

**City Council Agenda Item #13\_  
Meeting of April 16, 2018**

**Brief Description**                    Items related to the financing of Opus Station Apartments (Dominium Apartments) at 11001 Bren Road East

**Recommendation**                Adopt the resolutions:

- 1) Calling a public hearing on the issuance of senior multifamily housing revenue bonds proposed to be issued by the City of Minnetonka, and take other actions related to the issuance of the bonds;
- 2) Authorizing the issuance of a multifamily housing revenue note; adopting a housing program for workforce housing; and authorizing the execution and delivery of the multifamily housing revenue note and related documents;
- 3) Supporting a tax credit application for workforce housing within a multifamily housing project;
- 4) Supporting a tax credit application for senior housing within a multifamily housing project.

**Background**

Dominium is proposing to redevelop the existing commercial properties at 11001 Bren Road East. The concept plan contemplated redevelopment of the existing office building to construct a 6-story, 262-unit independent senior building and 220 units of affordable work-force rental housing within three 4 to 5-story buildings on the 9.8 acre site. The proposed 482 units would provide a housing density of 49 units per acre. (The original concept plan indicated 475 units.)

The concept plan included 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 (approximately \$54,240 for a family of four). The rents are structured to be capped at approximately 30% of the income level and are estimated to range from \$1,017 for a one-bedroom, \$1,221 for a two-bedroom, and \$1,410 for a three-bedroom unit (inclusive of utilities).

On Dec. 4, 2017, the city council discussed the initial concept plan and financing inquiry from Dominium. The discussion focused on the density, quality of construction, and height of the project, and the existing and proposed housing in Opus. The council expressed initial concern regarding the amount of affordable units in one project. However, the council members agreed that additional senior and workforce affordable housing would assist Minnetonka in meeting current and future housing demand. The council requested that staff research future trail, park planning, and retail opportunities in the area. Lastly, the council expressed the financial assistance request was reasonable for the size of the project and would further review the financial request as the project progresses.

On April 6, Dominium formally submitted its land use application which will be reviewed at the April 30, 2018 and June 4, 2018 city council meetings and May 10, 2018 planning commission meeting. Additionally, the developer previewed a request for Tax Increment Financing (TIF) with

the Economic Development Advisory Commission (EDAC) on Nov. 27, 2017 and city council on Dec. 4, 2017 and Dec. 18, 2017. Additional EDAC review will occur on April 19, 2018.

### **Financing Request**

On Dec. 18, 2018, the council provided preliminary approval for the issuance of tax-exempt multifamily housing revenue bonds up to \$120 Million to finance both the workforce units and the senior units. On Jan 9, 2018, the developer was awarded the bonding allocation from the state in the amount of \$65 Million (which provided half of the financing for the project as anticipated) to finance the workforce and senior housing. The developer now plans to return a portion of the workforce bond allocation and apply for a new bond allocation for the senior units in May 2018. The developer plans to construct the workforce and senior housing as two separate projects with separate ownership entities for each (Dominium plans to construct both projects at the same time). The attached letter from Ryan Lunderby, Dominion Apartments, describes the commitment in greater detail. In addition, representatives from Dominion will attend the meeting to answer any questions.

With the proposed change in financing, Dominion is committing to reserving approximately 262 units to tenants that are age 55 and greater (previous request committed to reserving units to age 50 and greater) in the senior component of the project. The developer is now requesting that the city call a public hearing on the proposed tax-exempt multifamily revenue bonds in the amount of \$36,500,000 for the senior housing. The developer is also requesting that the city issue a multifamily housing revenue note in the amount of \$30,500,000 to provide short-term financing for the workforce housing (previously approved in December 2018). Staff anticipates that bonds will be issued as permanent financing for the workforce project within one year (the bonds will refund the note and finance the remaining costs of the project). As part of this request, the city must also adopt a housing program for workforce housing which is a requirement of the Federal Housing Act.

In addition, the developer is requesting that the city council adopt resolutions supporting applications to Minnesota Housing Finance Agency (MHFA) for 4% Low Income Housing Tax Credits (LIHTC) in the amount of \$35,623,000 to assist with financing both the workforce and senior housing. The resolution includes language that the city will consider providing tax increment financing in the amount of up to \$4,161,000 for the senior housing and up to \$3,648,000 for the workforce housing, for a total of up to \$7,809,000. The attached memo from Ehlers further explains the analysis of the request, which is slightly higher than the previous request due to an increase of seven units and final 2018 property tax rates. The EDAC will review the TIF request and draft development agreement at its April 19 meeting and city council will review the financing request and development agreement at its June 4 meeting. The resolutions supporting the MHFA applications are required for the developer to obtain a 4% LIHTC commitment.

These actions do not obligate the city to provide zoning approvals or actual city financial assistance, but rather are being requested now to accommodate timing of other agencies. In addition, the bonds would not count against the City's bank-qualification (BQ) amount for 2018, because affordable housing bonds are not eligible to be designated BQ. The city's bond counsel, Julie Eddington, will attend the meeting to answer any questions about the bonding

request. Additionally, James Lehnhoff from Ehlers will be available to answer questions related to the TIF request.

**Project schedule:**

April 19, 2018 – EDAC review draft development agreement  
April 30, 2018 – Council introduction of planning items and referral to planning commissions  
May 10, 2018 – Planning commission public hearing and review  
June 4, 2018 – Final council review of planning items and financing request

**Recommendation**

Staff recommends the city council call the public hearing, adopt the resolutions, and authorize City officials to approve non-substantive changes to the related documents:

- 1) Calling a public hearing on the issuance of senior multifamily housing revenue bonds proposed to be issued by the City of Minnetonka; and
- 2) Authorizing the issuance of a multifamily housing revenue note; adopting a housing program for workforce housing; and authorizing the execution and delivery of the multifamily housing revenue note and related documents; and
- 3) Supporting a tax credit application for workforce housing within a multifamily housing project; and
- 4) Supporting a tax credit application for senior housing within a multifamily housing project.

Submitted through:

Geralyn Barone, City Manager  
Merrill King, Finance Director  
Julie Wischnack, AICP, Community Development Director

Originated by:

Alisha Gray, EDFP, Economic Development and Housing Manager

**Additional Information**

Location Map

Concept Plan

Memo from James Lehnhoff – Ehlers

Letter from Dominion

Memos from Kennedy and Graven

- Senior Housing Revenue Bonds
- Multifamily Housing Revenue Bonds
- MHFA Resolutions

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

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

[EDAC Meeting – November 27, 2017](#)



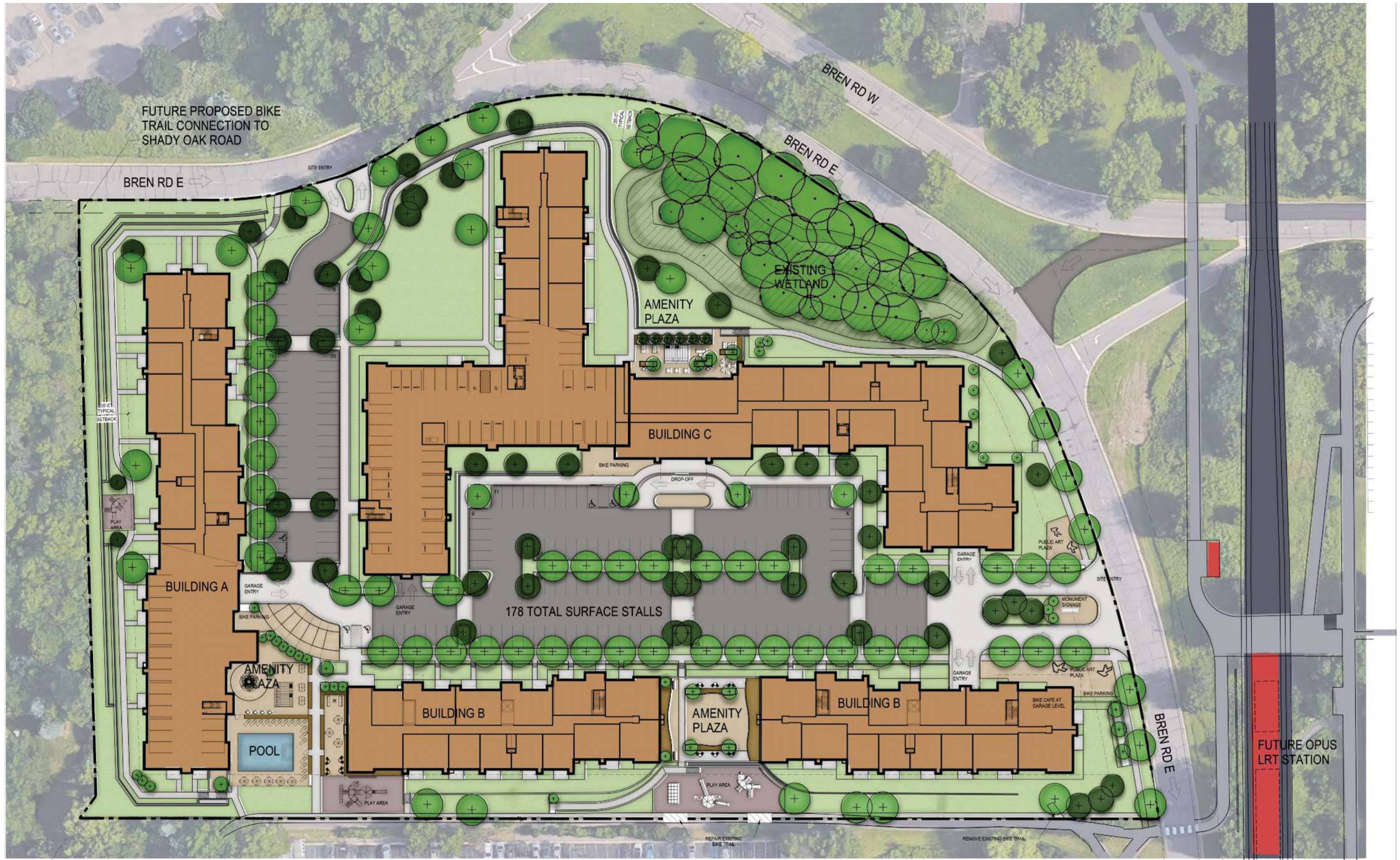
### Location Map

Dominium  
Address: 11001 Bren Rd E



This map is for illustrative purposes only.





**BREN ROAD DEVELOPMENT**  
 MINNETONKA, MN  
 CITY SUBMITTAL - APRIL 6, 2018

**PROPOSED SITE**





BLDG HEIGHT 153'-4"  
 FIFTH FLOOR 142'-8"  
 FOURTH FLOOR 132'-0"  
 THIRD FLOOR 121'-4"  
 SECOND FLOOR 110'-8"  
 FIRST FLOOR 100'-0"  
 GARAGE 89'-0"



BLDG HEIGHT 153'-4"  
 FIFTH FLOOR 142'-8"  
 FOURTH FLOOR 132'-0"  
 THIRD FLOOR 121'-4"  
 SECOND FLOOR 110'-8"  
 FIRST FLOOR 100'-0"  
 GARAGE 89'-0"

**BREN ROAD DEVELOPMENT**  
 MINNETONKA, MN  
 CITY SUBMITTAL - APRIL 6, 2018

**EXTERIOR RENDERING & ELEVATIONS - URBAN VILLAGE**







BLDG HEIGHT	167'-8"
SIXTH FLOOR	157'-0"
FIFTH FLOOR	146'-4"
FOURTH FLOOR	135'-8"
THIRD FLOOR	125'-0"
SECOND FLOOR	112'-6"
FIRST FLOOR	100'-0"
GARAGE	89'-0"

**BREN ROAD DEVELOPMENT**  
 MINNETONKA, MN  
 CITY SUBMITTAL - APRIL 6, 2018

**EXTERIOR RENDERING & ELEVATIONS - TRANSIT**





BLDG HEIGHT 142'-8"  
 FOURTH FLOOR 132'-0"  
 THIRD FLOOR 121'-4"  
 SECOND FLOOR 110'-8"  
 FIRST FLOOR 100'-0"  
 GARAGE 89'-0"



BLDG HEIGHT 153'-4"  
 FIFTH FLOOR 142'-8"  
 FOURTH FLOOR 132'-0"  
 THIRD FLOOR 121'-4"  
 SECOND FLOOR 110'-8"  
 FIRST FLOOR 100'-0"  
 GARAGE 89'-0"

**BREN ROAD DEVELOPMENT**  
 MINNETONKA, MN  
 CITY SUBMITTAL - APRIL 6, 2018

*EXTERIOR RENDERING & ELEVATIONS - NATURE/PARKS*





BREN ROAD DEVELOPMENT  
MINNETONKA, MN  
CITY SUBMITTAL - APRIL 6, 2018

*EXTERIOR RENDERING*

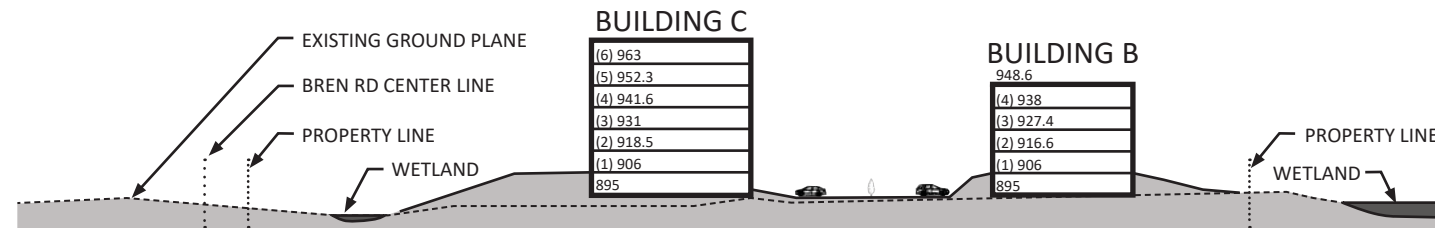




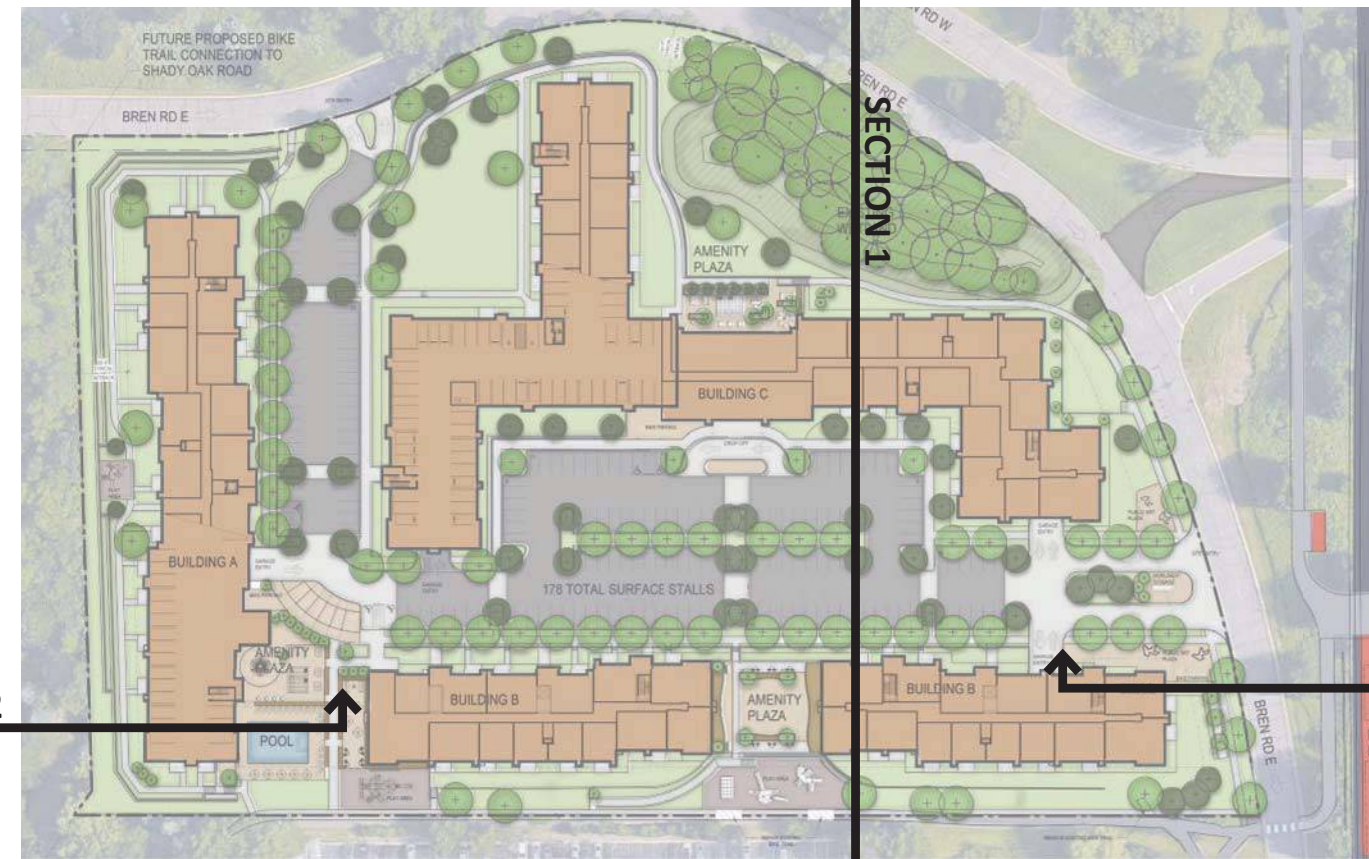
BREN ROAD DEVELOPMENT  
MINNETONKA, MN  
CITY SUBMITTAL - APRIL 6, 2018

*EXTERIOR RENDERING*

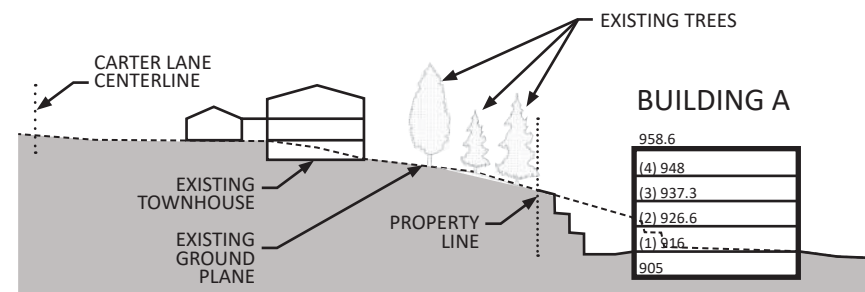




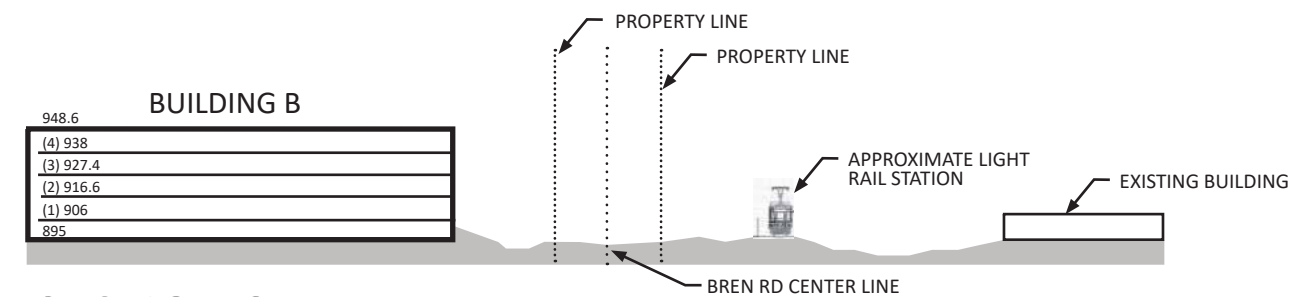
**SECTION 1**



**SITE PLAN**

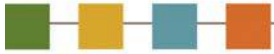


**SECTION 2**



**SECTION 3**

**SITE SECTIONS**



# 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:

<b>Revised Sources and Uses</b>			
<b>Sources</b>	<b>Amount</b>	<b>Per Unit</b>	<b>% of Cost</b>
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>
<b>Uses</b>	<b>Amount</b>	<b>Per Unit</b>	<b>% of Cost</b>
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.





*Via E-mail*

April 10, 2018

Ms. Julie Wischnack  
Economic Development Director  
City of Minnetonka  
14600 Minnetonka Blvd  
Minnetonka, MN 55345

Re: Dominion Minnetonka Multifamily Development  
11001 Bren Road East, Minnetonka, MN

Dear Ms. Wischnack,

The purpose of this letter is to inform you and city staff of a change in the plan of finance for the Bren Road redevelopment project that we have been working on together. In our initial concept reviews with the City of Minnetonka, Dominion had proposed a multifamily project that would serve both senior households and family/workforce households. To accomplish our goals for this project of providing a mix of housing for these two tenant populations, we need to split these into two separate projects.

We have been reviewing with our counsel ways to provide these two types of housing under one plan of finance and one ownership structure. There would have been benefits and efficiencies in financing this as one project, which is why we have been spending time exploring it. However, due to concerns with fair housing rules and further reviews of Minnesota bond statutes related to having tax exempt bonds finance age-restricted projects for seniors we felt it necessary to separate the two projects. The result of splitting the project into two projects will eliminate all fair housing concerns that we had previously and will allow us to restrict the senior building to households aged 55 or older, providing a better long term ownership and management plan for this site.

From the City's perspective and with guidance from city staff, Dominion expects to move through the remaining city processes as we have been. This includes providing one planning commission submission, scheduling remaining approvals for both projects at the same city council meetings, completing the financing closings for the two projects on the same date, and constructing both projects at the same time.

The workforce project and the senior project will be owned by separate Dominion-affiliated entities and Dominion Management Services, LLC will be managing both projects. Please let me know if you have any further questions about this change to the project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan Lunderby".

Ryan Lunderby  
Vice President



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**JULIE A. EDDINGTON**  
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April 9, 2018

Alisha Gray  
Economic Development and Housing Manager  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502

Re: Resolution calling a public hearing on the issuance of senior multifamily housing revenue bonds proposed to be issued by the City of Minnetonka

Dear Alisha,

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 or about 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 one or more series, as taxable or tax-exempt obligations (the "Bonds"), in the estimated aggregate principal amount not to exceed \$36,500,000. Enclosed is a resolution to be considered by the City Council on April 16, 2018, calling a public hearing on the issuance of the Bonds and taking other actions related to the issuance of the Bonds.

The Bonds, if issued, will be considered "housing bonds" issued pursuant to Minnesota Statutes, Chapter 462C, as amended (the "Act"). Section 146 of the Internal Revenue Code of 1986, as amended (the "Code"), requires that this type of housing bond receive an allocation of bonding authority of the State of Minnesota. An application for this allocation must be made pursuant to Minnesota Statutes, Chapter 474A, as amended (the "Allocation Act"). In addition, the City is required to prepare a housing program providing the information required by Section 462C.03, subdivision 1a of the Act (the "Housing Program"). The enclosed resolution authorizes the City to take actions to prepare the Housing Program and an application for allocation in accordance with Section 146 of the Code and the Allocation Act. In addition, the City Council is required to conduct a public hearing in accordance with Section 147(f) of the Code and Section 462C.04, subdivision 2 of the Act.

If the City Council adopts the enclosed resolution, the City Council will be asked to conduct the public hearing required under the Act and the Code on May 14, 2018, or another date to be determined by the City. Following the public hearing, the City Council will be asked to consider a resolution approving the

Housing Program, providing final approval to the issuance of the Bonds, and authorizing the execution of documents in connection therewith.

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 April 16, 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

**Resolution No. 2018-\_\_\_\_\_**

**Resolution calling a public hearing regarding a senior housing development and granting preliminary approval for the issuance of revenue bonds to finance the costs thereof**

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Be it resolved by the City Council (the "Council") of the City of Minnetonka, Minnesota (the "City") as follows:

Section 1. Recitals.

- 1.01. The City is a home rule city duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota.
- 1.02. Pursuant to Minnesota Statutes, Chapter 462C, as amended (the "Act"), the City is authorized to issue revenue bonds to provide funds to finance multifamily rental housing developments located within the City.
- 1.03. Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, or any of its affiliates or partners (collectively, the "Borrower"), has proposed that the City issue its revenue bonds in the approximate aggregate principal amount of \$36,500,000, in one or more series, as taxable or tax-exempt obligations (the "Bonds"), for the benefit of the Borrower for the purposes of (i) financing all or a portion of the acquisition, construction, and equipping of approximately 262 units of senior housing to be located on a portion of the real property currently located at or about 11001 Bren Road East in the City (the "Project"); (ii) funding of one or more reserve funds to secure the timely payment of the Bonds, if necessary; (iii) paying interest on the Bonds during the construction of the Project, if necessary; and (iv) paying the costs of issuing the Bonds.
- 1.04. As a condition to the issuance of such revenue bonds, the City must adopt a housing program providing the information required by Section 462C.03, subdivision 1a of the Act (the "Housing Program"). The Council must also grant preliminary approval to the issuance of revenue bonds to finance the multifamily rental housing development referred to in the Housing Program and authorize the submission of an application to the office of Minnesota Management & Budget for an allocation of bonding authority with respect to the Bonds to finance the Project.
- 1.05. Under Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), prior to the issuance of the Bonds, the Council must conduct a public hearing after one publication of notice in a newspaper circulating generally in the City at least fourteen (14) days before the hearing. Under

Section 462C.04, subdivision 2 of the Act, a public hearing must be held on the Housing Program after one publication of notice in a newspaper circulating generally in the City at least fifteen (15) days before the hearing.

- 1.06. Under Section 146 of the Code, the Bonds must receive an allocation of the bonding authority of the State of Minnesota. An application for such an allocation must be made pursuant to the requirements of Minnesota Statutes, Chapter 474A, as amended (the "Allocation Act").

Section 2. Preliminary Findings.

- 2.01. Based on representations made by the Borrower to the City to date, the Council hereby makes the following preliminary findings, determinations, and declarations:

(a) The Project consists of a multifamily rental housing development designed and intended to be used for rental occupancy by seniors.

(b) The proceeds of the Bonds will be loaned to the Borrower and the proceeds of the loan will be applied to the following purposes: (i) the acquisition, construction, and equipping of the Project; (ii) the funding of one or more reserve funds to secure the timely payment of the Bonds, if necessary; (iii) the payment of interest on the Bonds during the construction of the Project, if necessary; and (iv) the payment of the costs of issuing the Bonds. The City will enter into a loan agreement (or other revenue agreement) with the Borrower requiring loan repayments from the Borrower in amounts sufficient to repay the loan when due and requiring the Borrower to pay all costs of maintaining and insuring the Project, including taxes thereon.

(c) In preliminarily authorizing the issuance of the Bonds and the financing of the acquisition, construction, and equipping of the Project and related costs, the City's purpose is to further the policies of the Act.

(d) The Bonds will be special, limited obligations of the City payable solely from the revenues pledged to the payment thereof, and will not be a general or moral obligation of the City and will not be secured by or payable from revenues derived from any exercise of the taxing powers of the City.

Section 3. Public Hearing.

- 3.01. The Council shall meet on May 14, 2018, or another date to be determined by City staff, to conduct a public hearing on the Housing

Program, the Project, and the issuance of the Bonds by the City; notice of such hearing (the "Public Notice") will be published as required by Section 462C.04, subdivision 2 of the Act and Section 147(f) of the Code. Once the hearing date has been determined, the City Clerk of the City is hereby authorized and directed to publish the Public Notice, in substantially the form attached hereto as EXHIBIT A, in the *Lakeshore Weekly News*, the official newspaper of and a newspaper of general circulation in the City, at least fifteen (15) days before the meeting of the Council at which the public hearing will take place. At the public hearing reasonable opportunity will be provided for interested individuals to express their views, both orally and in writing, on the Project, the Housing Program, and the proposed issuance of the Bonds.

Section 4. Housing Program.

4.01. Bond Counsel, as described below, shall prepare and submit to the City a draft Housing Program to authorize the issuance by the City of up to \$36,500,000 in revenue bonds in one or more series to finance, among other things, the acquisition, construction, and equipping of the Project by the Borrower. The City is authorized and directed to submit the Housing Program to Metropolitan Council for review and comment pursuant to Section 462C.04, subdivision 2 of the Act.

Section 5. Application for Allocation.

5.01. Under Section 146 of the Code, the Bonds must receive an allocation of the bonding authority of the State of Minnesota. The Council hereby authorizes the submission of an application for allocation of bonding authority pursuant to Section 146 of the Code and the Allocation Act in accordance with the requirements of the Allocation Act. The Mayor, the City Manager, the Finance Director of the City, and Kennedy & Graven, Chartered, acting as Bond Counsel with respect to the Project and the Bonds, shall take all actions, in cooperation with the Borrower, as are necessary to submit an application for an allocation of bonding authority to the office of Minnesota Management & Budget.

Section 6. Preliminary Approval.

6.01. The Council hereby provides preliminary approval to the issuance of the Bonds in the approximate principal amount of \$36,500,000 to finance all or a portion of the costs of the Project pursuant to the Housing Program of the City, subject to: (i) a public hearing as required by the Act and Section 147(f) of the Code; (ii) receipt of allocation of bonding authority from the office of Minnesota Management & Budget; (iii) final approval following the preparation of bond documents; and (iv) final determination

by the Council that the financing of the Project and the issuance of the Bonds are in the best interests of the City.

Section 7. Reimbursement of Costs under the Code.

7.01. The United States Department of the Treasury has promulgated regulations governing the use of the proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City or the Borrower for project expenditures paid prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than sixty (60) days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds occur within eighteen (18) months after the later of: (i) the date the expenditure is paid; or (ii) the date the project is placed in service or abandoned, but in no event more than three (3) years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the Bonds.

7.02. To the extent any portion of the proceeds of the Bonds will be applied to expenditures with respect to the Project, the City reasonably expects to reimburse the Borrower for the expenditures made for costs of the Project from the proceeds of the Bonds after the date of payment of all or a portion of such expenditures. All reimbursed expenditures shall be capital expenditures, costs of issuance of the Bonds, or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations and also qualifying expenditures under the Act.

Based on representations by the Borrower, other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under prior regulations pursuant to the transitional provision contained in Section 1.150-2(j)(2)(i)(B) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimis" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures with respect to the Project to be reimbursed with the proceeds of the Bonds have been made by the Borrower more than sixty (60) days before the date of adoption of this resolution of the City.

7.03. Based on representations by the Borrower, as of the date hereof, there are no funds of the Borrower reserved, allocated on a long term-basis or otherwise set aside (or reasonably expected to be reserved, allocated on

a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Project to be financed from proceeds of the Bonds, other than pursuant to the issuance of the Bonds. This resolution, therefore, is determined to be consistent with the budgetary and financial circumstances of the Borrower as they exist or are reasonably foreseeable on the date hereof.

Section 8. Costs.

8.01. The Borrower will pay the administrative fees of the City and pay, or, upon demand, reimburse the City for payment of, any and all costs incurred by the City in connection with the Project and the issuance of the Bonds, whether or not the Bonds are issued.

Section 9. Commitment Conditional.

9.01. The adoption of this resolution does not constitute a guarantee or a firm commitment that the City will issue the Bonds as requested by the Borrower. If, as a result of information made available to or obtained by the City during its review of the Project, it appears that the Project or the issuance of Bonds to finance the costs thereof is not in the public interest or is inconsistent with the purposes of the Act, the City reserves the right to decline to give final approval to the issuance of the Bonds. The City also retains the right, in its sole discretion, to withdraw from participation and accordingly not issue the Bonds should the Council, at any time prior to the issuance thereof, determine that it is in the best interests of the City not to issue the Bonds or should the parties to the transaction be unable to reach agreement as to the terms and conditions of any of the documents for the transaction.

9.02. The adoption of this resolution does not constitute planning approval for the proposed Project. The Borrower must submit all planning application to the City through the typical planning process and obtain all required planning approvals from the City to commence construction of the Project.

Section 10. Effective Date.

10.01. This resolution shall be in full force and effect from and after its passage.



Adopted by the City Council of the City of Minnetonka, Minnesota this 16<sup>th</sup> day of April, 2018.

\_\_\_\_\_  
Brad Wiersum, Mayor

ATTEST:

\_\_\_\_\_  
David E. Maeda, City Clerk

**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 City Council of the City of Minnetonka, Minnesota, at a meeting held on April 16, 2018.

\_\_\_\_\_  
David E. Maeda, City Clerk

**EXHIBIT A****NOTICE OF PUBLIC HEARING****CITY OF MINNETONKA  
COUNTY OF HENNEPIN  
STATE OF MINNESOTA****NOTICE OF A PUBLIC HEARING TO BE CONDUCTED BY THE CITY OF MINNETONKA, MINNESOTA TO CONSIDER THE ISSUANCE OF REVENUE BONDS TO FINANCE THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF A MULTIFAMILY SENIOR RENTAL HOUSING DEVELOPMENT**

NOTICE IS HEREBY GIVEN that the City Council of the City of Minnetonka, Hennepin County, State of Minnesota (the "City"), will hold a public hearing on Monday, May 14, 2018, at or after 6:30 P.M. in the City Council Chambers in City Hall, 14600 Minnetonka Boulevard in the City, to consider a proposal that the City approve and authorize the issuance of its revenue bonds (the "Bonds"), in one or more series, as taxable or tax-exempt obligations, pursuant to Minnesota Statutes, Chapter 462C, as amended (the "Act"), for the purposes of (i) financing all or a portion of the acquisition, construction, and equipping of approximately 262 units of senior housing to be located on a portion of the real property currently located at or about 11001 Bren Road East in the City (the "Project"); (ii) funding of one or more reserve funds to secure the timely payment of the Bonds, if necessary; (iii) paying interest on the Bonds during the construction of the Project, if necessary; and (iv) paying the costs of issuance of the Bonds. Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, or any of its affiliates or partners (collectively, the "Borrower"), will own and operate the Project. The estimated aggregate principal amount of the proposed Bonds is \$36,500,000.

Following the public hearing, the City Council will consider a resolution approving a housing program prepared in accordance with the requirements of the Act and granting approval to the issuance of the Bonds.

The Bonds will be special, limited obligations of the City, and the Bonds and interest thereon will be payable solely from the revenues and assets pledged to the payment thereof. No holder of any Bond will have the right to compel any exercise of the taxing power of the City to pay the Bonds or the interest thereon, nor to enforce payment against any property of the City except money payable by the Borrower to the City and pledged to the payment of the Bonds. Before issuing the Bonds, the City will enter into an agreement with the Borrower, whereby the Borrower will be obligated to

make payments at least sufficient at all times to pay the principal of and interest on the Bonds when due.

At the time and place fixed for the public hearing, the City Council will give all persons who appear at the hearing an opportunity to express their views with respect to the proposal. In addition, interested persons may direct any questions or file written comments respecting the proposal with the City Clerk, at or prior to said public hearing.

Dated: [Date of Publication]

BY ORDER OF THE CITY COUNCIL  
OF THE CITY OF MINNETONKA,  
MINNESOTA

/s/ David E. Maeda  
City Clerk  
City of Minnetonka, Minnesota



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Affirmative Action, Equal Opportunity Employer

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**JULIE A. EDDINGTON**  
Attorney at Law  
Direct Dial (612) 337-9213  
Email: jeddington@kennedy-graven.com

April 9, 2018

Alisha Gray  
Economic Development and Housing Manager  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502

Re: Resolution approving the issuance of multifamily housing revenue bonds by the City of Minnetonka

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 finance the acquisition, construction, and equipping of approximately 220 units of workforce housing apartment units to be located at or about 11001 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 a multifamily housing revenue note, in one or more series, as taxable or tax-exempt obligations (the "Note"), in the estimated aggregate principal amount not to exceed \$30,500,000. The Note is expected to be issued as short-term financing for the Workforce Housing Project until the Borrower is able to obtain permanent financing from a mortgage loan, tax credit investor contributions, or other security.

The Note, if issued, will be considered a "housing bond" issued pursuant to Minnesota Statutes, Chapter 462C, as amended (the "Act"). Section 146 of the Internal Revenue Code of 1986, as amended (the "Code"), requires that this type of housing bond receive an allocation of bonding authority of the State of Minnesota. An application for this allocation was made pursuant to Minnesota Statutes, Chapter 474A, as amended, and the State of Minnesota has allocated bonding authority to the Note. In addition, the City is required to prepare a housing program providing the information required by Section 462C.03, subdivision 1a of the Act (the "Housing Program") and conduct a public hearing as required under the Section 147(f) of the Code and Section 462C.04, subdivision 2 of the Act. The public hearing will be held on April 16, 2018. Following the public hearing, the City Council will be asked to consider the enclosed resolution, which provides final approval to the issuance of the Note, the Housing Program, and the execution of loan documents and related documents.

If the City agrees to issue the Note, the Note will be a conduit revenue bond. The Borrower is required to pay all debt service on the proposed Note and any other fees or expenses of the City incurred in relation to

the Note, including but not limited to legal expenditures, publication costs, the City's administrative fee, costs of future modifications, and costs related to any audits by the State of Minnesota or the Internal Revenue Service.

The Note will be secured solely by the revenues derived from one or more loan agreements to be executed by the Borrower and from other security provided by the Borrower and its affiliates. The Note will not constitute a general or moral obligation of the City and 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 Note will not be subject to any debt limitation imposed on the City, and the issuance of the Note 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 to be financed with the proceeds of the Note.

The Note, if issued, will be a "private activity bond" within the meaning of Section 141(a) of the Code but will be an "exempt facility bond" 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.

At its City Council meeting on April 16, 2018, the City Council is asked to hold a public hearing and consider the enclosed resolution, which provides final approval for the issuance of the Note and the documents related to the Note. Our firm has drafted the documents related to the Note. It is our opinion that the City may approve the issuance of the Note and the related documents and that the documents are acceptable for the City to execute.

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 April 16, 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

**Resolution No. 2018-\_\_\_\_\_**

**Resolution authorizing the issuance of a multifamily housing revenue note; adopting a housing program for workforce housing; and authorizing the execution and delivery of the multifamily housing revenue note and related documents**

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Be it resolved by the City Council (the "Council") of the City of Minnetonka, Minnesota (the "City") as follows:

Section 1. Recitals.

- 1.01. The City is a home rule city duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota.
- 1.02. Pursuant to Minnesota Statutes, Chapter 462C, as amended (the "Act"), the City is authorized to carry out the public purposes described in the Act by providing for the issuance of revenue obligations to provide funds to finance multifamily rental housing developments located within the City.
- 1.03. Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, or any of its affiliates or partners (collectively, the "Borrower"), has proposed that the City issue its multifamily housing revenue obligations in the maximum aggregate principal amount of \$30,500,000, in one or more series, as taxable or tax-exempt obligations, for the benefit of the Borrower for the purposes of (i) financing all or a portion of 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; (ii) funding of one or more reserve funds to secure the timely payment of the revenue obligations, if necessary; (iii) paying interest on the revenue obligations during the construction of the Project, if necessary; and (iv) paying the costs of issuing the revenue obligations, if necessary (the "Project"). The Project will be owned and operated by the Borrower.
- 1.04. On December 18, 2017, the Council adopted a resolution authorizing the submission of an application to the office of Minnesota Management & Budget for an allocation of bonding authority with respect to the revenue bonds or other obligations to finance the Project in accordance with the requirements of Minnesota Statutes, Chapter 474A, as amended (the "Allocation Act"), and providing preliminary approval for the sale and issuance of the revenue bonds or other obligations for the Project.
- 1.05. On January 9, 2018, the City received Certificate of Allocation No. 324 from the Minnesota Department of Management & Budget allocating

bonding authority to the City in the amount of \$65,000,000, pursuant to the Allocation Act. In accordance with the Allocation Act, the revenue bonds or other obligations must be issued within one hundred twenty (120) days of the allocation award date (the "Allocation Expiration Date").

- 1.06. In order to provide short-term financing for the Project, the Borrower has requested that the City issue its Multifamily Housing Revenue Note (Opus Station Project), Series 2018 (the "Note"), in one or more series, in the maximum principal amount of \$30,500,000. The Borrower has further proposed that Bridgewater Bank, a Minnesota banking corporation (the "Purchaser"), purchase the Note.
- 1.07. The Note is expected to be issued on a short-term basis. Bonds or other revenue obligations (the "Bonds") are expected to be issued at a later date and secured by a mortgage loan, tax credit investor contributions, and/or other security. The financing approvals necessary to issue the Bonds will not be complete prior to the Allocation Expiration Date. The Bonds are proposed to be issued as permanent financing for the Project within one year of the issuance of the Note, at which time proceeds of the Bonds will refund the Note and finance the remaining costs of the Project.
- 1.08. With respect to the Note, there have been presented before the Council (i) a form of Loan Agreement (the "Loan Agreement") proposed to be entered into between the City and the Borrower, pursuant to which the City will loan the proceeds of the Note to the Borrower; (ii) a form of Pledge Agreement (the "Pledge Agreement") proposed to be entered into between the City and the Purchaser, pursuant to which the City will assign the repayments to be made under the Loan Agreement to the Purchaser; (iii) a form of the Note; (iv) a form of Regulatory Agreement (the "Regulatory Agreement") proposed to be entered into between the City, the Borrower, and the Purchaser to ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Code, and to ensure compliance with certain restrictions imposed by the City; and (v) a form of Disbursing Agreement (the "Disbursing Agreement") proposed to be entered into between the Borrower and the Purchaser.
- 1.09. In accordance with the Act, the City has prepared a housing program (the "Housing Program") to authorize the issuance by the City of the Bonds to finance the acquisition, construction, and equipping by the Borrower of the Project. The Housing Program was prepared and submitted to Metropolitan Council for its review and comment.
- 1.10. A notice of public hearing (the "Public Notice") was published in the *Lakeshore Weekly News*, the official newspaper of and a newspaper of general circulation in the City, with respect to the required public hearing

under Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and Section 462C.04, subdivision 2 of the Act.

1.11. The Public Notice was published at least fifteen (15) days before the regularly scheduled meeting of the Council of the City, and on the date hereof, the Council conducted a public hearing on the Housing Program and the issuance of the Note at which a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing.

Section 2. Housing Program. The Housing Program, in the form substantially on file with the City, is hereby approved.

Section 3. The Note.

3.01. The Borrower has requested that the City issue, sell, and deliver the Note, in one or more series, in the maximum principal amount of \$30,500,000, to the Purchaser.

3.02. The proceeds derived from the sale of the Note will be loaned by the City to the Borrower pursuant to the terms of the Loan Agreement.

3.03. The Note and the interest on the Note (i) shall be payable solely from the revenues pledged therefor under the Loan Agreement and additional sources of revenue provided by or on behalf of the Borrower; (ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City's interest in the Loan Agreement; and (v) shall not constitute a general or moral obligation of the City.

3.04. The loan repayments to be made by the Borrower under the Loan Agreement will be fixed so as to produce revenue sufficient to pay the principal of, premium, if any, and interest on the Note when due. Such loan repayments will be assigned to the Purchaser under the terms of the Pledge Agreement.

3.05. The City acknowledges, finds, determines, and declares that the issuance of the Note is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Note, and the other actions of the City under the Loan Agreement, the Pledge Agreement, and this resolution constitute a public purpose and are in the interests of the City. In authorizing the issuance of the Note for the financing of the Project and



the related costs, the City's purpose is and the effect thereof will be to promote the public welfare of the City and its residents by providing multifamily housing developments for workforce and low or moderate income residents of the City and otherwise furthering the purposes and policies of the Act.

- 3.06. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Note in the maximum aggregate principal of \$30,500,000. The Note shall bear interest at the rate or rates, shall be designated, shall be numbered, shall be dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the Note, substantially in the form now on file with the City, with the amendments referenced herein. The City hereby authorizes all or a portion of the Note to be issued as a "tax-exempt bond," the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes.

The Mayor and the City Manager are hereby authorized and directed to execute the Note in accordance with the terms hereof. All of the provisions of the Note, when executed 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 Note shall be substantially in the form now on file with the City, which form is hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Note, the stated maturity of the Note, the interest rate or rates on the Note and the terms of redemption of the Note) as the Mayor and the City Manager, in their discretion, shall determine. The execution of the Note with the manual or facsimile signatures of the Mayor and the City Manager and the delivery of the Note by the City shall be conclusive evidence of such determination.

- 3.07. The Note shall be a special, limited revenue obligation of the City payable solely from the revenues provided by the Borrower pursuant to the Loan Agreement.

- 3.08. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Loan Agreement, the Pledge Agreement, and the Regulatory Agreement. All of the provisions of the Loan Agreement, the Pledge Agreement, and the Regulatory Agreement, 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 Loan Agreement, the Pledge Agreement, and the Regulatory Agreement shall be substantially in the forms on file with the City which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, and as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determinations.

3.09. The Mayor, the City Manager, and the Finance Director of the City are hereby authorized to execute and deliver, on behalf of the City, such other documents and certificates as are necessary or appropriate in connection with the issuance, sale, and delivery of the Note, including various certificates of the City, an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038 (Rev. April 2011), an endorsement of the City to the tax certificate of the Borrower, and similar documents, and all other documents and certificates as shall be necessary and appropriate in connection with the issuance, sale, and delivery of the Note. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel ("Bond Counsel"), to prepare, execute, and deliver its approving legal opinion with respect to the Note.

3.10. The Council authorizes the execution and delivery of the Disbursing Agreement by the Borrower and the Purchaser and authorizes the disbursement of proceeds of the Note pursuant thereto or any other agreement providing for the disbursement of proceeds of the Note. The Purchaser is authorized to accept the Pledge Agreement and any mortgage lien, security interest, guaranty, or other security in order to secure payment of the Note and is hereby authorized to take all actions necessary or appropriate under the terms of the Pledge Agreement to ensure timely payment of the principal of, premium, if any, and interest on the Note.

Section 4. Additional Findings and Certifications.

4.01. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the City or the Council by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the City or by such members of the Council, or such officers, board, body or agency thereof as may be required or authorized by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member of the

Council, or any officer, agent or employee of the City in that person's individual capacity, and neither the Council nor any officer or employee executing the Note shall be personally liable on the Note or be subject to any personal liability or accountability by reason of the issuance thereof.

No provision, covenant or agreement contained in the aforementioned documents, the Note, or in any other document relating to the Note, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to a general or moral obligation of the City or any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Loan Agreement which are to be applied to the payment of the Note, as provided therein.

- 4.02. Except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied is intended or shall be construed to confer upon any person or firm or corporation, other than the City, any holder of the Note issued under the provisions of this resolution, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City, and any holder from time to time of the Note issued under the provisions of this resolution.
- 4.03. In case any one or more of the provisions of this resolution, other than the provisions contained in Sections 3.03 and 3.07 hereof, or of the aforementioned documents, or of the Note issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Note, but this resolution, the aforementioned documents, and the Note shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.
- 4.04. The Note, when executed and delivered, shall contain a recital that it is issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Note and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Note, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

- 4.05. The officers of the City, Bond Counsel, other attorneys, engineers, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Note, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Note, the aforementioned documents, and this resolution. If for any reason the Mayor or the City Manager is unable to execute and deliver the documents referred to in this resolution, such documents may be executed by any member of the Council or any officer of the City delegated the duties of the Mayor or the City Manager with the same force and effect as if such documents were executed and delivered by the Mayor or the City Manager.
- 4.06. The Borrower shall pay the administrative fee of the City on the date of issuance of the Note in the amount of one-eighth of one percent (0.125%) of the outstanding principal amount of the Note. The Borrower will also pay, or, upon demand, reimburse the City for payment of, any and all costs incurred by the City in connection with the Project and the issuance of the Note, whether or not the Note is issued, including any costs for attorneys' fees.
- Section 5. Effective Date. This resolution shall be in full force and effect from and after its approval. The approvals contained in the resolution are effective for one year after the date hereof.

Adopted by the City Council of the City of Minnetonka, Minnesota this 16<sup>th</sup> day of April, 2018.

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Brad Wiersum, Mayor

ATTEST:

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David E. Maeda, City Clerk

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 City Council of the City of Minnetonka, Minnesota, at a meeting held on April 16, 2018.

---

David E. Maeda, City Clerk

## 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 220 units of workforce 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 or tax-exempt obligations, in the approximate aggregate principal amount not to exceed \$30,500,000 (the “Obligations”), the proceeds of which will be loaned to Minnetonka Leased Housing Associates II, 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 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) At least forty percent (40%) of the Housing Units will be held for occupancy by families or individuals 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.

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 or tax-exempt obligations, in the approximate aggregate principal amount not to exceed \$30,500,000. 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. 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 spring 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 (collectively, 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.

**First Draft  
April 6, 2018**

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**LOAN AGREEMENT**

**between**

**CITY OF MINNETONKA, MINNESOTA,  
as Issuer**

**and**

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

**Dated as of May 1, 2018**

**Relating to:**

**\$30,500,000  
City of Minnetonka, Minnesota  
Multifamily Housing Revenue Note  
(Opus Station Project)  
Series 2018**

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Except for certain reserved rights, the interest of the City of Minnetonka, Minnesota (the “Issuer”) in this Loan Agreement has been pledged and assigned to Bridgewater Bank, a Minnesota banking corporation (the “Purchaser”), pursuant to a Pledge Agreement, dated as of May 1, 2018, between the Issuer and the Purchaser.

This instrument drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions .....2

Section 1.2 Rules of Interpretation .....4

ARTICLE 2 REPRESENTATIONS

Section 2.1 Representations by the Issuer .....6

Section 2.2 Representations by the Borrower.....6

ARTICLE 3 THE LOAN

Section 3.1 Amount and Source of Loan .....9

Section 3.2 Documents Required Prior to Disbursement of the Loan .....9

Section 3.3 Repayment .....9

Section 3.4 Borrower’s Obligations Unconditional.....10

Section 3.5 Disbursement of the Loan.....10

Section 3.6 Administrative Fee and Expenses .....10

Section 3.7 Loan Origination Fee .....10

ARTICLE 4 BORROWER’S COVENANTS

Section 4.1 Indemnity .....11

Section 4.2 Reports to Governmental Agencies. ....12

Section 4.3 Security for the Loan. ....12

Section 4.4 Preservation of Tax Exemption .....12

Section 4.5 Lease or Sale of Facilities .....15

Section 4.6 Facility Operation and Maintenance Expenses.....15

Section 4.7 Notification of Changes .....15

Section 4.8 Financial Statements and Rent Roll.....16

Section 4.9 Reserve Fund .....16

Section 4.10 IRS Audit Expenses .....16

Section 4.11 Compliance with Issuer’s Private Activity Bond Policy .....16

ARTICLE 5 PREPAYMENT OF LOAN

Section 5.1 Prepayment at Option of Borrower.....17

Section 5.2 Other Prepayment Provisions. ....17

Section 5.3 Partial Prepayment.....17

ARTICLE 6 EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default .....18

Section 6.2 Remedies.....19

Section 6.3 Disposition of Funds.....19

Section 6.4 Manner of Exercise.....19

Section 6.5 Effect of Waiver.....20

Section 6.6 Attorneys’ Fees and Expenses .....20

ARTICLE 7 GENERAL

Section 7.1 Notices .....21

Section 7.2 Binding Effect.....21

Section 7.3 Severability .....21

Section 7.4 Amendments, Changes and Modifications .....21

Section 7.5 Execution Counterparts.....21

Section 7.6	Limitation of Issuer’s Liability .....	21
Section 7.7	Issuer and PurchasersAttorneys’ Fees and Costs.....	22
Section 7.8	Release .....	22
Section 7.9	Assignment by Issuer and Survivorship of Obligations.....	22
Section 7.10	Required Approvals .....	23
Section 7.11	Termination Upon Retirement of Note .....	23
SIGNATURES	.....	S-1

## LOAN AGREEMENT

THIS LOAN AGREEMENT is entered into as of May 1, 2018 (the “Loan Agreement”), between 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 (the “Issuer”), and MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”).

### RECITALS

WHEREAS, Minnesota Statutes, Chapter 462C, as amended (the “Act”), authorizes the Issuer to issue revenue obligations to finance or refinance the acquisition, construction, rehabilitation, and equipping of multifamily housing developments; and

WHEREAS, the Borrower, whose general partner is \_\_\_\_\_, a \_\_\_\_\_, has proposed that the Issuer issue its Multifamily Housing Revenue Note (Opus Station Project), Series 2018 (the “Note”), in the original aggregate principal amount of \$30,500,000, and loan the proceeds thereof (the “Loan”) to the Borrower for the purpose of (i) financing all or a portion of the acquisition, construction, and equipping of approximately 220 units of workforce housing to be located at or about 11001 Bren Road East, Minnetonka, Minnesota (the “Facilities”); and (ii) paying all or a portion of the costs of issuing the Note, if necessary; and

WHEREAS, the Issuer will issue the Note pursuant to this Loan Agreement, a resolution adopted by the City Council of the Issuer on April 16, 2018, and the Act; and

WHEREAS, the Note will be purchased by Bridgewater Bank, a Minnesota banking corporation (the “Purchaser”); and

WHEREAS, the Borrower agrees to be absolutely and unconditionally obligated to repay the Loan together with interest thereon, at times and in amounts sufficient to pay when due the principal of and interest on the Note; and

WHEREAS, in connection with the issuance of the Note, the Issuer, the Borrower, and the Purchaser will enter into a Regulatory Agreement, dated May \_\_\_, 2018, relating to compliance with certain federal and state requirements applicable to the Facilities; and

WHEREAS, the Issuer will assign its rights under this Loan Agreement to the Purchaser (except for certain unassigned rights set forth in Section 7.9 hereof) pursuant to the Pledge Agreement, dated as of May 1, 2018, between the Issuer and the Purchaser; and

WHEREAS, as security for the Borrower’s repayment obligations hereunder, Dominion Holdings II, LLC, a Minnesota limited liability company, will execute and deliver to the Purchaser a Guaranty Agreement, dated as of May 1, 2018; and

NOW THEREFORE, the Issuer and the Borrower each in consideration of the representations, covenants and agreements of the other as set forth herein, mutually represent, covenant and agree as follows:

## ARTICLE 1

### DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1. Definitions. In this Loan Agreement the following terms have the following respective meanings unless the context hereof clearly requires otherwise:

Act: Minnesota Statutes, Chapter 462C, as amended.

Bond Counsel: the firm of Kennedy & Graven, Chartered, of Minneapolis, Minnesota; any opinion of Bond Counsel shall be a written opinion signed by such Bond Counsel.

Borrower: Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, its successors and assigns, and any surviving, resulting or transferee business entity which may assume its obligations in accordance with the provisions of this Loan Agreement.

Borrower Tax Certificate: the Borrower Tax Certificate, dated the Issue Date, executed and delivered by the Borrower in connection with the issuance of the Note.

Business Day: any day other than a Saturday or Sunday or other day on which commercial banks in the city in which the principal office of the Purchaser is located are not open for business or other day on which the New York Stock Exchange is not open for business.

Code: the Internal Revenue Code of 1986, as amended and the Treasury Regulations promulgated thereunder.

Counsel: an attorney designated by or acceptable to the Purchaser, duly admitted to practice law before the highest court of any state; an attorney for the Borrower or the Issuer may be eligible for appointment as Counsel.

Date of Taxability: the meaning ascribed to it in Section 4.4(2) hereof.

Determination of Taxability: the meaning ascribed to it in Section 4.4(2) hereof.

Disbursing Agreement: the Disbursing Agreement, dated as of May 1, 2018, between the Borrower and the Purchaser, providing for the disbursement to the Borrower of proceeds of the Note, as the same may from time to time be amended or supplemented as herein provided.

Event of Default: any of the events described in Section 6.1 hereof.

Facilities: the approximately 220 units of workforce housing to be located at or about 11001 Bren Road East, Minnetonka, Minnesota.

General Partner: \_\_\_\_\_, a \_\_\_\_\_, its successors and assigns.

Guarantor: Dominion Holdings II, LLC, a Minnesota limited liability company, its successors and assigns.

Guaranty: the Guaranty Agreement, dated as of May 1, 2018, by the Guarantor in favor of the Purchaser, as it may be amended from time to time.

Issuance Expenses: any and all costs and expenses relating to the issuance, sale and delivery of the Note, including, but not limited to, any fees of the Purchaser, all fees and expenses of legal counsel, financial consultants, feasibility consultants and accountants, any fee to be paid to the Issuer, the preparation and printing of the Note Documents and all other related documents, and all other expenses relating to the issuance, sale and delivery of the Note and any other costs which are treated as “issuance costs” within the meaning of Section 147(g) of the Code.

Issue Date: May \_\_\_\_, 2018, which is the date there is physical delivery of the Note to the Purchaser.

Issuer: 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, its successors and assigns.

Land: the real property and any other easements and rights described in Exhibit A to the Regulatory Agreement.

Limited Partnership Agreement: the Limited Liability Limited Partnership Agreement of the Borrower, dated \_\_\_\_\_, 2018, as amended, modified, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

Loan: the loan of Note proceeds from the Issuer to the Borrower in accordance with the terms of this Loan Agreement, as described in Section 3.1 hereof.

Loan Agreement: this Loan Agreement, dated as of May 1, 2018, between the Issuer and the Borrower, as the same may from time to time be amended or supplemented.

Mandatory Purchase Date: December 31, 2018.

Note: the Multifamily Housing Revenue Note (Opus Station Project), Series 2018, issued by the Issuer in the original aggregate principal amount of \$30,500,000.

Note Documents: collectively, this Loan Agreement, the Pledge Agreement, the Regulatory Agreement, the Disbursing Agreement, and the Resolution.

Person: any individual, corporation, partnership (general, limited, or limited liability), joint venture, association, trust, unincorporated organization, or government or any agency or political subdivision thereof.

Pledge Agreement: the Pledge Agreement, dated as of May 1, 2018, between the Issuer and the Purchaser, pledging and assigning the Issuer’s interest in this Loan Agreement (except for certain unassigned rights set forth in Section 7.9 hereof) to the Purchaser, as the same may from time to time be amended or supplemented.

Principal Balance: so much of the principal sum on the Note as from time to time and remains unpaid.

Project: the acquisition, construction, and equipping of the Facilities.

Project Costs: the total of all construction costs and Issuance Expenses.

Project Fund: the fund created by the Disbursing Agreement from which funds are to be disbursed to the Borrower for payment of Project Costs and Issuance Expenses.

Purchaser: Bridgewater Bank, a Minnesota banking corporation, its successors and assigns.

Refunding: the issuance of revenue bonds to pay and refund the Note and finance the Project.

Regulatory Agreement: the Regulatory Agreement, dated the Issue Date, between the Issuer, the Borrower, and the Purchaser, as the same may from time to time be amended or supplemented.

Reserve Fund: the Bond Reserve Escrow Account established under Section 4.9 hereof to be held by the Purchaser.

Resolution: the resolution of the Issuer adopted April 16, 2018, authorizing the issuance of the Note, together with any supplement or amendment thereto.

State: the State of Minnesota.

Treasury Regulations: all proposed, temporary or permanent federal income tax regulations then in effect and applicable.

Yield: with reference to any obligation, that discount rate which, when computing the present value of all unconditionally payable payments of principal and interest paid and to be paid on such obligation, produces an amount equal to the present value of the issue price of the obligation.

#### Section 1.2. 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” and “hereof” 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 hereof.

(3) References herein to any particular section or subdivision hereof are to the section or subdivision of this instrument as originally executed.

(4) 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 with the same force and effect as if done or accomplished by the Borrower.

(5) The Table of Contents and titles of articles and sections herein are for convenience only and are not a part of this Loan Agreement.

(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) References to the Note as “tax exempt” or to the “tax-exempt status of the Note” are to the exclusion of interest on the Note from gross income pursuant to Section 103(a) of the Code, except during any period the Note is held by a “substantial user” or “related person,” 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

Section 2.1. Representations by the Issuer. The Issuer makes the following representations as the basis for its covenants herein:

(1) The Issuer is a home rule city, political subdivision, and municipal corporation organized and existing under its Charter and the Constitution and laws of the State and is authorized to issue the Note pursuant to the Act.

(2) There is no pending or, to the actual knowledge of the undersigned representatives of the Issuer, without inquiry or investigation, threatened suit, action or proceeding against the Issuer before any court, arbitrator, administrative agency or other governmental authority that challenges the Issuer's execution and delivery of the Note Documents to which it is a party.

(3) To the actual knowledge of the undersigned, without inquiry or investigation, the execution and delivery of the Note Documents by the Issuer will not constitute a breach of or default under any existing (a) provision of any special legislative act or charter provision relating to the establishment of the Issuer or (b) agreement, indenture, mortgage, lease or other instrument to which the Issuer is a party or by which it is bound.

(4) No proceeding of the Issuer for the issuance, execution or delivery of the Note Documents has been repealed, rescinded, amended or revoked.

(5) The Note is issued as a "qualified residential rental bond" within the meaning of Section 142(a)(7) of the Code.

(6) The Issuer has received an allocation of tax-exempt bonding authority for the Note pursuant to Minnesota Statutes, Chapter 474A.

Section 2.2. Representations by the Borrower. The Borrower makes the following representations 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 in good standing and duly authorized and qualified to conduct its business in the State, is duly authorized to conduct its business in all states where its activities require such authorization, has power to enter into the Note Documents to which it is a party and to use the Facilities for the purpose set forth in this Loan Agreement and by proper corporate action has authorized the execution and delivery of the Note Documents to which it is a party.

(2) The General Partner is a limited liability company duly organized under the laws of the State, is in good standing and duly authorized and qualified to conduct its business in the State, is duly authorized to conduct its business in all states where its activities require such authorization, and by proper corporate action has authorized the execution and delivery of the Limited Partnership Agreement.

(2) The execution and delivery of the Note Documents to which the Borrower is a party, the consummation of the transactions contemplated hereby and 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 Borrower's organizational documents, any restriction or any agreement or instrument to which the Borrower or any of its partners 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 a violation of any order, decree, statute, rule or regulation of any court or of any state or federal regulatory body having jurisdiction over the Borrower or its properties, including the Facilities, 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 Project will be completed in accordance with the Plans and Specifications and the portion of the Project funded with the proceeds of the Note will constitute a residential rental project within the meaning of Section 142(d) of the Code and will be operated and maintained in such manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other applicable governmental regulations and as to be consistent with the Act.

(4) As of the date hereof, the use of the Facilities as designed and proposed to be operated complies or 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 subdivision in which the Facilities are located. The Borrower has obtained, or will obtain in a timely manner, 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 Facilities to operate the Facilities and to enter into, execute and perform its obligations under the Note Documents to which is a party and, to the knowledge of the Borrower, no violation of any local ordinance, laws, regulation or requirement exists with respect to the Facilities.

(5) The proceeds of the Note, 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 the Project, and all costs and expenses incidental thereto, and the proceeds of the Note will be used only for the purposes contemplated hereby and allowable under the Act.

(6) The Facilities will be located entirely within the boundaries of the City of Minnetonka, Minnesota.

(7) Comparable private financing for the Project was not found by the Borrower to be reasonably available, and the Project is economically more feasible with the availability of the financing herein authorized.

(8) The Borrower is not in the trade or business of selling properties such as the Facilities and is constructing the Facilities for use in its operations, and 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 Facilities, except pursuant to a mortgage.

(9) There are no actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting 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, 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 General Partner 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 the Borrower to the extent that they have become due.

(12) The Borrower has approved the terms and conditions of the Note.

(13) The Borrower will comply with all provisions of the Act, including without limitation any notice and filing requirements imposed under the Act.

(14) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on any of the Note to be included in the gross income of the owners thereof for purposes of federal income taxation.

(15) The Note is to be issued within the exemption provided under Sections 142(a)(7) and 142(d) of the Code to provide a “qualified residential rental project” (as defined in Section 142(d) of the Code), and at least ninety-five percent (95%) of the net proceeds of the Note will be used to provide for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation for an exempt facility within the meaning of Section 142 of the Code.

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

## ARTICLE 3

### THE LOAN

Section 3.1. Amount and Source of Loan. The Issuer has authorized the issuance of the Note in the principal amount not to exceed \$30,500,000 to provide funds to the Borrower for its use in the Project. The Issuer agrees to lend to the Borrower, upon the terms and conditions set forth herein and in the Note, the proceeds received from the Note by causing such sums to be advanced and deposited into the Project Fund upon satisfaction of all terms and conditions set forth herein and in the Disbursing Agreement and such other supporting documentation as the Purchaser may reasonably require.

Section 3.2. Documents Required Prior to Disbursement of the Loan. Prior to any advance of amounts in the Project Fund, the Borrower shall deliver to the Purchaser the following:

- (1) a duly executed copy of the Note;
- (2) a duly executed copy of this Loan Agreement;
- (3) a duly executed copy of the Pledge Agreement;
- (4) a duly executed copy of the Disbursing Agreement;
- (5) a duly executed copy of the Regulatory Agreement;
- (6) a duly executed copy of the Guaranty;
- (7) the approving resolutions of the Borrower and the General Partner;
- (8) a certificate of good standing for the Borrower and the General Partner of recent date issued by the Secretary of State of the State;
- (9) copies of the organizational documents of the Borrower and the General Partner, certified by the Secretary of State of the State (together with copies of all amendments thereto), certified by the Borrower, to be true and correct copies of such instruments;
- (10) an opinion of Bond Counsel to the effect that the Issuer has duly authorized the Note and that the interest thereon is exempt from federal income taxation and subject to other conditions acceptable to the Purchaser; and
- (11) any other items required under the Disbursing Agreement or reasonably required by the Purchaser.

Section 3.3. Repayment. Subject to the prepayment provisions set forth in Article 5 hereof and in the Note, the Borrower agrees to repay the Loan by making all payments of principal, interest and any penalty or charge required to be made by the Issuer under the Note at the times and in the amounts provided therein, including without limitation the payment of redemption price as provided in Section 8 of the Note. All payments shall be made directly to the Purchaser at its principal office for the account of the Issuer. The Borrower shall also pay the reasonable fees and expenses of the Issuer, including the Issuer's administrative fee and reasonable fees and expenses of the Issuer's counsel in connection with the issuance of the Note and the Refunding.

Section 3.4. Borrower's Obligations Unconditional. All payments required of the Borrower hereunder shall be paid without notice or demand and without setoff, counterclaim, abatement, deduction or defense. The Borrower will not suspend or discontinue any payments, and will perform and observe all of its other agreements in this Loan Agreement and, except as expressly permitted herein, 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 Facilities, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer or the Purchaser, 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, the Pledge Agreement, or the Note.

Section 3.5. Disbursement of the Loan.

(1) Pursuant to the Loan Agreement and the Act, the Issuer has authorized the Borrower to provide directly for the financing of the Project in such manner as is determined by the Borrower and hereby authorizes the Purchaser to advance the proceeds of the Note to or at the direction of the Borrower in accordance with the Disbursing Agreement, including without limitation advancing on the Issue Date \$50,001 of the proceeds of the Note to **[pay Issuance Expenses]**.

(2) Interest earnings on the proceeds of the Note held in the Project Fund, if any, shall be disbursed to the Purchaser on or prior to each interest payment date and applied as a credit against Loan repayments.

(3) The Issuer authorizes and directs the Purchaser to disburse money from the Project Fund as further provided in the Disbursing Agreement.

Section 3.6. Administrative Fee and Expenses. The Borrower agrees to pay to the Issuer an administrative fee equal to \$38,215 (one-eighth of one percent (0.125%) of the total principal amount of the Note) on the Issue Date with respect to the Note. The administrative fee is not pledged to payment of the Note and may be used by the Issuer for any proper purpose. In addition to any other payments required hereunder, the Borrower shall pay the following amounts to the Issuer in immediately available funds on the due date thereof (or, if there is no due date with respect to such payment, then upon demand of the Issuer): (1) all reasonable expenses paid or incurred by the Issuer in connection with the transactions contemplated by the Note and the Note Documents, including any legal, accounting, financial, or other costs paid or incurred by the Issuer; and (2) all costs and expenses, including without limitation, attorneys' fees, paid or incurred by the Issuer in connection with (a) the discussion, negotiation, preparation, approval, execution and delivery, and amendments or modifications of the Note, the Note Documents, and the documents and instruments related hereto or thereto, (b) 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, and (c) all audit fees and expenses in accordance with Section 4.10 hereof.

3.7. Loan Origination Fee. The Borrower agrees to pay the Purchaser a loan origination fee of \$70,000 on the Issue Date with respect to the Note and the purchase thereof.

## ARTICLE 4

### BORROWER'S COVENANTS

#### Section 4.1. Indemnity.

(1) The Borrower will indemnify, defend, and hold harmless the Purchaser, the Issuer and its officers, members, employees and agents, from and against any and all claims by or on behalf of any person, firm, corporation or other entity arising from the conduct, operation or management of, or from, any work or thing done on the Facilities during the term of this Loan Agreement, including, without limitation, (i) any condition of the Facilities; (ii) any breach or default on the part of the Borrower in the performance of any of its obligations under this Loan Agreement; (iii) any act of negligence of the Borrower or of any of its agents, contractors, servants, employees or licensees; or (iv) any act of negligence of any assignee or lessee of the Borrower, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Borrower. The Borrower shall indemnify and save the Purchaser and Issuer harmless from any such claim arising as aforesaid, or in connection with any action or proceeding brought thereon, and upon notice from the Purchaser or Issuer, the Borrower shall defend them or either of them in any such action or proceeding.

(2) The Borrower agrees to indemnify, defend and hold harmless the Issuer and Purchaser and their respective employees, members, officers and agents (the "Indemnified Parties") against any and all losses, claims, damages or liability to which the Indemnified Parties may become subject under any law in connection with the issuance and sale of the Note, the carrying out of the transactions contemplated by this Loan Agreement and the conduct of any activity in connection with the Project or the Facilities, including claims for which the Indemnified Parties may be or may be claimed to be liable unless such liability is due to the gross negligence or willful misconduct of such Indemnified Party, and to reimburse the Indemnified Parties for any out-of-pocket legal and other expenses (including reasonable counsel fees) incurred by the Indemnified Parties in connection with investigating any such losses, claims, damages or liabilities, or in connection with defending any actions relating thereto. The Indemnified Parties agree, at the request and expense of the Borrower, to cooperate in the making of any investigation in defense of any such claim and promptly to assert any or all of the rights and privileges and defenses identified in writing by the Borrower which may be available to the Indemnified Parties. These provisions shall survive payment of the Note and termination of this Loan Agreement.

(3) If the Issuer incurs any expense or suffers any losses, claims or damages or incurs any liabilities in connection with the transaction contemplated by this Loan Agreement, the Borrower will indemnify, defend, and hold harmless the Issuer from the same and will reimburse the Issuer for any reasonable legal or other expenses incurred by the Issuer in relation thereto. The Borrower shall also reimburse the Issuer for all other 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 this Loan Agreement and the documents and instruments related thereto; (ii) any amendments or modifications thereto and any document, instrument or agreement related thereto and the discussion, negotiation, preparation, approval, execution and delivery of any and all documents necessary or desirable to effect such amendments or modification; and (iii) the enforcement by the Issuer during the term of this Loan Agreement or thereafter of any of the rights or remedies of the Issuer under this Loan Agreement or any document, instrument or agreement related thereto, including, without limitation, costs and expenses of collection in the event of default, whether or not suit is filed with respect thereto.

(4) The Borrower acknowledges and agrees that the Issuer shall not be liable to the Borrower, and releases and discharges the Issuer from any liability, for any and all losses, costs, expenses (including reasonable attorneys' fees), damages, judgments, claims and causes of action, paid, incurred or

sustained by the Borrower as a result of or relating to any action, or failure or refusal to act, on the part of the Issuer with respect to this Loan Agreement or the documents and transaction related thereto, including, without limitation, the exercise by the Issuer of any of its rights or remedies pursuant to this Loan Agreement or any related document and instrument.

Section 4.2. Reports to Governmental Agencies. The Borrower shall furnish to agencies of the State, including but not limited to the Minnesota Housing Finance Agency, such periodic reports or statements as are required under the Act or Minnesota Statutes, Chapter 474A, as amended, or as they may otherwise reasonably require of the Issuer or the Borrower throughout the term of this Loan Agreement in connection with the transaction contemplated herein; provided, however, the Issuer shall promptly notify the Borrower of any reports or statements being required by agencies of the State of which the Issuer has received notice to allow the Borrower a reasonable and adequate amount of time to prepare and submit any such reports or statements. Copies of such reports shall be provided, upon request, to the Issuer and, upon request, to the Purchaser.

Section 4.3. Security for the Loan. As additional security for the Loan, and to induce the Issuer to issue and deliver the Note, the Borrower agrees to execute and deliver such other documents requested by the Purchaser, in such places and in such manner as the Purchaser deems necessary or desirable to perfect or protect the security interest of the Purchaser in and to the Project and other collateral referred to in such documents. Furthermore, the Borrower agrees to cause the Guarantor to execute and deliver the Guaranty and agrees to cause the Guarantor to meet all of its obligations under the Guaranty, which shall remain in effect until all payments required hereunder have been made.

Section 4.4. Preservation of Tax Exemption.

(1) In order to ensure that interest on the Note shall at all times be excludable from gross income for federal income tax purposes, the Borrower represents, warrants, and covenants with the Issuer and the Purchaser that it shall comply with applicable provisions of Section 103 and Sections 141 through 150 of the Code and applicable Treasury Regulations promulgated thereunder as follows:

(a) The Borrower has entered into an agreement to purchase the Land on or before the date of delivery of the Note, and no more than twenty-five percent (25%) of the net proceeds of the Note shall be allocated to the acquisition of the Land. The Project shall continue to be owned and operated by the Borrower, except as provided in Section 4.5 hereof, and in no event shall the Project be managed in a manner that would cause interest on the Note to be included in gross income for federal income tax purposes.

(b) The Borrower shall fulfill all continuing conditions specified in Section 142 of the Code and Section 1.103-8(b) of the Treasury Regulations applicable thereunder, to qualify the Note as an “exempt facility bond” issued to provide a “qualified residential rental project” thereunder and to qualify the Facilities as a “qualified residential rental project” thereunder. The Borrower shall fulfill its obligations under the Regulatory Agreement.

(c) The Borrower covenants and agrees that it will not (i) use or permit the use of any of the funds provided by the Issuer hereunder or any other funds of the Borrower, directly or indirectly, in such manner as would, (ii) enter into, or allow any “related person” (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the Note that would, or (iii) take or omit to take any other action that would, in each case cause the Note to be an “arbitrage bond” within the meaning of Section 148 of the Code.



(d) 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 (currently under an Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013)), and if the requirements for a “qualified residential rental project” are not met, does not allow deduction for interest paid on the Note 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.

(e) In order to qualify the Note and this Loan Agreement under the “governmental program” provisions of Section 1.148-2(d)(2)(iii) of the Treasury Regulations, the Borrower (and any “related person” thereto) shall take no action the effect of which would be to disqualify this Loan Agreement as a “program investment” under Section 1.148-1(b), including but not limited to entering into any arrangement, formal or informal, for the Borrower or any related person to purchase any obligations that finance the program in an amount related to the amount of this Loan Agreement. Notwithstanding the foregoing, the Issuer understands that the Borrower has an obligation to repurchase the Note from the Purchaser on or before the Mandatory Purchase Date, unless extended, and if the Borrower is unable to find replacement financing, the Borrower may be the holder of the Note for a period of time after the Mandatory Purchase Date.

(f) The Borrower has not paid or incurred any costs to be reimbursed from proceeds of the Note before the date sixty (60) days before December 18, 2017, the date of adoption by the City Council of the Issuer of a written declaration of official intent which complies with the provisions of Section 1.150-2(d) and (e) of the Treasury Regulations, except for “preliminary expenditures” (within the meaning of Section 1.150-2(f)(2) of the Treasury Regulations) for the Project, including engineering or architectural expenses and similar preparatory expenses, which in the aggregate do not exceed twenty percent (20%) of the aggregate “issue price” of the Note, or expenditures in the de minimis amount of \$100,000 (as defined in Section 1.150-2(f)(1) of the Treasury Regulations).

(g) The weighted average maturity of the Note shall not exceed the estimated economic life of the Project by more than twenty percent (20%), all within the meaning of Section 147(b) of the Code.

(h) While the Note remains outstanding, no portion of the proceeds of the Note shall be used to provide any airplane, skybox or other private luxury box, any facility primarily used for gambling, or a store, the principal business of which is the sale of alcoholic beverages for consumption off premises.

(i) Any Issuance Expenses financed by the Note shall not exceed two percent (2%) of the proceeds of the Note. Except as permitted by Section 1.148-6(d)(3)(ii) of the Treasury Regulations, none of the proceeds of the Note will be used for working capital purposes.

(j) The Borrower shall not use the proceeds of the Note in such manner as to cause either of the Note to be an “arbitrage bond” within the meaning of Section 148 of the Code and applicable Treasury Regulations.

(k) 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 Note, 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 and applicable Treasury Regulations, all within the meaning of Section 148(f) of the Code and applicable Treasury Regulations. The Borrower shall maintain records of the interest rate borne by the Note and earnings thereon in adequate detail to enable the Borrower to calculate the amount of any rebate required to be made to the United States at times and in installments which satisfy Section 148(f) of the Code and applicable Treasury Regulations, at least once every five (5) years and within sixty (60) days after the day on which the Note is paid in full. Calculations of the amount to be rebated shall be made at least once every five (5) years (or at such other times as may be required by Section 148(f) of the Code and applicable Treasury Regulations) and the Purchaser shall be furnished with such calculations within sixty (60) days of the time they are made. If the Purchaser is not furnished with such calculations, the Purchaser may undertake to have such calculations made at the expense of the Borrower. Such calculations shall be retained until six (6) years after the Note is paid in full. The rebate shall be calculated as provided in Section 148(f) of the Code and Sections 1.148-0 through 1.148-9 of the Treasury Regulations, including taking into account the gain or loss on the disposition of nonpurpose investments. The Borrower shall acquire, and shall cause the Purchaser to acquire, all nonpurpose investments at their fair market value in arm's length transactions.

(l) The Borrower has not leased, sold, assigned, granted, or conveyed and shall not lease, sell, assign, grant, or convey all or any portion of the Project or any interest therein to the United States, or any agency or instrumentality thereof, within the meaning of Section 149(b) of the Code.

(m) In addition to the Note, no other obligations have been or shall be issued under Section 103 of the Code which are sold at substantially the same time as the Note under a common plan of marketing and at substantially the same rate of interest as the Note and which are payable in whole or part by the Borrower or otherwise have with the Note any common or pooled security for the payment of debt service thereon, or which are otherwise treated as the same "issue of obligations" as the Note under Section 1.501(c)(1) of the Treasury Regulations.

(n) The Borrower shall observe the requirements of this Loan Agreement with respect to the obligations imposed by applicable provisions of the Code and the representations, warranties, covenants, and requirements of the Borrower Tax Certificate.

(o) No proceeds of the Note shall be invested in investments which cause the Note to be federally guaranteed within the meaning of Section 149(b) of the Code.

(p) The Borrower shall not otherwise use the proceeds of the Note, or take or fail to take any action, the effect of which would be to impair the exclusion of interest on the Note from gross income for federal income tax purposes.

(2) For the purpose of this Section, a "Determination of Taxability" shall mean the issuance of a statutory notice of deficiency by the Internal Revenue Service, or a ruling of the National Office or any District Office of the Internal Revenue Service, or a final decision of a court of competent jurisdiction, or a change in any applicable federal statute, which holds or provides in effect that the interest payable on the Note is included, for federal income tax purposes under Section 103 of the Code, in the gross income of the Purchaser or any other holder or prior holder of the Note, if the period, if any, for contest or appeal of such action, ruling, or decision by the Borrower or Purchaser or any other interested party has expired without any such contest or appeal having been properly instituted by the Purchaser, the Borrower, or any other interested party. The expenses of any such contest shall be paid by the party initiating the contest, and neither the Purchaser nor the Borrower shall be required to contest or

appeal any Determination of Taxability. The “Date of Taxability” shall mean that point in time, as specified in the determination, ruling, order, or decision, that the interest payable on the Note becomes includable in the gross income of the Purchaser or any other holder or prior holder of the Note, as the case may be, for federal income tax purposes.

(3) If the Purchaser receives notice of a “Determination of Taxability” with respect to the Note and delivers to the Borrower a copy of that notice, the rate of interest on the Note shall be automatically adjusted and additional charges shall be paid as provided in the Note and the Borrower shall be obligated to pay the same as provided in Section 3.3 hereof.

(4) If the Borrower becomes aware of a Determination of Taxability it shall promptly give notice of such Determination of Taxability to the Issuer and the Purchaser.

Section 4.5. Lease or Sale of Facilities. The Borrower shall not lease, sell, convey or otherwise transfer any of the Facilities in whole or part, nor sell any of the Facilities in whole or part, without first securing the written consent of the Purchaser; provided that in no event shall any lease, transfer, assignment, or sale be permitted if the effect thereof would be to cause the Note to be deemed issued in violation of any requirement under Section 142(a) of the Code, and the Treasury Regulations promulgated thereunder, that substantially all of the net proceeds of the Note be used to provide a qualified residential rental project, or under the Act that no portion of any of the Facilities to be financed from proceeds of the Note be acquired in whole or part for sale, nor shall any such transaction be permitted if the effect thereof would otherwise be to impair the validity or the tax-exempt status of the Note, nor shall any such transaction release the Borrower of any of its obligations under this Loan Agreement. The Borrower shall promptly notify the Issuer and the Purchaser of any such sale, transfer, assignment, or lease. Nothing contained in this Section shall prohibit the Borrower from (a) entering into leases with residential tenants in the ordinary course of business; or (b) entering into easement or other agreements necessary for the operation of the Project. Any transfer of any interest in the Borrower shall require the consent of the Purchaser, which shall not be unreasonably withheld, delayed, or conditioned..

Section 4.6. Facility Operation and Maintenance Expenses.

(1) The Borrower shall pay all expenses of the operation and maintenance of the Facilities 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 Facilities and payable during the term of this Loan Agreement.

(2) The Facilities shall not be used for purposes which violate any federal, State or other laws prohibiting discrimination in access or employment based on race, creed, sex, handicap, ethnic origin, age or marital status.

Section 4.7. Notification of Changes. The Borrower covenants and agrees that it will promptly notify the Purchaser of:

(1) any litigation which might materially and adversely affect the Borrower and any of the Facilities;

(2) the occurrence of any Event of Default under this Loan Agreement or under any other loan agreement, debenture, note, purchase agreement or any other agreement providing for the borrowing of money by the Borrower or any event of which the Borrower has knowledge and which, with the passage of time or giving of notice, or both, would constitute an Event of Default under this Loan Agreement or under such other agreements; and

(3) any material adverse change in the operations, business, properties, assets or conditions, financial or otherwise, of the Borrower.

Section 4.8. Financial Statements and Rent Roll. The Borrower will cause to be prepared annual financial statements for the Borrower (including a balance sheet, statement of income and statement of changes in financial position which may be done on a consolidating basis) and certified by an independent certified public accountant, and within ninety (90) days of the close of each fiscal year will furnish a copy to the Purchaser along with a copy of annual filed tax returns containing all schedules and exhibits within thirty (30) days of Borrower, the General Partner, and the Guarantor filing such tax returns annually, which in any event shall be no later than October 25 of each year. The Borrower will provide to the Purchaser a rent roll for the Facilities and operating statements for the Facilities within ninety (90) days of the close of each fiscal year.

Section 4.9. Reserve Fund. The Borrower shall maintain a Reserve Fund in the amount of \$50,001. The Borrower shall make the initial deposit of \$50,001 into the Reserve Fund on the Issue Date with equity of the Borrower. Amounts in the Reserve Fund may be used to make up any deficiencies in debt service payments on the Note when due and the Reserve Fund shall be collateral for the Loan held by the Purchaser.

If at any time the amount in the Reserve Fund is less than \$50,001, the Purchaser shall request the amount of deficiency from the Borrower for deposit to the Reserve Fund. Within ten (10) days of the Purchaser's written request to replenish the Reserve Fund, the Borrower shall make a deposit to replenish the full amount of the deficiency in the Reserve Fund. All income derived from the investment of amounts on hand in the Reserve Fund shall remain in and be credited as received to the Reserve Fund until such time as the balance therein (valued at the outstanding stated principal amount of investments therein) is equal to \$50,001. Thereafter all such investment income shall, at the election of the Borrower, be transferred as received to the Borrower. Amounts in the Reserve Fund, if not previously used as aforesaid, shall be applied against the final installments of principal of and interest due on the Note or deposited to the Project Fund established with respect to the obligation issued in connection with the Refunding on the date of the Refunding.

Section 4.10. IRS Audit Expenses. The Borrower agrees to pay any costs incurred by the Issuer or the Purchaser as a result of the Issuer's or the Purchaser's compliance with an audit, random or otherwise, by the Internal Revenue Service or the Minnesota Department of Revenue with respect to the Note or the Project.

Section 4.11. 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.

## ARTICLE 5

### PREPAYMENT OF LOAN

Section 5.1. Prepayment at Option of Borrower. The Borrower may at its option prepay the Loan, in whole or in part, by prepaying a like amount of the Principal Balance of the Note, but only in the manner, at the times and under the conditions provided in the Note.

Section 5.2. Other Prepayment Provisions. The Loan shall also be subject to prepayment if and to the extent the Note is subject to prepayment other than as described in Section 5.1 hereof.

Section 5.3. Partial Prepayment. If the Loan is prepaid hereunder only in part, the Purchaser shall apply any prepayment first against reasonable attorneys' fees and collection costs, second against accrued interest due under the Note, and then against the Principal Balance due under the Note. The Borrower shall continue to pay in full the monthly payments due under the Note until the entire Principal Balance and accrued interest due on the Note and any other charges or premiums due hereunder or under the Note have been paid.

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## ARTICLE 6

### EVENTS OF DEFAULT AND REMEDIES

Section 6.1. Events of Default. Any one or more of the following events is an Event of Default continuing beyond the applicable cure period under this Loan Agreement:

(1) If the Borrower shall fail to make (a) any payments required under Section 3.3 hereof on the date due, or (b) any other payment due under this Loan Agreement (except from payments required under Section 3.3 hereof) on or before the date that the payment is due, and such default continues for twenty (20) days after written notice given to the Borrower by the Issuer or the Purchaser as provided herein.

(2) If the Borrower shall fail to observe and perform any other covenant, condition or agreement on its part under this Loan Agreement for a period of thirty (30) days after written notice (a "Default Notice"), specifying such default and requesting that it be remedied, is given to the Borrower by the Issuer or the Purchaser, unless the Purchaser shall agree in writing to an extension of such time prior to its expiration, or for such longer period as may be reasonably necessary to remedy such default provided that the Borrower is proceeding with reasonable diligence to remedy the same, but not exceeding sixty (60) days after the Default Notice is given.

(3) If the Borrower shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal bankruptcy act or any similar federal or State law, shall consent to the entry of an order for relief pursuant to any present or future federal bankruptcy act or under any similar federal or State law, or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the entry of an order for relief of the Borrower under any present or future federal bankruptcy act or any similar federal or State law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof, or a receiver, trustee or liquidator of the Borrower or of all or substantially all of the assets of the Borrower or of the Facilities shall be appointed in any proceeding brought against the Borrower and shall not be discharged within ninety (90) days after such appointment or if the Borrower shall consent to or acquiesce in such appointment, or if the estate or interest of the Borrower in the Facilities or a part thereof shall be levied upon or attached in any proceeding and such process shall not be vacated or discharged within ninety (90) days after such levy or attachment; if the Borrower shall be dissolved or liquidated or shall be merged with or be acquired by another business entity in violation of Section 4.5 hereof.

(4) If the Limited Partnership Agreement of the Borrower shall expire or be annulled; if the Limited Partnership Agreement of the Borrower shall be amended or modified without the consent of the Purchaser, which shall not be unreasonably delayed, withheld or conditioned; or 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 4.5 hereof).

(5) If any representation or warranty made by the Borrower herein, or by an officer or representative of the Borrower in any document or certificate furnished the Purchaser or the Issuer 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.

(6) If the Borrower shall default or fail to perform any covenant, condition or agreement on its part under the Disbursing Agreement, the Regulatory Agreement, the Note, or any other document

securing the Note, and such failure continues beyond the period set forth in such documents during which the Borrower may cure the default.

Section 6.2. Remedies. Whenever any Event of Default referred to in Section 6.1 hereof shall have happened and be subsisting, any one or more of the following remedial steps, to the extent permitted by law, may be taken by the Issuer with the prior written consent of the Purchaser (except that rights arising under the sections listed in Section 7.9 hereof may not require such consent in order to be exercised by the Issuer) or by the Purchaser itself:

(1) The Issuer, upon written direction of the Purchaser, or the Purchaser may declare, upon ten (10) days' written notice to the Borrower, all installments of the Loan (being an amount equal to that necessary to pay in full the Principal Balance of plus accrued interest on the Note, assuming acceleration of the Note under the terms thereof, 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.

(2) The Issuer, upon written direction of the Purchaser (except as otherwise provided in Section 7.9 hereof), or the Purchaser (in either case at no expense to the Issuer) may take whatever action at law or in equity may appear necessary or appropriate to collect the amounts then due and thereafter to become due under this Loan Agreement, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement.

(3) The Purchaser's obligation to advance any further amounts under the Disbursing Agreement, if any, may terminate. Notwithstanding anything to the contrary contained herein or in any other instrument evidencing or securing the Loan, the Purchaser may exercise the foregoing remedy upon the occurrence of an event that would constitute such an Event of Default but for the requirement that notice be given or that a period of cure or time elapse.

(4) The Purchaser may disburse any amounts remaining in the Project Fund and the Reserve Fund first toward payment of accrued interest owing on the Note and then to the Principal Balance of the Note in accordance with the terms of the Note.

(5) The Purchaser may exercise its rights under the Guaranty.

In addition, the Purchaser will have such remedies as are provided in the Pledge Agreement and the Disbursing Agreement upon an Event of Default under this Loan Agreement.

Section 6.3. Disposition of Funds. Notwithstanding anything to the contrary contained in this Loan Agreement, any amounts collected pursuant to action taken under Section 6.2 hereof, shall, after deducting all expenses incurred in collecting the same, be applied as a prepayment of the Note in accordance with Section 5.1 hereof.

Section 6.4. Manner of Exercise. No remedy herein conferred upon or reserved to the Issuer or the Purchaser 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 by statute. No delay or omission to exercise any right or power accruing upon any 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 the Purchaser to exercise any remedy reserved to either of them in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 6.5. Effect of Waiver. In the event any agreement contained in this Loan Agreement should be breached by either party and the breach 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 6.6. Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Loan Agreement and the Issuer or the Purchaser should employ attorneys or incur other expenses for the collection of amounts due hereunder or the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower will on demand pay to the Issuer or the Purchaser the reasonable fees and costs of such attorneys and such other expenses so incurred.

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## ARTICLE 7

### GENERAL

Section 7.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when received by certified or registered mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower, and the Purchaser 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 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 Attn: City Manager
To the Purchaser:	Bridgewater Bank 3800 American Boulevard West, Suite 100 Bloomington, MN 55431 Attn: _____
To the Borrower:	Minnetonka Leased Housing Associates II, LLLP [ADDRESS] Attn: _____
With a copy to:	Winthrop & Weinstine, P.A. 225 South Sixth Street, Suite 3500 Minneapolis, MN 55402-4629 Attention: John Stern, Esq.

Section 7.2. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer and the Borrower and their respective successors and assigns.

Section 7.3. Severability. In the event any provision 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 7.4. Amendments, Changes and Modifications. Except as otherwise provided in this Loan Agreement, subsequent to the initial issuance of the Note and before the Note 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 Purchaser.

Section 7.5. 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 7.6. Limitation of Issuer's Liability. No covenant, provision or agreement of the Issuer herein or in the Note or in any other document executed by the Issuer (or any other party) in connection with the issuance, sale and delivery of the Note, or any obligation herein or therein imposed upon the Issuer or respecting the breach thereof, shall give rise to a pecuniary liability of the Issuer, its

officers, employees or agents, or a charge against the Issuer's general credit or taxing powers or shall obligate the Issuer, its officers, employees or agents, financially in any way except with respect to this Loan Agreement and the application of revenues and the proceeds of the Note. The Note shall be and constitutes only a special and limited revenue obligation of the Issuer, payable solely from the revenues pledged to the payment thereof pursuant to this Loan Agreement and the Pledge Agreement, and the Note does not now and shall never constitute an indebtedness, a general or moral obligation or a loan of the credit of the Issuer, the State or any political subdivision thereof or a lien, charge or encumbrance, legal or equitable, against the Issuer's general credit or taxing powers or any of the Issuer's property. No failure of the Issuer to comply with any term, condition, covenant or agreement therein shall subject the Issuer, its officers, employees or agents, 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 Loan Agreement or revenues therefrom or proceeds of the Note. 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 Loan Agreement and the application of revenues hereunder as hereinabove provided. It is further understood and agreed by the Borrower and the Purchaser that the Issuer, its officers, employees or agents shall incur no pecuniary liability hereunder and shall not be liable for any expenses related hereto, all of which the Borrower agrees to pay. If, notwithstanding the provisions of this Section, the Issuer, its officers, employees or agents incurs any expense, or suffers any losses, claims or damages or incurs any liabilities, the Borrower will indemnify and hold harmless the Issuer, its officers, employees or agents from the same and will reimburse the Issuer, its officers, employees or agents for any legal or other expenses incurred by the Issuer, its officers, employees or agents in relation thereto, and this covenant to indemnify, hold harmless and reimburse the Issuer, its officers, employees or agents shall survive delivery of and payment for the Note and expiration or termination of this Loan Agreement. The liability of the Issuer is further restricted as provided in the Act.

Section 7.7. Issuer and Purchaser Attorneys' Fees and Costs. The Borrower shall reimburse the Issuer and the Purchaser, upon demand, for all costs and expenses, including without limitation attorneys' fees, paid or incurred by the Issuer and the Purchaser in connection with (i) the discussion, negotiation, preparation, approval, execution and delivery of the Note, 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 hereof or thereafter; and (iv) the enforcement by the Issuer and the Purchaser during the term hereof or hereafter of any of the rights or remedies of the Issuer and the Purchaser 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 7.8. Release. The Borrower hereby acknowledges and agrees that the Issuer and the Purchaser shall not be liable to the Borrower, and hereby releases and discharges the Issuer and the Purchaser 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 Borrower as a result of or relating to any action, or failure or refusal to act, on the part of any party with respect to the Note, this Loan Agreement, or the documents and transactions related hereto or thereto or contemplated hereby or thereby, including, without limitation, the exercise by any third party of any of its rights or remedies pursuant to any of such documents.

Section 7.9. Assignment by Issuer and Survivorship of Obligations. The Issuer may assign its rights under this Loan Agreement and any related documents to the Purchaser to secure payment of the principal of and interest on the Note, conditioned upon the Purchaser's assumption of the Issuer's and

Purchaser's obligations to the Borrower hereunder, but any such assignment shall not operate to limit or otherwise affect the following provisions hereof to the extent that they run to the Issuer from the Borrower to which extent they shall survive any such assignment: Sections 3.4, 3.6, 4.1, 4.2, 4.4, 4.10, 6.6, 7.6, 7.7, 7.8, and 7.9 hereof.

Upon any such assignment, the provisions immediately above running to the Issuer from the Borrower for the Issuer's benefit shall run jointly and severally to the Issuer and the Purchaser (if appropriate), provided that the Issuer shall have the right to enforce any retained rights without the approval of the Purchaser but only if the Purchaser is not enforcing such rights in a manner to protect the Issuer or is otherwise taking action with respect thereto that brings adverse consequences to the Issuer. The obligations of the Borrower running to the Issuer for the purpose of preserving the tax-exempt status of the Note or otherwise for the Issuer's benefit under the foregoing Sections shall survive repayment of the Note and interest thereon.

Section 7.10. Required Approvals. Consents and approvals required by this Loan Agreement to be obtained from the Borrower, the Issuer or the Purchaser shall be in writing and shall not be unreasonably withheld or delayed.

Section 7.11. Termination Upon Retirement of Note. At any time when no Principal Balance on the Note remains outstanding, and arrangements satisfactory to the Purchaser and the Issuer have been made for the discharge of all other accrued liabilities, if any, under this Loan Agreement, this Loan Agreement shall terminate, except as otherwise expressly provided in Section 7.9 or otherwise herein.

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

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be executed in their respective names 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 Borrower to the 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: \_\_\_\_\_  
Its: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**First Draft  
April 6, 2018**

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

Multifamily Housing Revenue Note  
(Opus Station Project)  
Series 2018

May \_\_, 2018

\$30,500,000

FOR VALUE RECEIVED, 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 (the "Issuer"), hereby promises to pay BRIDGEWATER BANK, a Minnesota banking corporation in Bloomington, Minnesota, its successors or registered assigns (the "Purchaser"), solely from the source and in the manner hereinafter provided, the principal sum of THIRTY MILLION FIVE HUNDRED THOUSAND DOLLARS (\$30,500,000), or so much thereof as has been advanced and remains unpaid from time to time (the "Principal Balance"), with interest thereon at the rate of one percent (1.00%) per annum or at such higher rate as may be hereinafter provided in Section 1(b) or 12 hereof, in any coin or currency which at the time or times of payment is legal tender for the payment of public or private debts in the United States of America, in accordance with the terms hereinafter set forth. Any capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Loan Agreement, dated as of May 1, 2018 (the "Loan Agreement"), between the Issuer and Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the "Borrower").

1. With respect to interest on the Note:

(a) Interest shall accrue on the advanced and outstanding Principal Balance from and after the date hereof. Interest only on the advanced and outstanding Principal Balance of this Note shall be due and payable on December 31, 2018 (unless extended with the consent of the Purchaser) and monthly thereafter through \_\_\_\_\_, 20\_\_ (the "Final Maturity Date") or any earlier prepayment date at which time the entire remaining Principal Balance and accrued interest shall be fully due and payable.

(b) If the interest on this Note should become subject to federal income taxation pursuant to a Determination of Taxability and the Purchaser delivers to the Borrower a copy of the notice of the Determination of Taxability, the interest rate shall be immediately adjusted to be equal to the rate of one and one-half percent (1.50%) per annum and each monthly installment thereafter payable shall be accordingly adjusted. In addition, the Purchaser shall be entitled to receive upon demand an amount equal to the aggregate difference between (i) the monthly payments theretofore made to the Purchaser on this Note between the Date of Taxability and the date of receipt by the Borrower of notice of such "Determination of Taxability" and (ii) the monthly payments which would have been made during such period if the adjusted rate had been in effect throughout such period.

2. In any event, the payments hereunder shall be sufficient to pay all principal and interest due, as such principal and interest become due, at maturity, upon redemption, or otherwise. Interest shall be computed on the basis of a three hundred sixty (360) day year but shall be payable on the actual days elapsed.

3. Principal and interest due hereunder shall be payable at the office of the Purchaser set forth in the attached Note register, or at such other place as the Purchaser may designate in writing.

4. This Note is issued by the Issuer to provide funds to the Borrower for a multifamily housing development project, as defined in Minnesota Statutes, Section 462C, as amended (the "Act"), consisting of (i) the financing of the acquisition, construction, and equipping of all or a portion of approximately 220 units of workforce housing to be located at or about 11001 Bren Road East, Minnetonka, Minnesota (the "Project"); and (ii) the payment of all or a portion of the costs of issuing the Note, if necessary. This Note is issued pursuant to and in full compliance with the Constitution and laws of the State of Minnesota, particularly the Act, and pursuant to a resolution of the governing body of the Issuer duly adopted on April 16, 2018 (the "Resolution").

5. This Note is secured by a Pledge Agreement, dated as of May 1, 2018 (the "Pledge Agreement"), between the Issuer and the Purchaser. As security for the Borrower's obligations under the Loan Agreement, Dominion Holdings II, LLC, a Minnesota limited liability company, will execute and deliver to the Purchaser a Guaranty Agreement, dated as of May 1, 2018 (the "Guaranty"). Amounts held by the Purchaser relating to this Note shall be disbursed pursuant to the Disbursing Agreement, dated as of May 1, 2018 (the "Disbursing Agreement"), between the Borrower and the Purchaser. The Purchaser shall authorize disbursements from the Project Fund to or at the order of the Borrower upon compliance with the terms and conditions of the Disbursing Agreement. The Borrower, the Issuer, and the Purchaser have entered into a Regulatory Agreement of even date herewith (the "Regulatory Agreement"), requiring compliance with certain requirements of federal and state law relating to the construction and operation of the Project as a residential rental housing project.

The Issuer, for itself, its successors and assigns, hereby waives demand, presentment, protest and notice of dishonor, and to the extent permitted by law, the Purchaser may extend the due date of interest and/or principal of this Note, or release any part or parts of the property and interest subject to any security document from the same, all without notice to or consent of any party liable hereon or thereon and without releasing any such party from such liability and whether or not as a result thereof the interest on this Note is no longer exempt from the federal or state income tax.

6. In lieu of providing for a balloon maturity of this Note prior to the Maturity Date, the Purchaser has agreed to the terms of this paragraph. At the option of the Purchaser, this Note is subject to mandatory purchase at a purchase price equal to the entire outstanding Principal Balance hereof plus accrued interest thereon (the "Purchase Price") by the Borrower, or another purchaser selected by the Borrower and approved by the Issuer, on any date on or after December 31, 2018, unless such date is extended as provided herein (the "Mandatory Purchase Date"), upon notice, written or printed, delivered, at least thirty (30) days prior to such Mandatory Purchase Date, to the Borrower at the address provided in the Loan Agreement or by telex or other means of written or printed instantaneous communication (the "Tender Notice") stating: (a) the Mandatory Purchase Date; (b) the Purchaser's intent to require the purchase of this Note on the Mandatory Purchase Date; and (c) the then outstanding Principal Balance of this Note. Upon the giving of such notice the entire Purchase Price shall be due and payable in full by the Borrower on the applicable Mandatory Purchase Date and the Purchaser shall deliver this Note to the Borrower, or its designee, on the Mandatory Purchase Date. If this Note is not purchased from the Purchaser by or on behalf of the Borrower on the Mandatory Purchase Date, the failure to purchase this

Note shall constitute an event of default under this Note and an Event of Default under the Loan Agreement, and the Purchaser may exercise its remedies for default, including acceleration of this Note.

7. This Note may be prepaid in whole on any date, at the option of the Borrower, upon ten (10) days' prior written notice to the Purchaser, at a redemption price equal to the Principal Balance of this Note plus accrued interest thereon, plus any reasonable attorneys' fees and costs.

8. This Note is subject to extraordinary mandatory redemption or purchase in lieu of redemption in whole but not in part, at a redemption price equal to the Principal Balance of this Note plus accrued interest thereon, without premium, without notice, on the earlier of (i) the Mandatory Purchase Date or (ii) the date the Purchaser transfers this Note to another person through assignment or purchase, unless such date is extended as provided below, if the Refunding of this Note has not occurred on or before such date. The Mandatory Purchase Date shall be extended at the option of the Borrower one or more times to a date not later than December 31, 20\_\_\_ with the consent of the Purchaser and upon delivery to the Purchaser of an opinion of Bond Counsel to the effect that such extension will not adversely affect the tax-exempt status of interest paid on this Note.

9. In the event of prepayment of this Note, the Purchaser shall apply any such prepayment first against reasonable attorneys' fees and collection costs, second against the accrued interest on the Principal Balance and then against the principal amounts due under this Note. The monthly payments due under Section 1 hereof shall continue to be due and payable in full until the entire Principal Balance and accrued interest due on this Note have been paid regardless of any partial prepayment made hereunder unless otherwise agreed to by the Purchaser.

10. All of the agreements, conditions, covenants, provisions and stipulations contained in the Resolution, the Loan Agreement, the Disbursing Agreement, the Guaranty, and the Pledge Agreement are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein.

11. This Note and interest thereon are payable solely from the revenues and proceeds derived from the Loan Agreement, the Pledge Agreement, the Guaranty, and the Disbursing Agreement and do not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation, are not payable from or a charge upon any funds of the Issuer other than the revenues and proceeds pledged to the payment thereof, and do not give rise to a pecuniary liability of the Issuer or any of its officers, agents or employees. No holder of this Note shall ever have the right to compel any exercise of the taxing power of the Issuer to pay this Note or the interest thereon, or to enforce payment thereof against any property of the Issuer, and this Note does not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer. The agreement of the Issuer 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 Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

12. It is agreed that time is of the essence of this Note. If an Event of Default (as that term is defined in the Disbursing Agreement or the Loan Agreement) shall occur and has not been cured by the Borrower within twenty (20) days of written notice by the Purchaser, then the following remedies are available: (a) the interest rate shall be adjusted to a rate per annum which is five percent (5.00%) above the then applicable interest rate of this Note; or (b) the Issuer, upon written direction of the Purchaser, or the Purchaser shall have the right and option to declare the Principal Balance and accrued interest thereon, immediately due and payable, whereupon the same shall be due and payable, but solely from sums made available under the Loan Agreement, the Pledge Agreement, the Guaranty, and the Disbursing



Agreement. Failure to exercise such option at any time shall not constitute a waiver of the right to exercise the same at any subsequent time.

13. The remedies of the Purchaser, as provided herein and in the Loan Agreement, the Pledge Agreement, the Guaranty, and the Disbursing Agreement, are not exclusive and shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of the Purchaser, and may be exercised as often as occasion therefore shall occur. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

14. The Purchaser shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Purchaser, and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

15. As provided in the Resolution and subject to certain limitations set forth therein, this Note is only transferable upon the books of the Issuer at the office of the City's Finance Director, by the Purchaser in person or by its agent duly authorized in writing, at the Purchaser's expense, upon surrender hereof together with a written instrument of transfer satisfactory to the City's Finance Director, duly executed by the Purchaser or its duly authorized agent. Upon such transfer the City's Finance Director will note the date of registration and the name and address of the new registered owner in the registration blank appearing below. The Issuer may deem and treat the person in whose name this Note is last registered upon the books of the Issuer with such registration noted on this Note, as the absolute owner hereof, for the purpose of receiving payment of or on the account of the Principal Balance or interest, whether or not overdue, and for all other purposes, and all such payments so made to the Purchaser or upon its order shall be valid and effective to satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid, and the Issuer shall not be affected by any notice to the contrary.

16. This Note has been issued without registration under state or federal or other securities laws, pursuant to an exemption for such issuance; accordingly this Note may not be assigned or transferred in whole or part, nor may a participation interest in this Note be given pursuant to any participation agreement, except in accordance with the Resolution and an applicable exemption from such registration requirements.

17. THIS NOTE, INTEREST HEREON, AND ANY PENALTY OR CHARGE OR ANY AMOUNTS PAYABLE HEREUNDER, OR HOWEVER DESIGNATED, IS A SPECIAL, LIMITED OBLIGATION OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES AND PROCEEDS PLEDGED HERETO. THIS NOTE AND THE INTEREST HEREON DO NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY, GENERAL OR MORAL OBLIGATION OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE ISSUER, THE STATE OF MINNESOTA, OR ANY POLITICAL SUBDIVISION OF THE STATE OF MINNESOTA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATIONS AND ARE NOT PAYABLE FROM OR A CHARGE UPON ANY FUNDS OF THE ISSUER OTHER THAN THE REVENUES AND PROCEEDS PLEDGED BY THE ISSUER TO THE PAYMENT HEREOF AND DO NOT GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER OR ITS OFFICERS, AGENTS OR EMPLOYEES AND NO HOLDER OF THIS NOTE SHALL EVER HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE ISSUER OR THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS TO PAY THIS NOTE OR TO ENFORCE PAYMENT HEREOF AGAINST ANY PROPERTY OF THE ISSUER OR HENNEPIN COUNTY, MINNESOTA. THIS NOTE DOES NOT CONSTITUTE A CHARGE, LIEN OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE ISSUER, AND THE AGREEMENT OF THE

ISSUER 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 LOAN AGREEMENT SUFFICIENT TO PAY ALL COSTS OF SUCH PERFORMANCE OR THE ENFORCEMENT HEREOF. NEITHER THE STATE OF MINNESOTA NOR THE ISSUER NOR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF MINNESOTA SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THIS NOTE OR INTEREST HEREON OR OTHER COSTS INCIDENT HERETO EXCEPT FROM REVENUES PLEDGED THEREFOR UNDER THE LOAN AGREEMENT AND THE PLEDGE AGREEMENT, AS MORE FULLY SET FORTH IN THOSE DOCUMENTS. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER, IF ANY, OF THE ISSUER, THE STATE OF MINNESOTA, OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THIS NOTE OR INTEREST HEREON OR OTHER COSTS INCIDENT HERETO. THIS NOTE IS NOT A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER AGENCY THEREOF AND IS NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THIS NOTE IS NEITHER A MORAL NOR AN ANNUAL APPROPRIATION OBLIGATION OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE PROVISIONS OF THIS PARAGRAPH SHALL, FOR PURPOSES OF THIS NOTE, BE CONTROLLING AND SHALL BE GIVEN FULL FORCE AND EFFECT, ANYTHING ELSE TO THE CONTRARY IN THIS NOTE NOTWITHSTANDING.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts and things required to exist to happen and to be performed precedent to or in the issuance of this Note do exist, have happened and have been performed in regular and due form as required by law.

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

IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed in its name by the manual signatures of the Mayor and City Manager, the seal of the City 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 REGISTRATION**

The ownership of the unpaid Principal Balance of this Note and the interest accruing thereon is registered on the books of City of Minnetonka, Minnesota in the name of the holder last noted below.

<u>Date of Registration</u>	<u>Name and Address Registered Owner</u>	<u>Signature of Finance Director, as Registrar</u>
	Bridgewater Bank 3800 American Boulevard Suite 100 Bloomington, MN 55431	

**First Draft  
April 6, 2018**

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**REGULATORY AGREEMENT**

**between**

**CITY OF MINNETONKA, MINNESOTA,  
as Issuer**

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

**and**

**BRIDGEWATER BANK,  
as Purchaser**

**Dated May \_\_\_, 2018**

**Relating to:**

**\$30,500,000  
City of Minnetonka, Minnesota  
Multifamily Housing Revenue Note  
(Opus Station Project)  
Series 2018**

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This Instrument Drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

**TABLE OF CONTENTS**

	<u>Page</u>
PARTIES .....	1
RECITALS .....	1
Section 1. Definitions .....	1
Section 2. Representations by the Borrower .....	4
Section 3. Qualified Residential Rental Project .....	5
Section 4. Low Income Tenants .....	7
Section 5. Restrictions Imposed by Minnesota Statutes, Chapter 474A .....	9
Section 6. Covenants Run With the Land .....	10
Section 7. Indemnification .....	10
Section 8. Consideration .....	10
Section 9. Reliance .....	10
Section 10. Sale or Transfer of the Project .....	11
Section 11. Term .....	11
Section 12. Burden and Benefit .....	12
Section 13. Enforcement .....	12
Section 14. The Purchaser and the Issuer .....	12
Section 15. Amendment .....	13
Section 16. Right of Access to the Project and Records .....	13
Section 17. No Conflict with Other Documents .....	13
Section 18. Severability .....	13
Section 19. Notices .....	13
Section 20. Governing Law .....	14
Section 21. Payment of Fees .....	14
Section 22. Limited Liability .....	14
Section 23. Actions of Issuer .....	14
Section 24. Counterparts .....	14
Section 25. Recording and Filing .....	15
SIGNATURES .....	S-1
EXHIBIT A — LEGAL DESCRIPTION OF PROPERTY .....	A-1
EXHIBIT B — FORM OF TENANT INCOME CERTIFICATION .....	B-1
EXHIBIT C — CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE .....	C-1

## REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated May \_\_, 2018 (the “Regulatory Agreement”), is between 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 (the “Issuer”), MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), and BRIDGEWATER BANK, a Minnesota banking corporation (the “Purchaser”).

### RECITALS

The Issuer is authorized to issue bonds or other obligations to provide financing for multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapter 462C, as amended (the “Act”).

The Issuer has agreed to issue its Multifamily Housing Revenue Note (Opus Station Project), Series 2018 (the “Note”), in the original aggregate principal amount of \$30,500,000, the proceeds of which will be used by the Borrower for the purpose of (i) financing all or a portion of the acquisition, construction, and equipping of approximately 220 units of workforce housing to be located at or about 11001 Bren Road East, Minnetonka, Minnesota, on the real property described on EXHIBIT A attached hereto (the “Project”); and (ii) paying all or a portion of the costs of issuance of the Note, if necessary.

To finance the Project, the Issuer will loan the proceeds derived from the sale of the Note to the Borrower pursuant to a Loan Agreement, dated as of May 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower, and the Issuer will assign its rights under the Loan Agreement to the Purchaser (except for certain unassigned rights set forth in Section 7.9 thereof) pursuant to the Pledge Agreement, dated as of May 1, 2018, between the Issuer and the Purchaser.

For good and valuable consideration, the Borrower, the Purchaser, and the Issuer have determined to enter into this Regulatory Agreement in order to impose on the Project certain requirements of the Internal Revenue Code of 1986, as amended, and of the Act applicable to the Project.

NOW, THEREFORE, the Borrower, the Purchaser, and the Issuer 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 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 of the age of 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.

“*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.

“*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 Loan Agreement.

“*Certificate of Continuing Program Compliance*” means the document substantially in the form set forth in EXHIBIT C attached hereto.

“*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 Note.

“*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*” means and includes 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.

“*Housing Act*” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“*Issuer*” means 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.

“*Loan*” means the loan of the proceeds of the Note pursuant to the Loan Agreement to provide financing for the Project.

“*Loan Agreement*” means the Loan Agreement, dated as of May 1, 2018, between the Issuer and the Borrower, as it may be amended and supplemented from time to time.

“*Low Income Tenants*” means persons or families 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) hereof.

“*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 Issuer shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“*Note*” means the Issuer’s Multifamily Housing Revenue Note (Opus Station Project), Series 2018, issued in the original aggregate principal amount of \$30,500,000.

“*Pledge Agreement*” means the Pledge Agreement, dated as of May 1, 2018, between the Issuer and the Purchaser, as it may be amended and supplemented from time to time.

“*Project*” means the approximately 200 units of workforce housing to be located at or about 11001 Bren Road East, Minnetonka, Minnesota, which will be acquired, constructed, and equipped with the proceeds of the Note.

“*Purchaser*” means Bridgewater Bank, a Minnesota banking corporation, or any successor or assign.

“*Qualified Project Period*” means the period beginning on the later of the date of issuance of the Note 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 May \_\_\_\_, 2018, between the Issuer, the Borrower, and the Purchaser, 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.

“*State*” means the State of Minnesota.

“*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.

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) To the best of the Borrower’s knowledge, there is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or 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 Note or the use of the proceeds of the Note to finance the acquisition, construction, and equipping of the Project or the execution and delivery of this Regulatory Agreement,

(ii) affects or questions the validity or enforceability of the Note or this Regulatory Agreement,

- (iii) questions the tax-exempt status of the Note, 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, Minnesota.
- (f) As of the date on which the Note is executed and delivered to the Purchaser, the Borrower will have entered into an agreement to purchase the Land and, prior to any advance from the Project Fund, will have title to the Land 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 residential apartment buildings and related facilities situated on the real property described in EXHIBIT A attached 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 Note. The Borrower will utilize and operate the Project as a multifamily rental housing project during the term of the Note 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 does not and will not own the Note. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Note, the interest on the Note shall not be tax-exempt pursuant to Section 147(a) of the Code.
- (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.
- (k) The statements made in the various certificates delivered by the Borrower to the Issuer or the Purchaser on the date of issuance of the Note are true and correct.

**Section 3. Qualified Residential Rental Project.** The Borrower shall acquire, construct, equip, 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) 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) 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 during the Qualified Project Period; and

(ii) the Borrower shall not give preference in renting Dwelling Units in the Project to any particular class or group of persons, other than Low Income Tenants as provided herein or as otherwise permitted by law;

(e) that the Dwelling Units in the Project shall be leased and rented to members of the general public in compliance with this Regulatory Agreement, except for any Dwelling Unit for a resident manager or maintenance personnel;

(f) 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 Loan 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;

(g) 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;

(h) 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;

(i) that the Borrower shall not convert the Project to condominium or cooperative ownership;

(j) that no Dwelling Unit in the Project shall be occupied by any partner of the Borrower (or any person related to a partner of the Borrower or to 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);

(k) that the Note will not be “federally guaranteed,” as defined in Section 149(b) of the Code;

(l) that the Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and

(m) 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, at least forty percent (40%) of the units in the Project will be occupied or held for occupancy by Low Income Tenants. Throughout the Qualified Project Period, 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 subsection (e) below, the Borrower shall advise the Issuer and the Purchaser 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 Issuer and the Purchaser. 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 Issuer 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

thereafter re-obtain in any year in which a unit in the Project is occupied by a new resident whose income exceeds the applicable income limit, income certifications (based upon their then current income), from each Low Income Tenant, substantially in the form of the income certification set forth in EXHIBIT B hereto or another form approved by Bond Counsel (the "Income Certification") and will 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 Note. Such Income Certification shall be obtained prior to initial occupancy. If requested by the Purchaser or Issuer, a copy of such Income Certification shall be filed with the Purchaser and the Issuer 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 Issuer and the Purchaser 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 (1) 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 Issuer, the Purchaser, 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 Issuer and the Purchaser, on or before March 1 of each year during the Qualified Project Period, beginning the first March 1 following commencement of the Qualified Project Period, a Continuing Program Compliance Certificate in the form of EXHIBIT C attached hereto and executed by the Borrower, and, if requested by the Purchaser or Issuer the Income Certifications described in subsection (c) above.

(f) The Borrower, upon becoming aware of an Event of Default, will notify the Issuer and the Purchaser, 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 Issuer and the Purchaser 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 tenants 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, in any year in which a unit in the Project is occupied by a new resident whose income exceeds the applicable income limit, by obtaining a completed Income Certification. 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 Minnesota Statutes, Chapter 474A.** Because the Note is issued by the Issuer as a residential rental project bond, as defined in Minnesota Statutes, Chapter 474A, as amended ("Chapter 474A"), and has 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 hereof) to an amount not exceeding 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 Issuer 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 Issuer 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 Issuer may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management & Budget may request from the Issuer a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management & Budget may require the Issuer 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 the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the land and shall, except as otherwise provided in 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 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 Issuer and its officers, agents, and employees (the "Indemnified Parties") and the Purchaser and its officers, agents, members, directors, officials, and employees as provided in the Loan Agreement. All provisions of the 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 Issuer has issued the Note in part to provide funds to make the Loan 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 Note by the Issuer, 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 Issuer 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 Note and in the exemption from federal income taxation of the interest on the Note. In performing their duties and obligations hereunder and under the Pledge Agreement, the Issuer and the Purchaser 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 Issuer and the Purchaser 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 Issuer or the Purchaser hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer or the Purchaser to the Borrower upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Issuer or the Purchaser 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 Issuer or the Purchaser 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.



The Purchaser shall be under no duty 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 it 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 Loan Agreement. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of these covenants, 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 the Borrower's partners.

**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 Note and termination of the Loan Agreement and the Loan 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 under a mortgage or similar instruments without the consent of or fee of any kind payable to the Issuer 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 may, at the option of the Purchaser, 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 Issuer and the Purchaser from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Note is 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 Note has 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, neither the Borrower nor any such related person as described above will obtain an ownership interest in the Project for federal income tax purposes.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Issuer and the Borrower (and the Purchaser, if the Note is then outstanding) upon receipt of an opinion of Bond Counsel to the effect that such termination will not cause interest on the Note to become included in gross income for federal income tax purposes or cause interest on the Note 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 Issuer 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 Issuer 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 Note was 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 Issuer or the Purchaser to the Borrower, then the Issuer or the Purchaser, acting on its own behalf or on behalf of the Issuer, may declare an "Event of Default" to have occurred hereunder and, at its 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 Issuer or the Purchaser 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; or

(d) with the Purchaser's consent, declare a default under the Loan, accelerate the indebtedness evidenced by the Loan, and proceed to redeem the Note in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer and the Purchaser hereby agree that any cure of any default made or tendered by one or more of the Borrower's partners or by the Purchaser shall be deemed to be a cure by the 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 Purchaser or the Issuer incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Purchaser or the Issuer, as the case may be, on demand.

After the Note has been discharged, the Issuer 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 Purchaser.

**Section 14. The Purchaser and the Issuer.** The Purchaser, in its discretion, may act as the agent of and on behalf of the Issuer where requested to do so by the Issuer. The Purchaser is entering into



To the Borrower:

Minnetonka Leased Housing Associates II, LLLP  
[ADDRESS]  
Attn: \_\_\_\_\_

With a copy to:

Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Attention: John Stern, Esq.

**Section 20. Governing Law.** This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, without regard to its conflicts of laws principles, except as such laws may be preempted by any federal rules, regulations, and laws.

**Section 21. Payment of Fees.** Notwithstanding payment of the Loan, the termination of the Loan Agreement, and the defeasance or discharge of the Note, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:

(a) to the Purchaser, its reasonably and customary fees and expenses for reviewing and, if necessary, enforcing compliance by the Borrower with the terms hereof;

(b) to the Issuer, reimbursement for all reasonable fees and expenses, including, but not limited to, financial advisory and legal fees and expenses necessary for the Issuer's reviewing and, if necessary, enforcing compliance by the Borrower with the terms of this Regulatory Agreement; and

(c) the fees and expenses of any entity or person designated by the Purchaser or the Issuer 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 subsections (a) and (b) above.

**Section 22. Limited Liability.** All obligations of the Issuer hereunder shall be special, limited obligations of the Issuer, payable solely and only from proceeds of the Note and amounts derived by the Issuer from the Loan and the Loan Agreement.

**Section 23. Actions of Issuer.** The Issuer 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 Issuer by virtue of this Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Note; it being the intent of the parties hereto that the Issuer, and any and all present and future trustees, members, officers, employees, attorneys, and agents of the Issuer shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Issuer by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Note; 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 Note, the Loan Agreement, the Pledge Agreement, or any other instrument or agreement executed in connection with the issuance of the Note. If the Issuer's consent or approval is required under this Regulatory Agreement, or any other agreement or instrument executed in connection with the issuance of the Note, the Issuer 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.** Prior to any further advances of the proceeds of the note under Section 3.03 of the Disbursing Agreement, the Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Issuer or the Purchaser may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

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

IN WITNESS WHEREOF, the Issuer, the Borrower, and the Purchaser have caused this Regulatory Agreement to be signed by their respective duly authorized representatives as of the date 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 municipal corporation under the law of the State of Minnesota, on behalf of the Issuer.

\_\_\_\_\_  
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 municipal corporation under the law of the State of Minnesota, on behalf of the Issuer.

\_\_\_\_\_  
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: \_\_\_\_\_  
Its: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a Minnesota \_\_\_\_\_, the general partner of Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, on behalf of the Borrower.

\_\_\_\_\_  
Notary Public





**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

[Insert legal description]

**EXHIBIT B**

**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: Opus Station Apartments  Address: _____ 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 if over \$5,000	\$ _____	Passbook Rate x 2.00 %	=	(J) Imputed Income \$
Enter the greater of the total column I, or J: imputed income ASSETS (K)	TOTAL INCOME FROM			\$
(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 Income Restriction at:	RECERTIFICATION ONLY: Current Income Limit x 140%
Current Income Limit per Family Size: _____	\$ _____	50% <input type="checkbox"/> 60% <input type="checkbox"/>	\$ _____
Household Income at Move-in \$ _____		30% <input type="checkbox"/> 40% <input type="checkbox"/>	Household income exceeds 140% at recertification:
		<input type="checkbox"/> ___%	<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**

\_\_\_\_\_, 20\_\_

TO: City of Minnetonka, Minnesota  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345  
Attn: City Manager

and (prior to the discharge of the Note (hereinafter defined))

Bridgewater Bank  
3800 American Boulevard, Suite 100  
Bloomington, MN 55431  
Attn: Nicholas Place

Re: Multifamily Housing Revenue Note (Opus Station Project), Series 2018 (the "Note")

The undersigned, an authorized representative for 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 project located at \_\_\_\_\_ Bren Road East, Minnetonka, Minnesota commonly known as the Opus Station Apartments (the "Project").

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement, dated May \_\_, 2018 (the "Regulatory Agreement"), between the Owner, the City of Minnetonka, Minnesota (the "Issuer"), and Bridgewater Bank (the "Purchaser"); and (2) the Loan Agreement, dated as of May 1, 2018 (the "Loan Agreement"), between the Owner and the Issuer. The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Note.

3. A review of the activities of the Owner and of the Owner's performance under the Regulatory Agreement and the Loan Agreement during the year ending \_\_\_\_ has been made under the supervision of the undersigned.

4. The Project's Qualified Project Period commenced on \_\_\_\_\_, \_\_\_\_ (the date on which ten percent (10%) of the residential units in the Project were occupied), and will end on the latest of:

(i) \_\_\_\_\_, \_\_\_\_ (the date which is fifteen (15) years after the date on which fifty percent (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 Note, if this is the first such certificate) has less than \_\_\_\_\_ units (representing forty percent (40%) of the completed units in the Project) been occupied by or were last occupied by Low Income Tenants.

7. As of the date of this Certificate, at least forty percent (40%) of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed sixty percent (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 sixty percent (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 sixty percent (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 forty percent (40%) of the units in the Project has been equal to or less than applicable area fair market rents or exception fair market rents for existing housing as established by the federal Department of Housing and Urban Development from time to time.

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 and the Loan Agreement and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Note.

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. Unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Regulatory Agreement.

12. 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 Purchaser and the Issuer with respect to the Project. **(If the Owner has transferred any interest in the Project, such transfer should be detailed here.)**

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Signature page of the Borrower to the Certificate of Continuing Program Compliance.

Dated: \_\_\_\_\_, \_\_\_\_\_.

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

By: \_\_\_\_\_  
Its: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**First Draft  
April 6, 2018**

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**DISBURSING AGREEMENT**

**between**

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

**and**

**BRIDGEWATER BANK,  
as Purchaser**

**Dated as of May 1, 2018**

**Relating to:**

**\$30,500,000  
City of Minnetonka, Minnesota  
Multifamily Housing Revenue Note  
(Opus Station Project)  
Series 2018**

---

This instrument drafted by:

Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

**TABLE OF CONTENTS**

PARTIES ..... 1  
RECITALS ..... 1

**ARTICLE 1  
DEFINITIONS**

Section 1.01. Defined Terms .....2

**ARTICLE 2  
COMMITMENT TO MAKE DISBURSEMENTS,  
DISBURSEMENT PROCEDURES AND DEPOSIT OF FUNDS**

Section 2.01. The Project Fund.....5  
Section 2.02. Disbursements.....5  
Section 2.03. Disbursement Procedures.....5  
Section 2.04. Deposit of Funds by the Borrower.....6  
Section 2.05. Disbursements Without Receipt of Draw Request .....6

**ARTICLE 3  
CONDITIONS OF ADVANCES**

Section 3.01. Conditions Precedent to Initial Advance .....7  
Section 3.02. Conditions Precedent to Further Disbursements.....7  
Section 3.03. Further Conditions Precedent to All Disbursements.....9  
Section 3.04. Conditions Precedent to the Final Disbursement.....10  
Section 3.05. No Waiver.....10  
Section 3.06. Refunding of Note Prior to Completion of Project .....10

**ARTICLE 4  
REPRESENTATIONS AND WARRANTIES**

Section 4.01. Representations and Warranties..... 11

**ARTICLE 5  
ADDITIONAL COVENANTS OF THE BORROWER**

Section 5.01. Affirmative Covenants..... 13  
Section 5.02. Negative Covenants ..... 13

**ARTICLE 6  
EVENTS OF DEFAULT AND RIGHTS AND REMEDIES**

Section 6.01. Events of Default .....14  
Section 6.02. Rights and Remedies ..... 15

ARTICLE 7  
MISCELLANEOUS

Section 7.01.	Inspections .....	16
Section 7.02.	Indemnification by the Borrower.....	16
Section 7.03.	Additional Security Interest .....	16
Section 7.04.	Fees and Expenses .....	16
Section 7.05.	Notices .....	17
Section 7.06.	Time of Essence.....	17
Section 7.07.	Binding Effect and Assignment.....	17
Section 7.08.	Waivers .....	17
Section 7.09.	The Purchaser’s Remedies Cumulative .....	17
Section 7.10.	Governing Law and Entire Agreement .....	17
Section 7.11.	Counterparts.....	18
Section 7.12.	Inconsistency .....	18
Section 7.13.	Conditions of Disbursements.....	18
Section 7.14.	Amendments .....	18
Section 7.15.	Jurisdiction.....	18
SIGNATURES .....		S-1

## DISBURSING AGREEMENT

THIS DISBURSING AGREEMENT is made as of May 1, 2018 (the “Disbursing Agreement”), between MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), and BRIDGEWATER BANK, a Minnesota banking corporation (the “Purchaser”).

### RECITALS

WHEREAS, the City of Minnetonka (the “Issuer”) has provided for the issuance of its Multifamily Housing Revenue Note (Opus Station Project), Series 2018 (the “Note”), in the original aggregate principal amount of \$30,500,000; and

WHEREAS, by a Loan Agreement, dated as of May 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower, the Issuer has agreed to lend the proceeds of its Note to the Borrower for use in (i) financing all or a portion of the acquisition, construction, and equipping of approximately 220 units of workforce housing to be located at or about 11001 Bren Road East, Minnetonka, Minnesota (the “Facilities”); and (ii) paying all or a portion of the costs of issuing the Note, if necessary; and

WHEREAS, by a Pledge Agreement, dated as of May 1, 2018, between the Issuer and the Purchaser, the Issuer has assigned to the Purchaser the Issuer’s interest in the Loan Agreement, except for those rights retained by the Issuer under the provisions of Section 7.9 of the Loan Agreement; and

WHEREAS, by a Regulatory Agreement, dated May \_\_, 2018 (the “Regulatory Agreement”), between the Issuer, the Borrower, and the Purchaser, the Borrower agrees to comply with certain rental and occupancy requirements of federal and state law set forth therein; and

WHEREAS, the Loan Agreement provides that the proceeds of the Note shall be disbursed from the Project Fund created hereunder to the Borrower in accordance herewith; and

NOW, THEREFORE, in consideration of the premises, the payment by the Borrower to the Purchaser of a fee (receipt of which is acknowledged by the Purchaser), and of the mutual covenants and agreements hereinafter set forth, it is agreed between the parties hereto as follows:

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



## ARTICLE 1

### DEFINITIONS

Section 1.01. Defined Terms. Any terms not defined herein shall have the meanings as defined in the Loan Agreement. As used in this Disbursing Agreement, the following terms shall have the meanings set out respectively after each (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

Appraisal: an acceptable appraisal of the market value of the completed Facilities and the Land (a) addressed to the Purchaser, (b) prepared by an appraiser approved by the Purchaser and (c) conforming to all laws applicable to the Purchaser and otherwise in a form satisfactory to the Purchaser.

Architect: the architect retained by the Borrower to design the Facilities.

Architect's Contract: the agreement between the Borrower and the Architect as to preparation of the Plans and Specifications for the construction of the Facilities.

Borrower: Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, its successors and assigns.

Contractor: any person, including the General Contractor, who shall be engaged to work on, or to furnish materials and supplies for, the Facilities.

Construction Contract: the agreement between the Borrower and the General Contractor pursuant to which the General Contractor agrees to construct the Facilities in accordance with the Plans and Specifications for a fixed price or maximum cost.

Disbursement: a disbursement by the Purchaser from the Project Fund to the Borrower pursuant to Article II hereof.

Draw Request: a request for a Disbursement made on a form approved by the Purchaser and in accordance with Section 2.03 hereof.

Event of Default: one of the events of default specified in Section 6.01 hereof and the continuance of such event following the giving of any notice and the expiration of any cure period specified in Section 6.01 hereof.

Facilities: the approximately 220 units of workforce housing apartment units to be located at or about 11001 Bren Road East, Minnetonka, Minnesota.

General Contractor: the general contractor retained by the Borrower to construct the Facilities.

General Partner: \_\_\_\_\_, a \_\_\_\_\_, its successors and assigns.

Governing Authorities: the Issuer and any other local, state or federal governing authority having jurisdiction over the Project.

Guarantor: Dominion Holdings II, LLC, a Minnesota limited liability company, its successors and assigns.

Guaranty: the Guaranty Agreement, dated as of May 1, 2018, by the Guarantor in favor of the Purchaser, as it may be amended from time to time.

Issuer: the City of Minnetonka, Minnesota.

Land: the land in Minnetonka, Minnesota upon which the Facilities are to be constructed.

Loan: the loan to be made to the Borrower pursuant to the terms of the Loan Agreement and to be disbursed in accordance with this Disbursing Agreement.

Loan Agreement: the Loan Agreement, dated as of May 1, 2018, between the Issuer and the Borrower.

Note: the Multifamily Housing Revenue Note (Opus Station Project), Series 2018, issued by the Issuer in the original aggregate principal amount of \$30,500,000.

Organizational Documents: the following documents each of which shall be in form and substance acceptable to the Purchaser:

- (a) a copy of the Borrower's Limited Partnership Agreement, duly certified as of a current date by an officer thereof;
- (b) complete and correct copies of the Certificate of Formation and Certificate of Limited Partnership of the Borrower;
- (c) Articles of Organization of the General Partner, as in effect of the date of execution of this Disbursing Agreement, duly certified by the Secretary of State of the State as of a current date;
- (d) a copy of the Operating Agreement of the General Partner;
- (e) Articles of Organization of the Guarantor, as in effect of the date of execution of this Disbursing Agreement, duly certified by the Secretary of State of the State as of a current date;
- (f) a copy of the Operating Agreement of the Guarantor;
- (g) Certificates of Good Standing of the Borrower, the General Partner, and the Guarantor, duly issued as of a current date by the Secretary of State of the State;
- (h) copies of the resolutions of the Borrower and the General Partner authorizing the execution, delivery and performance of those Loan Documents to which each is a party and the transactions contemplated thereby, duly certified by an officer thereof; and
- (i) a copy of the resolution of the Guarantor authorizing the execution, delivery and performance of the Guaranty and the transactions contemplated thereby, duly certified by an officer thereof.

Plans and Specifications: the plans and specifications for the construction of the Facilities prepared and signed by the Architect and approved by the Purchaser.

Pledge Agreement: the Pledge Agreement, dated as of May 1, 2018, between the Issuer and the Purchaser.

Project: the acquisition, construction, and equipping of the Facilities.

Project Costs: the costs shown on the Total Project Cost Statement.

Project Fund: the fund created pursuant to Section 2.01 hereof.

Purchaser: Bridgewater Bank, a Minnesota banking corporation, its successors and assigns.

Regulatory Agreement: the Regulatory Agreement, dated May \_\_\_\_, 2018, between the Issuer, the Borrower, and the Purchaser.

Security Documents: the Loan Agreement, the Pledge Agreement, and any mortgage, assignment of leases and rents or security documents subsequently executed by the Borrower.

Subcontractor: any person who contracts with the General Contractor to perform any of the work or supply any of the materials necessary to complete the construction of the Facilities.

Subcontract: any contract between the General Contractor and a Subcontractor.

Sworn Construction Statement: a sworn construction statement duly executed by the Borrower and the General Contractor showing all Contractors having contracts or subcontracts for specific portions of the work on the Facilities and the amounts due or to become due each such Contractor, and including all costs and expenses of any kind incurred and to be incurred in constructing the Facilities and fulfilling the obligations of the General Contractor under the terms of the Construction Contract.

Title: such entity as the Borrower and the Purchaser shall agree on prior to any disbursement under Section 3.02 hereof.

Total Project Cost Statement: a total project cost statement duly executed by the Borrower incorporating the Sworn Construction Statement and setting forth all costs and expenses of any kind incurred or to be incurred by the Borrower in connection with acquisition of the Land and the construction and equipping of the Facilities, including all so-called “hard” and “soft” costs.

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## ARTICLE 2

### COMMITMENT TO MAKE DISBURSEMENTS, DISBURSEMENT PROCEDURES, AND DEPOSIT OF FUNDS

Section 2.01. The Project Fund. Pursuant to this Disbursing Agreement, a Project Fund has been established, or will be established, and maintained in the Borrower's name as a separate account with the Purchaser (the "Project Fund"). Once established, the Purchaser shall maintain the Project Fund for as long as the Purchaser is the holder of the Note. On the Issue Date, [\$50,001] of Note proceeds have been advanced under the Note and have been expended on the Issuance Expenses. Thereafter, with the consent of the Purchaser, proceeds of the Note shall be advanced and deposited into the Project Fund in the amount of each Disbursement. All amounts in the Project Fund shall earn interest at a variable per annum rate equal to that paid by the Purchaser on its business money market accounts or at such other rate as the Borrower and the Purchaser may agree, provided, however that any amounts remaining in the Project Fund from and after May \_\_\_\_, 2021 shall not be invested at a yield greater than the yield on the Note (\_\_\_\_\_%). The Borrower hereby grants to the Purchaser a security interest in any and all amounts on deposit in the Project Fund as security for payment by the Borrower and performance of its other obligations under the Note and the Security Documents. Upon redemption of the Note and payment of the Note in full to the Purchaser, if any funds remain in the Project Fund, the Purchaser shall disburse such funds based on the written direction of the Borrower.

Section 2.02. The Disbursements. Subject to the conditions precedent for disbursement set forth in Article 3, the Purchaser agrees, on the terms and subject to the conditions hereinafter set forth, to make Disbursements from the Project Fund to the Borrower from time to time in an aggregate principal amount of up to and including the maximum amount of \$30,500,000. All Disbursements shall be used to pay Project Costs. The obligation of the Borrower to repay the Disbursements shall be evidenced by the Loan Agreement and the Note which contain terms relating to maturity, interest rate, payments, prepayment, acceleration and other matters.

Section 2.03. Disbursement Procedures.

(a) Whenever the Borrower desires a Disbursement, which shall be no more often than monthly, the Borrower shall submit to the Purchaser a Draw Request, duly executed on behalf of the Borrower, setting forth the information requested therein. Each Draw Request shall be submitted on or between the first day and the fifteenth day of the month in which a Disbursement is requested, and shall be filed at least seven (7) days before the date the Disbursement is desired. With respect to construction items (so-called "hard costs") each Draw Request shall be limited to amounts equal to (i) the total of such costs actually incurred and paid or owing by the Borrower to the date of such Draw Request for work performed on the Project that the Purchaser has committed to finance pursuant to Section 2.02 hereof, plus (ii) the cost of materials and equipment not incorporated in the Project, but delivered to and suitably stored on the Land; less, (iii) five percent (5%) holdback with respect to labor and not materials (or such lesser holdback as is authorized by the Purchaser) and less prior Disbursements. Notwithstanding anything herein to the contrary, no Disbursements for materials stored on the Land will be made by the Purchaser unless the Borrower provides suitable security for such storage. With respect to all other costs (so-called "soft costs") each Draw Request shall be limited to the total of such costs incurred by the Borrower to the date of such Draw Request, less prior Disbursements for such costs. Each Draw Request shall constitute a representation and warranty by the Borrower that all representations and warranties set forth in Article 4 hereof are true and correct as of the date of such Draw Request.

(b) At the time of submission of each Draw Request, the Borrower shall also submit to the Purchaser and Title any materials required by Title, including (without limitation) a written lien waiver from each Contractor for work done and materials supplied by it which were paid for pursuant to the previous Draw Request.

(c) If on the date a Disbursement is desired, (i) the Borrower has performed all of its agreements and complied with all requirements therefor to be performed or complied with hereunder including satisfaction of all applicable conditions precedent contained in Article 3 hereof, (ii) the Borrower has performed all of its obligations hereunder, and (iii) the Purchaser receives a current construction report from the inspecting architect/engineer, if any, confirming the accuracy of the information set forth in the Draw Request, the Purchaser shall advance under the Note and disburse the amount of the requested Disbursement to or at the direction of the Borrower. Each Disbursement shall constitute an advance under the Note and shall bear interest at the rate provided in the Note from the date such Disbursement is disbursed by the Purchaser.

Section 2.04. Deposit of Funds by the Borrower. If the Purchaser shall at any time after the conditions set forth in Section 3.02 hereof have been met in good faith determine that the undisbursed amount of the Note is less than the amount required to pay all unpaid costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project, and shall thereupon send written notice thereof to the Borrower specifying the amount required to be deposited by the Borrower into the Project Fund to provide sufficient funds to pay all such costs and complete the Project, the Borrower agrees that it will, within seven (7) calendar days of receipt of any such notice, deposit into the Project Fund the amount of funds specified in the Purchaser's notice. The Borrower agrees that any such funds so deposited may be disbursed before any further disbursement of monies in the Project Fund, to pay any and all costs and expenses of any kind in connection with completion of the Project.

Section 2.05. Disbursements Without Receipt of Draw Request. Notwithstanding anything herein to the contrary, the Purchaser shall have the irrevocable right at any time and from time to time to apply monies in the Project Fund or the Reserve Fund to pay interest on the Note as and when it becomes due, and to pay any and all of the expenses referred to in Section 7.04 hereof, all without receipt of a Draw Request from the Borrower.

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## ARTICLE 3

### CONDITIONS OF ADVANCES

Section 3.01. Conditions Precedent to Initial Advance. The obligation of the Purchaser to make the initial advance of \$50,001 to pay the costs of issuing the Note shall not be subject to the requirements provided elsewhere in this Disbursing Agreement (except as indicated in this Section 3.01), but shall be subject to the condition precedent that the Borrower shall be in compliance with the conditions contained in Section 3.03 and the further condition precedent that the Purchaser shall have received on or before the date of the initial advance under the Note, the following, each to be satisfactory to the Purchaser in form and substance:

- (a) The Loan Agreement duly executed by the Issuer and the Borrower;
- (b) The Note duly executed by the Issuer;
- (c) The Pledge Agreement duly executed by the Issuer and the Purchaser;
- (d) The Regulatory Agreement duly executed by the Issuer, Borrower and the Purchaser;
- (e) The Guaranty duly executed by the Guarantor;
- (f) The Organizational Documents;
- (g) A signed copy of a favorable opinion of counsel to the Borrower; and
- (h) An opinion of Kennedy & Graven, Chartered, or other nationally recognized bond counsel to the effect that interest on the Note is exempt from all federal and state income taxes.

Section 3.02. Conditions Precedent to Further Disbursements. The obligation of the Purchaser to make additional advances of the purchase price of the Note and Disbursements shall be subject to the conditions precedent that the Borrower shall have received the consent of the Purchaser and be in compliance with all the conditions contained in Section 3.03 hereof and the further condition precedent that the Purchaser shall have received (unless waived in writing by the Purchaser) on or before the date of each further Disbursement each of the following, each to be satisfactory to the Purchaser in form and substance:

- (a) A mortgage and assignment of leases and rents encumbering the Land;
- (b) An Assignment of Construction Contract duly executed by the Borrower and consented to by the General Contractor;
- (c) An Assignment of Architect's Contract duly executed by the Borrower and consented to by the Architect;
- (d) A copy of the Plans and Specifications;
- (e) Copies of the Construction Contract and the Architect's Contract;

(f) Copies of such Subcontracts as the Purchaser may request, together with a letter from each Contractor under such Subcontracts permitting the Purchaser, upon its election to complete the Facilities in accordance with the provisions of Section 6.02(c) hereof, to acquire the interest of the Contractor under such Subcontracts;

(g) The Sworn Construction Statement;

(h) The Appraisal;

(i) An extended coverage ALTA Mortgagee's Policy of Title Insurance issued by Title (Form 1970 or Form 1992 Revised 10-23-92 with the exclusion for creditors rights and arbitration requirements deleted) and containing such endorsements as Purchaser may require including ALTA Form 9 Comprehensive Endorsement and ALTA Form 3.0 Zoning Endorsement; such Policy shall be in an amount equal to the amount of the Commitment and shall insure any mortgage as a first lien on a good and marketable fee simple title to the Facilities and the Land, subject only to such encumbrances as shall be acceptable to the Purchaser; and without limiting the generality of the foregoing, such Policy shall insure the Purchaser against claims for mechanics' liens, rights of parties in possession and matters which would be disclosed by a comprehensive survey of the Land;

(j) A boundary survey of the Land prepared and certified by a licensed or registered surveyor to the Purchaser in accordance with Minimum Standard Detail Requirements for a Class A Urban ALTA Land Survey (as most recently adopted by the ALTA/NSPS) including Items Nos. 1, 2, 3, 4, 6, 7(a), 7(b)(1), 8, 9, 10, 11 and 13 of Table A of the Requirements and such other items as the Purchaser may reasonably require; the survey shall set forth the street addresses of the Facilities along with the legal description and the number of square feet within said description; the survey shall be "spotted" to show each of the proposed Facilities according to the site plan prepared by the Architect and revised to show foundations when laid; and upon completion of the Facilities the applicable survey shall be recertified "as-built";

(k) A copy of the plat for the Project conforming to all platting requirements, or evidence that a plat is not required or has been waived by the appropriate Governing Authority;

(l) Appropriate searches conducted in the required offices in the State showing no tax liens, bankruptcies, judgments or other liens affecting the Borrower or the Project, and Uniform Commercial Code searches conducted disclosing no security interests existing against the Project including the equipment, fixtures and personalty;

(m) The site plan prepared by the Architect showing each of the proposed Facilities;

(n) One or more letter(s) from the appropriate Governing Authority stating that the Facilities when constructed in accordance with the Plans and Specifications will comply in all respects with all applicable ordinances, zoning, planned unit development, subdivision, platting, environmental and land use requirements, without special variance or exception, and such other evidence as the Purchaser shall request to establish that the Project and the contemplated use thereof are permitted by and comply with all applicable use or other restrictions and requirements in prior conveyances, zoning ordinances, environmental laws and regulations, water shed district regulations and all other applicable laws or regulations, and have been duly approved by the municipal and other governmental authorities having jurisdiction over the Project, and that all required permits for construction of the Facilities have been obtained;

(o) Soil reports describing the soil conditions and indicating any corrective action that may be necessitated because of such conditions, together with evidence that the Plans and Specifications incorporate such corrective action, if any;

(p) One or more Phase I Environmental Site Assessment(s), addressed and certified to the Borrower and the Purchaser and performed by a qualified licensed engineer or certified environmental/industrial hygienist in strict conformance with the Standard Practice for Environmental Site Assessment Process, ASTM Standard E1527-97 and a findings and conclusions section consistent with Section 11.6.1 thereof and any additional investigations and analysis necessary for the consultant to conclude there are no Recognized Environmental Conditions or Historical Recognized Environmental Conditions (as such terms are used in Standard E1527) associated with the Project, or such have been remediated in accordance with applicable law;

(q) The Total Project Cost Statement;

(r) Letters from utility companies establishing that all utilities necessary for the construction and operation of the Facilities are available at the boundaries of the Land, including without limitation water, sewer, electricity, gas and telephone, and that the Borrower has the right to connect to and use such utilities;

(s) Copies of the policies of builder's risk insurance (including business interruption insurance) and comprehensive general liability insurance and a certificate of the worker's compensation insurance, with all such insurance in full force and effect;

(t) Evidence of all commitments for financing necessary to complete the Project;  
and

(u) Such other documents as the Purchaser may require.

Section 3.03. Further Conditions Precedent to All Disbursements. The obligation of the Purchaser to make each subsequent Disbursement shall be subject to the condition precedent that the Borrower shall be in compliance with all conditions set forth in Sections 3.01 and 3.02 hereof, and the further conditions precedent that on the date of such Disbursement:

(a) No Event of Default hereunder, or event which would constitute an Event of Default but for the requirement that notice be given or that a period of cure or time elapse, shall have occurred and be continuing and all representations and warranties made by the Borrower in Article 4 hereof shall continue to be true and correct as of the date of such Disbursement.

(b) No determination shall have been made by the Purchaser that the unadvanced amount of the Note is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project; or if such a determination has been made and notice thereof sent to the Borrower, the Borrower has deposited the necessary funds in the Project Fund in accordance with Section 2.04 hereof.

(c) The disbursement requirements of Section 2.03 hereof shall have been satisfied.

(d) If required by the Purchaser, the Purchaser shall be furnished with an updated statement of the Borrower and of any Contractor, in form and substance required by the Purchaser, setting forth the names, addresses and amounts due or to become due as well as the



amounts previously paid to every Contractor, subcontractor, person, firm or corporation furnishing materials or performing labor in connection with the construction of any part of the Project.

(e) The Borrower shall have provided to the Purchaser such evidence of compliance with all of the provisions of this Disbursing Agreement as the Purchaser may reasonably request.

(f) The Borrower shall have provided to the Purchaser copies of all building permits and such other licenses and permits as may be required to construct each of the Facilities. No license or permit necessary for the construction of the Facilities shall have been revoked or the issuance thereof subjected to challenge before any court or other Governing Authority.

Section 3.04. Conditions Precedent to the Final Disbursement. The obligation of the Purchaser to make the final Disbursement shall be subject to the condition precedent that the Borrower shall be in compliance with all conditions set forth in Sections 3.01, 3.02 and 3.03 hereof, and, further, that the following conditions shall have been satisfied:

(a) The Project, including all landscape and parking requirements, shall have been completed in accordance with the Plans and Specifications and the Purchaser shall have received a Certificate of Completion from the General Contractor and the Architect certifying that (i) work on the Project has been completed in accordance with the Plans and Specifications and all labor, services, materials and supplies used in such work have been paid for and (ii) the completed Project conforms with all applicable zoning, land use planning, building and environmental laws and regulations of all Governing Authorities.

(b) The Purchaser shall have received satisfactory evidence that all work requiring inspection by municipal or other Governing Authorities has been duly inspected and approved by such authorities, and that all requisite certificates of occupancy and any other approvals for occupancy and operation of the Project have been issued.

(c) The Purchaser and Title shall have received a final lien waiver from each Contractor for all work done and for all materials furnished by it for the Project or Title shall be reasonably satisfied that such lien waivers will be provided within thirty (30) days and shall have provided its Policy of Title Insurance described in Section 3.02(i) hereof with the mechanic's lien exception removed.

(d) The Purchaser shall have received an "as-built" survey of the Land meeting all of the requirements set forth in Section 3.01(j) hereof and showing that the Facilities as completed are entirely within the exterior boundaries of the Land and any building setback or restriction lines and do not encroach upon any easements or right-of-way, and showing such other information as the Purchaser may reasonably request.

Section 3.05. No Waiver. The making of any Disbursement prior to fulfillment of any condition thereof shall not be construed as a waiver of such condition, and the Purchaser reserves the right to require fulfillment of any and all such conditions prior to making any subsequent Disbursements.

Section 3.06. Refunding of Note Prior to Completion of Project. It is the expectation of the Borrower and the Purchaser that the Borrower will refund the Note prior to the completion of the Project. Notwithstanding the conditions precedent to disbursements set forth in Sections 3.02, 3.03, and 3.04 hereof, if no Event of Default has occurred and is continuing hereunder and the Borrower has secured financing or other available funds in an amount sufficient to immediately redeem and prepay the Note in

full, the Purchaser agrees to fully advance the Note on the date the Note is scheduled to be refunded and deposit such funds to the Project Fund.

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## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

Section 4.01. Representations and Warranties. The Borrower represents to the Purchaser and warrants as follows:

(a) The Borrower is a limited liability limited partnership, duly organized, validly existing and in good standing under the laws of the State, and has all requisite power and authority to enter into a purchase agreement for and to own the Land and construct the Facilities, and to execute and deliver and to perform all of its obligations under the Loan Agreement, this Disbursing Agreement, the Note and the Security Documents and the execution and delivery thereof and the carrying out of the transactions contemplated thereby will not violate, conflict with or constitute a default under the terms of the Organizational Documents or under any note, bond, debenture or other evidence of indebtedness or any contract, loan agreement or lease to which the Borrower is a party or by which the Land is subject, or violate any law, regulation or order of any Governing Authority, or any court order or judgment in any proceeding to which the Borrower is or was a party or by which the property of the Borrower is bound.

(b) The execution, delivery and performance by the Borrower of the Loan Agreement, this Disbursing Agreement, the Regulatory Agreement and the Security Documents have been duly authorized by the Borrower.

(c) This Disbursing Agreement constitutes, and the Loan Agreement, the Regulatory Agreement, the Note and the Security Documents when delivered hereunder will constitute, legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms.

(d) The Borrower has obtained or will obtain all necessary licenses and permits required for construction of the Facilities and the operation of each of the Facilities, except those which cannot be obtained until completion of the Facilities.

(e) The Facilities will be constructed in accordance with the Plans and Specifications; will be constructed entirely on the Land; and will not encroach upon or overhang any easement or right-of-way. The Facilities, both during construction and at the time of completion, and the contemplated use thereof, will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record. The Borrower agrees that it will furnish to the Purchaser from time to time reasonably satisfactory evidence with respect thereto.

(f) Any and all financial statements of the Borrower heretofore delivered to the Purchaser by or on behalf of the Borrower are true and correct in all respects, have been prepared and fairly present the financial condition of the subject thereof as of the respective dates thereof. No materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. None of the aforesaid financial statements or any certificate or statement furnished to the Purchaser by or on behalf of the Borrower in connection with the transactions contemplated hereby, and none of the representations and warranties in this Disbursing Agreement, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein not misleading. To the best knowledge of the Borrower, there is no fact which materially adversely affects or in the future (so far as the Borrower can now foresee) may materially adversely affect the business or prospects or

condition (financial or other) of the Borrower or any of its properties or assets, which has not been set forth herein or in a certificate or statement furnished to the Purchaser by the Borrower.

(g) There is no suit, action, proceeding or investigation pending or threatened against or affecting the Borrower (or any basis therefor) at law or in equity or by or before any court, arbitrator, administrative agency or other federal, state or local governmental authority which individually or in the aggregate, if adversely determined, might have a material adverse effect on, or affect the validity as to the Borrower of, any of the transactions contemplated by this Disbursing Agreement or the ability of the Borrower to perform its obligations hereunder or as contemplated hereby.

(h) No consent, approval, order or authorization of or registration, declaration or filing with any governmental authority is required in connection with a valid execution and delivery of this Disbursing Agreement, the Loan Agreement, the Regulatory Agreement, the Security Documents or of any and all other agreements and instruments herein mentioned to which the Borrower is a party or the carrying out or performance of any of the transactions required or contemplated thereby, or, if required, such consent, approval, order or authorization shall have been obtained or such registration, declaration or filing shall have been accomplished prior to the initial Disbursement.

(i) The principal amount of the Note, together with any other funds to be contributed toward the payment of Project Costs by the Borrower will be sufficient to pay the entire cost of acquiring, constructing, equipping and otherwise rendering the Project suitable for its intended use.

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## ARTICLE V

### ADDITIONAL COVENANTS OF THE BORROWER

Section 5.01. Affirmative Covenants. The Borrower agrees that:

(a) The Borrower will diligently proceed with acquisition, construction, and equipping of the Facilities according to the Plans and Specifications and in accordance with all applicable laws and ordinances, will complete the Project by the Completion Date and will use the proceeds of the Note solely to pay Project Costs.

(b) The Borrower will use all reasonable efforts to require each Contractor to comply with all rules, regulations, ordinances and laws bearing on its conduct of work on the Project.

(c) The Borrower will provide and maintain at all times during construction of the Facilities (and, from time to time at the request of the Purchaser, furnish the Purchaser with proof of payment of premiums on) insurance on the Project.

(d) The Borrower shall maintain accurate and complete books, accounts and records pertaining to the Project. The Borrower will permit the Purchaser, acting by and through its officers, employees and agents during normal business hours and upon reasonable notice, to examine all books, records, contracts, plans, drawings, permits, bills and statements of account pertaining to the Project and to make extracts therefrom and copies thereof.

Section 5.02. Negative Covenants. The Borrower agrees that, without the prior written consent of the Purchaser, it will not voluntarily, involuntarily or by operation of law agree to, cause, suffer or permit any sale, transfer, lease, sublease or conveyance of any interest of the Borrower, legal or equitable, in the Project, except in the ordinary course of the Borrower's business, or any sale, transfer, or encumbrance of any general or limited partnership interest or equity interests in the Borrower, or any mortgage, pledge, encumbrance, or lien to be outstanding against the Project or any portion thereof, or any security interest to exist therein, except as created by the Security Documents or as explicitly permitted therein, without, in each instance, the prior written consent of the Purchaser. If the Borrower breaches the foregoing covenant, the Purchaser may, at its election, declare all amounts owing under this Disbursing Agreement, the Loan Agreement, the Note, and the Security Documents to be immediately due and payable, without notice to the Borrower (which notice the Borrower hereby expressly waives), and upon such declaration all such amounts shall be immediately due and payable. Any transfer of an interest in the General Partner, including in accordance with the terms of the Limited Partnership Agreement, shall require the consent of the Purchaser, which shall not be unreasonably withheld, delayed, or conditioned.

No transfer, conveyance, lease, sale or other disposition shall relieve the Borrower from personal liability for its obligations hereunder or under the other Security Documents, whether or not the transferee assumes such obligations. The Purchaser may, without notice to the Borrower, deal with any successor owner of all or any portion of the Project in the same manner as with the Borrower, without in any way discharging the liability of the Borrower hereunder or under the Security Documents.

## ARTICLE 6

### EVENTS OF DEFAULT AND RIGHTS AND REMEDIES

Section 6.01. Events of Default. Each of the following shall constitute an Event of Default.

(a) The Borrower shall fail to pay, when due, interest or principal due under the Loan Agreement or the Note and such failure shall continue for twenty (20) calendar days;

(b) Any representation or warranty made by the Borrower herein, in the Security Documents or in any financial statement, certificate, report or Draw Request furnished pursuant to this Disbursing Agreement or the Security Documents shall prove to have been untrue in any material respect as of the time such representation or warranty was made;

(c) The Borrower shall fail duly to observe or perform, any of the terms, conditions, covenants or agreements required to be observed or performed by the Borrower hereunder (other than terms, conditions, covenants or agreements otherwise specifically dealt with in this Article 6), and such failure shall continue for a period of thirty (30) calendar days after written notice of such failure has been given by the Purchaser to the Borrower, provided that if the Borrower promptly commences and diligently pursues a cure but such default cannot reasonably be cured within thirty (30) days, then the Borrower may have an additional thirty (30) days within which to cure the default;

(d) The Borrower shall be in default under or in breach of any of the covenants contained in any of the Security Documents and such default or breach shall not be cured or waived within the period or periods of grace or time allowed to cure, if any, applicable thereto;

(e) An Event of Default as defined in the Loan Agreement shall occur and be continuing, and such Event of Default shall not be cured or waived within the period or periods of grace or time allowed to cure, if any, applicable thereto;

(f) The Facilities shall be materially damaged or destroyed by fire or other casualty and the loss, in the reasonable judgment of the Purchaser, shall not be adequately covered by insurance actually collected or in the process of collection or by other funds available to the Borrower;

(g) The Purchaser shall have given notice to the Borrower pursuant to Section 2.04 hereof to deposit additional funds in the Project Fund and the Borrower shall have failed to do so within seven (7) calendar days;

(h) The Borrower shall fail to comply with any requirement of any Governing Authority within thirty (30) days after notice in writing of such requirement shall be given to the Borrower by such Governing Authority, subject to any rights of the Borrower to contest such requirement as provided in the Security Documents;

(i) The Borrower shall fail to disclose to the Purchaser the names of all persons with whom the Borrower contracted or intends to contract for the construction of the Facilities or the furnishing of labor or any materials therefor or shall fail to exhibit to the Purchaser, upon request, copies of all such contracts; and

(j) A petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a custodian, receiver or trustee for any of its property shall be filed by the Borrower, or a petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a custodian, receiver or trustee of any of the Borrower's property shall be filed against the Borrower and shall not be dismissed within ninety (90) days, or a custodian, receiver or trustee of any property of the Borrower shall be appointed and shall not be discharged within ninety (90) days, or the Borrower shall make an assignment for the benefit of creditors or generally shall not pay its debts as they become due, or the Borrower shall be adjudged insolvent by any state or federal court of competent jurisdiction, or an attachment or execution shall be levied against any substantial portion of the property of the Borrower and shall not be discharged within ninety (90) days.

Section 6.02. Rights and Remedies. Upon the occurrence of an event which with the passage of time or the giving of notice or both would constitute an Event of Default and at any time thereafter, the Purchaser may by notice in writing to the Borrower, refrain from making any further Disbursements hereunder (but the Purchaser may make Disbursements after the occurrence of such an event or an Event of Default without thereby waiving its rights and remedies hereunder). Upon the occurrence of an Event of Default the Purchaser may, at its option, exercise any and all of the following rights and remedies (and any other rights and remedies available to it):

(a) The Purchaser may, by written notice to the Borrower, declare immediately due and payable all unpaid principal and accrued interest owing under the Loan Agreement and the Note, together with all other sums payable thereunder (including any amounts due upon prepayment of the Loan or Note), and the same shall thereupon be immediately due and payable without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are hereby expressly waived.

(b) The Purchaser shall have the right, in addition to any other rights provided by law, to enforce its rights and remedies under the Loan Agreement and the other Security Documents.

(c) The Purchaser may pay any amount or take any other action necessary to remedy the Event of Default, and any amount so paid shall be repaid to the Purchaser by the Borrower on demand with interest at the rate provided for in the Note plus five percent (5%).

(d) The Purchaser may at its option apply any amounts in the Project Fund or the Reserve Fund to repay amounts owing under the Note or the Security Documents, or the Purchaser may use such amounts to pay the costs of completing the Project.

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

## ARTICLE VII

### MISCELLANEOUS

Section 7.01. Inspections. The Borrower and the Architect shall be responsible for making inspections of the Project during the course of the construction of the Facilities and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Disbursement has been properly done or supplied in accordance with the Construction Contract and the other applicable contracts with the Contractors. If any work done or materials supplied by a Contractor are not satisfactory to the Borrower and/or its Architect and the same is not remedied within fifteen (15) days of the discovery thereof; the Borrower will immediately notify the Purchaser in writing of such fact. It is expressly understood and agreed that the Purchaser and any inspecting architect/engineer engaged by the Purchaser may conduct such inspections of the Project as either may deem necessary for the protection of the Purchaser's interest, and that any inspections which may be made of the Project by the Purchaser or such inspecting architect/engineer will be made, and all certificates issued by any inspecting architect/engineer will be issued, solely for the benefit and protection of the Purchaser, and that the Borrower will not rely thereon.

Section 7.02. Indemnification by the Borrower. The Borrower shall bear all loss, expense (including attorneys' fees) and damage in connection with, and agrees to indemnify and hold harmless the Purchaser, its agents, servants and employees from all claims, demands and judgments made or recovered against the Purchaser, its agents, servants and employees (the "Indemnified Partners"), because of bodily injuries, including death at any time resulting therefrom, and/or because of damages to property of the Purchaser or otherwise (including loss of use) from any cause whatsoever, except to the extent due to the gross negligence or willful misconduct of the Purchaser, arising out of, incidental to, or in connection with the construction of the Project, whether or not due to any act of omission or commission, including negligence of the Borrower or any Contractor of its or their employees, servants or agents, and whether or not due to any act of omission or commission of the Purchaser, its employees, servants or agents. The Borrower's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Borrower or subject to any exclusions from coverage in any insurance policy. The obligations of the Borrower under this Section shall survive the payment of all amounts owing under the Loan Agreement and the Note.

Section 7.03. Additional Security Interest. In the event a Disbursement is to be made for materials then being fabricated or stored, or both, for later use in the completion of the Project but which are not then stored upon the Land or installed or incorporated into the Project, then such Disbursement shall be made only after the Borrower has given to the Purchaser such security instruments and insurance on such materials as the Purchaser may reasonably request.

Section 7.04. Fees and Expenses. Whether or not any Disbursement shall be made hereunder, the Borrower agrees to pay all fees of Title and the appraisal fees, survey fees, recording fees, license and permit fees and title insurance and other insurance premiums, and agrees to reimburse the Purchaser upon demand for all reasonable out-of-pocket expenses actually incurred by the Purchaser in connection with this Disbursing Agreement or in connection with the transactions contemplated by this Disbursing Agreement, including, but not limited to, any and all reasonable legal expenses and attorneys' fees sustained by the Purchaser in the exercise of any right or remedy available to it under this Disbursing Agreement (whether or not suit is commenced) or otherwise by law or equity and all reasonable fees and disbursements of counsel for the Purchaser for the services performed by such counsel in connection with the preparation of this Disbursing Agreement and the other documents and instruments contemplated hereby.





Section 7.11. Counterparts. This Disbursing 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 one and the same instrument.

Section 7.12. Inconsistency. In the event that any of the terms and provisions of this Disbursing Agreement are inconsistent with any of the terms and provisions of the Loan Agreement or the other Security Documents, the terms and provisions of this Disbursing Agreement shall govern.

Section 7.13. Conditions of Disbursements. All conditions of the obligation of the Purchaser to make Disbursements hereunder are imposed solely and exclusively for the benefit of the Purchaser, and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the Purchaser will refuse to make Disbursements in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by the Purchaser at any time if the Purchaser, in its sole discretion, deems it advisable to do so.

Section 7.14. Amendments. Neither this Disbursing Agreement nor any provision hereof may be amended, changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

Section 7.15. Jurisdiction. The Borrower hereby irrevocably agrees that any legal action or proceedings against it with respect to this Disbursing Agreement may be brought in the Hennepin County District Court in the State, or in any United States District Court in the State, and by the execution and delivery of this Disbursing Agreement, the Borrower hereby irrevocably submits to the jurisdiction of each such court and hereby irrevocably waives any and all objections that the Borrower may have as to jurisdiction or venue in any of such courts. The Borrower acknowledges that it has received sufficient consideration for any inconvenience which may be caused by any legal action brought in the State, and agrees that the enforcement of the provisions of this paragraph against the Borrower would not be unreasonable or unfair under all the circumstances of the Loan or this Disbursing Agreement.

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

IN WITNESS WHEREOF, the Borrower and the Purchaser have caused this Disbursing 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: \_\_\_\_\_  
Its: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Execution page of the Purchaser to the Disbursing Agreement, dated as of the date and year first written above.

**BRIDGEWATER BANK**

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

**First Draft  
April 6, 2018**

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**PLEDGE AGREEMENT**

**between**

**CITY OF MINNETONKA, MINNESOTA,  
as Issuer**

**and**

**BRIDGEWATER BANK,  
as Purchaser**

**Dated as of May 1, 2018**

**Relating to:**

**\$30,500,000  
City of Minnetonka, Minnesota  
Multifamily Housing Revenue Note  
(Opus Station Project)  
Series 2018**

---

This instrument drafted by:

Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

## PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT is made as of May 1, 2018 (the “Pledge Agreement”), between 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 (the “Issuer”), and BRIDGEWATER BANK, a Minnesota banking corporation, its successors and assigns (the “Purchaser”).

### RECITALS

WHEREAS, Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), whose general partner is \_\_\_\_\_, and the Issuer have entered into a Loan Agreement (the “Loan Agreement”), dated as of May 1, 2018, pursuant to which the Issuer will lend to the Borrower the proceeds of the Multifamily Housing Revenue Note (Opus Station Project), Series 2018 (the “Note”), in the original aggregate principal amount of \$30,500,000, for use in in (i) financing all or a portion of the acquisition, construction, and equipping of approximately 220 units of workforce housing to be located at or about 11001 Bren Road East, Minnetonka, Minnesota; and (ii) paying all or a portion of the costs of issuing the Note, if necessary; and

WHEREAS, the Note is payable from and secured by the loan repayments to be made by the Borrower under the Loan Agreement, and the Purchaser, as a condition to the purchase of the Note, has required the execution of this Pledge Agreement; and

NOW THEREFORE, as an inducement to the Purchaser to purchase the Note, and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. In order to secure the due and punctual payment of the Note and all other sums due the Purchaser under the Loan Agreement, the Issuer does hereby pledge and assign to the Purchaser all of the Issuer’s right, title and interest in and to the Loan Agreement (including, without limitation, any right, title and interest of the Issuer in the Project Fund and Bond Reserve Escrow Account), except for those rights retained by the Issuer under the provisions of Section 7.9 of the Loan Agreement.

2. The Issuer hereby represents and warrants to the Purchaser that the Issuer has not assigned or encumbered its right, title and interest in the Loan Agreement other than by this Pledge Agreement.

3. The Issuer hereby authorizes the Purchaser to exercise, whether or not a default exists under the Note or an Event of Default has occurred under the Loan Agreement, either in the Issuer’s name or the Purchaser’s name, any and all rights or remedies available to the Issuer under the Loan Agreement. The Issuer agrees, on request of the Purchaser, to execute and deliver to the Purchaser such other documents or instruments as shall be deemed necessary or appropriate by the Purchaser at any time to confirm or perfect the security interest hereby granted. The Issuer hereby appoints the Purchaser its attorney-in-fact to execute on behalf of the Issuer, and in its name, any and all such assignments, financing statements or other documents or instruments which the Purchaser may deem necessary or appropriate to perfect, protect or enforce the security interest hereby granted.

4. The Issuer will not:

(a) exercise or attempt to exercise any remedies under the Loan Agreement except as permitted by Sections 6.2 and 7.9 of the Loan Agreement, or terminate, modify or accept a surrender of the same, or by affirmative act, consent to the creation or existence of any security interest or other lien in the Loan Agreement to secure payment of any other indebtedness; or

(b) receive or collect or permit the receipt or collection of any payments, receipts, rentals, profits or other moneys under the Loan Agreement (except as allowed under Section 7.9 thereof) or assign, transfer or hypothecate (other than to the Purchaser hereunder) any of the same then due or to accrue in the future.

5. The Issuer expressly covenants and agrees that the Purchaser shall be entitled to receive all payments under the Loan Agreement (except any payments due the Issuer under Section 7.9 thereof), and hereby authorizes and directs the Borrower to make such payments directly to the Purchaser. The Purchaser covenants and agrees that all payments received by the Purchaser pursuant to the Loan Agreement shall be applied to the payment of principal of and interest on the Note and any other amounts due and owing by the Borrower to the Purchaser under the Note or the Loan Agreement.

6. The Purchaser agrees to advance the purchase price of the Note on the Borrower's behalf into the Project Fund as provided in the Note, the Loan Agreement and the Disbursing Agreement. In accordance with Section 7.9 of the Loan Agreement, the Purchaser hereby assumes the Issuer's obligations to the Borrower thereunder.

7. If an Event of Default shall occur and be continuing, the Purchaser may exercise any one or more or all, in any order, of the remedies hereinafter set forth, in addition to any other remedy at law or in equity or specified in the Loan Agreement, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Purchaser may, without prior notice of any kind, declare the principal of and interest accrued on the Note immediately due and payable.

(b) The Purchaser may exercise any rights and remedies and options of a secured party under the Uniform Commercial Code as adopted in the State of Minnesota and any and all rights available to it under the Loan Agreement and the Disbursing Agreement related to the Note.

8. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Pledge Agreement contained by or on behalf of the Issuer or the Purchaser shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

9. The unenforceability or invalidity of any provision or provisions of this Pledge Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

10. This Pledge Agreement shall in all respects be construed in accordance with and governed by the laws of the State of Minnesota. This Pledge Agreement may not be amended or modified except in writing signed by the Issuer and the Purchaser.

11. This Pledge Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all of which together constituting one agreement.

12. The terms used in this Pledge Agreement which are defined in the Loan Agreement shall have the meanings specified therein, unless the context of this Pledge Agreement otherwise requires, or unless such terms are otherwise defined herein.

13. No obligation of the Issuer hereunder shall constitute or give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers, but shall be payable solely out of the proceeds and the revenues derived under the Loan Agreement.

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



IN WITNESS WHEREOF, the Issuer and the Purchaser have caused this Pledge Agreement to be duly executed as of the date and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

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

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

Execution page of the Purchaser to the Pledge Agreement, dated as of the date and year first written above.

**BRIDGEWATER BANK**

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

**First Draft**  
**April \_\_, 2018**

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**GUARANTY AGREEMENT**

**from**

**DOMINIUM HOLDINGS II, LLC,**  
**as Guarantor**

**in favor of**

**BRIDGEWATER BANK,**  
**as Purchaser**

**Dated as of May 1, 2018**

**Relating to:**

**\$30,500,000**  
**City of Minnetonka, Minnesota**  
**Multifamily Housing Revenue Note**  
**(Opus Station Project)**  
**Series 2018**

---

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This instrument drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

**TABLE OF CONTENTS**

PARTIES ..... 1  
RECITALS ..... 1

**ARTICLE I  
REPRESENTATIONS AND COVENANTS OF GUARANTOR**

Section 1.01. Defined Terms .....2

**ARTICLE II  
COVENANTS AND AGREEMENTS**

Section 2.01. Obligation .....3  
Section 2.02. Term.....3  
Section 2.03. Obligations Unconditional.....3  
Section 2.04. Set-Offs, Counterclaims.....4  
Section 2.05. Default .....4  
Section 2.06. Waiver of Acceptance.....4  
Section 2.07. Financial Statements .....4

**ARTICLE III  
MISCELLANEOUS**

Section 3.01. Remedies.....6  
Section 3.02. Purchaser May File Proofs of Claim.....6  
Section 3.03. Waiver, Amendment.....6  
Section 3.04. Address .....6  
Section 3.05. Counterparts.....6  
Section 3.06. Separability .....7

SIGNATURES ..... S-1

## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT, dated as of May 1, 2018 (the “Guaranty”), is from DOMINIUM HOLDINGS II, LLC, a Minnesota limited liability company (the “Guarantor”), in favor of BRIDGEWATER BANK, a Minnesota banking corporation (the “Purchaser”).

### RECITALS

WHEREAS, the City of Minnetonka, Minnesota (the “Issuer”) will issue its Multifamily Housing Revenue Note (Opus Station Project), Series 2018 (the “Note”), in the original aggregate principal amount of \$30,500,000, under and pursuant to Minnesota Statutes, Chapter 462C, as amended, and a resolution adopted by the City Council of the Issuer on April 16, 2018 (the “Resolution”); and

WHEREAS, the proceeds derived from the issuance of the Note are being loaned by the Issuer to Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), the general partner of which is \_\_\_\_\_, a \_\_\_\_\_, pursuant to a Loan Agreement, dated as of May 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower, for the purpose of providing financing for all or a portion of the acquisition, construction, and equipping of approximately 220 units of workforce housing apartment units to be located at or about 11001 Bren Road East, Minnetonka, Minnesota (the “Project”), as part of a multiphased development to also include senior housing; and

WHEREAS, the Issuer will assign its rights under the Loan Agreement to the Purchaser (except for certain unassigned rights set forth in Section 7.9 thereof) pursuant to the Pledge Agreement, dated as of May 1, 2018 (the “Pledge Agreement”), between the Issuer and the Purchaser; and

WHEREAS, terms capitalized but not defined herein have the meanings given them in the Loan Agreement; and

WHEREAS, the Guarantor desires that the Issuer issue the Note and apply the proceeds thereof as described above and further proposes to execute this Guaranty to permit or enhance the security of the Note and thereby achieve enhanced financing terms therefor; and

WHEREAS, the Guarantor hereby, subject to the terms hereof, covenants and agrees with the Purchaser, its successors and assigns, as follows:

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

## **ARTICLE I**

### **REPRESENTATIONS AND COVENANTS OF GUARANTOR**

(a) The Guarantor has duly executed and delivered and, by proper entity action, has duly authorized the execution and delivery of this Guaranty.

(b) The undertaking by the Guarantor of its obligations hereunder will result in a direct or indirect financial benefit to the Guarantor and to the financial and operational success of the Project.

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

## ARTICLE II

### COVENANTS AND AGREEMENTS

Section 2.1 Obligation. The Guarantor unconditionally guarantees to the Purchaser (i) the full and prompt payment of all principal of and premium, if any, and interest on the Note when and as the same shall become due, whether at the stated maturity thereof, by acceleration, call for redemption or otherwise, as well as attorneys' fees and costs; and (ii) the full and prompt payment of any other amounts owing to the Purchaser by the Borrower under the Loan Agreement (the "Obligations").

Section 2.2 Term. Subject to Article III hereof, the obligations of the Guarantor under this Guaranty shall arise absolutely and unconditionally when the Note shall have been issued, sold and delivered by the Issuer and shall remain in full force and effect until the entire principal of, premium, if any, and interest on the Note shall have been paid or provided for in accordance its terms.

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 or any obligations, covenants or agreements of the Borrower under the Loan Agreement or the Issuer under the Pledge Agreement;
- (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, or the Pledge Agreement;
- (c) the waiver of the payment, performance or observance by the Borrower or the Guarantor of the Obligations or any of the obligations, covenants or agreements of either of them contained in the Resolution, the Loan Agreement, or the Pledge Agreement;
- (d) the extension of the time for payment of any Obligations or the principal of, premium, if any, or interest on any Note or of the time for performance of any other obligations, covenants or agreements under or arising out of the Resolution, the Loan Agreement, or the Pledge Agreement or the extension or the renewal of any thereof;
- (e) the modification or amendment (whether material or otherwise) of the Obligations or any obligation, covenant or agreement set forth in the Resolution, the Loan Agreement, or the Pledge Agreement;
- (f) the taking or omission of any of the actions referred to in the Resolution, the Loan Agreement, or the Pledge Agreement or any actions under this Guaranty;
- (g) any failure, omission, delay, or lack on the part of the Issuer or Purchaser to enforce, assert or exercise any rights, power, or remedy conferred on the Issuer or Purchaser in this Guaranty, the Resolution, the Loan Agreement, or the Pledge Agreement;
- (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 the Issuer from the performance or observance of any obligations, covenants or agreements contained in the Resolution, the Loan Agreement, the Pledge Agreement, or the Note by operation of law;

(j) the default or failure of the Guarantor to perform any of the Obligations set forth herein;

(k) the default or failure of the Borrower, the Purchaser or the Issuer to fully perform any of its obligations to the Guarantor; or

(l) the invalidity or unenforceability of the Loan Agreement, the Pledge Agreement, or the 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 written action of the Purchaser.

Section 2.4 Set-Offs, Counterclaims. No set-off, counterclaim, reduction, or diminution of the Obligations, or any defense of any kind or nature which the Guarantor has or may have against the Issuer, the Borrower, or the Purchaser shall be available hereunder to the Guarantor against the Purchaser.

Section 2.5 Default.

(a) In the event of a default in the payment of any Obligations under this Guaranty, the Purchaser, 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 Loan Agreement or exhausting any other remedies which it may have and without resorting to any other security held by the Purchaser.

(b) The Purchaser shall not be obligated to expend or risk its own funds or otherwise incur any financial liability in the taking of any action hereunder, if it 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, except liability which is adjudicated to have resulted from its gross negligence, willful misconduct, or willful default by reason of any action so taken.

(c) The Guarantor agrees to pay all the costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Purchaser in enforcing or attempting to enforce this Guaranty following any default on the part of either the 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 Purchaser of its acceptance of and reliance on this Guaranty.

Section 2.7 Financial Statements. The Guarantor agrees to cause to be prepared annual financial statements for the Guarantor (including a balance sheet, statement of income and statement of changes in financial position which may be done on a consolidating basis) and certified by an independent certified public accountant, and within ninety (90) days of the close of each fiscal year will furnish a copy to the Purchaser along with a copy of annual filed tax returns containing all schedules and exhibits within



thirty (30) days of the Guarantor filing such tax returns annually, which in any event shall be no later than October 25 of each year.

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

## ARTICLE III

### MISCELLANEOUS

Section 3.1 Remedies. No remedy herein conferred upon or reserved to the Purchaser 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 Purchaser 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 the Purchaser, 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 Purchaser 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 Purchaser shall be entitled and empowered by intervention in such proceeding or otherwise,

(a) 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 Note and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Purchaser (including any claim for the reasonable compensation, expenses, disbursements and advances of the Purchaser, its agents and counsel) allowed in such judicial proceeding, and

(b) 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 Purchaser.

Section 3.3 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 Purchaser.

Section 3.4 Address. The current mailing address of the Guarantor is set forth below:

Dominium Holdings II, LLC

[ADDRESS]

Attention: \_\_\_\_\_

The Guarantor shall forthwith notify the Purchaser in writing of any change in its mailing address.

Section 3.5 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 3.6 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.

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

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty Agreement to be executed as of the date and year first above written.

**DOMINIUM HOLDINGS II, LLC**

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



Offices in 470 U.S. Bank Plaza  
Minneapolis 200 South Sixth Street  
Minneapolis, MN 55402  
Saint Paul (612) 337-9300 telephone  
(612) 337-9310 fax  
St. Cloud www.kennedy-graven.com  
Affirmative Action, Equal Opportunity Employer

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**GINA A. FIORINI**  
Attorney at Law  
Direct Dial (612) 337-9210  
Email: gfiorini@kennedy-graven.com

April 6, 2018

Alisha Gray  
Economic Development and Housing Manager  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1502

Re: Resolutions supporting the use of tax increment financing with respect to a workforce housing and senior housing development in the City of Minnetonka

Dear Alisha,

Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the "Workforce Housing Developer"), and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the "Senior Housing Developer"), have proposed to develop an affordable housing development to be located at or about 11001 Bren Road East in the City of Minnetonka. The Workforce Housing Developer will construct and develop approximately 220 workforce housing apartment units (the "Workforce Housing Development"), and the Senior Housing Developer will construct and develop approximately 262 affordable apartments for seniors (the "Senior Housing Development").

Both the Workforce Housing Developer and the Senior Housing Developer (together, the "Developers") plan to apply for low income housing tax credits ("LIHTC") from the Minnesota Housing Finance Agency (the "MHFA") to assist in developing the Workforce Housing Development and the Senior Housing Development. It is expected that the Economic Development Authority in and for the City of Minnetonka will consider providing tax increment financing to support both developments.

The City Council is being asked to consider the enclosed resolutions, one of which supports the tax credit application for the Workforce Housing Development and one which supports the tax credit application for the Senior Housing Development. Both resolutions, if adopted by the City Council, may be used by each of the Developers in their applications for LIHTC.

Julie Eddington will be attending the City Council meeting on April 16, 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,

Gina A. Fiorini

**Resolution No. 2018-\_\_\_\_\_**

**Resolution supporting a tax credit application for workforce housing  
within a multifamily housing project**

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Be it resolved by the City Council (the “Council”) of the City of Minnetonka, Minnesota (the “City”) as follows:

Section 1. Recitals.

- 1.01. Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, or any of its affiliates or partners (collectively, the “Developer”), has proposed to construct a multifamily housing development with approximately 220 workforce housing apartment units to be located at or about 11001 Bren Road East in the City (the “Workforce Housing Development”).
- 1.02. The Developer has presented the proposed Workforce Housing Development to the Council and has received support of the Council.
- 1.03. The success of the tax credit application is predicated on local support of the proposal.

Section 2. Findings; Approvals.

- 2.01. The Council supports the application for the tax credits for the Workforce Housing Development.
- 2.02. The City and the Economic Development Authority in and for the City of Minnetonka are in the process of establishing a housing tax increment district for the Workforce Housing Development with a maximum term of 26 years.
- 2.03. The Council supports the use of tax increment financing for the Workforce Housing Development in the approximate amount of up to \$3,648,000; however, the Council must complete all of the legally required proceedings set forth in Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

Adopted by the City Council of the City of Minnetonka, Minnesota this 16<sup>th</sup> day of April, 2018.

\_\_\_\_\_  
Brad Wiersum, Mayor

ATTEST:

\_\_\_\_\_  
David E. Maeda, City Clerk

**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 City Council of the City of Minnetonka, Minnesota, at a meeting held on April 16, 2018.

\_\_\_\_\_  
David E. Maeda, City Clerk

**Resolution No. 2018-\_\_\_\_\_**

**Resolution supporting a tax credit application for senior housing  
within a multifamily housing project**

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Be it resolved by the City Council (the "Council") of the City of Minnetonka, Minnesota (the "City") as follows:

Section 1. Recitals.

- 1.01. Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, or any of its affiliates or partners (collectively, the "Developer"), has proposed to construct a multifamily housing development with approximately 262 affordable apartment units for seniors to be located at or about 11001 Bren Road East in the City (the "Senior Housing Development").
- 1.02. The Developer has presented the proposed Senior Housing Development to the Council and has received support of the Council.
- 1.03. The success of the tax credit application is predicated on local support of the proposal.

Section 2. Findings; Approvals.

- 2.01. The Council supports the application for the tax credits for the Senior Housing Development.
- 2.02. The City and the Economic Development Authority in and for the City of Minnetonka are in the process of establishing a housing tax increment district for the Senior Housing Development with a maximum term of 26 years.
- 2.03. The Council supports the use of tax increment financing for the Senior Housing Development in the approximate amount of up to \$4,161,000; however, the Council must complete all of the legally required proceedings set forth in Minnesota Statutes, Sections 469.174 through 469.1794, as amended.



Adopted by the City Council of the City of Minnetonka, Minnesota this 16<sup>th</sup> day of April, 2018.

\_\_\_\_\_  
Brad Wiersum, Mayor

ATTEST:

\_\_\_\_\_  
David E. Maeda, City Clerk

**ACTION ON THIS RESOLUTION:**

- Motion for adoption:
- Seconded by:
- Voted in favor of:
- Voted against:
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- Absent:
- Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on April 16, 2018.

\_\_\_\_\_  
David E. Maeda, City Clerk