

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]

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated _____, 20__, by and among U.S. Bank National Association, a national banking association and U.S. Bank National Association, a national banking association and consents to the agreement of the parties set forth in this Agreement.

MINNETONKA LEASED HOUSING ASSOCIATES [II] [III], LLLP, a Minnesota limited liability limited partnership

By: **MINNETONKA LEASED HOUSING ASSOCIATES [II] [III], LLC**, a Minnesota limited liability company, its General Partner

By: _____
Name: Ryan Lunderby
Title: Authorized Representative

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Ryan Lunderby, the authorized representative of Minnetonka Leased Housing Associates [II] [III], LLC, a Minnesota limited liability company and the General Partner of Minnetonka Leased Housing Associates [II] [III], LLLP, a Minnesota limited liability limited partnership, on behalf of the limited liability company and the partnership.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

Lot 1, Block 2, Dominion 2nd Addition, Hennepin County, Minnesota.