Enforcement Action taken by Subordinate Mortgagee is the appointment of a receiver for any of the Mortgaged Property, all of the Rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver solely to and for the benefit of Senior Tax-Exempt Mortgagee or Funding Lender until the Senior Indebtedness will have been paid in full.
- (f) Subordinate Mortgagee consents to and authorizes the release by Senior Tax-Exempt Mortgagee or Funding Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Mortgagee waives to the fullest extent permitted by law, all equitable or other rights it may have (i) in connection with the release of all or any portion of the Mortgaged Property, (ii) to require the separate sale of any portion of the Mortgaged Property, ([II] [III]) to require Senior Tax-Exempt Mortgagee or Funding Lender to exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness, or (iv) to require Senior Tax-Exempt Mortgagee or Funding Lender to proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Tax-Exempt Mortgagee or Funding Lender determines. Subordinate Mortgagee consents to and authorizes, at the option of Senior Tax-Exempt Mortgagee or Funding Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Mortgagee acknowledges that without Notice to Subordinate Mortgagee and without affecting any of the provisions of this Agreement, Senior Tax-Exempt Mortgagee or Funding Lender may (i) extend the time for or waive any payment or performance under the Senior Loan Documents; (ii) modify or amend in any respect any provision of the Senior Loan Documents; and ([II] [III]) modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.
- (g) If any party other than Borrower (including Senior Tax-Exempt Mortgagee or Funding Lender) acquires title to any of the Mortgaged Property pursuant to a foreclosure of, or trustee's sale or other exercise of any power of sale under, the Senior Tax-Exempt Mortgage conducted in accordance with applicable law, the lien, operation, and effect of the Subordinate Mortgage and other Subordinate Loan Documents automatically will terminate with respect to such Mortgaged Property.

**6. Refinancing.** Subordinate Mortgagee agrees that its agreement to subordinate hereunder will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Tax-Exempt Mortgagee will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

**7. Miscellaneous Provisions.**

- (a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.
- (b) If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control.
- (c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. No other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise.
- (d) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (e) Each notice, request, demand, consent, approval or other communication (collectively, “**Notices**,” and singly, a “**Notice**”) which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or ([II] [III]) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

- (i) Notices intended for Senior Tax-Exempt Mortgagee will be addressed to:

U.S. Bank National Association

Corporate Trust Services  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Dan Sheff, Vice President  
Email: dan.sheff@usbank.com  
Telephone: 651-466-6302

- (ii) Notices intended for Subordinate Mortgagee will be addressed to:

U.S. Bank National Association  
60 Livingston Avenue, Third Floor  
EP-MN-WS3C  
Saint Paul, MN 55107-2292  
Attn: Corporate Trust Services

- ([II] [III]) Notices intended for Funding Lender will be addressed to:

U.S. Bank National Association

[Address]  
Attention:  
Facsimile:  
Telephone:

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (f) Upon Notice from Funding Lender, Subordinate Mortgagee will execute and deliver such additional instruments and documents, and will take such actions, as are required by Funding Lender in order to further evidence or implement the provisions and intent of this Agreement.
- (g) This Agreement will be governed by the laws of the State in which the Land is located.
- (h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right,

power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.

- (j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (k) This Agreement shall inure to the benefit of any subsequent holder of the Senior Indebtedness.
- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument or written instruments signed by the parties to this Agreement or their successors or assigns.
- (m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (n) The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events: (i) the payment of all of the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Tax-Exempt Mortgagee or Funding Lender as described in Section 2(e) of this Agreement, (ii) the payment of all of the Subordinate Indebtedness other than by reason of payments which Subordinate Mortgagee is obligated to remit to Senior Tax-Exempt Mortgagee or Funding Lender pursuant to this Agreement, (III) [III] the acquisition by Senior Tax-Exempt Mortgagee or Funding Lender or by a third party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Tax-Exempt Mortgage; or (iv) with the prior written consent of Funding Lender, without limiting the provisions of Section 5(d), the acquisition by Subordinate Mortgagee of title to the Mortgaged Property subject to the Senior Tax-Exempt Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (o) This Agreement does not constitute an approval by Senior Tax-Exempt Mortgagee or Funding Lender of the terms of the Subordinate Loan Documents.
- (p) Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Tax-Exempt Mortgagee or Funding Lender as a joint venturer or partner of Subordinate Mortgagee.
- (q) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Mortgagee of its governmental powers

(including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

- (r) Notwithstanding anything herein to the contrary, pursuant to the Senior Tax-Exempt Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Tax-Exempt Mortgagee hereunder shall be solely at the written direction of the Funding Lender. The parties acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

**[Signature and acknowledgment pages follow]**



**SUBORDINATE MORTGAGEE:**

**U.S. BANK, NATIONAL  
ASSOCIATION**, a national banking  
association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2018, by \_\_\_\_\_, the \_\_\_\_\_ of  
U.S. Bank National Association, a national banking association, on behalf of the association.

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







**DOMINIUM HOLDINGS II, LLC,**  
a Minnesota limited liability company

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

Name: Mark S. Moorhouse

Its: Senior Vice President

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Mark S. Moorhouse, the Senior Vice President of Dominion Holdings II, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

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

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lot 1, Block 2, Dominion 2<sup>nd</sup> Addition, Hennepin County, Minnesota.

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**BOND PURCHASE AGREEMENT**

**BY AND BETWEEN**

**CITY OF MINNETONKA, MINNESOTA,  
as Issuer,**

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,  
as Borrower,**

**AND**

**DOUGHERTY & COMPANY LLC,  
as Underwriter**

**Dated August \_\_, 2018**

**City of Minnetonka, Minnesota  
Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds  
(Preserve at Shady Oak Project)  
Series 2018C**

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This instrument drafted by:  
Barnes & Thornburg LLP (BWJ)  
225 South Sixth Street  
Minneapolis, Minnesota 55402

**BOND PURCHASE AGREEMENT**

August \_\_, 2018

City of Minnetonka, Minnesota  
14600 Minnetonka Road  
Minnetonka, Minnesota 55345-1502

Minnetonka Leased Housing Associates II, LLLP  
2905 Northwest Boulevard, Suite 150  
Plymouth, Minnesota 55441-7400

\$ \_\_\_\_\_

**City of Minnetonka, Minnesota  
Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds  
(Preserve at Shady Oak Project)  
Series 2018C**

Ladies and Gentlemen:

The undersigned, Dougherty & Company LLC (the “Underwriter”) hereby proposes to enter into the following bond purchase agreement (this “Agreement” or “Bond Purchase Agreement”) concerning the above-captioned bonds (the “Series 2018C Bonds”), subject to the acceptance of this Bond Purchase Agreement by the City of Minnetonka, Minnesota (the “Issuer”), a home rule city and a municipal corporation duly organized and validly existing under its Charter and the laws of the State of Minnesota, and Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”). This offer is made subject to acceptance by the Issuer, and the Borrower at or prior to 10:00 A. M. on August \_\_, 2018, Central Time, and upon such acceptance this Bond Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the Issuer, the Borrower, and the Underwriter. The Series 2018C Bonds are described in the Preliminary Official Statement, dated August \_\_, 2018 (the “Preliminary Official Statement”), prepared in connection with the issuance of the Series 2018C Bonds and the final Official Statement, to be dated on or about September \_\_, 2018 (together with the Appendices thereto), to be prepared in substantially the same form as the Preliminary Official Statement, together with the insertion of the underwriting details of the Series 2018C Bonds, including the interest rates thereon (the “Official Statement”). The terms of the Series 2018C Bonds shall be as set forth on Schedule I attached hereto. The Series 2018C Bonds are issued pursuant to a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”). The proceeds of the Series 2018C Bonds are being loaned to the Borrower pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower. If and when accepted by you, this document shall constitute the agreement of the Underwriter to purchase the Series 2018C Bonds on the terms and subject to the conditions herein set forth. Undefined terms used herein shall have the meaning assigned to such terms in the Indenture.

Section 1. Background. The Series 2018C Bonds are to be issued by the Issuer pursuant to, and will be secured as provided in, the Indenture, Minnesota Statutes, Chapters 462C and 474A, as amended, and a resolution of the Issuer on August 27, 2018 (the “Resolution”). The proceeds of the Series 2018C

Bonds will be loaned by the Issuer to the Borrower, to be used together with other available funds of the Borrower and proceeds of the Senior Notes, in order to: (i) refund the Issuer's Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018, dated May 7, 2018 (the "Prior Note"); (ii) fund capitalized interest for the Series 2018C Bonds through March 1, 2022; and (iii) pay certain costs of issuance for the Series 2018C Bonds. The proceeds of the Prior Note were issued to finance a portion of the costs of the acquisition, construction and equipping of a 220 unit affordable multifamily housing facility, to be known as the Preserve at Shady Oak, located at or about 11001 Bren Road East, Minnetonka, Minnesota (the "Workforce Housing Project"). The unexpended proceeds of the Prior Note will become transferred proceeds of the Series 2018C Bonds and used to finance the costs of the acquisition, construction and equipping of the Workforce Housing Project. The Series 2018C Bonds will be secured by and payable from (a) an assignment of the Borrower's interest in that certain Tax Increment Revenue Note, Series 2018 (the "TIF Note") issued by the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Minnetonka EDA") in the original aggregate principal amount of \$3,648,000, under the terms of an Assignment, Pledge, and Security Agreement, dated as of September 1, 2018 (the "Pledge Agreement", from the Borrower for the benefit of the Trustee, (b) amounts held under the Indenture that are derived from payments made by the Borrower under the Loan Agreement ("Basic Payments"), (c) a subordinate mortgage lien on and security interest in the Workforce Housing Project granted under the terms of a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (the "Subordinate Mortgage"), by the Borrower in favor of the Issuer and assigned to the Trustee, and (d) a guaranty by Dominion Holdings II, LLC (the "Guarantor") of the payment of debt service on the Series 2018C Bonds.

In order to provide for the tax exemption of the Series 2018C Bonds, the Issuer, the Borrower, the Fiscal Agent for the Senior Notes, and the Trustee are entering into a Regulatory Agreement (the "Regulatory Agreement"), dated the date of issuance of the Series 2018C Bonds. In order to provide certain ongoing, continuing disclosure with respect to the Series 2018C Bonds, the Borrower and U.S. Bank National Association, as dissemination agent, are entering into a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") dated as of September 1, 2018.

## Section 2. Official Statement.

(a) The Issuer and the Borrower hereby ratify and consent to the use by the Underwriter of the Preliminary Official Statement and the Official Statement in connection with the sale of the Series 2018C Bonds. The Borrower shall deliver or cause to be delivered to the Underwriter, promptly upon the completion thereof, copies of the Official Statement. In connection with the offering and sale of the Series 2018C Bonds, the Issuer and the Borrower authorize the use by the Underwriter of copies of the Official Statement with respect to the Series 2018C Bonds, the Indenture, the Loan Agreement, and the other documents required for the issuance of the Series 2018C Bonds.

(b) The Borrower, on behalf of itself and any other "issuers" within the meaning of Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Rule"), agrees to deliver to the Underwriter, at such addresses as the Underwriter shall specify, as many copies of the Official Statement as the Underwriter shall reasonably request as necessary to comply with paragraph (b)(4) of the Rule and with Rule G-32 and all other applicable rules of the Municipal Securities Rulemaking Board (the "MSRB"). The Borrower agrees to deliver such Official Statement within seven (7) business days after the date of this Bond Purchase Agreement.

The Preliminary Official Statement and the Official Statement may be delivered in printed form and “designated electronic format” as defined in the MSRB’s Rule G-32 and as may be agreed by the Borrower and the Underwriter. If the Preliminary Official Statement or the Official Statement has been prepared in electronic form, the Borrower hereby confirms that it does not object to distribution of the Preliminary Official Statement and the Official Statement in electronic form.

(c) The Underwriter agrees that it shall send or cause to be sent no later than the next business day, by first class mail, electronically, or other equally prompt means, to any potential customer, on request, one or more copies of the Official Statement, as most recently supplemented or amended (if at all).

(d) The Borrower shall not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without the prior written consent of the Underwriter, which consent shall not be unreasonably withheld. The Borrower covenants to notify the Underwriter promptly if, on or prior to the 25th day after the End of the Underwriting Period (as defined herein) (or such other period as may be agreed to by the Borrower and the Underwriter), any event shall occur, or information comes to the attention of the Borrower or the Issuer (with respect to the Issuer Portion, as defined herein), that is reasonably likely to cause the Official Statement (whether or not previously supplemented or amended) to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and if in the opinion of the Underwriter such event requires the preparation and distribution of a supplement or amendment to the Official Statement, to prepare and furnish to the Underwriter, at the Borrower’s expense, such number of copies of the supplement or amendment to the Official Statement, in (i) a “designated electronic format” consistent with the requirements of the MSRB’s Rule G-32 and (ii) a printed form in substance mutually agreed upon by the Borrower and the Underwriter, as the Underwriter may reasonably request. If such notification shall be given subsequent to the Closing Date (as defined in Section 7 below), the Borrower also shall furnish, or cause to be furnished, such additional certificates, instruments and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy of any such supplement or amendment to the Official Statement. For purposes of this Bond Purchase Agreement, the term “End of the Underwriting Period” means the later of (i) the Closing Date or (ii) when the Underwriter no longer retains an unsold balance of the Series 2018C Bonds.

Section 3. Issuer’s and Minnetonka EDA’s Lack of Participation. The Borrower and the Underwriter acknowledge that the Issuer assumes no responsibility for the sufficiency, accuracy or completeness of the Preliminary Official Statement or the Official Statement (other than with respect to information provided under the captions “THE ISSUER” and “ABSENCE OF MATERIAL LITIGATION – The Issuer” (together, the “Issuer Portion” of the Official Statement) as it relates to the Issuer). It is further understood and agreed that no obligations of the Issuer contained in this Bond Purchase Agreement shall give rise to any pecuniary liability of the Issuer. The Issuer and the Minnetonka EDA have not participated in the preparation of the Preliminary Official Statement or the Official Statement.

Section 4. Representations of Issuer. The Issuer represents to the Underwriter and the Borrower that:

(a) the Issuer is and will be at Closing a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “State”);

(b) the Issuer has duly authorized the action necessary to be taken by it or on its behalf for: (i) the issuance and delivery of the Series 2018C Bonds upon the terms set forth in the Indenture; (ii) the execution and delivery of the (A) Indenture, (B) the Loan Agreement, (C) the Regulatory Agreement, (D) the Assignment of Mortgage related to the Subordinate Mortgage, (E) the Contract for Private Development, dated September \_\_, 2018 (the “Development Agreement”), between the Minnetonka EDA, the Issuer and the Borrower, and (F) this Bond Purchase Agreement (the documents listed in (A) through (F) above are collectively referred to herein as the “Issuer Documents”); (iii) the carrying out, giving effect to and consummation of the transactions described herein; and (iv) the use and distribution of the Official Statement,

(c) the execution and delivery of the Issuer Documents, and the performance by the Issuer of its obligations hereunder and thereunder, are within the powers of the Issuer and do not and will not conflict, in any material respect, with or constitute a material breach of or result in a material violation of (i) any material agreement or other instrument to which the Issuer is a party or by which it is bound, or (ii) any constitutional or statutory provision or order, rule regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Issuer or its property;

(d) there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the undersigned, threatened against or affecting the Issuer, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions described in this Bond Purchase Agreement or the Official Statement or would materially adversely affect the validity of the Series 2018C Bonds, the Issuer Documents, or any agreement or instrument to which the Issuer is a party and which is used or contemplated for use in the consummation of the transactions described herein; and

(e) any certificate authorized by resolution of the Issuer, signed by any authorized officer or officers of the Issuer and delivered to the Underwriter shall be deemed a representation by the Issuer to the Underwriter as to the statements made therein.

Section 5. Reserved.

Section 6. Representations of Borrower. The Borrower represents and warrants to the Underwriter and the Issuer that:

(a) the Borrower is and will be at the date of Closing a duly formed and validly existing Minnesota limited liability limited partnership, authorized to do business in the State, and in good standing under the laws of the State;

(b) the execution, delivery and performance by the Borrower of (i) the Loan Agreement, (ii) the Continuing Disclosure Agreement, (iii) the Regulatory Agreement, (iv) the Subordinate Mortgage, (v) the Pledge Agreement, (vi) the Minimum Assessment Agreement,



dated as of September 1, 2018 (the “Minimum Assessment Agreement”), between the Borrower and the Minnetonka EDA, (vii) the Development Agreement, and (viii) this Bond Purchase Agreement (all such documents in (i) through (viii) are collectively referred to herein as the “Borrower Documents”), have been duly authorized by the Borrower, and compliance with the provisions hereof and thereof, under the circumstances contemplated herein and therein, will not in any material respect conflict with or constitute on the part of the Borrower a breach of or default (with due notice or the passage of time or both) under any indenture, mortgage, deed of trust, loan agreement, contract or other agreement or other instrument to which the Borrower is a party or, to the best of its knowledge, any existing law, administrative regulation, court order or decree to which the Borrower is subject or by which it or any of its properties are otherwise subject or bound;

(c) there is no action, suit, litigation, proceeding, inquiry or investigation at law or in equity or by or before any judicial or administrative court, agency, body or other entity, pending or, to the best knowledge of the Borrower, threatened against the Borrower or any of its properties, wherein an unfavorable decision, ruling or finding (1) would adversely affect the issuance, delivery, validity or enforceability of any of the Borrower Documents, (2) would result in any materially adverse change in the corporate existence or powers of the Borrower, the business, properties, assets, liabilities or condition (financial or other) of the Borrower, or (3) would otherwise materially adversely affect the ability of the Borrower to comply with its obligations under the Borrower Documents, or adversely affect the transactions contemplated by the Indenture;

(d) no event or event which, with notice or lapse of time or both, would constitute an event of default or default under the Borrower Documents or any other material agreement or instrument to which the Borrower is a party or by which the Borrower or its properties is or may be bound has occurred and is continuing;

(e) the Borrower has, or will have when required, all necessary licenses, permits and approvals currently required to carry on and operate all of its properties;

(f) to the best of the knowledge of the Borrower, neither the Borrower nor the Workforce Housing Project is in violation of, nor has the Borrower received any notice of any actual or alleged violation of, any environmental, zoning, land use or other similar laws or regulations applicable to the Borrower or the Workforce Housing Project which has not otherwise been disclosed by the Borrower;

(g) all of the representations and warranties of the Borrower contained in the Borrower Documents are true and correct in all material respects as of this date, as if made on this date;

(h) The Preliminary Official Statement did not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein not misleading and the Borrower is not aware of any material omission or misstatement in any other information contained in the Official Statement, provided that the Borrower makes no representation as to the information in the Official Statement in the Issuer Portion and under the headings “TAX EXEMPTION AND RELATED CONSIDERATIONS” and “UNDERWRITING”; and

(i) The Borrower deems the Preliminary Official Statement final as of its date of distribution (August \_\_, 2018) within the meaning of the Rule, except for the omission of the following information: offering prices, interest rates, selling compensation, principal amount per maturity or other terms of the Series 2018C Bonds depending on such matters.

Section 7. Purchase, Sale and Delivery of the Series 2018C Bonds. On the basis of the representations and warranties and subject to the terms and conditions set forth herein, the Underwriter hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell to the Underwriter, all of the Series 2018C Bonds at a purchase price of \$\_\_\_\_\_ which amount represents the principal amount of the Series 2018C Bonds (\$\_\_\_\_\_), [plus/less] net original issue [premium/discount] of \$\_\_\_\_. The Borrower will pay the Underwriter a fee of \$\_\_\_\_\_ plus miscellaneous expenses associated with the sale of the Series 2018C Bonds. Payment for the Series 2018C Bonds shall be made to the Issuer on its order in federal funds or other immediately available funds at 12:00 P.M. prevailing time on September \_\_, 2018, at the offices of Kennedy & Graven, Chartered, Minneapolis, Minnesota, or at such other time and place as shall be mutually agreeable to the parties hereto, against delivery of the Series 2018C Bonds as directed by the undersigned. The date and time of such payment and delivery are herein called the “Closing Date” or the “Closing.” The Series 2018C Bonds are to be delivered to The Depository Trust Company (“DTC”) for the respective accounts of the original purchasers thereof at DTC’s offices in New York, New York, and the Series 2018C Bonds shall be made available for inspection by the undersigned prior to the Closing Date.

It shall be a condition to the obligations of the Issuer to sell and deliver the Series 2018C Bonds to the Underwriter and to the obligations of the Underwriter to purchase and accept delivery of and to pay for the Series 2018C Bonds, that the entire aggregate principal amount of the Series 2018C Bonds to be sold and delivered by the Issuer in accordance with this Section 7 shall be sold and delivered simultaneously by the Issuer and be purchased, accepted and paid for simultaneously by the Underwriter.

The Issuer and the Borrower acknowledge and agree that (i) the purchase and sale of the Series 2018C Bonds pursuant to this Bond Purchase Agreement is an arm’s-length commercial transaction among the Issuer, the Borrower, and the Underwriter, (ii) in connection with such transaction, the Underwriter is acting solely as a principal and not as an agent or a fiduciary of the Issuer or the Borrower, (iii) the Underwriter has not assumed (individually or collectively) a fiduciary responsibility in favor of the Issuer or the Borrower with respect to (a) the offering of the Series 2018C Bonds or the process leading thereto or (b) any other obligation to the Issuer or the Borrower except the obligations expressly set forth in this Bond Purchase Agreement, and (iv) the Issuer and the Borrower have consulted with their own respective legal and other professional advisors to the extent they deemed appropriate in connection with the offering of the Series 2018C Bonds.

The Issuer and the Borrower acknowledge that the Underwriter, without regard to priority, may allocate the Series 2018C Bonds between customer orders and orders that could be considered to be from “related accounts” for purposes of MSRB Rule G-11. The Issuer and the Borrower hereby agree to the Underwriter’s allocation of the Series 2018C Bonds to the orders that the Underwriter received during the order period for the Series 2018C Bonds, regardless of priority between customer accounts and those accounts that could be considered “related accounts”.

Section 8. The Borrower’s Covenants. The Borrower shall:

(a) if at any time for a period of 90 days after the date of the Official Statement an event of which the Borrower has knowledge shall have occurred as a result of which it is necessary to amend or supplement the Official Statement in order to make the statements therein

not untrue or misleading, notify the undersigned promptly thereof and furnish to the Underwriter an appropriate amendment or a supplement that will correct the statements in the Official Statement in order to make the statements therein not untrue or misleading;

(b) refrain from taking any action, or permitting any action to be taken with regard to which the Borrower may exercise control, that results in the loss of the tax-exempt status of the interest on the Series 2018C Bonds;

(c) furnish to the Underwriter so long as any Series 2018C Bonds remain outstanding copies of annual audited financial statements of the Borrower; and

(d) enter into the Continuing Disclosure Agreement, to which the Trustee shall be a party, under which the Borrower shall provide annual financial information, including audited financial statements of the Borrower prepared in accordance with generally accepted accounting principles, and all required event notices, all in accordance with and as required by the Rule.

Section 9. Conditions of Purchase Obligation of Underwriter. The respective obligations of the Underwriter to purchase and pay for the Series 2018C Bonds are subject to the following conditions:

(a) The representations and warranties of the Borrower shall be true and correct in all material respects as of the date hereof and the Closing Date.

(b) At the Closing Date the Borrower shall have performed all of its obligations in all material respects hereunder theretofore to have been performed.

(c) At the Closing Date, there shall be delivered to the Underwriter and dated as of the Closing Date:

(i) one or more opinions of Kennedy & Graven, Chartered, as Bond Counsel, in form and substance satisfactory to the Underwriter and its counsel, covering the validity of and the tax-exempt status of the interest on the Series 2018C Bonds, the valid execution and delivery of the Issuer Documents, and related matters, together with a supplemental opinion of Bond Counsel in form and substance satisfactory to the Underwriter and its counsel;

(ii) one or more opinions of Kennedy & Graven, Chartered, as counsel to the Minnetonka EDA, in form and substance satisfactory to the Borrower and the Underwriter and its counsel, covering the valid issuance of the TIF Note, the valid execution and delivery of the Development Agreement, the Minimum Assessment Agreement, and related matters (the TIF Note, the Development Agreement, the Minimum Assessment Agreement are collectively referred to herein as the “Minnetonka EDA Documents”);

(iii) one or more opinions of counsel to the Borrower and Guarantor, addressed to the Issuer, the Minnetonka EDA, the Underwriter, Bond Counsel, and the Trustee, in form and substance satisfactory to the Underwriter and its counsel;

(iv) an opinion of Barnes & Thornburg LLP, as counsel to the Underwriter, addressed solely to the Underwriter, and in form and substance satisfactory to the Underwriter;

(v) A certificate of the Issuer, signed by one or more authorized representatives of the Issuer, dated the date of the Closing, to the effect that, to the actual knowledge of the Issuer Representative that (A) the representations of the Issuer contained in this Bond Purchase Agreement and the Issuer Documents are true and correct in all material respects as of the date of the Closing; and (B) no litigation is pending or, to the actual knowledge of the Issuer, without investigation or inquiry, threatened, against the Issuer (1) seeking to restrain or enjoin the issuance or delivery of any of the Series 2018C Bonds or the collection of revenues or other security pledged under the Indenture, (2) in any way contesting any authority for the issuance of the Series 2018C Bonds or the validity of the Series 2018C Bonds or the Issuer Documents, or (3) in any way contesting the existence or powers of the Issuer;

(vi) A certificate of the Minnetonka EDA, signed by one or more authorized representatives of the Minnetonka EDA, dated the date of the Closing, to the effect that, to the actual knowledge of the Minnetonka EDA Representative that (A) the representations of the Minnetonka EDA contained in the Minnetonka EDA Documents are true and correct in all material respects as of the date of the Closing; and (B) no litigation is pending or, to the actual knowledge of the Minnetonka EDA, without investigation or inquiry, threatened, against the Minnetonka EDA (1) seeking to restrain or enjoin the issuance or delivery of the TIF Note or the collection of tax increment revenues, (2) in any way contesting any authority for the issuance of the TIF Note or the validity of the TIF Note or the Minnetonka EDA Documents, or (3) in any way contesting the existence or powers of the Minnetonka EDA;

(vii) A certificate of the Borrower, signed by an authorized representative of the Borrower, dated the date of the Closing, to the effect that (A) the representations, warranties and agreements of the Borrower contained in this Bond Purchase Agreement and in the Borrower Documents are true and correct in all material respects as of the date of the Closing; (B) no litigation to which the Borrower is a party is pending or, to the knowledge of the Borrower, threatened, (1) seeking to restrain or enjoin the issuance or delivery of any of the Series 2018C Bonds or the collection of revenues or other security pledged under the Indenture, (2) in any way contesting or affecting any authority for the issuance of the Series 2018C Bonds or the validity of the Series 2018C Bonds, the TIF Note, the Resolution, the Indenture or any of the Borrower Documents, or (3) in any way contesting the existence or powers of the Borrower; (C) no event affecting the Borrower has occurred since the date of the Official Statement that should be disclosed in the Official Statement, for the purpose for which it is to be used or which should be disclosed therein in order to make the statements and information therein not misleading in any material respect; (D) the information in the Preliminary Official Statement and the Official Statement relating to the Borrower, the Workforce Housing Project, and the proposed operation of the Workforce Housing Project is true and correct in all material respects, and the information under the heading “BONDHOLDERS’ RISKS” is a fair description of the risk factors related to the Borrower’s Workforce Housing Project; (E) all resolutions and other actions required to be approved or taken by or on behalf of the Borrower authorizing and approving the transactions described or contemplated in this Bond Purchase Agreement or in the Official Statement, the execution of or approval of the respective forms of, as the case may be, this Bond Purchase Agreement, the Indenture, the Borrower Documents and the Series 2018C Bonds have been duly approved by the Borrower, are in full force and effect and have not been modified,

amended or repealed; and (F) the Borrower is a limited liability limited partnership organized and validly existing under the laws of the State with full power and authority to own its properties and conduct its business;

(viii) A certificate of the Guarantor, signed by an authorized representative of the Guarantor, dated the date of the Closing, to the effect that (A) no litigation is pending or to its knowledge threatened, (1) in any way contesting or affecting the Guaranty, or (3) in any way contesting the existence or powers of the Guarantor; (B) no event affecting the Guarantor has occurred since the date of the Official Statement that should be disclosed in the Official Statement, for the purpose for which it is to be used or which should be disclosed therein in order to make the statements and information therein not misleading in any material respect; (C) the information under the headings “SUMMARY INFORMATION – The Guarantor and Security for the Series 2018C Bonds - *The Guaranty*,” “INTRODUCTORY STATEMENT – The Guarantor” and “– Security for the Series 2018C Bonds – *The Guaranty*,” “THE GUARANTOR,” and “SECURITY FOR THE SERIES 2018C BONDS – The Guaranty” (collectively, the “Guarantor Portion”) of the Preliminary Official Statement and the Official Statement is true and correct in all material respects; (D) all resolutions and other actions required to be approved or taken by or on behalf of the Guarantor authorizing and approving the transactions described or contemplated in this Bond Purchase Agreement and the Guaranty and the execution and delivery of the Guaranty have been duly approved by the Guarantor, are in full force and effect and have not been modified, amended or repealed; (E) the Guarantor is a limited liability company organized and validly existing under the laws of the State with full power and authority to own its properties and conduct its business.

In rendering the above opinions discussed in (c)(i)-(iv), counsel may rely upon customary certificates.

(d) The Issuer Documents, the Minnetonka EDA Documents, the Borrower Documents, and the Guaranty in substantially the forms existing on the date hereof, with such changes therein as may be mutually agreed upon by the parties thereto and the undersigned, and all instruments contemplated thereby, shall have been duly authorized, executed and delivered by the respective parties thereto and shall be in full force and effect on the Closing Date.

(e) All proceedings and related matters in connection with the authorization, issue, sale and delivery of the Series 2018C Bonds shall have been satisfactory to Bond Counsel, and Bond Counsel shall have been furnished with such papers and information as it may have reasonably requested to enable it to pass upon the matters referred to in this Section 9.

(f) The offer and sale of the Series 2018C Bonds and underlying securities shall be exempt from registration under the Securities Act of 1933, as amended; and the Indenture shall be exempt from qualification under the Trust Indenture Act of 1939, as amended.

(g) The Underwriter shall have been provided with such quantities of the Official Statement at such time or times as shall be necessary for it to comply with any applicable provision of law or regulation, including the Rule.

(h) An ALTA form of lender’s extended coverage policy of title insurance (or a binding commitment therefor), dated as of the Closing Date, payable to the Trustee, in an amount

not less than the stated principal amount of the Series 2018C Bonds, stating that Borrower is the fee owner of the Land and insuring that the Trustee's interest under the Subordinate Mortgage is a valid subordinate lien on the Borrower's interest in the Land, subject only to Permitted Encumbrances (the "Title Insurance Policy"). In the Title Insurance Policy all standard exceptions for parties in possession, surveys, and mechanics', contractors', and materialmen's liens shall be deleted. The Title Insurance Policy shall contain a standard ALTA Form 3.1 zoning endorsement, an ALTA Form 9 (or 100) comprehensive endorsement and an endorsement insuring that payment of a mortgage registration tax is not necessary in connection with the recording of the Subordinate Mortgage. The description of the Land therein shall conform to the legal description of the Land contained in the survey described below, and the Title Insurance Policy shall contain other endorsements reasonably required by the Underwriter; title policy or policies, or a commitment therefor, indicating that the Subordinate Mortgage constitutes a valid subordinate lien on the Workforce Housing Project.

(i) Evidence of the creation and perfection of the various security interests purported to be created by the documents herein referenced.

(j) A compilation of financing statements ("UCC Search") on file with the Secretary of State of Minnesota indicating that the security interest created by the Subordinate Mortgage will have priority, upon execution, satisfactory to the Underwriter.

(k) A certificate of good standing of the Borrower, the General Partner, and their organizational documents, each certified by the proper authorities of the State and dated within thirty days of the Closing Date.

(l) A copy of resolutions of the Borrower and Guarantor, certified by the secretary and approving of the Borrower's execution, delivery and performance of the Borrower Documents and the Guarantor's execution, delivery and performance of the Guaranty.

(m) A survey of the Land prepared by a registered land surveyor containing a legal description of the site of the Workforce Housing Project conforming to the legal description contained in the Subordinate Mortgage, detailing all easements, encroachments, and utility rights of way upon the Land, showing the location of adjoining public streets so as to show affirmatively rights of ingress and egress to and from the Land, including the site plan of the Workforce Housing Project indicating that the location of the Workforce Housing Project is within the boundary lines of the land described in the survey and the survey will be certified to the Underwriter and the Trustee.

(n) Payment (or evidence acceptable to the Underwriter that payment has been made), in immediately available funds, of all fees required to be paid on the Closing Date, the premium for the Title Policy, and the fees and expenses incurred by the Underwriter.

(o) The consent of Novogradac & Company LLP to the use of its market study in the Preliminary Official Statement and the Official Statement and to the references to its firm therein.

(p) Evidence of flood insurance or evidence satisfactory to the Underwriter that the Project site is not in a flood plain.

(q) Evidence that the Land is properly zoned or will be properly zoned for the operation of the Workforce Housing Project.

(r) Evidence that Citi Community Capital, as the tax credit investor has made its initial capital contribution to the Borrower on the Closing Date as required by the Closing Memorandum prepared by the Underwriter.

All such opinions, certificates, letters and documents will be in compliance with the provisions hereof only if they are in all material respects satisfactory to the undersigned, as to which the undersigned shall act reasonably.

If any condition of the obligations of the undersigned hereunder to be satisfied prior to the Closing Date is not so satisfied, this Bond Purchase Agreement may be terminated by the Underwriter by notice in writing to the Borrower and the Issuer.

The Underwriter may waive in writing compliance by the Borrower or the Issuer with any one or more of the foregoing conditions or extend the time for their performance.

Section 10. Termination by Underwriter. This Bond Purchase Agreement may be terminated in writing by the Underwriter if any of the following shall occur: (i) this Bond Purchase Agreement shall not have been accepted by the Issuer or the Borrower within the time herein provided; (ii) the Series 2018C Bonds and all of the closing documents shall not have been delivered as provided herein as of 12:00 P.M., Minneapolis, Minnesota time on the date of Closing; (iii) legislation shall be enacted, or favorably reported out of committee to, either House of the Congress of the United States of America, or a decision by a court of the United States of America shall be rendered, or a regulation or ruling shall be issued or proposed by or on behalf of the Treasury Department of the United States, the Internal Revenue Service of the United States, or any other agency of the Federal government having jurisdiction, or a release or official statement shall be issued by the Treasury Department of the United States, the Internal Revenue Service of the United States, or any other agency of the Federal government having jurisdiction, with respect to Federal taxation upon interest received on obligations of the character of the Series 2018C Bonds to the effect that interest on obligations of the general character of the Series 2018C Bonds shall not be exempt from federal income taxes, or that securities of the general character of the Series 2018C Bonds shall not be exempt from registration under the Securities Act of 1933, as amended, or that the Indenture shall not be exempt from qualification under the Trust Indenture Act of 1939, as amended; (iv) there shall exist any event or circumstance which, in the reasonable opinion of the Underwriter, makes untrue, incorrect or misleading in any material respect any statement or information contained herein or in the Official Statement and such statement cannot, in the reasonable opinion of the Underwriter, be corrected with a supplement to the Official Statement; (v) there shall have occurred any outbreak of hostilities or material escalation thereof, or other national or international calamity or crisis, the effect of which outbreak, escalation, calamity or crisis on the financial markets of the United States of America being such as, in the reasonable opinion of the Underwriter, would render the Series 2018C Bonds incapable of being sold on terms acceptable to the Underwriter and the Borrower; (vi) there shall be in force a general suspension of trading on the New York Stock Exchange, or minimum or maximum prices for trading on the New York Stock Exchange shall have been fixed and be in force; (vii) in the reasonable judgment of the Underwriter the market price of the Series 2018C Bonds, or the market price generally of obligations of the general character of the Series 2018C Bonds, might be adversely affected because: (a) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, or (b) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Series 2018C Bonds or similar obligations, any material

restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, underwriters; (viii) a general banking moratorium shall have been declared by either federal, Minnesota or New York authorities having jurisdiction, and shall be in force; (ix) economic, market or other conditions occur or exist which, in the reasonable judgment of the Underwriter, render the Series 2018C Bonds incapable of being sold on terms acceptable to the Underwriter; (x) any suit, proceeding, litigation or other action shall be commenced, or, if commenced prior to the date hereof, shall be continuing or have been adjudicated, which, in any event, in the reasonable judgment of the Underwriter, adversely affects the market price or marketability of the Series 2018C Bonds; (xi) a default has occurred with respect to the obligations of, or proceedings have been instituted under the federal bankruptcy laws or any similar state laws by or against, any state of the United States or any city located in the United States having a population in excess of 500,000 persons or against any entity issuing obligations for or on behalf of such a city or state, which in the reasonable opinion of the Underwriter adversely affects the market price or marketability of the Series 2018C Bonds; or (xii) the sovereign debt rating of the United States is downgraded by any major credit rating agency or a payment default occurs on United States Treasury obligations, which in the reasonable opinion of the Underwriter adversely affects the market price or marketability of the Series 2018C Bonds.

Section 11. Termination by Issuer or Borrower. This Bond Purchase Agreement may be terminated in writing by the Issuer or the Borrower in the event that the Underwriter shall fail to accept delivery of the Series 2018C Bonds on the Closing Date upon tender thereof to DTC by the Issuer and delivery to the Underwriter of all of the Closing Documents.

Section 12. Expenses. Except as hereinafter specifically provided, all expenses and costs of the Borrower and the Issuer incident to the performance of their obligations in connection with the authorization, issuance and sale of the Series 2018C Bonds, including (i) fees and expenses of the Trustee, Borrower's Counsel, Bond Counsel, and counsel to the Underwriter, (ii) the fee of the Underwriter referred to in Section 7 hereof, (iii) all costs and expenses with respect to the examination of, and registration of the Series 2018C Bonds under, the securities or "Blue Sky" laws of the various jurisdictions in which the Series 2018C Bonds are to be offered or sold, (iv) all costs of procuring a satisfactory survey and title insurance policy, and (v) the costs and expenses of preparing, printing and distributing the Preliminary Official Statement and the Official Statement, the Issuer Documents, the Borrower Documents, the Minnetonka EDA Documents, the Guaranty and related documents shall be payable by the Borrower or, if available and permitted by law, from Series 2018C Bond proceeds. The terms and provisions of this Section 12 shall survive and be binding upon the Borrower notwithstanding the termination of this Bond Purchase Agreement pursuant to Section 10 or Section 11 hereof, except that the fee of the Underwriter referred to in Section 7 hereof shall not be payable upon any such termination. In addition to the fee of the Underwriter referred to in Section 9 hereof, the Borrower shall reimburse the Underwriter for its direct out-of-pocket expenses incurred in connection with its performance of its obligations related to the Series 2018C Bonds.

Section 13. Offering by Underwriter. The Underwriter shall offer the Series 2018C Bonds in a bona fide public offering for sale in transactions exempt from registration under the applicable securities laws in the states in which the Series 2018C Bonds will be reoffered, or in compliance with such registration requirements, as set forth in the Official Statement. Concessions from the offering price may be allowed to selected dealers and special purchasers. The initial offering price and concessions set forth in the Official Statement may vary after the initial offering. The Borrower represents, warrants, certifies and confirms that the Preliminary Official Statement, as of its date, was in final form, within the meaning of the Rule, except for the omission of the following information: offering prices, interest rates, selling compensation, principal amount per maturity or other terms of the Series 2018C Bonds depending on



such matters. The Borrower hereby confirms and the Issuer hereby consents to the authority and use by the Underwriter of the Official Statement.

Based on the covenant of the Borrower set forth in Section 6(d) hereof, the Underwriter hereby determines that the Borrower, as an obligated person for whom financial or operating data is presented in the final Official Statement, has undertaken, in a written agreement or contract for the benefit of the holders of the Series 2018C Bonds, to provide, through the Trustee, all information required under the pertinent provisions of the Rule.

Section 14. Establishment of Issue Price for Series 2018C Bonds.

OPTION 1

[(a) The Underwriter agrees to assist the Issuer in establishing the issue price of the Series 2018C Bonds and shall execute and deliver to the Issuer on the date of Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2018C Bonds.

(b) The Underwriter confirms that at least 10% of each maturity of the Series 2018C Bonds has been sold to the public at a single price (the “10% test”) (if different interest rates apply within a maturity, each separate CUSIP number within that maturity is evaluated separately). Schedule I attached to this Bond Purchase Agreement sets forth the first price at which the Underwriter has sold to the public 10% of each such maturity of Series 2018C Bonds.

(c) The Underwriter confirms that the Underwriter has offered the Series 2018C Bonds to the public on or before the date of this Bond Purchase Agreement (the “Sale Date”) at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in Schedule I attached hereto.

(d) The Underwriter confirms that it does not have any selling group agreement and any retail distribution agreement relating to the initial sale of the Series 2018C Bonds to the public.]

OPTION 2

[(a) The Underwriter agrees to assist the Issuer in establishing the issue price of the Series 2018C Bonds and shall execute and deliver to the Issuer on the date of Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2018C Bonds.

(b) Except as otherwise set forth in Schedule I attached hereto, the Issuer will treat the first price at which 10% of each maturity of the Series 2018C Bonds (the “10% test”) is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test). At or promptly after the execution of this Bond Purchase Agreement, the Underwriter shall report to the Issuer and Bond Counsel the price or prices at which it has sold to the public each maturity of Series 2018C Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Series 2018C Bonds, the Underwriter agrees to promptly

report to the Issuer the prices at which it sells the unsold Series 2018C Bonds of that maturity to the public. That reporting obligation shall continue, whether or not the date of Closing has occurred, until the 10% test has been satisfied as to the Series 2018C Bonds of that maturity or until all Series 2018C Bonds of that maturity have been sold to the public.

(c) The Underwriter confirms that the Underwriter has offered the Series 2018C Bonds to the public on or before the date of this Bond Purchase Agreement (the “Sale Date”) at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in Schedule I attached hereto, except as otherwise set forth therein. Schedule I also sets forth, as of the date of this Bond Purchase Agreement, the maturities, if any, of the Series 2018C Bonds for which the 10% test has not been satisfied and for which the Issuer and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the Issuer to treat the initial offering price to the public of each such maturity as of the Sale Date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Series 2018C Bonds, the Underwriter will neither offer nor sell unsold Series 2018C Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the Sale Date and ending on the earlier of the following:

- (1) the close of the fifth (5<sup>th</sup>) business day after the Sale Date; or
- (2) the date on which the Underwriter has sold at least 10% of that maturity of the Series 2018C Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the Issuer when it has sold 10% of that maturity of the Series 2018C Bonds to the public at a price that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5<sup>th</sup>) business day after the Sale Date.

(d) The Underwriter confirms that it does not have any selling group agreement and any retail distribution agreement relating to the initial sale of the Series 2018C Bonds to the public.]

(e) The Underwriter acknowledges that sales of any Series 2018C Bonds to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this Section. Further, for purposes of this Section:

- (i) “public” means any person other than an underwriter or a related party,
- (ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2018C Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Series 2018C Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Series 2018C Bonds to the public), and
- (iii) a purchaser of any of the Series 2018C Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships

(including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

Section 15. Notices. Any notice or other communication to be given to the Borrower, the Minnetonka EDA and the Issuer under this Bond Purchase Agreement may be given by delivering the same in writing to their respective addresses set forth above; and any such notice or other communication to be given to the Underwriter may be given by delivering the same in writing to the Underwriter at Dougherty & Borrower LLC, 90 South 7th Street, Suite 4300, Minneapolis, Minnesota, Attention: Frank J. Hogan, Senior Vice President.

Section 16. Indemnification. The Borrower and its general partner agrees to indemnify and hold harmless the Issuer and the Underwriter, and any person who controls the Underwriter within the meaning of the Securities Act of 1933, as amended, against any and all losses, claims, damages and liabilities arising out of any untrue statement or alleged untrue statement of a material fact in the Official Statement (other than the Issuer Portion and under the heading “TAX EXEMPTION AND RELATED CONSIDERATIONS” and “UNDERWRITING” therein), or omission or alleged omission of a material fact necessary in order to make the Official Statement or the statements therein not misleading (other than the Issuer Portion and under the headings “TAX EXEMPTION AND RELATED CONSIDERATIONS” and “UNDERWRITING” therein), and to the extent of the aggregate amount paid in settlement of any litigation commenced or threatened arising from a claim based upon any such statement or omission if such settlement is effected with the written consent of the Borrower. In case any claim shall be made or action brought against the Issuer or the Underwriter, or any controlling person (as aforesaid) based upon such statement or omission, in respect of which indemnity may be sought against the Borrower, then the Issuer or the Underwriter, or any controlling person, as the case may be, shall promptly notify the Borrower in writing setting forth the particulars of such claim or action and the Borrower shall assume the defense thereof including the retaining of counsel (who shall be satisfactory to the Issuer and the Underwriter) and the payment of all expenses. If the Issuer or the Underwriter is advised in an opinion of counsel that there may be legal defenses available to the Issuer or the Underwriter that are adverse to or in conflict with those available to the Borrower, or that the defense of the Issuer the Underwriter or the Borrower should be handled by separate counsel, the Borrower shall not have any right to assume such defense of the Issuer or the Underwriter, as the case may be, but shall be responsible for the reasonable fees and expenses of counsel retained by the Issuer or the Underwriter, as the case may be, in assuming its or their own defense, and provided also that if the Borrower shall have failed to assume the defense of such action or to retain counsel satisfactory to the Issuer or the Underwriter, as the case may be, within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Issuer or the Underwriter, as the case may be, shall be paid by the Borrower. Notwithstanding, and in addition to, any of the foregoing, the Issuer and the Underwriter or any such controlling person shall have the right to retain separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the party retaining such counsel unless the retaining of such counsel has been specifically authorized by the Borrower in writing. The Borrower shall not be liable to indemnify any person for the settlement of any such action effected without its written consent. This indemnity shall be in addition to any similar or other obligations which the Borrower may have under the Indenture or the Loan Agreement.

To the same extent as the foregoing indemnity contained in this Section from the Borrower to the Underwriter, and the Issuer and each person, if any, who controls the Underwriter and the Issuer, the

Underwriter agrees to indemnify and hold harmless the Borrower and the Issuer and each person, if any, who controls the Borrower and the Issuer within the meaning of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended (hereinafter in this paragraph separately and collectively referred to as the “defendants”), with reference to any untrue statement, error, misstatement or omission or allegation thereof in the Official Statement, but only if furnished in writing specifically for use therein by the Underwriter. In case any such claim shall be presented in writing or any action shall be brought against any of the defendants in respect of which indemnity may be sought from the Underwriter on account of its agreement contained in this Section, the Underwriter shall have the rights and duties given to the Borrower in the above paragraph and the defendants shall have the rights and duties given by the above paragraph to the persons therein referred to as “defendants.”

In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in the preceding part of this Section 16 is for any reason held to be unavailable to the Underwriter, the Borrower or the Issuer, then the Borrower shall contribute to the damages paid by the Underwriter, and the Underwriter shall contribute to the damages paid by the Borrower in such proportion that the Underwriter is responsible for the portion represented by the percentage that the underwriting fee set forth herein bears to the aggregate face amount of the Series 2018C Bonds and the Borrower is responsible for the balance; provided, however, that (i) in no case shall the Underwriter be responsible for any amount in excess of the underwriting fee applicable to the Series 2018C Bonds purchased by it pursuant to this Bond Purchase Agreement, and (ii) no person guilty of gross negligence, willful misconduct, fraudulent misrepresentation of a material fact, or failing to state a material fact shall be entitled to contribution as to any liability arising from such fraudulent misrepresentation or omission, from any person who was not guilty of such fraudulent misrepresentation or omission. In determining the amount of contribution to which the respective parties are entitled, there shall be considered the relative benefits received by each party from the offering of the Series 2018C Bonds (taking into account the portion of the proceeds of the offering realized by each), the parties’ relative knowledge and access to information concerning the matter with respect to which the claim was asserted the opportunity to correct and prevent any statement or omission, and any other equitable consideration appropriate in the circumstances. The Borrower and the Underwriter agree that it would not be equitable if the amount of such contribution were determined by pro rata or per capita allocation. For purposes of this Section, each person, if any, who controls the Underwriter or the Issuer within the meaning of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, shall have the same rights to contribution as the Underwriter, the Issuer or the Borrower, respectively.

Section 17. Parties and Interests; Borrower’s Undertakings; Survival of Representations. This Bond Purchase Agreement is made solely for the benefit of the Issuer, the Borrower and the Underwriter, and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements by the Issuer, the Underwriter and the Borrower in this Bond Purchase Agreement shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriter, and shall survive the delivery of and payment for the Series 2018C Bonds.

Section 18. Governing Law. This Bond Purchase Agreement shall be governed by the laws of the State.

Section 19. Counterparts. This Bond Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 20. Immunity of Officers, Employees and Members of the Issuer. No recourse shall be had for the payment of the principal of or premium or interest on the Series 2018C Bonds for any claim based thereon or upon any representation, obligation, covenant or agreement in this Bond Purchase Agreement contained against any past, present or future officer, member, employee, director or agent of the Issuer or of any successor public or private corporation thereto, as such, either directly or through the Issuer or any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Bond Purchase Agreement and the issuance of the Series 2018C Bonds.

Section 21. Electronic Signatures. The parties agree that the electronic signature of a party to this Bond Purchase Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Bond Purchase Agreement. For purposes hereof: (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

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**DOUGHERTY & COMPANY LLC**

By: \_\_\_\_\_  
Frank J. Hogan  
Its: Senior Vice President

(Signature Page of Dougherty & Company LLC to the Bond Purchase Agreement for Legends of Minnetonka)

Accepted by:

**CITY OF MINNETONKA, MINNESOTA**

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

By: \_\_\_\_\_  
Its: City Manager

(Signature Page of the Issuer to the Bond Purchase Agreement for Legends of Minnetonka)

Accepted by:

**MINNETONKA LEASED HOUSING  
ASSOCIATES II, LLLP**, a Minnesota limited liability  
limited partnership

By: Minnetonka Leased Housing Associates SPE II,  
LLC

Its: General Partner

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

Ryan J. Lunderby

Its: Vice President

(Signature Page of the Borrower to the Bond Purchase Agreement for Legends of Minnetonka)



**SCHEDULE I**

**TERMS OF BONDS**

\$ \_\_\_\_\_  
**City of Minnetonka, Minnesota**  
**Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds**  
**(Preserve at Shady Oak Project)**  
**Series 2018C**

As more fully described in the Indenture, the Bonds are subject to the following redemption provisions.

Dated Date: September \_\_\_\_, 2018

**Serial Bonds**

<u>Maturity Date</u> <u>(____ 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>
-----------------------------------------	-----------------------------------	--------------------------------	--------------

\$ \_\_\_\_\_ % Term 2018A Bonds Due \_\_\_\_\_ 1, 20\_\_\_\_  
Price of \_\_\_\_\_% to Yield \_\_\_\_\_%

<u>Sinking Fund</u> <u>Redemption Date</u>	<u>Principal Amount</u>
-----------------------------------------------	-------------------------

\_\_\_\_\_  
*\*Stated Maturity.*

\$ \_\_\_\_\_ % Term 2018A Bonds Due \_\_\_\_\_ 1, 20\_\_\_\_  
Price of \_\_\_\_\_% to Yield \_\_\_\_\_%

<u>Sinking Fund</u> <u>Redemption Date</u>	<u>Principal Amount</u>
-----------------------------------------------	-------------------------

\_\_\_\_\_  
*\*Stated Maturity.*

**Optional Redemption.** The Series 2018C Bonds are subject to redemption prior to maturity upon request of the Borrower to the Trustee on \_\_\_\_\_ 1, 202\_, and on any Business Day thereafter, in whole or in part, and if in part, in inverse order of their maturity dates in principal increments of \$5,000 and by lot within any maturity, at a Redemption Price equal to the principal amount of the Series 2018C Bonds to be redeemed plus accrued interest thereon.

**EXHIBIT A**

**[Issue Price Certificate for General Rule Only]**

\$ \_\_\_\_\_

**City of Minnetonka, Minnesota  
Tax Increment Revenue and  
Subordinate Multifamily Housing Revenue Refunding Bonds  
(Preserve at Shady Oak Project)  
Series 2018C**

**CERTIFICATE OF UNDERWRITER**

**September \_\_, 2018**

The undersigned, for and on behalf of Dougherty & Company LLC (the "Underwriter"), certifies as follows with respect to the sale and issuance by the City of Minnetonka, Minnesota (the "Issuer") of its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018 (the "Subordinate Bonds"), in the original aggregate principal amount of \$ \_\_\_\_\_:

1. **Sale of Subordinate Bonds.** As of the date of this Certificate of Underwriter (the "Certificate"), for each Maturity of the Subordinate Bonds, the first price at which at least ten percent (10%) of such Maturity of the Subordinate Bonds was sold to the Public is the respective price provided in EXHIBIT A attached hereto. Capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in Section 6 hereof.

2. **Purchase Price and Receipt.** The Subordinate Bonds were purchased by the Underwriter at a purchase price of \$ \_\_\_\_\_ (the principal amount of \$ \_\_\_\_\_, [plus an original issue premium of \$ \_\_\_\_\_,] [less an original issue discount of \$ \_\_\_\_\_,] less an Underwriter's discount of \$ \_\_\_\_\_). Receipt of the executed and authenticated Subordinate Bonds from U.S. Bank National Association, a national banking association, as trustee, is hereby acknowledged by the Underwriter.

3. **Yield.** The Underwriter has calculated the yield on the Subordinate Bonds as the discount rate that, when used in computing the present value, as of September \_\_, 2018, of all unconditionally payable payments of principal of and interest on the Subordinate Bonds, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price of the Subordinate Bonds as of September \_\_, 2018. Based on the foregoing and any instructions that the Underwriter received from Kennedy & Graven, Chartered, as bond counsel, the Underwriter has calculated a yield on the Subordinate Bonds of \_\_\_\_\_%.

4. **Weighted Average Maturity.** For purposes of the Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038 (Rev. April 2011) ("Form 8038"), prepared with respect to the Subordinate Bonds, the Underwriter hereby certifies that the weighted average maturity of the Subordinate Bonds is \_\_\_\_\_ years.

5. **Defined Terms.** Capitalized terms used herein shall have the following meanings:

(a) "Maturity" means Subordinate Bonds with the same credit and payment terms. Subordinate Bonds with different maturity dates, or Subordinate Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(b) "Public" means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term "related party" for purposes of this Certificate generally means any two or more persons who have greater than fifty percent (50%) common ownership, directly or indirectly.

(c) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Subordinate Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Subordinate Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Subordinate Bonds to the Public). The Underwriter of the Subordinate Bonds is Dougherty & Company LLC.

6. Representations. The representations set forth in this Certificate are limited to factual matters only. Nothing in this Certificate represents the interpretation by the Underwriter of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder. The undersigned understands that the foregoing information will be relied upon by: (i) the Issuer and Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), with respect to certain of the representations set forth in a tax certificate of the Borrower executed on the date hereof with respect to compliance with the federal income tax rules affecting the Subordinate Bonds; and (ii) Kennedy & Graven, Chartered, in connection with rendering its opinion that the interest on the Subordinate Bonds is excluded from gross income for federal income tax purposes, the preparation of Form 8038, and other federal income tax advice that it may give to the Issuer and the Borrower from time to time relating to the Subordinate Bonds.

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IN WITNESS WHEREOF, the undersigned has executed this Certificate of Underwriter as of the date and year first written above.

**DOUGHERTY & COMPANY LLC**

By \_\_\_\_\_  
Its Senior Vice President

**EXHIBIT A**

**SALE PRICES OF THE SUBORDINATE BONDS**

[Insert table]

[Issue Price Certificate for General Rule and Hold-the-Offering Price Maturities]

\$ \_\_\_\_\_  
**City of Minnetonka, Minnesota**  
**Tax Increment Revenue and**  
**Subordinate Multifamily Housing Revenue Refunding Bonds**  
**(Preserve at Shady Oak Project)**  
**Series 2018C**

**CERTIFICATE OF UNDERWRITER**

**September \_\_, 2018**

The undersigned, for and on behalf of Dougherty & Company LLC (the “Underwriter”), certifies as follows with respect to the sale and issuance by the City Minnetonka, Minnesota (the “Issuer”) of its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018 (the “Subordinate Bonds”), in the original aggregate principal amount of \$ \_\_\_\_\_:

1. Sale of the General Rule Maturities. As of the date of this Certificate of Underwriter (the “Certificate”), for each Maturity of the General Rule Maturities, the first price at which at least ten percent (10%) of such Maturity was sold to the Public is the respective price listed in EXHIBIT A attached hereto. Capitalized terms used herein that are otherwise not defined shall have the meanings assigned to such terms in Section 6 hereof.

2. Initial Offering Price of the Hold-the-Offering-Price Maturities.

(a) The Underwriter offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in EXHIBIT B attached hereto (the “Initial Offering Prices”). A copy of the pricing wire or equivalent communication for the Subordinate Bonds is attached hereto as EXHIBIT B.

(b) As set forth in the Bond Purchase Agreement, dated August \_\_, 2018, between the Issuer, the Underwriter, and Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability company (the “Borrower”), the Underwriter has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any of the Subordinate Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “Hold-the-Offering-Price Rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the Hold-the-Offering-Price Rule. Pursuant to such agreement, the Underwriter has not offered or sold any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Subordinate Bonds during the Holding Period.

3. Purchase Price and Receipt. The Subordinate Bonds were purchased by the Underwriter at a purchase price of \$ \_\_\_\_\_ (the principal amount of \$ \_\_\_\_\_, [plus an original issue premium of \$ \_\_\_\_\_,] [less an original issue discount of \$ \_\_\_\_\_,] less an Underwriter’s discount of \$ \_\_\_\_\_). Receipt of the executed and authenticated Subordinate Bonds from U.S. Bank National Association, a national banking association, as trustee, is hereby acknowledged by the Underwriter.

4. Yield. The Underwriter has calculated the yield on the Subordinate Bonds as the discount rate that, when used in computing the present value, as of October \_\_, 2018, of all unconditionally payable payments of principal of and interest on the Subordinate Bonds, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price of the Subordinate Bonds as of October \_\_, 2018. Based on the foregoing and any instructions that the Underwriter received from Kennedy & Graven, Chartered, as bond counsel, the Underwriter has calculated a yield on the Subordinate Bonds of \_\_\_\_\_%.

5. Weighted Average Maturity. For purposes of the Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038 (Rev. April 2011) (“Form 8038”), prepared with respect to the Subordinate Bonds, the Underwriter hereby certifies that the weighted average maturity of the Subordinate Bonds is \_\_\_\_\_ years.

6. Defined Terms.

(a) “General Rule Maturities” means those Maturities of the Subordinate Bonds listed in EXHIBIT A attached hereto as the “General Rule Maturities.”

(b) “Hold-the-Offering-Price Maturities” means those Maturities of the Subordinate Bonds listed in EXHIBIT B attached hereto as the “Hold-the-Offering-Price Maturities.”

(c) “Holding Period” means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which the Underwriter has sold at least ten percent (10%) of such Hold-the-Offering-Price Maturity to the Public at a price that is no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(d) “Maturity” means Subordinate Bonds with the same credit and payment terms. Subordinate Bonds with different maturity dates, or Subordinate Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(e) “Public” means any person (including an individual trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this Certificate generally means any two or more persons who have greater than fifty percent (50%) common ownership, directly or indirectly.

(f) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Subordinate Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Subordinate Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Subordinate Bonds to the Public). The Underwriter of the Subordinate Bonds is Dougherty & Company LLC.

7. Representations. The representations set forth in this Certificate are limited to factual matters only. Nothing in this Certificate represents the interpretation by the Underwriter of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder. The undersigned understands that the foregoing information will be relied upon by: (i) the Issuer and the Borrower with respect to certain of the representations set forth in a tax certificate of the Borrower executed on the date hereof with respect to compliance with the federal income tax rules affecting the Subordinate Bonds; and (ii) Kennedy & Graven, Chartered, in connection with rendering its opinion that the interest on the Subordinate Bonds is excluded from gross income for federal income tax purposes, the preparation of Form 8038, and other federal income tax advice that it may give to the Issuer and the Borrower from time to time relating to the Subordinate Bonds.

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



IN WITNESS WHEREOF, the undersigned has executed this Certificate of Underwriter as of the date and year first written above.

**DOUGHERTY & COMPANY LLC**

By \_\_\_\_\_  
Its Senior Vice President

**EXHIBIT A**

**SALE PRICES OF THE GENERAL RULE MATURITIES**

[Insert table]

**EXHIBIT B**

**INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES AND  
PRICING WIRE OR EQUIVALENT COMMUNICATION**

[Insert copy of pricing wire]

65014 67 (BWJ)  
13133630v.2

## **SENIOR HOUSING AND WORK FORCE HOUSING PROJECT DOCUMENTS**

### **Summary of Financing (two series of tax-exempt notes and two series of taxable notes)**

Under Project Loan Agreement, Borrower provides the Project Notes. Construction Lenders (U.S. Bank and BMO Harris) fund the Project Notes and the proceeds of the Project Notes are given to the City to fund the Tax-Exempt Funding Loan and Taxable Funding Loan. The proceeds of the Funding Loans pay for the costs of constructing both projects. Once the projects are completed, the “conversation date” occurs and if all conditions of conversion are met, Freddie Mac buys and becomes the lender for the tax-exempt notes and Freddie Mac makes a supplemental loan to take the place of the taxable notes.

### **Documents relating to Tax-Exempt Notes and Taxable Notes (one set of documents for each of the workforce housing project and the senior housing project)**

- Multifamily Notes each with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series A-1, Series A-2, Series B-1 and Series B-2
  - Sets forth the terms of the Note, including repayment requirements, interest rates, and redemption provisions
- Allonge Endorsement of Multifamily Notes
  - Each allonge assigns all the City’s right, title, and interest in the Notes to the Fiscal Agent for the benefit of the purchasers of the Notes
- Funding Loan Agreement
  - Provides for the issuance of the Notes by the City and creates the various funds and accounts relating to the use of the proceeds of the Notes and assigns all the City’s rights under the Project Loan Agreement, the Notes, and certain other moneys and securities to the Fiscal Agent on behalf of the Lender
- Project Loan Agreement
  - Provides the terms for the loan of proceeds of the Notes to the Borrower, sets forth the City’s administrative fees, and indemnifies the City for any costs, fees, expenses and liability of the Notes
- Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement (one for Taxable and Tax-Exempt Notes)
  - Grants a mortgage, security and assignment of leases and rents in the project to the City as security for the Notes
- Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement
  - Assigns all the City’s right, title and interest in the Mortgage to the Fiscal Agent, to the Lenders
- Regulatory Agreement
  - Sets forth the certain rental and occupancy restrictions that the project must meet to comply with state law and federal tax law applicable to tax-exempt bonds
- Housing Program
  - Required by Minnesota Statutes, Chapter 462C and sets forth the proposed plan for the acquisition, construction and equipping of the project and the issuance of conduit revenue obligations to finance the project. The program also explains what the proceeds of the conduit obligations will be used for, the amount and general terms of the conduit revenue obligations, and the affordability requirements relating to the project
- Resolutions
  - The resolution approving each bond transaction also provides authorization for the Minnetonka EDA and the City to sign various closing certificates and other documents necessary to carry out the purposes of the documents approved and the resolutions adopted.

## **Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds, Series 2018C Documents**

- Subordinate Indenture of Trust
  - Issues the Subordinate Bonds and creates the various funds and accounts relating to the use of the proceeds of the Subordinate and for the repayment of the Subordinate Bonds
- Subordinate Loan Agreement
  - Provides for the terms for the loan of proceeds of the Subordinate Bonds to the Borrower, sets forth the City's administrative fees, and indemnifies the City for any costs, expenses and liability of the Subordinate Bonds
- Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents
  - Provides the Trustee on behalf of bondholders with a subordinate mortgage, assignment of leases and rents relating to the project
- Assignment, Pledge, and Security Agreement
  - Pursuant to this document, the Borrower will pledge and assign its interest in the TIF Note issued by the Minnetonka EDA to the Trustee in order to secure its repayment obligations under the Subordinate Loan Agreement
- Subordinate Guaranty Agreement of Dominion Holdings II, LLC
  - A subordinate guaranty of payments of debt service by an affiliate of the Borrower relating to the Subordinate Bonds
- Subordination Agreement (for Mortgage and Pledge of Surplus Cash)
  - Subordinates the Subordinate Mortgage, Subordinate Guaranty, and the use of surplus cash for repayment of debt service on the Subordinate Bonds to the senior financing
- Bond Purchase Agreement
  - Sets forth the terms of the sale and purchase of the Subordinate Bonds
- Resolutions
  - The resolution approving each bond transaction also provides authorization for the Minnetonka EDA and the City to sign various closing certificates and other documents necessary to carry out the purposes of the documents approved and the resolutions adopted.

## **TIF and Development Documents**

- Construction Addendum to Contract for Private Development (one for each project)
  - Sets forth, among other items, certain construction obligations under the Contract for Private Development including timelines, the payment of certain fees and charges, design and construction of various site improvements, landscaping, the submission of engineering reports, the installation of utilities, erosion and grading requirements, and the ownership of various site improvements and utilities.
- Subordination Agreements related to the Tax-Exempt Notes and Taxable Notes (for Contract for Private Development, Declaration of Restrictive Covenants and Minimum Assessment Agreement) (two agreements for each project – one for tax-exempt notes and one for taxable notes)
  - Subordinates the EDA's rights in the Minimum Assessment Agreement setting forth a minimum market value for the project, Declaration of Restrictive Covenants relating to the affordability of the project and the Contract for Private Development setting forth terms of providing tax increment financing assistance to the borrower to the rights of the Fiscal Agent on behalf of the Lenders under the financing documents relating to the Tax-Exempt Notes and the Taxable Notes. The subordination agreement subordinates the right of the City to require replacement of the property manager. The City and EDA may exercise the remedies of specific performance or injunctive relief to enforce covenants

and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Agreements. The EDA has the right to exercise its remedies under the Contract for Private Development upon default by the developer.



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**JULIE A. EDDINGTON**  
Attorney at Law  
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Email: jeddington@kennedy-graven.com

August 20, 2018

Alisha Gray  
Economic Development and Housing Manager  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502

Re: Resolution approving the issuance of senior housing revenue obligations for the benefit of  
Minnetonka Leased Housing Associates III, LLLP

Dear Alisha,

As you know, Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), is working with the City of Minnetonka (the “City”) to finance the acquisition, construction, and equipping of approximately 262 units of senior housing to be located at 11001 Bren Road East in the City (the “Senior Housing Project”). The Senior Housing Project will be adjacent to the workforce housing project being developed by Minnetonka Leased Housing Associates II, LLLP. To finance the Senior Housing Project, the Borrower is requesting that the City issue multifamily housing revenue bonds in multiple series, as both taxable and tax-exempt obligations (the “Obligations”), in the estimated aggregate principal amount not to exceed \$67,500,000.

The Obligations will be considered “housing bonds” issued pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Act”), and Minnesota Statutes, Chapter 474A, as amended. To satisfy the requirements of the Act, the City must prepare a housing program providing the information required by Section 462C.03, subdivision 1a of the Act (the “Housing Program”). The Obligations will be “private activity bonds” within the meaning of Section 141(a) of the Code but will be “exempt facility bonds” the net proceeds of which are to be used to provide a “qualified residential rental project” within the meaning of Sections 142(a)(7) and 143(d) of the Code and will not affect the City’s ability to designate up to \$10,000,000 in tax-exempt bonds as “qualified tax-exempt obligations” (or “bank-qualified bonds”) for calendar year 2018.

The Obligations will not constitute general or moral obligations of the City, will not be secured by or payable from any property or assets of the City (other than the interests of the City in the loan agreements), and will not be secured by any taxing power of the City. The Obligations will not be subject to any debt limitation imposed on the City, and the issuance of the Obligations will not have any adverse impact on the credit rating of the City, even in the event that the Borrower encounters financial difficulties with respect to the Senior Housing Project.

Below is a brief explanation of the financing structure and the documents that the City officials will be asked to execute.

One portion of the Obligations is expected to be issued in the approximate principal amount of \$57,820,000 (the "Notes") and will be issued in two separate series (one tax-exempt and one taxable) to evidence two funding loans (the "Funding Loans") made by U.S. Bank National Association and BMO Harris Bank N.A., as the initial funding lenders. The City will loan the proceeds of the Notes (the "Project Loans") to the Borrower to finance a portion of the Senior Housing Project. The Borrower will provide U.S. Bank National Association, as fiscal agent, with two parity mortgage liens on the Senior Housing Project. Freddie Mac has committed to purchasing the Notes at the conversion date (which will occur after the Senior Housing Project is placed in service). In connection with the Notes, City officials will be asked to execute a Funding Loan Agreement (with respect to the Funding Loans), a Project Loan Agreement (with respect to the Project Loans), four Governmental Notes, two Project Note Allonges, Assignments of Mortgage, and a Regulatory Agreement. A resolution is enclosed approving the issuance of the Notes.

The remaining portion of the Obligations is expected to be issued in the approximate principal amount of \$4,090,000 (the "Bonds") and will be publicly offered for sale by Dougherty & Company LLC. To secure its repayment obligations with respect to the Bonds, the Borrower will assign to U.S. Bank National Association (the "Trustee") the Borrower's interest in the TIF Note to be issued by the Minnetonka EDA. The Borrower will provide the Trustee with a subordinate mortgage lien in the Senior Housing Project, which lien will be subordinate to the mortgage liens to be provided with respect to the Notes. The Bonds are also secured by a Guaranty from Dominion Holdings II, LLC and a subordinate pledge of surplus cash. In connection with the issuance of the Bonds, City officials will be asked to execute an Indenture of Trust, a Loan Agreement, an Assignment of Mortgage, a Bond Purchase Agreement, a Subordination Agreement (subordinating the mortgage and the pledge of surplus cash), and the Regulatory Agreement referenced in the preceding paragraph. A resolution is enclosed approving the issuance of the Bonds.

In conjunction with the Contract for Private Development, which has already been approved by the City Council, City officials will be asked to approve the mortgage financing to be obtained by the Borrower and to execute a Construction Addendum and a Subordination Agreement (pursuant to which the City will assign its interests and rights under the Contract for Private Development to the interests and rights of U.S. Bank National Association, as fiscal agent under the Funding Loan Agreement, with respect to the senior financing documents described in the Funding Loan Agreement). A resolution is enclosed approving the execution of these documents.

Following the public hearing, the City Council will be asked to consider the three enclosed resolutions, which provide approval of the issuance of the Obligations, the Housing Program, and the execution of loan documents and related documents. The resolutions each provide that the Mayor and City Manager may sign the documents in substantially the forms on file as of August 27, 2018, which allows modifications of the documents but not substantial changes.

The Borrower will agree to pay the out-of-pocket expenses of the City with respect to this transaction as well as the City's administrative fee.

I will be attending the City Council meeting on August 27, 2018 and can answer any questions that may arise during the meeting. Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,



Julie A. Eddington



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**JULIE A. EDDINGTON**  
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August 20, 2018

Alisha Gray  
Economic Development and Housing Manager  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502

Re: Resolution approving the execution by of various agreements with respect to the senior housing development to be located at 11001 Bren Road East

Dear Alisha,

As you know, Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the "Developer"), is working with the City of Minnetonka (the "City") to finance the acquisition, construction, and equipping of approximately 262 units of senior housing to be located at 11001 Bren Road East in the City (the "Senior Housing Project"). The Senior Housing Project will be adjacent to the workforce housing project being developed by Minnetonka Leased Housing Associates II, LLLP. The Minnetonka EDA and the City approved the execution of the Contract for Private Development (the "Development Agreement") with the Developer at a prior meeting.

In order to provide financing for the Senior Housing Project, the City expects to issue multiple series of taxable and tax-exempt obligations in a maximum aggregate principal amount of \$67,500,000 (the "Obligations") to finance the Senior Housing Project. Portion of the Obligations in the approximate principal amount of \$32,410,000 (the "Tax-Exempt Notes") and in the approximate principal amount of \$25,410,000 (the "Taxable Notes") will be sold to U.S. Bank National Association and BMO Harris Bank N.A., as initial funding lenders. The remainder of the Obligations in the approximate principal amount of \$4,090,000 (the "Bonds") will be publicly offered for sale by an underwriter. As a condition for these financings, the Minnetonka EDA will be asked to execute various subordination agreements.

With respect to the Tax-Exempt Notes and the Taxable Notes, both the Minnetonka EDA and the City are being asked to subordinate their respective rights and interests under the Development Agreement, the Declaration of Restrictive Covenants, and the Minimum Assessment Agreement to the rights of U.S. Bank National Association, as fiscal agent for the Tax-Exempt and Taxable Notes, under the senior financing agreements described in these particular subordination agreements.

With respect to the Bonds, the Minnetonka EDA is being asked to consent to the Developer's assignment to U.S. Bank National Association, as trustee for the Bonds, of the TIF Note to be issued under the terms of the Development Agreement. The revenues derived under the TIF Note will be used by the Borrower to repay its loan of the proceeds of the Bonds.

Enclosed are resolutions to be considered by the Board of Commissioners of the Minnetonka EDA and the City Council of the City at their meetings on August 27, 2018. The resolution to be considered by the Board of Commissioners of the EDA approves the execution of two subordination agreements, the assignment and pledge of the TIF Note, and a construction addendum setting forth the additional terms and responsibilities of the construction of the Senior Housing Project. The resolution to be considered by the City Council of the city approves the execution of the subordination agreements and a construction addendum.

I will be attending the meetings of the Board of Commissioners and the City Council on August 27, 2018 and can answer any questions that may arise during the meetings. Please contact me with any questions you may have prior to the meetings.

Sincerely,

Julie A. Eddington



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**JULIE A. EDDINGTON**  
Attorney at Law  
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August 20, 2018

Alisha Gray  
Economic Development and Housing Manager  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502

Re: Resolution approving the issuance of workforce housing revenue obligations for the benefit of Minnetonka Leased Housing Associates II, LLLP

Dear Alisha,

As you know, Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the "Borrower"), is working with the City of Minnetonka (the "City") to provide permanent financing for the acquisition, construction, and equipping of approximately 262 units of workforce housing to be located at 10987 and 11015 Bren Road East in the City (the "Workforce Housing Project"). The Workforce Housing Project will be adjacent to the senior housing project being developed by Minnetonka Leased Housing Associates III, LLLP. To finance the Workforce Housing Project, the Borrower is requesting that the City issue multifamily housing revenue bonds in multiple series, as both taxable and tax-exempt obligations (the "Obligations"), in the estimated aggregate principal amount not to exceed \$55,000,000. A portion of the proceeds of the Obligations will be used to refund the Multifamily Housing Revenue Note (Preserve at Shady Oak Project), Series 2018, issued by the City on May 7, 2018, to provide short-term financing for the Workforce Housing Project.

The Obligations will be considered "housing bonds" issued pursuant to Minnesota Statutes, Chapter 462C, as amended (the "Act"), and Minnesota Statutes, Chapter 474A, as amended. To satisfy the requirements of the Act, the City must prepare a housing program providing the information required by Section 462C.03, subdivision 1a of the Act (the "Housing Program"). The Obligations will be "private activity bonds" within the meaning of Section 141(a) of the Code but will be "exempt facility bonds" the net proceeds of which are to be used to provide a "qualified residential rental project" within the meaning of Sections 142(a)(7) and 143(d) of the Code and will not affect the City's ability to designate up to \$10,000,000 in tax-exempt bonds as "qualified tax-exempt obligations" (or "bank-qualified bonds") for calendar year 2018.

The Obligations will not constitute general or moral obligations of the City, will not be secured by or payable from any property or assets of the City (other than the interests of the City in the loan agreements), and will not be secured by any taxing power of the City. The Obligations will not be subject to any debt limitation imposed on the City, and the issuance of the Obligations will not have any adverse

impact on the credit rating of the City, even in the event that the Borrower encounters financial difficulties with respect to the Workforce Housing Project.

Below is a brief explanation of the financing structure and the documents that the City officials will be asked to execute.

One portion of the Obligations is expected to be issued in the approximate principal amount of \$45,972,000 (the "Notes") and will be issued in two separate series (one tax-exempt and one taxable) to evidence two funding loans (the "Funding Loans") made by U.S. Bank National Association and BMO Harris Bank N.A., as the initial funding lenders. The City will loan the proceeds of the Notes (the "Project Loans") to the Borrower to finance a portion of the Workforce Housing Project. The Borrower will provide U.S. Bank National Association, as fiscal agent, with two parity mortgage liens on the Workforce Housing Project. Freddie Mac has committed to purchasing the Notes at the conversion date (which will occur after the Workforce Housing Project is placed in service). In connection with the Notes, City officials will be asked to execute a Funding Loan Agreement (with respect to the Funding Loans), a Project Loan Agreement (with respect to the Project Loans), four Governmental Notes, two Project Note Allonges, Assignments of Mortgage, and a Regulatory Agreement. A resolution is enclosed approving the issuance of the Notes.

The remaining portion of the Obligations is expected to be issued in the approximate principal amount of \$3,570,000 (the "Bonds") and will be publicly offered for sale by Dougherty & Company LLC. To secure its repayment obligations with respect to the Bonds, the Borrower will assign to U.S. Bank National Association (the "Trustee") the Borrower's interest in the TIF Note to be issued by the Minnetonka EDA. The Borrower will provide the Trustee with a subordinate mortgage lien in the Workforce Housing Project, which lien will be subordinate to the mortgage liens to be provided with respect to the Notes. The Bonds are also secured by a Guaranty from Dominion Holdings II, LLC and a subordinate pledge of surplus cash. In connection with the issuance of the Bonds, City officials will be asked to execute an Indenture of Trust, a Loan Agreement, an Assignment of Mortgage, a Bond Purchase Agreement, and the Regulatory Agreement referenced in the preceding paragraph. A resolution is enclosed approving the issuance of the Bonds.

In conjunction with the Contract for Private Development, which has already been approved by the City Council, City officials will be asked to approve the mortgage financing to be obtained by the Borrower and to execute a Construction Addendum and a Subordination Agreement (pursuant to which the City will assign its interests and rights under the Contract for Private Development to the interests and rights of U.S. Bank National Association, as fiscal agent under the Funding Loan Agreement, with respect to the senior financing documents described in the Funding Loan Agreement). A resolution is enclosed approving the execution of these documents.

Following the public hearing, the City Council will be asked to consider the two enclosed resolutions, which provide approval of the issuance of the Obligations, the Housing Program, and the execution of loan documents and related documents. The resolutions each provide that the Mayor and City Manager may sign the documents in substantially the forms on file as of August 27, 2018, which allows modifications of the documents but not substantial changes.

The Borrower will agree to pay the out-of-pocket expenses of the City with respect to this transaction as well as the City's administrative fee.

I will be attending the City Council meeting on August 27, 2018 and can answer any questions that may arise during the meeting. Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,

Julie A. Eddington



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Minneapolis 200 South Sixth Street  
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August 20, 2018

Alisha Gray  
Economic Development and Housing Manager  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502

Re: Resolution approving the execution by of various agreements with respect to the workforce housing development to be located at 10987 and 11015 Bren Road East

Dear Alisha,

As you know, Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the "Developer"), is working with the City of Minnetonka (the "City") to finance the acquisition, construction, and equipping of approximately 220 units of workforce housing to be located at 10987 and 11015 Bren Road East in the City (the "Workforce Housing Project"). The Workforce Housing Project will be adjacent to the senior housing project being developed by Minnetonka Leased Housing Associates III, LLLP. The Minnetonka EDA and the City approved the execution of the Contract for Private Development (the "Development Agreement") with the Developer at prior meetings.

In order to provide financing for the Workforce Housing Project, the City expects to issue multiple series of taxable and tax-exempt obligations in a maximum aggregate principal amount of \$55,000,000 (the "Obligations") to finance the Workforce Housing Project. Portion of the Obligations in the approximate principal amount of \$26,930,000 (the "Tax-Exempt Notes") and in the approximate principal amount of \$19,042,000,000 (the "Taxable Notes") will be sold to U.S. Bank National Association and BMO Harris Bank N.A., as initial funding lenders. The remainder of the Obligations in the approximate principal amount of \$3,570,000 (the "Bonds") will be publicly offered for sale by an underwriter. As a condition for these financings, the Minnetonka EDA will be asked to execute various subordination agreements.

With respect to the Tax-Exempt Notes and the Taxable Notes, both the Minnetonka EDA and the City are being asked to subordinate their respective rights and interests under the Development Agreement, the Declaration of Restrictive Covenants, and the Minimum Assessment Agreement to the rights of U.S. Bank National Association, as fiscal agent for the Tax-Exempt and Taxable Notes, under the senior financing agreements described in these particular subordination agreements.

With respect to the Bonds, the Minnetonka EDA is being asked to consent to the Developer's assignment to U.S. Bank National Association, as trustee for the Bonds, of the TIF Note to be issued under the terms of the Development Agreement. The revenues derived under the TIF Note will be used by the Borrower to repay its loan of the proceeds of the Bonds.

Enclosed are resolutions to be considered by the Board of Commissioners of the Minnetonka EDA and the City Council of the City at their meetings on August 27, 2018. The resolution to be considered by the Board of Commissioners of the EDA approves the execution of two subordination agreements, the assignment and pledge of the TIF Note, and a construction addendum setting forth the additional terms and responsibilities of the construction of the Workforce Housing Project. The resolution to be considered by the City Council of the city approves the execution of the subordination agreements and a construction addendum.

I will be attending the meetings of the Board of Commissioners and the City Council on August 27, 2018 and can answer any questions that may arise during the meetings. Please contact me with any questions you may have prior to the meetings.

Sincerely,

Julie A. Eddington





# Memo

**To:** Alisha Gray, Economic Development and Housing Manager  
**From:** James Lehnhoff - Ehlers  
**Date:** April 6, 2018  
**Subject:** Dominion Project Proposal Review: Digi Site Redevelopment

In November 2017, the City of Minnetonka requested that Ehlers review the development pro forma and Tax Increment Financing (TIF) request from Dominion for their proposal to construct approximately 475 affordable apartments at 11001 Bren Road East. The original redevelopment concept included demolishing the existing office building and constructing 210 general occupancy affordable apartments and 265 age-restricted affordable apartments. To help close a nearly \$8.5 million project financing gap, the Economic Development Advisory Commission (“EDAC”) and the City Council subsequently considered a \$7.6 million TIF request from Dominion (includes a 2% inflationary factor). The remaining gap amount was to be addressed through a combination of project cost reductions and other funding sources.

Since last November, Dominion has conducted additional design work, revised the project budget, and submitted an updated development pro forma for analysis. The revised project proposes a total of 482 apartments—an increase of seven apartments. The “Legends of Minnetonka” includes 262 age-restricted affordable apartments and the “Preserve at Shady Oak” includes 220 general occupancy affordable apartments. As before, all the apartments would be affordable to households at or below 60% of area median income (AMI). The 2017 income limits as published by HUD:

Income Limit by Household Size	
Household Size	60% AMI Income Limit
1	\$37,980
2	\$43,440
3	\$48,840
4	\$54,240

*HUD has not yet released the 2018 updates*

The project must comply with the statutory required income restrictions for the term of the Housing TIF District (statutes do not require rent restrictions). However, the City has extended the compliance period to 30 years and required rent restrictions in prior projects.

## Analysis

We have reviewed the updated development pro forma based on general industry standards for construction, land, and project costs; affordable rental rates and operating

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expenses; developer fees; available funding sources; underwriting criteria; and, project cash flow.

While the total development costs (“TDC”) increased from approximately \$240,000 per unit to \$274,000 per unit, the development pro forma assumptions are generally reasonable and within industry standards in the current market. The cost increase is primarily due to three factors: 1) construction costs, 2) financing costs, and 3) the developer/contractor fee. In addition to construction costs generally increasing in this market, more detailed designs and design changes contributed to a majority of the overall cost increase (i.e. a large retaining wall to address grade changes, shallow groundwater issues, additional stormwater management, and a 5-6 story building instead of the original 4-story building).

The financing costs increased due to higher interest rates and a need to “park” their bond allocation, which adds to the carrying costs. Finally, while the developer/contractor fee increased from the prior analysis, the increase was entirely offset by an even larger deferred fee to help reduce the gap (this is a financing technique used in LIHTC projects that can result in additional tax credit proceeds that actually reduces the overall financing gap). The developer/contractor fees still conform to Minnesota Housing underwriting requirements. The updated summary sources and uses are as follows:

Revised Sources and Uses			
Sources	Amount	Per Unit	% of Cost
First Mortgage	\$69,780,000	\$144,772	53%
TIF Note Request (26 years with 2% Inflation)	\$7,809,000	\$16,201	6%
4% LIHTC	\$35,623,000	\$73,907	27%
Met Council/Hennepin County Grants	\$1,500,000	\$3,112	1%
Deferred Developer/Contractor Fee (83% of total fee)	\$14,494,976	\$30,073	11%
Cash from Operations	\$3,071,523	\$6,372	2%
<b>Total</b>	<b>\$132,278,499</b>	<b>\$274,437</b>	<b>100%</b>
Uses	Amount	Per Unit	% of Cost
Acquisition Costs	\$10,000,000	\$20,747	8%
Construction Costs	\$87,689,878	\$181,929	66%
Professional Services	\$4,622,578	\$9,590	3%
Financing Costs	\$10,684,951	\$22,168	8%
Developer/Contractor Fee	\$17,439,080	\$36,181	13%
Reserves	\$1,842,012	\$3,822	1%
<b>Total</b>	<b>\$132,278,499</b>	<b>\$274,437</b>	<b>100%</b>

Dominium has maximized the first mortgage and 4% low-income housing tax credit equity. They expect to apply for \$1,500,000 in additional public resources from such entities as Hennepin County and the Metropolitan Council. Finally, Dominion will use future project cash flow from operations for the remaining project costs.

The TIF Note size increased from approximately \$7.6 million in the prior analysis to \$7.8 million in this analysis because of the additional units and applying the final 2018 property tax rates. However, this also means the property is paying more in annual property taxes than previously assumed. Other than this adjustment to the tax increment calculation, the project cost increases are addressed by Dominion through other sources.

## **Recommendation**

Based upon our review of the developer's pro forma and current market conditions, the proposed development will not reasonably be expected to occur solely through private investment within the reasonably near future. Due to the costs associated with redeveloping the property and constructing housing with affordable rents, this project is feasible only through assistance, in part, from the City's contribution.

TIF assistance would be provided on a "pay-as-you-go" basis in the amount of \$7,809,000 over a maximum 26-year term. As discussed at the November meeting, the TIF assistance includes a 2% inflationary factor. The interest rate on the TIF Note will be set at the lesser of 5.15% or the Developer's actual interest rate.

With "pay-as-you-go" TIF assistance, the City does not provide any up-front funding. Instead, the City enters into an agreement to provide tax increment payments that are generated solely from a portion of the development's actual increased property taxes for up to 26 years. The applicant uses those future tax increment payments to obtain additional financing from a private lender. If the tax increment is insufficient to pay the \$7,809,000 TIF note in 26 years, the City does not make up the shortfall. Conversely, if the tax increment provides the \$7,809,000 before the end of the 26-year term, the City may end the TIF district early.

Please contact me at 651-697-8552 with any questions.

**Policy Number 2.5**  
**Tax Exempt Financing for Industrial Development, Health Care Facilities,**  
**Multi-Family Housing, and 501 (c)(3) Projects**  
**(Private Activity Tax Exempt Financing)**

**Purpose of Policy:** This policy establishes factors that guide the city council in consideration of applications for tax exempt financing for industrial development, health care facilities, multi-family housing developments, and qualified 501 (c)(3) projects.

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**Introduction**

Under the Minnesota Municipal Industrial Development Act, Minnesota Statutes Sections 469.152 to 469.165 (the "IDR Act"), the city of Minnetonka has the authority to issue industrial development and health care facility bonds or notes to attract or promote economically sound industry, commerce, and health care in the city.

Under Minnesota Statutes, Chapter 462C (the "Housing Act"), the city is authorized to issue housing revenue bonds to finance multi-family residential housing projects for low and moderate income persons and elderly persons. Projects must be embodied in a Housing Program, as defined in the Housing Act.

Additionally, the city may issue tax exempt financing for qualified 501 (c)(3) entities for various project types including housing, health care, nursing homes and educational facilities.

The council is aware that such financing for certain private activities may be of benefit to the city and will consider requests for tax exempt financing subject to this council policy. The council considers tax exempt financing to be a privilege, not a right.

It is the judgment of the council that tax exempt financing is to be used on a selective basis to encourage certain development that offers a benefit to the city as a whole, including significant employment and housing opportunities, as well as for those projects that may be carried out through a qualified non-profit organization. It is the applicant's responsibility to demonstrate the benefit to the city, both in writing and at the public hearing(s). The applicant should understand that although approval may have been granted previously by the city for the issuance of financing for a similar project or a similar debt structure, the council is not bound by that earlier approval. Each application will be judged on the merits of the project as it relates to the public purpose of the Housing Act or the IDR Act and benefit to the city at the time the request for financing is being considered.

**Part A: Standards**

Applications must meet all of the following standards to be eligible for consideration:

- At the time of any application for a guide plan amendment, rezoning or site plan approval for a project, whichever occurs first, the applicant must divulge that private activity tax exempt financing will be requested.

- The project must meet the objectives of and be otherwise consistent with the IDR Act or the Housing Act and any other controlling laws.
- The projects must comply with all applicable federal, state, regional, and city laws, including compatibility with the Comprehensive Guide Plan and the development plans and objectives of the city, as well as applicable zoning and land use regulations and ordinances.
- A project application must demonstrate financial feasibility and adequate bond holder security through credit enhancement, rating or a financial review by a third party accounting firm or the city's financial advisor.
- Industrial and health care projects must not be speculative, i.e., they must either be for the applicant's sole use or 60 percent of the square footage must be pre-leased.
- The principal amount of the tax-exempt obligations will be limited to the sum of costs that are financeable with tax-exempt obligations under state and federal law. The proceeds of the tax-exempt obligations cannot be used for working capital expenditures. Capital equipment may be financed with the proceeds of tax-exempt obligations only if the City Council finds the equipment to be essential to the new, redeveloped or expanded business.

Those applications which exceed the minimum standards will generally be considered more favorably than those which only meet these standards.

**Part B: Additional Review Standards**

Those applications meeting all of the standards listed above will be further reviewed to determine compliance with the following additional review standards. Applications meeting more of the following standards will generally be considered before those which just meet some of them or meet them less extensively:

- Facilitation of the city's development or redevelopment objectives.
- The number and type of additional jobs created or retained in the city.
- For housing projects, the number, type and affordability of new or newly available housing units.
- The projected increase in property tax revenue.
- The amount of equity participation above 10 percent.
- The quality of the project, as represented by renderings, site plans, the applicant's record of development, etc.
- The project's impact on additional city services.

- For projects located outside of the city, the benefit the project brings to the region, including the number of Minnetonka residents and/or businesses served.

The view of individuals and businesses expressed at the public hearing(s) on the project will also be considered.

### **Part C: Other Provisions**

- A project will not normally be given preliminary approval until all city planning and zoning requirements have been met and all related permits and approvals have been issued. Planning and zoning matters may be considered simultaneously with preliminary approval of the project.
- City officials will not deliver documents for the issuance of tax exempt obligations until all required fees have been paid by the applicant to the city and special counsel to the city has issued a favorable opinion on those matters for which special counsel is responsible.
- The council resolution giving preliminary approval to a project must specify:
  - That the approval given terminates at the end of the calendar year from the date of the resolution and may be renewed only upon request of the applicant.
  - That the applicant agrees to pay all required fees and reimburse the city for any and all costs incurred by it in the financing.
  - That the city reserves the right in its sole discretion to withdraw the preliminary approval at any time prior to the issuance of tax exempt obligations for the project upon its determination that the purposes of the appropriate Act and this policy would not be served thereby, or if any material misstatement is made. The council's decision on this matter is uncontestable.
- The director of community development, under the direction of the city manager, is responsible for the administration and processing of applications for tax exempt financing. The director of community development is to prepare and revise, from time to time, necessary application forms and informational material in order to carry out the objectives of the policy.
- The following fees for the processing of applications are established:
  - A non-refundable application fee of \$3,500, and  
  
An administrative fee equal to one-eighth of one percent (.125%) of the principal amount of the bonds. The application fee must accompany the original application. The administrative fee must be paid at or prior to delivery of the bonds to the original purchaser. The proceeds of the administrative fee must be deposited in a special fund of the city to be used to defray administrative costs of the city in the administration of private activity financing.

- The applicant must select a financial advisor acceptable to the city or an underwriter to assist the applicant in preparing all necessary application documents and materials. The financial adviser will subject a letter that establishes the financial feasibility of the project. Applications may, in the alternative, include a signed letter from a responsible financial institution or underwriter indicating that the project is economically feasible and viable and stating that bonds can be successfully sold for the project or that an individual or institution intends to purchase all of the bonds.

The applicant must receive approval from the appropriate state agencies, secure financing by the end of the calendar year in which approval was given and commence construction within one year of the date of the resolution giving preliminary approval to the project or the housing program. Upon application, the council may approve an extension of the preliminary approval.

- The city is to be reimbursed and held harmless for any out-of-pocket expenses related to the tax exempt financing including, but not limited to, legal fees, financial analyst fees, bond counsel fees, and the city's administrative expenses in connection with the application. The applicant must execute a letter to the city undertaking to pay all such expenses even if they exceed the deposit.

#### **Part D: Miscellaneous Matters**

##### Refundings

The council will approve the refunding of a tax-exempt issue only upon a showing by the applicant of substantial debt service savings and/or the removal of bond covenants significantly impairing the financial feasibility of the project.

For each application for refunding, the non-refundable application fee must be paid together with any city expenses in excess of that fee. If the administrative fees listed in paragraph 5 of Part C were paid for the original bond issue, no new administrative fees are required. If the administrative fees were not paid for the original bond issues, they must be paid for the refunding issue.

##### Subsequent Proceedings

Where changes to the underlying documents or credit facilities of outstanding bond issues are to be made and require council action, no administrative fee is charged but a non-refundable fee of \$2,500 must be deposited with the city to cover administrative costs. No formal application form is required.

##### Arbitrage and Reporting

The city must be copied on any reporting to bondholders and/or trustees that the borrower produces. The borrower must also undertake arbitrage calculations every five years or more often if required for legal compliance, and copy the city with these calculations.

##### IRS Examination/Audit

If the borrower is subject to an IRS examination/audit on the tax exempt financing, the city's bond counsel must be involved in a timely fashion on any responses to IRS inquiries. The borrower will reimburse the city for any costs the city occurs related to the

examination/audit.

Issue by Another Political Subdivision (Host Approval)

The city will consider requests for approval of tax exempt financing by another political subdivision for projects located in the city of Minnetonka. In these cases, a non-refundable application fee of \$250 must be paid and all procedures followed through the approval of the preliminary resolution. No administrative fee is charged.

City as Issuer for Another Political Subdivision

The city may consider requests for tax exempt financing for projects located in another city. Host approval must first be given by the jurisdiction in which the project is located. All projects must meet the city's standards as deemed applicable by the Community Development Director, and application and administrative fees will be collected as called out in Part C.

Deadlines

The council conducts all tax exempt financing matters at regularly scheduled council meetings generally held on the second and fourth Monday of each month. Documents for council consideration must be at the city office ten days preceding the council meeting at which the matter is to be considered. No exceptions to this requirement will be made. In the case of a publicly offered bond issue, the documents, when submitted, may specify a maximum price and maximum effective interest rate if prices and rates have not yet been established.

Public Hearings

Published and mailed notice of any required public hearing may be set and arranged administratively by city staff.

Economic Development Authority as Issuer

Regarding any tax exempt financing for which the Minnetonka Economic Development Authority (EDA) is to be the issuer, the EDA is to follow the adopted council policy applicable to such financing.

Adopted by Resolution No. 84-7547  
Council Meeting of August 6, 1984

Adopted by Resolution No. 84-7563  
Council Meeting of August 27, 1984

Amended by Council Motion  
Council Meeting of November 18, 1985

Amended by Resolution No. 97-104  
Council Meeting of July 28, 1997

Amended by Resolution No. 2003-077  
Council Meeting of August 25, 2003

Amended by Resolution No. 2015-019  
Council Meeting of March 23, 2015



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**Policy Number 2.16**  
**Post-Issuance Compliance Procedure and Policy**  
**For Tax-Exemption Governmental Bonds**

**Purpose of Policy:** To ensure that the city complies with its post-issuance compliance obligations under applicable provisions of the code and treasury regulations

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**Introduction**

The city of Minnetonka issues tax-exempt governmental bonds (“TEBs”) to finance capital improvements. As an issuer of TEBs, the city is required by sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended (the “code”), and the associated treasury regulations (the “treasury regulations”), to take certain actions after the issuance of TEBs to ensure the continuing tax-exempt status of the bonds. In addition, section 6001 of the code and section 1.6001-1(a) of the treasury regulations impose record retention requirements on the city.

**Effective Date and Term**

The effective date of this policy is March 5, 2012, and this policy will remain in effect until superseded or terminated by the city council.

**Responsible Parties**

The finance director is the party primarily responsible for ensuring that the city successfully carries out its post-issuance compliance requirements under federal law. The finance director will be assisted by finance department staff and by other city staff and officials when appropriate. The finance director will also be assisted in carrying out post-issuance compliance requirements by the following organizations:

- Bond counsel
- Financial advisor
- Paying agent (the person, organization, or officer of the city primarily responsible for providing paying agent services for the city); and
- Rebate analyst (the organization primarily responsible for providing rebate analyst services for the city).

The finance director is responsible for assigning post-issuance compliance responsibilities to finance department staff, other city staff, bond counsel, paying agent, and rebate analyst. The finance director may use other professional service organizations as necessary to ensure compliance with the city’s post-issuance compliance requirements. The finance director will provide training and educational resources to city staff responsible for ensuring compliance with this policy.

**Post-Issuance Compliance Actions**

The finance director will take the following post-issuance compliance actions or verify

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that they have been taken on behalf of the city with respect to each issue of TEBs:

- The finance director will prepare a transcript of principal documents (this action will be the primary responsibility of bond counsel).
- The finance director will file with the Internal Revenue Service (the “IRS”), within the time limit imposed by code section 149(e) and applicable treasury regulations, an information return for tax-exempt governmental obligations, form 8038-G (this action will be the primary responsibility of bond counsel).
- The finance director will prepare an “allocation memorandum” for each issue of TEBs in accordance with the provisions of treasury regulations, section 1.148-6(d)(1). This memorandum will account for the allocation of the TEB proceeds to expenditures not later than the earlier of:
  - eighteen months after the later of the date the expenditure is paid, or the date any project financed by the TEBs is placed in service; or
  - sixty days after the earlier of the fifth anniversary of the issue date of the TEBs, or 60 days after the retirement of the TEBs.
- The finance director will identify proceeds of TEBs that must be yield-restricted and will monitor the investments of those funds to ensure that the yield does not exceed the applicable restrictions.
- The finance director will determine whether the city is subject to the rebate requirements of code section 148(f) regarding each issue of TEBs. The finance director will determine whether the city is eligible for any of the temporary periods for unrestricted investments and is eligible for any of the spending exceptions to the rebate requirements, for each issue of TEBs. The finance director will contact the rebate analyst (and, if appropriate, bond counsel) before the fifth anniversary of the issuance date of each issue of TEBs and each fifth anniversary thereafter to arrange for calculations of the rebate requirements for such TEBs. If a rebate payment is required to be paid by the city, the finance director will prepare or cause to be prepared the arbitrage rebate, yield reduction and penalty in lieu of arbitrage rebate, form 8038-T, and submit the form to the IRS with the required rebate payment. If the city is authorized to recover a rebate payment previously paid, the finance director will prepare or cause to be prepared the request for recovery of overpayments under arbitrage rebate provisions, form 8038-R, and submit the form to the IRS.

#### **Procedures for Monitoring, Verification, and Inspections**

The finance director will institute such procedures as the finance director deems necessary and appropriate to monitor the use of the proceeds of TEBs issued by the city, to verify that certain post-issuance compliance actions have been taken by the city, and to provide for the inspection of the facilities financed with the proceeds of such bonds. At a minimum, the finance director will establish the following procedures:

- The finance director will monitor the use of the proceeds of TEBs to: (1) ensure

compliance with the expenditure and investment requirements under the temporary period provisions set forth in treasury regulations, section 1.148-2(e); (2) ensure compliance with the safe harbor restrictions on the acquisition of investments set forth in treasury regulations, section 1.148-5(d); (3) ensure that the investments of any yield-restricted funds do not exceed the yield to which such investments are restricted; and (4) determine whether there has been compliance with the spend-down requirements under the spending exceptions to the rebate requirements set forth in treasury regulations, section 1.148 7.

- The finance director will monitor the use of all bond-financed facilities in order to: (1) determine whether private business uses of bond-financed facilities have exceeded the *de minimis* limits set forth in code section 141(b) as a result of leases and subleases, licenses, management contracts, research contracts, naming rights agreements, or other arrangements that provide special legal entitlements to nongovernmental persons; and (2) determine whether private security or payments that exceed the *de minimis* limits set forth in code section 141(b) have been provided by nongovernmental persons regarding such bond-financed facilities. The finance director will provide training and educational resources to any city staff who have the primary responsibility for the operation, maintenance, or inspection of bond-financed facilities regarding the limitations on the private business use of bond-financed facilities and the limitations on private security or payments regarding bond-financed facilities.
- The finance director will undertake the following for each outstanding issue of city TEBs: (1) an annual review of the books and records maintained by the city for such bonds; and (2) an annual physical inspection of the facilities financed with the proceeds of such bonds, conducted by the finance director with the assistance with any city staff who have the primary responsibility for the operation, maintenance, or inspection of such facilities.

### **Record Retention Requirements**

The finance director will collect and retain the following records regarding each issue of city TEBs and the facilities financed with the proceeds of such bonds: (1) audited financial statements of the City; (2) appraisals, demand surveys, or feasibility studies for the facilities to be financed with the proceeds of such bonds; (3) publications, brochures, and newspaper articles related to the bond financing; (4) trustee or paying agent statements; (5) records of all investments and the gains (or losses) from such investments; (6) paying agent or trustee statements regarding investments and investment earnings; (7) reimbursement resolutions and expenditures reimbursed with the proceeds of such bonds; (8) allocations of proceeds to expenditures (including costs of issuance) and the dates and amounts of such expenditures (including requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks for such expenditures); (9) contracts entered into for the construction, renovation, or purchase of bond-financed facilities; (10) an asset list or schedule of all bond-financed depreciable property and any depreciation schedules for such assets or property; (11) records of the purchases and sales of bond-financed assets; (12) private business uses of bond-financed facilities that arise after the issue date through leases and subleases, licenses, management contracts, research contracts, naming rights agreements, or other

arrangements that provide special legal entitlements to nongovernmental persons and copies of any such agreements or instruments; (13) arbitrage rebate reports and records of rebate and yield reduction payments; (14) resolutions or other actions taken by the governing body after the issue date regarding such bonds; (15) formal elections authorized by federal law that are taken regarding such bonds; (16) relevant correspondence relating to such bonds; (17) documents related to guaranteed investment contracts or certificates of deposit, credit enhancement transactions, and financial derivatives entered into after the issue date; (18) copies of all form 8038Ts and form 8038-Rs filed with the IRS; and (19) the transcript prepared regarding such TEBs.

The records collected by the city will be stored in any format deemed appropriate by the finance director and will be retained for a period equal to the life of the relevant TEBs (which includes the life of any bonds issued to refund any portion of such TEBs or to refund any refunding bonds) plus three years.

### **Remedies**

The finance director will become acquainted with the remedial actions under treasury regulations, section 1.141-12, to be used if private business use of bond-financed facilities exceeds the *de minimis* limits under code section 141(b)(1). The finance director will become acquainted with the tax exempt bonds voluntary closing agreement program described in notice 2008-31, 2008-11 I.R.B. 592, to be used as a means for the city to correct any post-issuance infractions of federal law regarding outstanding TEBs.

### **Continuing Disclosure Obligations**

In addition to the federal law requirements, the city has agreed to provide continuing disclosure, such as annual financial information and material event notices, pursuant to a continuing disclosure certificate or similar document (the "continuing disclosure document") prepared by bond counsel and made a part of the transcript for each issue of city bonds that is subject to continuing disclosure requirements under 17 C.F.R. section 240 ("rule 15c2-12"). The continuing disclosure documents are executed by the city to assist the bond underwriters in meeting their obligations under rule 15c2-12. The finance director is primarily responsible for undertaking, and monitoring compliance with, such continuing disclosure obligations.

### **Other Post-Issuance Actions**

If the finance director determines that additional action not identified in this policy must be taken to ensure the continuing tax-exempt status of any issue of city TEBs, the finance director will take such action if authorized to do so. If the finance director determines that this policy must be amended or supplemented to ensure the continuing tax-exempt status of any issue of city TEBs, the finance director will recommend to the city council that this policy be so amended or supplemented.

### **Taxable Governmental Bonds**

Most of the provisions of this policy, other than the continuing disclosure obligations, are not applicable to taxable governmental bonds. On the other hand, if an issue of taxable governmental bonds is later refunded with the proceeds of an issue of TEBs, then the uses of the proceeds of the taxable governmental bonds and the uses of the facilities financed with the proceeds of the taxable governmental bonds will be relevant to the tax-

exempt status of the governmental refunding bonds. Therefore, if there is any reasonable possibility that an issue of taxable governmental bonds may be refunded, in whole or in part, with the proceeds of an issue of TEBs, then for purposes of this policy, the finance director will treat the issue of taxable governmental bonds as if such issue were an issue of TEBs and will carry out and comply with the requirements of this policy regarding such taxable governmental bonds. The finance director will seek the advice of bond counsel as to whether there is any reasonable possibility of issuing TEBs to refund an issue of taxable governmental bonds.

**Qualified 501(c)(3) Bonds**

If the city issues bonds to finance a facility to be owned by the city but which may be used, in whole or in substantial part, by a nongovernmental organization that is exempt from federal income taxation under code section 501(c)(3) (a "501(c)(3) organization"), the city may elect to issue the bonds as "qualified 501(c)(3) bonds" the interest on which is exempt from federal income taxation. Although such qualified 501(c)(3) bonds are not governmental bonds, the finance director may treat such bonds as if they were TEBs and will comply with the requirements of this policy regarding such bonds. Alternatively, in cases where compliance activities are reasonably within the control of the relevant 501(c)(3) organization, the finance director may determine that all or some portion of compliance responsibilities described in this policy will be assigned to the relevant organization.

**Conduit Bonds**

The city may also issue tax-exempt bonds, the proceeds of which are loaned to certain private entities, including qualified 501(c)(3) organizations (referred to as "conduit bonds"). The city will require, as part of approval of any conduit bonds, that the borrower assumes the duties of post-issuance compliance described in this policy, including provisions for reporting to the city.

Adopted by Resolution No. 2012-  
Council Meeting of March 5, 2012

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**Policy Number 2.18**  
**Tax Increment Financing and Tax Abatement**

**Purpose of Policy:** This policy establishes criteria which guide the economic development authority and the city council when considering the use of tax increment financing and tax abatement tools in conjunction with proposed development.

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### **Introduction**

Under the Minnesota Statutes Sections 469.152 to 469.1799, the city of Minnetonka has the authority to establish tax increment financing districts (TIF districts). Tax increment financing is a funding technique that takes advantage of the increases in tax capacity and property taxes from development or redevelopment to pay public development or redevelopment costs. The difference in the tax capacity and the tax revenues the property generates after new construction has occurred, compared with the tax capacity and tax revenues it generated before the construction, is the captured value, or increments. The increments then go to the economic development authority and are used to repay public indebtedness or current costs the development incurred in acquiring the property, removing existing structures or installing public services. The fundamental principle that makes tax increment financing viable is that it is designed to encourage development that would not otherwise occur.

Under Minnesota Statutes, Sections 469.1812 to 469.1815, the city of Minnetonka has the right to abate property taxes. A city may grant an abatement of some or all of the taxes or the increase in taxes it imposes on a parcel of property if the city expects the benefits of the proposed abatement agreement to at least equal the costs of the proposed agreement. Abatement would be considered a reallocation or rededication of taxes for specific improvements or costs associated with development rather than a "refund" of taxes.

It is the judgment of the city council that TIF and abatement are appropriate tools that may be used when specific criteria are met. The applicant is responsible for demonstrating the benefit of the assistance, particularly addressing the criteria below. The applicant should understand that although approval may have been granted previously by the city for a similar project or a similar mechanism, the council is not bound by that earlier approval. Each application will be judged on the merits of the project as it relates to the public purpose.

### **TAX INCREMENT FINANCING**

The Economic Development Authority (EDA), as authorized by the city, will be responsible to determine that (1) a project would not occur "but for" the assistance provided through tax increment financing; and (2) no other development would occur on the relevant site without tax increment assistance that could create a larger market value increase than the increase expected from the proposed development (after adjusting for

the value of the tax increment). At the time of any application for a Comprehensive Guide Plan amendment, rezoning or site plan approval for a project, whichever occurs first, the applicant must divulge that TIF financing will be requested.

Projects eligible for consideration of tax increment financing include but are not limited to the following:

- Projects must be compatible with the Comprehensive Guide Plan (or acquire an amendment) and the development and redevelopment objectives of the city.
- Priority will be given to those projects which:
  - are within the “village areas” identified in the city’s most recently adopted Comprehensive Guide Plan;
  - are mixed use or residential in nature, and include affordable housing units which meet the city’s affordable housing standards;
  - contain amenities or improvements which benefit a larger area than the identified development;
  - improve blighted or dilapidated properties, provide cohesive development patterns, or improve land use transitions; or
  - maximize and leverage the use of other financial resources.

**Costs Eligible for Tax Increment Financing Assistance**

The EDA will consider the use of tax increment financing to cover project costs as allowed for under Minnesota Statutes. The types of project costs that are eligible for tax increment financing are as follows:

Utilities design	Site related permits
Architectural and engineering fees directly attributable to site work	Soils correction
Earthwork/excavation	Utilities (sanitary sewer, storm sewer, and water)
Landscaping	Street/parking lot paving
Streets and roads	Curb and gutter
Street/parking lot lighting	Land acquisition
Sidewalks and trails	Legal (acquisition, financing, and closing fees)
Special assessments	Surveys
Soils test and environmental studies	Sewer Access Charges (SAC) and Water Access Charges (WAC)

Title insurance	Landscape design
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**Forms of Assistance**

Tax increment financing will generally be provided on a “pay-as-you-go” basis wherein the EDA compensates the applicant for a predetermined amount for a stated number of years. The EDA will have the option to issue a TIF Note with or without interest, where the principal amount of the TIF Note is equal to the amount of eligible project costs incurred and proven by the developer. In all cases, semi-annual TIF payments will be based on available increment generated from the project. TIF payments will be made after collection of property taxes.

**Fiscal Disparities**

TIF Districts will generally be exempt from the contribution to fiscal disparities. Tax revenues for fiscal disparities, generated by the TIF project, will be the responsibility of properties inside the district. The exception to this policy is when MN Statutes require that fiscal disparities be paid from within a TIF District, as is the case with Economic Development Districts.

**TAX ABATEMENT**

The tax abatement tool provides the ability to capture and use all or a portion of the property tax revenues within a defined geographic area for a specific purpose. Unlike TIF, tax abatement must be approved by each major authority under which the area is taxed, and therefore, usually only city property taxes will be abated. In practice, it is a tax “reallocation” rather than an exemption from paying property taxes. Tax abatement is an important economic development tool that, when used appropriately, can be useful to accomplish the city’s development and redevelopment goals and objectives. Requests for tax abatement must serve to accomplish the city’s targeted goals for development and redevelopment, particularly in the designated village center areas. At the time of any application for a Comprehensive Guide Plan amendment, rezoning or site plan approval for a project, whichever occurs first, the applicant must divulge that tax abatements will be requested.

**Projects Eligible for Tax Abatement Assistance**

Projects eligible for consideration of property tax abatement include but are not limited to the following:

- Projects must be compatible with the Comprehensive Guide Plan (or acquire an amendment) and the development and redevelopment objectives of the city; and
- Priority will be given to those projects which:
  - increase or preserve the tax base
  - provide employment opportunities in the City of Minnetonka;



- provide, help acquire or construct public facilities;
- finance or provide public infrastructure;
- improve blighted or dilapidated properties, provide cohesive development patterns, or improve land use transitions; or
- produce long-term affordable housing opportunities.

### **Fiscal Disparities**

Tax revenues for fiscal disparities, generated by the abatement project, will be the responsibility of properties inside the district.

### **REVIEW PROCESS**

All applications for TIF and tax abatement will be reviewed by city's community development director. After review by the city's financial consultant, the community development director may refer the request to the EDA. The EDA will hold appropriate public hearings and receive public input about the use of the financial tools. The EDA will provide a recommendation regarding the assistance to the city council.

The city council must consider, along with other development decisions, the request for assistance and will make the final decision as to the amount, length, and terms of the agreement.

Adopted by Resolution No. 2014-074  
Council Meeting of July 21, 2014

# Opus Housing

November 2017



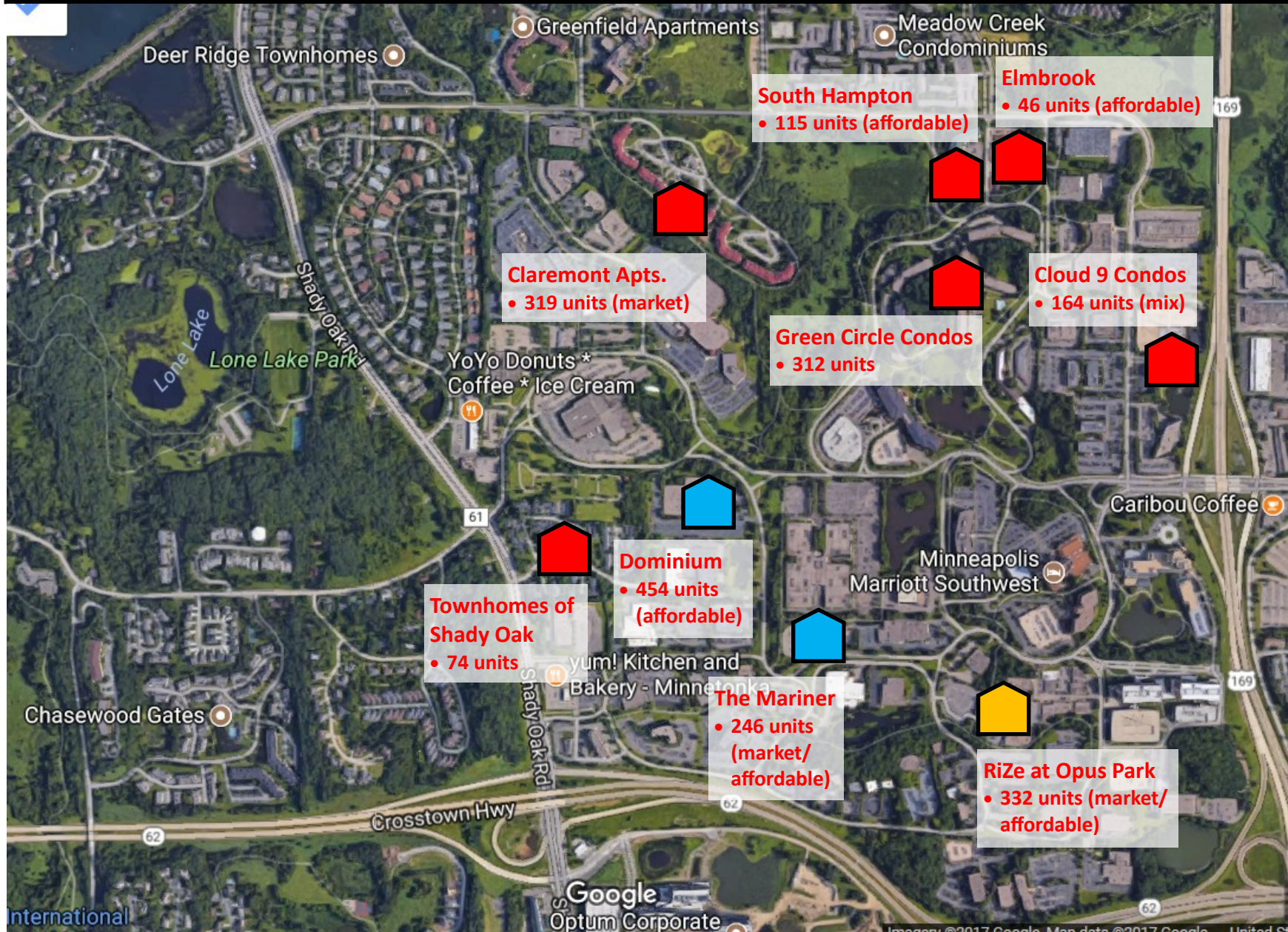
1,030 existing units



332 units under construction



700 units proposed



Name of Project	Number of Affordable Units	Total Assistance	Years of Affordability	Assistance per Unit, per Year	Affordability Level
<b>Dominium Apartments</b>	<b>482</b>	<b>7,890,000 (est)</b>	<b>30</b>	<b>\$540</b>	<b>60% AMI</b>
Newport Partners (Mariner)	55	\$556,179 (est)	30	\$337	60% AMI
Homes Within Reach (2004-2012 grant years)	35	\$1,740,000	99	\$502	80% AMI
The Ridge	52	\$1,050,000	30	\$673	60% AMI
Shady Oak Redevelopment	49	\$1,209,000 (est)	30	\$822	60%AMI
West Ridge Market (Crown Ridge, Boulevard Gardens, Gables, West Ridge)	185	\$8,514,000	30	\$1,534	<i>Crown Ridge—60% AMI</i> <i>Boulevard Gardens—60% AMI</i> <i>Gables—initially 80% AMI, now no income limit</i> <i>West Ridge—50% AMI</i>
Beacon Hill (apartments)	62	\$2,484,000	25	\$1,602	50% AMI
Ridgebury	56	\$3,243,000	30	\$1,930	Initially--80% AMI Now no income limit
Glen Lake (St. Therese, Exchange)	43	\$4,800,000	30	\$3,721	60% AMI
Cedar Point Townhomes	9	\$512,000	15	\$3,792	50% AMI
Tonka on the Creek	20	\$2,283,000	30	\$3,805	50% AMI
At Home (Rowland)	21	\$2,500,000	30	\$3,968	50% AMI
Applewood Pointe	9	\$1,290,000	Initial Sale/Ongoing maximum %	\$4,777	80% AMI

**EDA Resolution No. 2018-\_\_\_\_\_**

**Resolution approving the execution and delivery of documents in connection  
with a senior housing development**

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Be it resolved by the Board of Commissioners (the “Board”) of the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) as follows:

Section 1. Background.

- 1.01. The Authority previously approved a Contract for Private Development (the “Development Agreement”), between the Authority, the City of Minnetonka (the “City”), and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “Developer”), pursuant to which the Developer agreed to acquire certain property (the “Development Property”) and develop approximately 262 affordable apartment units for seniors, to be located at 11001 Bren Road East in the City, with one hundred percent (100%) of the apartment units made affordable to seniors at or below sixty percent (60%) of the area median income (the “Minimum Improvements”). In consideration for the construction of the Minimum Improvements, the Authority approved the issuance of a Tax Increment Revenue Note (the “TIF Note”) in the maximum principal amount of \$4,161,000, to reimburse the Developer for certain qualified costs related to the Minimum Improvements if certain conditions set forth in the Development Agreement are met.
- 1.02. Pursuant to the Development Agreement, the Developer has agreed to execute a Declaration of Restrictive Covenants to be recorded against the Development Property and setting forth the income and rent restrictions required by the Development Agreement and a Minimum Assessment Agreement to be recorded against the Development Property and setting forth the minimum assessed value for the Development Property.
- 1.03. The Developer has requested that the City issue several series of revenue obligations in the maximum aggregate principal amount of \$67,500,000 (the “Obligations”) and loan the proceeds thereof to the Developer to assist in financing the Minimum Improvements.
- 1.04. A portion of the Obligations in the approximate principal amount of \$32,410,000 (the “Tax-Exempt Notes”) and a portion of the Obligations in the approximate principal amount of \$26,910,000 (the “Taxable Notes”) are expected to be issued by the City to evidence funding loans (the “Funding Loans”) made by U.S. Bank National Association, a national

**EDA Resolution No. 2018-\_\_\_\_\_**

**Resolution approving the execution and delivery of documents in connection  
with a workforce housing development**

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Be it resolved by the Board of Commissioners (the “Board”) of the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) as follows:

Section 1. Background.

- 1.01. The Authority previously approved a Contract for Private Development (the “Development Agreement”), between the Authority, the City of Minnetonka (the “City”), and Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “Developer”), pursuant to which the Developer agreed to acquire certain property (the “Development Property”) and develop approximately 220 workforce housing apartment units, to be located at 10987 and 11015 Bren Road East in the City, with one hundred percent (100%) of the apartment units made affordable to individuals and their families at or below sixty percent (60%) of the area median income (the “Minimum Improvements”). In consideration for the construction of the Minimum Improvements, the Authority approved the issuance of a Tax Increment Revenue Note (the “TIF Note”) in the maximum principal amount of \$3,648,000, to reimburse the Developer for certain qualified costs related to the Minimum Improvements if certain conditions set forth in the Development Agreement are met.
- 1.02. Pursuant to the Development Agreement, the Developer has agreed to execute a Declaration of Restrictive Covenants to be recorded against the Development Property and setting forth the income and rent restrictions required by the Development Agreement and a Minimum Assessment Agreement to be recorded against the Development Property and setting forth the minimum assessed value for the Development Property.
- 1.03. The Developer has requested that the City issue several series of revenue obligations in the maximum aggregate principal amount of \$55,000,000 (the “Obligations”) and loan the proceeds thereof to the Developer to assist in financing the Minimum Improvements.
- 1.04. A portion of the Obligations in the approximate principal amount of \$26,930,000,000 (the “Tax-Exempt Notes”) and a portion of the Obligations in the approximate principal amount of \$19,042,000 (the “Taxable Notes”) are expected to be issued by the City to evidence

funding loans (the "Funding Loans") made by U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together the "Funding Lender"), pursuant to a Funding Loan Agreement (the "Funding Loan Agreement") between the City, U.S. Bank National Association, a national banking association, as fiscal agent (the "Fiscal Agent"), and U.S. Bank National Association, a national banking association, as administrative agent for the Funding Lender. As a condition of the Funding Loans, the Authority is required to subordinate its rights and interests in the Development Agreement, the Minimum Assessment Agreement, and the Declaration of Restrictive Covenants to the rights of the Fiscal Agent under the Financing Documents defined and described in the Funding Loan Agreement.

- 1.05. A portion of the Obligations in the approximate principal amount of \$3,570,000 (the "Subordinate Bonds") is expected to be issued by the City under the terms of a Subordinate Indenture of Trust between the City and U.S. Bank National Association, a national banking association (the "Bond Trustee"). The City will loan the proceeds of the Subordinate Bonds to the Developer pursuant to a Subordinate Loan Agreement (the "Subordinate Loan Agreement") between the City and the Developer. The Developer has proposed to pledge and assign its interest in the TIF Note to the Bond Trustee in order to secure its repayment obligations under the Subordinate Loan Agreement. The Subordinate Bonds are also secured by a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents by the Developer in favor of the City and a Subordinate Guaranty Agreement by Dominion Holdings II, LLC in favor of the Bond Trustee.
- 1.06. There has been presented before this Board a form of Assignment, Pledge, and Security Agreement (the "Security Agreement") proposed to be executed by the Developer and the Bond Trustee, pursuant to which the Developer will assign and pledge its interest in the TIF Note to the Bond Trustee and the Authority will consent to the assignment and pledge thereof.
- 1.07. There has also been presented before this Board a form of Subordination Agreement related to the Tax-Exempt Notes (the "Tax-Exempt Notes Subordination Agreement") proposed to be entered into between the Authority, the City, and the Fiscal Agent, pursuant to which the Authority will subordinate its rights and interests in the Development Agreement, the Minimum Assessment Agreement, and the Declaration of Restrictive Covenants to the rights of the Fiscal Agent under the Financing Documents.
- 1.08. There has also been presented before this Board a form of Subordination Agreement related to the Taxable Notes (the "Taxable Notes

Subordination Agreement”) proposed to be entered into between the Authority, the City, and the Fiscal Agent, pursuant to which the Authority will subordinate its rights and interests in the Development Agreement, the Minimum Assessment Agreement, and the Declaration of Restrictive Covenants to the rights of the Fiscal Agent under the Financing Documents.

- 1.09. There has also been presented before this Board a form of Construction Addendum to Contract for Private Development (Dominium Workforce Housing Development) (the “Construction Addendum”) proposed to be executed by the Authority, the City, and the Developer, which sets forth the rights and responsibilities of each party with respect to certain construction obligations under the Developer Agreement.

Section 2. The Agreements.

- 2.01. The Board approves the Security Agreement, the Tax-Exempt Notes Subordination Agreement, the Taxable Notes Subordination Agreement, and the Construction Addendum (collectively, the “Agreements”) in substantially the forms on file in City Hall. The President and Executive Director are hereby authorized and directed to execute and deliver the Agreements. All of the provisions of the Agreements, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Agreements shall be substantially in the forms on file with the Authority which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the President and the Executive Director, in their discretion, shall determine, and the execution thereof by the President and the Executive Director shall be conclusive evidence of such determination.

- 2.02. The President and the Executive Director are hereby authorized and directed to execute other agreements and certificates deemed necessary to carry out the intentions of the Agreements and this resolution.

Section 3. Approval of Financing.

- 3.01 Pursuant to the terms of Section 7.1 of the Development Agreement, the Authority hereby approves the issuance of the Obligations by the City for the benefit of the Developer for the purpose of financing the Minimum Improvements.

Section 4. Miscellaneous.

- 4.01. This resolution shall be effective from and after the date hereof.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on August 27, 2018.

\_\_\_\_\_  
Brad Wiersum, President

ATTEST:

\_\_\_\_\_  
David E. Maeda, Secretary

**Action on this resolution:**

Motion for adoption:  
Seconded by:  
Voted in favor of:  
Voted against:  
Abstained:  
Absent:  
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held on August 27, 2018.

\_\_\_\_\_  
Secretary



banking association, and BMO Harris Bank N.A., a national banking association (together the "Funding Lender"), pursuant to a Funding Loan Agreement (the "Funding Loan Agreement") between the City, U.S. Bank National Association, a national banking association, as fiscal agent (the "Fiscal Agent"), and U.S. Bank National Association, a national banking association, as administrative agent for the Funding Lender. As a condition of the Funding Loans, the Authority is required to subordinate its rights and interests in the Development Agreement, the Minimum Assessment Agreement, and the Declaration of Restrictive Covenants to the rights of the Fiscal Agent under the Financing Documents defined and described in the Funding Loan Agreement.

- 1.05. A portion of the Obligations in the approximate principal amount of \$4,090,000 (the "Subordinate Bonds") is expected to be issued by the City under the terms of a Subordinate Indenture of Trust between the City and U.S. Bank National Association, a national banking association (the "Bond Trustee"). The City will loan the proceeds of the Subordinate Bonds to the Developer pursuant to a Subordinate Loan Agreement (the "Subordinate Loan Agreement") between the City and the Developer. The Developer has proposed to pledge and assign its interest in the TIF Note to the Bond Trustee in order to secure its repayment obligations under the Subordinate Loan Agreement. The Subordinate Bonds are also secured by a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents by the Developer in favor of the City and a Subordinate Guaranty Agreement by Dominion Holdings II, LLC in favor of the Bond Trustee.
- 1.06. There has been presented before this Board a form of Assignment, Pledge, and Security Agreement (the "Security Agreement") proposed to be executed by the Developer and the Bond Trustee, pursuant to which the Developer will assign and pledge its interest in the TIF Note to the Bond Trustee and the Authority will consent to the assignment and pledge thereof.
- 1.07. There has also been presented before this Board a form of Subordination Agreement related to the Tax-Exempt Notes (the "Tax-Exempt Notes Subordination Agreement") proposed to be entered into between the Authority, the City, and the Fiscal Agent, pursuant to which the Authority will subordinate its rights and interests in the Development Agreement, the Minimum Assessment Agreement, and the Declaration of Restrictive Covenants to the rights of the Fiscal Agent under the Financing Documents.
- 1.08. There has also been presented before this Board a form of Subordination Agreement related to the Taxable Notes (the "Taxable Notes Subordination Agreement") proposed to be entered into between the

Authority, the City, and the Fiscal Agent, pursuant to which the Authority will subordinate its rights and interests in the Development Agreement, the Minimum Assessment Agreement, and the Declaration of Restrictive Covenants to the rights of the Fiscal Agent under the Financing Documents.

- 1.09. There has also been presented before this Board a form of Construction Addendum to Contract for Private Development (Dominium Senior Housing Development) (the "Construction Addendum") proposed to be executed by the Authority, the City, and the Developer, which sets forth the rights and responsibilities of each party with respect to certain construction obligations under the Developer Agreement.

Section 2. The Agreements.

- 2.01. The Board approves the Security Agreement, the Tax-Exempt Notes Subordination Agreement, the Taxable Notes Subordination Agreement, and the Construction Addendum (collectively, the "Agreements") in substantially the forms on file in City Hall. The President and Executive Director are hereby authorized and directed to execute and deliver the Agreements. All of the provisions of the Agreements, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Agreements shall be substantially in the forms on file with the Authority which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the President and the Executive Director, in their discretion, shall determine, and the execution thereof by the President and the Executive Director shall be conclusive evidence of such determination.

- 2.02. The President and the Executive Director are hereby authorized and directed to execute other agreements and certificates deemed necessary to carry out the intentions of the Agreements and this resolution.

Section 3. Approval of Financing.

- 3.01 Pursuant to the terms of Section 7.1 of the Development Agreement, the Authority hereby approves the issuance of the Obligations by the City for the benefit of the Developer for the purpose of financing the Minimum Improvements.

Section 4. Miscellaneous.

- 4.01. This resolution shall be effective from and after the date hereof.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on August 27, 2018.

\_\_\_\_\_  
Brad Wiersum, President

ATTEST:

\_\_\_\_\_  
David E. Maeda, Secretary

**Action on this resolution:**

Motion for adoption:  
Seconded by:  
Voted in favor of:  
Voted against:  
Abstained:  
Absent:  
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held on August 27, 2018.

\_\_\_\_\_  
Secretary