

City Council Agenda Item #14
Meeting of April 1, 2019

Brief Description: Items related to a grant from the Metropolitan Council Livable Communities Demonstration Account – Transit Oriented Development for Dominion Apartments (11001 Bren Road East)

Recommended Actions: Adopt the resolutions

Background

The Metropolitan Council solicits annually for its four Livable Communities Act programs, which provide grants to cities. Dominion submitted an application to the Metropolitan Council for Livable Communities Demonstration Account – Transit Oriented Development. (LCDA-TOD)

The LCDA-TOD grants support innovative development and redevelopment that links housing, jobs, and services that demonstrate efficient and cost-effective use of land and infrastructure. Additionally, these grants are awarded to projects if they are located within one-half mile of LRT, BRT, commuter rail, or high frequency bus station stops. In October 2018, the city was notified that the Dominion project (Legends of Minnetonka and Preserve at Shady Oak) was selected for a grant through this competitive process to receive \$2,000,000 to assist in solar panel installation, stormwater management, and site preparation.

The city of Minnetonka is the grantee; therefore, the grant agreement with the Metropolitan Council must be executed with the city rather than with Dominion. The subrecipient agreement between the city and Dominion further outlines the terms of the grant award between the city and Dominion. The Metropolitan Council grant funds will flow through the city to the developer and will be structured as two deferred loans, each to be payable in 30 years with loan agreements, notes and mortgages. The separate loans relate to specific components of the project and the related grants. This structure is preferred as it allows the developer to retain the benefit of the low income housing tax credits for the project. Further detailed explanation of the agreements are provided in letters from the city's bond counsel, Kennedy & Graven, as attached.

Recommendation

Staff recommends the city council adopt the resolutions:

- 1) Approving the execution and delivery of documents in connection with a Livable Communities Demonstration Account grant from the Metropolitan Council with respect to a senior housing project; and
- 2) Approving the execution and delivery of documents in connection with a Livable Communities Demonstration Account grant from the Metropolitan Council with respect to a workforce housing project.

Submitted through:

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

Prepared by:

Alisha Gray, EDFP, Economic Development and Housing Manager

Attachments:

Location Map

Metropolitan Livable Communities Act Grant Agreement

Memo from Gina Fiorini, Kennedy and Graven, for Legends of Minnetonka

- Sub-Recipient Funding Agreement
- Loan Agreement
- Mortgage
- Note
- Subordination Agreement – Governmental Entity (Tax-Exempt Loan) relating to the City's Multifamily Housing Revenue Refunding Notes (Legends of Minnetonka Project), Series A-1 and A-2
- Subordination Agreement – Governmental Entity (Taxable Loan) relating to the City's Taxable Multifamily Housing Revenue Refunding Notes (Legends of Minnetonka Project), Series B-1 and B-2
- Subordination Agreement relating to the City's Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Legends of Minnetonka Project), Series 2018

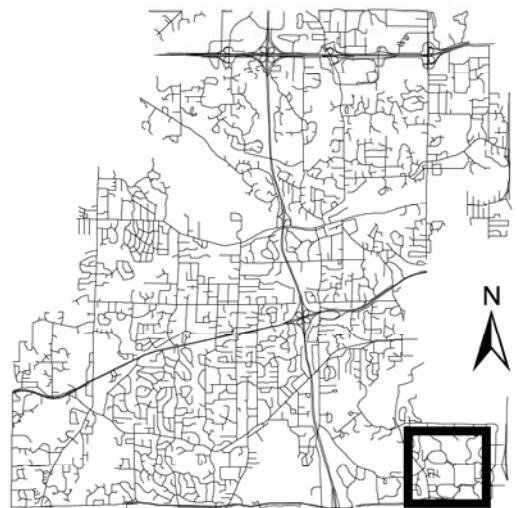
Memo from Gina Fiorini, Kennedy and Graven, for Preserve at Shady Oak

- Sub-Recipient Funding Agreement
- Loan Agreement
- Mortgage
- Note
- Subordination Agreement – Governmental Entity (Tax-Exempt Loan) relating to the City's Multifamily Housing Revenue Refunding Notes (Preserve at Shady Oak Project), Series A-1 and A-2
- Subordination Agreement – Governmental Entity (Taxable Loan) relating to the City's Taxable Multifamily Housing Revenue Refunding Notes (Preserve at Shady Oak Project), Series B-1 and B-2
- Subordination Agreement relating to the City's Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018



Location Map

Dominium
Address: 11001 Bren Rd E



This map is for illustrative purposes only.

**DEMONSTRATION ACCOUNT
DEVELOPMENT GRANT PROGRAM
TRANSIT ORIENTED DEVELOPMENT (TOD) PROGRAM**

GRANTEE: City of Minnetonka	GRANT NO. SG-10882
PROJECT: The Legends of Minnetonka	
GRANT AMOUNT: \$2,000,000	FUNDING CYCLE: 2018
COUNCIL ACTION: October 24, 2018	EXPIRATION DATE: December 31, 2021

**METROPOLITAN LIVABLE COMMUNITIES ACT
GRANT AGREEMENT**

THIS GRANT AGREEMENT (“Agreement”) is made and entered into by the Metropolitan Council (“Council”) and the Municipality, County, or Development Authority identified above as “Grantee.”

WHEREAS, Minnesota Statutes section 473.251 creates the Metropolitan Livable Communities Fund, the uses of which fund must be consistent with and promote the purposes of the Metropolitan Livable Communities Act (“LCA”) and the policies of the Council’s Metropolitan Development Guide; and

WHEREAS, Minnesota Statutes sections 473.251 and 473.253 establish within the Metropolitan Livable Communities Fund a Livable Communities Demonstration Account and require the Council to use the funds in the account to make grants or loans to municipalities participating in the Local Housing Incentives Account Program under Minnesota Statutes section 473.254 or to Counties or Development Authorities to fund the initiatives specified in Minnesota Statutes section 473.25(b) in Participating Municipalities; and

WHEREAS, the Council has established an LCA Transit Oriented Development (“TOD”) program to help leverage the metropolitan area’s public investment in its transit infrastructure; and

WHEREAS, the Grantee is a Municipality participating in the Local Housing Incentives Account program under Minnesota Statutes section 473.254, a County, or a Development Authority; and

WHEREAS, the Grantee seeks funding in connection with an application for Livable Communities Demonstration Account grant program funds submitted in response to the Council’s notice of availability of grant funds for the “Funding Cycle” identified above and will use the grant funds made available under this Agreement to help fund the “Project” identified in the application; and

WHEREAS, the Grantee represented in its application that certain land use guidelines or official controls and other required threshold criteria were in place at the time of the application or that certain land use guidelines and official controls and other required threshold criteria would be in place within thirty-six (36) months from the date of the “Council Action” identified above; and

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WHEREAS, the Council awarded Livable Communities Demonstration Account TOD program grant funds to the Grantee subject to any terms, conditions, and clarifications stated in its Council Action, and with the understanding that the Project identified in the application will proceed to completion in a timely manner, that all grant funds will be expended prior to the “Expiration Date” identified above, and that the land use guidelines and official controls and other required threshold criteria identified in the Grantee’s application currently are in place or will be in place as stated in the Grantee’s application.

NOW THEREFORE, in reliance on the above statements and in consideration of the mutual promises and covenants contained in this Agreement, the Grantee and the Council agree as follows:

I. DEFINITIONS

1.01. Definition of Terms. The terms defined in this Section have the meanings given them in this Section unless otherwise provided or indicated by the context.

- (a) **Commenced.** For the purposes of Sections 2.08 and 5.03, “commenced” means significant physical improvements have occurred in furtherance of the Project (*e.g.*, a foundation is being constructed or other tangible work on a structure has been initiated). In the absence of significant physical improvements, visible staking, engineering, land surveying, soil testing, cleanup site investigation, or pollution cleanup activities are not evidence of Project commencement for the purposes of this Agreement.
- (b) **Council Action.** “Council Action” means the action or decision of the governing body of the Metropolitan Council, on the meeting date identified at Page 1 of this Agreement, by which the Grantee was awarded Livable Communities Demonstration Account TOD program grant funds.
- (c) **County.** “County” means Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties.
- (d) **Development Authority.** “Development Authority” means a statutory or home rule charter city, a housing and redevelopment authority, an economic development authority, or a port authority in the Metropolitan Area.
- (e) **Metropolitan Area.** “Metropolitan Area” means the seven-county metropolitan area as defined by Minnesota Statutes section 473.121, subdivision 2.
- (f) **Municipality.** “Municipality” means a statutory or home rule charter city or town participating in the Local Housing Incentives Account Program under Minnesota Statutes section 473.254.
- (g) **Named TOD Area.** “Named TOD Area” means the TOD area identified by name and location in the Grantee’s application for TOD program funds and in the TOD Project Summary attached to this Agreement.

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- (h) **Participating Municipality.** “Participating Municipality” means a statutory or home rule charter city or town which has elected to participate in the Local Housing Incentive Account program and negotiated affordable and life-cycle housing goals for the Municipality pursuant to Minnesota Statutes section 473.254
- (i) **Project.** Unless clearly indicated otherwise by the context of a specific provision in this Agreement, “Project” means the TOD development or redevelopment project identified in the application for Livable Communities Demonstration Account TOD program grant funds for which grant funds were requested that provides the deliverables upon which the application was scored. Grant-funded activities typically are components of the Project.
- (j) **Transit Oriented Development.** “Transit Oriented Development” means high density, mixed use development adjacent to transit stations using pedestrian-friendly design standards.

II. GRANT FUNDS

2.01. Source of Funds. The grant funds made available to the Grantee under this Agreement are from the Livable Communities Demonstration Account of the Metropolitan Livable Communities Fund. The grant funds are derived from the property tax authorized by Minnesota Statutes section 473.253, subdivision 1 and are not from federal sources.

2.02. Total Grant Amount. The Council will grant to the Grantee the “Grant Amount” identified at Page 1 of this Agreement. Notwithstanding any other provision of this Agreement, the Grantee understands and agrees that any reduction or termination of Livable Communities Demonstration Account TOD program grant funds made available to the Council may result in a like reduction in the Grant Amount made available to the Grantee.

2.03. Authorized Use of Grant Funds. The Grant Amount made available to the Grantee under this Agreement shall be used only for the purposes and activities described in the application for Livable Communities Demonstration Account TOD program grant funds. The grant funds may be used for reimbursement of real estate acquisition costs if: (a) the property was purchased within the twelve-month period preceding the date by which the TOD grant program applications for the Funding Cycle were due; (b) the real estate was purchased by the Grantee or by a not-for-profit or a socially responsible developer; and (c) the Project will lead to the development of affordable housing or will result in jobs retained, created, or made more accessible to low-income and underserved populations, including opportunities for entrepreneurship. Property holding costs are an eligible use of grant funds but may not exceed five percent (5%) of the amount of the grant funds awarded for property acquisition or \$100,000, whichever is less. A TOD Project Summary that describes eligible uses of the grant funds as approved by the Council is attached to and incorporated into this Agreement as Attachment A. Aerial photography or drawings that identify the specific location(s) within the Project boundaries for which grant funds must be used is attached to and incorporated into this Agreement as Attachment B. Grant funds must be used to fund the initiatives specified in Minnesota Statutes section 473.25(b), in a Participating Municipality.

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2.04. Ineligible Uses. Grant funds must be used for costs directly associated with the specific proposed Project activities and shall not be used for “soft costs” such as: administrative overhead; travel expenses; legal fees; insurance; bonds; permits, licenses, or authorization fees; costs associated with preparing other grant proposals; operating expenses; planning costs, including comprehensive planning costs; and prorated lease and salary costs. Except as provided in Section 2.03, the grant funds may not be used for costs of Project activities that occurred prior to the grant award. A detailed list of ineligible and eligible costs is available from the Council’s Livable Communities program office. Except for reimbursement for real estate acquisition and holding costs as provided in Section 2.03, grant funds also shall not be used by the Grantee or others to supplant or replace: (a) grant or loan funds obtained for the Project from other sources; or (b) Grantee contributions to the Project, including financial assistance, real property or other resources of the Grantee; or (c) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized in Attachment A. The Council shall bear no responsibility for cost overruns which may be incurred by the Grantee or others in the implementation or performance of the Project activities. The Grantee agrees to comply with any “business subsidy” requirements of Minnesota Statutes sections 116J.993 to 116J.995 that apply to the Grantee’s expenditures or uses of the grant funds.

2.05. Loans for Low-Income Housing Tax Credit Projects. If consistent with the application and the Project activities described or identified in Attachments A and B or if requested in writing by the Grantee, the Grantee may structure the grant assistance to the Project as a loan so the Project Owner can take advantage of federal and state low-income housing tax credit programs. The Grantee may use the grant funds as a loan for a low-income housing tax credit project, subject to the terms and conditions stated in Sections 2.03 and 2.04 and the following additional terms and conditions:

- (a) The Grantee covenants and represents to the Council that the Project is a rental housing project that received or will receive an award of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency or a program administered by the Minneapolis/Saint Paul Housing Finance Board or another designated housing credit agency that sub-allocates low-income housing tax credits in the Metropolitan Area.
- (b) The Grantee will execute a loan agreement with the Project Owner. Prior to disbursing any grant funds for the Project, the Grantee will provide to the Council a copy of the loan agreement between the Grantee and the Project Owner.
- (c) The Grantee will submit annual written reports to the Council that certify: (1) the grant funds continue to be used for the Project for which the grant funds were awarded; and (2) the Project is a “qualified low-income housing project” under Section 42 of the Internal Revenue Code of 1986, as amended. This annual reporting requirement is in addition to the reporting requirements stated in Section 4.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 5.01, the Grantee will submit the annual certification reports during the initial “compliance period” and any “extended use period,” or until such time as the Council terminates this annual reporting requirement by written notice to the Grantee.

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- (d) The grant funds made available to the Grantee and disbursed to the Project Owner by the Grantee in the form of a loan may be used only for the grant-eligible activities and Project components for which the Grantee was awarded the grant funds. For the purposes of this Agreement, the term “Project Owner” means the current Project Owner and any Project Owner successor(s).
- (e) Pursuant to Section 2.04, the grant funds made available to the Grantee and disbursed to the Project Owner in the form of a loan shall not be used by the Grantee, the Project Owner or others to supplant or replace: (1) grant or loan funds obtained for the Project from other sources; or (2) Grantee contributions to the Project, including financial assistance, real property, or other resources of the Grantee; or (3) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized in Attachment A. The Council will not make the grant funds available to the Grantee in a lump sum payment, but will disburse the grant funds to the Grantee on a reimbursement basis pursuant to Section 2.11.
- (f) By executing this Agreement, the Grantee: (1) acknowledges that the Council expects the loan will be repaid so the grant funds may be used to help fund other activities consistent with the requirements of the Metropolitan Livable Communities Act; (2) covenants, represents, and warrants to the Council that the Grantee’s loan to the Project Owner will meet all applicable low-income housing tax credit program requirements under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”), and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency or a program administered by the Minneapolis/Saint Paul Housing Finance Board or another designated housing credit agency that sub-allocates low-income housing tax credits in the Metropolitan Area; and (3) agrees to administer its loan to the Project Owner consistent with federal and state low-income housing tax credit program requirements.
- (g) The Grantee will, at its own expense, use diligent efforts to recover loan proceeds: (1) when the Project Owner becomes obligated to repay the Grantee’s loan or defaults on the Grantee’s loan; (2) when the initial thirty-year “compliance period” expires, unless the Council agrees in writing that the Grantee may make the grant funds available as a loan to the Project Owner for an “extended use period”; or (3) if noncompliance with low-income housing tax credit program requirements or some other event triggers the Project Owner’s repayment obligations under its loan agreement with the Grantee. The Grantee must repay to the Council all loan repayment amounts the Grantee receives from the Project Owner. The Grantee shall not be obligated to repay the grant funds to the Council except to the extent the Project Owner repays its loan to the Grantee, provided the Grantee has exercised the reasonable degree of diligence and used administrative and legal remedies a reasonable and prudent housing finance agency would use to obtain payment on a loan, taking into consideration (if applicable) the subordinated nature of the loan. At its discretion, the Council may: (1) permit the Grantee to use the loan repayment from the Project Owner to continue supporting affordable housing components of the Project; or (2) require the Grantee to remit the grant funds to the Council.

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- (h) If the Grantee earns any interest or other income from its loan agreement with the Project Owner, the Grantee will: (1) use the interest earnings or income only for the purposes of implementing the Project activities for which the grant was awarded; or (2) remit the interest earnings or income to the Council. The Grantee is not obligated to earn any interest or other income from its loan agreement with the Project Owner, except to the extent required by any applicable law.

2.06. Revolving Loans. If consistent with the application and the TOD Project Summary or if requested in writing by the Grantee, the Grantee may use the grant funds to make deferred loans (loans made without interest or periodic payments), revolving loans (loans made with interest and periodic payments), or otherwise make the grant funds available on a “revolving” basis for the purposes of implementing the Project activities described or identified in Attachments A and B. The Grantee will submit annual written reports to the Council that report on the uses of the grant funds, the form and content of the report will be determined by the Council. This annual reporting requirement is in addition to the reporting requirements stated in Section 4.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 5.01, the Grantee will submit the annual reports until the deferred or revolving loan programs terminate, or until such time as the Council terminates this annual reporting requirement by written notice to the Grantee. At its discretion, the Council may: (a) permit the Grantee to use loan repayments to continue supporting affordable housing components of the Project; or (b) require the Grantee to remit the grant funds to the Council.

2.07. Restrictions on Loans or Grants to Subrecipients. The Grantee shall not permit any subgrantee or subrecipient to use the grant funds for loans or grants to any subrecipient at any tier unless the Grantee obtains the prior written consent of the Council. The requirements of this Section 2.07 shall be included in all subgrant and subrecipient agreements.

2.08. Project Commencement and Changes. The Project for which grant funds were requested must be “commenced” prior to the Expiration Date. If the grant funds will be used only for land acquisition and holding costs as authorized by Section 2.03 and will not be used for any other grant-eligible activities, the Project need not be commenced prior to the Expiration Date but the property acquired for the Project must be purchased prior to the Expiration Date. The Grantee must promptly inform the Council in writing of any significant changes to the Project for which the grant funds were awarded, as well as any potential changes to the grant-funded activities described or identified in Attachments A and B. Failure to inform the Council of any significant changes to the Project or significant changes to grant-funded components of the Project, and use of grant funds for ineligible or unauthorized purposes, will jeopardize the Grantee’s eligibility for future LCA awards. Grant funds will not be disbursed prior to Council approval of significant changes to either the Project or grant-funded activities described or identified in Attachments A and B.

2.09. Budget Variance. The Grantee may reallocate up to twenty percent (20%) of the Grant Amount among the grant-funded activities, provided: (a) the grant funds may be used only for Project activities for which the Council awarded the grant funds; (b) the reallocation does not significantly change the Project deliverables; and (c) the Grantee receives written permission from Council staff prior to reallocating any grant funds. Council staff may administratively approve budget reallocation requests that exceed twenty percent (20%) of the Grant Amount only if the reallocation does not significantly change the Project deliverables. Notwithstanding the aggregate or net effect of any

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variances, the Council's obligation to provide grant funds under this Agreement shall not exceed the Grant Amount identified at Page 1 of this Agreement.

2.10. Loss of Grant Funds. The Grantee agrees to remit to the Council in a prompt manner: any unspent grant funds, including any grant funds that are not expended prior to the Expiration Date identified at Page 1 of this Agreement; any grant funds that are not used for the authorized purposes; and any interest earnings described in Section 2.12 that are not used for the purposes of implementing the grant-funded Project activities described or identified in Attachments A and B. For the purposes of this Agreement, grant funds are "expended" prior to the Expiration Date if the Grantee pays or is obligated to pay for expenses of eligible grant-funded Project activities that occurred prior to the Expiration Date and the eligible expenses were incurred prior to the Expiration Date. Unspent or unused grant funds and other funds remitted to the Council shall revert to the Council's Livable Communities Demonstration Account for distribution through application processes in future Funding Cycles or as otherwise permitted by law.

2.11. Payment Request Forms, Documentation, and Disbursements. The Council will disburse grant funds in response to payment requests submitted by the Grantee through the Council's online grant management system and reviewed and approved by the Council's authorized agent. Payment requests shall be made using payment request forms, the form and content of which will be determined by the Council. Payment request and other reporting forms will be provided to the Grantee by the Council. Payment requests must include the following documentation:

Consultant/contractor invoices showing the time period covered by the invoice; the specific grant-funded Project activities conducted or completed during the authorized time period within which eligible costs may be incurred; and documentation supporting expenses including subcontractor and consultant invoices showing unit rates, quantities, and a description of the goods or services provided. Subcontractor markups shall not exceed ten percent (10%).

The Council will disburse grant funds on a reimbursement basis or a "cost incurred" basis. The Grantee must provide with its payment requests documentation that shows grant-funded Project activities actually have been completed. Subject to verification of each payment request form (and the required documentation) and approval for consistency with this Agreement, the Council will disburse a requested amount to the Grantee within two (2) weeks after receipt of a properly completed and verified payment request form. **NOTWITHSTANDING THE PROVISIONS OF THIS SECTION 2.11, AFTER JANUARY 1, 2019 THE COUNCIL WILL NOT DISBURSE ANY GRANT FUNDS TO THE GRANTEE UNLESS THE GOVERNING BODY OF THE GRANTEE HAS ADOPTED A FAIR HOUSING POLICY AS REQUIRED BY SECTION 3.04.**

2.12. Interest Earnings. If the Grantee earns any interest or other income from the grant funds received from the Council under this Agreement, the Grantee will use the interest earnings or income only for the purposes of implementing the Project activities described or identified in Attachments A and B.

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2.13. Effect of Grant. Issuance of this Grant neither implies any Council responsibility for contamination, if any, at the Project site nor imposes any obligation on the Council to participate in any pollution cleanup of the Project site if such cleanup is undertaken or required.

III. AFFORDABILITY; AFFIRMATIVE FAIR HOUSING

3.01. Affordability Term. If the Project for which the grant funds were awarded includes affordable housing units, the Grantee shall, through written instruments or otherwise, ensure the affordable units will remain affordable for a minimum period of fifteen (15) years. The Grantee's obligation under this section may be satisfied if other Project funding sources (*e.g.*, the Minnesota Housing Finance Agency or the U.S. Department of Housing and Urban Development ("HUD"), or state or federal laws (*e.g.*, low-income housing tax credit programs) require an affordability term of at least fifteen (15) years. For the purposes of this section, "affordable housing unit" means a unit that is affordable to households at eighty percent (80%) or less of the Area Median Income ("AMI"), as established by HUD, unless the Grantee's application stated an affordability standard lower than eighty percent (80%) of AMI, in which case the Grantee's lower affordability standard shall apply. The affordability requirements of this section shall survive the expiration or termination of this Agreement.

3.02. Affirmative Fair Housing Marketing Plans. If the Project for which the grant funds were awarded is a housing project or includes housing units (whether market rate or affordable), the Grantee shall, through written instruments or otherwise, ensure the Project owner (and any subsequent owner(s)) adopts and implements an affirmative fair housing marketing plan for Project housing units. For the purposes of this section, "affirmative fair housing marketing plan" means an affirmative fair housing marketing plan that substantially conforms to affirmative fair housing marketing plans published by the U.S. Department of Housing and Urban Development ("HUD") or sample affirmative fair housing marketing plans published by the Minnesota Housing Finance Agency. The affirmative fair housing marketing plan requirement under this section shall continue for the minimum affordability term specified in Section 3.01 and shall survive the expiration or termination of this Agreement.

3.03 Section 8 Housing Choice Vouchers. If the Project is a housing project, or includes housing units (whether market rate or affordable) and the Grantee stated in its application that the Project housing units would be made available to households participating in the federal Housing Choice Voucher program, the Grantee shall, through written instruments or otherwise, ensure the Project owner (and any subsequent owner(s)) adopts and implements a policy under which the Project owner will not refuse to lease Project units to households or individuals participating in the Housing Choice Voucher program because those households or individuals are Housing Choice Voucher program participants. The Housing Choice Voucher requirement under this section shall continue for the minimum affordability term specified in Section 3.01 and shall survive the expiration or termination of this Agreement.

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3.04. Fair Housing Policy. If the Project will include a housing component, the governing body of the Grantee must have adopted a Fair Housing Policy. For the purposes of this section, the term “Fair Housing Policy” means a written statement regarding the Grantee’s commitment to fair housing that substantively includes at least the following elements: a purpose statement; procedures for responding to fair housing concerns and complaints; and a designated individual or staff position responsible for fair housing issues. A best practices guide, as well as a copy of a model local fair housing policy is available at: <https://metro council.org/Handbook/Files/Resources/Best-Practices/Fair-Housing-Policy-Guide.aspx>.

IV. ACCOUNTING, AUDIT, AND REPORT REQUIREMENTS

4.01. Accounting and Records. The Grantee agrees to establish and maintain accurate and complete accounts and records relating to the receipt and expenditure of all grant funds received from the Council. Notwithstanding the expiration and termination provisions of Sections 5.01 and 5.02, such accounts and records shall be kept and maintained by the Grantee for a period of six (6) years following the completion of the Project activities described or identified in Attachments A and B or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Accounting methods shall be in accordance with generally accepted accounting principles.

4.02. Audits. The above accounts and records of the Grantee shall be audited in the same manner as all other accounts and records of the Grantee are audited and may be audited or inspected on the Grantee’s premises or otherwise by individuals or organizations designated and authorized by the Council at any time, following reasonable notification to the Grantee, for a period of six (6) years following the completion of the Project activities or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Pursuant to Minnesota Statutes section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of the Grantee that are relevant to this Agreement are subject to examination by the Council and either the Legislative Auditor or the State Auditor, as appropriate, for a minimum of six (6) years.

4.03. Report Requirements. The Grantee will report to the Council on a semi-annual basis (twice each year) a status of the Project activities described or identified in Attachments A and B and the expenditures of the grant funds. Submission of properly completed payment request forms (with proper documentation) required under Section 2.11 will constitute semi-annual status reports. The Grantee must complete and submit to the Council a Final Report before the final disbursement of grant funds will be approved. The form and content of the semi-annual status reports and the Final Report will be determined by the Council. These reporting requirements and the reporting requirements of Sections 2.05 and 2.06 shall survive the expiration or termination of this Agreement.

4.04. Environmental Site Assessment. The Grantee represents that a Phase I Environmental Site Assessment or other environmental review has been or will be carried out, if such environmental assessment or review is appropriate for the scope and nature of the Project activities funded by this Grant, and that any environmental issues have been or will be adequately addressed.

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V. AGREEMENT TERM

5.01 Term. This Agreement is effective upon execution of the Agreement by the Council. Unless terminated pursuant to Section 5.02, this Agreement expires on the “Expiration Date” identified at Page 1 of this Agreement. **ALL GRANT FUNDS NOT EXPENDED BY THE GRANTEE PRIOR TO THE EXPIRATION DATE SHALL REVERT TO THE COUNCIL.**

5.02. Termination. This Agreement may be terminated by the Council for cause at any time upon fourteen (14) calendar days’ written notice to the Grantee. Cause shall mean a material breach of this Agreement and any amendments of this Agreement. If this Agreement is terminated prior to the Expiration Date, the Grantee shall receive payment on a pro rata basis for eligible Project activities described or identified in Attachments A and B that have been completed prior to the termination. Termination of this Agreement does not alter the Council’s authority to recover grant funds on the basis of a later audit or other review, and does not alter the Grantee’s obligation to return any grant funds due to the Council as a result of later audits or corrections. If the Council determines the Grantee has failed to comply with the terms and conditions of this Agreement and the applicable provisions of the Metropolitan Livable Communities Act, the Council may take any action to protect the Council’s interests and may refuse to disburse additional grant funds and may require the Grantee to return all or part of the grant funds already disbursed.

5.03. Amendments and Extensions. The Council and the Grantee may amend this Agreement by mutual agreement. Amendments or an extension of this Agreement shall be effective only on the execution of written amendments signed by authorized representatives of the Council and the Grantee. If the Grantee needs a change to the Project, additional time within which to complete the grant-funded activities and commence the Project, a change in the budget, or a change in grant-funded activities the Grantee must submit to the Council **AT LEAST NINETY (90) CALENDAR DAYS PRIOR TO THE EXPIRATION DATE**, a complete, written amendment request. All requirements must be met for a request to be considered complete. **THE EXPIRATION DATE MAY BE EXTENDED, BUT THE PERIOD OF ANY EXTENSION(S) SHALL NOT EXCEED TWO (2) YEARS BEYOND THE ORIGINAL EXPIRATION DATE IDENTIFIED AT PAGE 1 OF THIS AGREEMENT.**

VI. GENERAL PROVISIONS

6.01. Equal Opportunity. The Grantee agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability, sexual orientation, or age and will take affirmative action to insure applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training.

6.02. Conflict of Interest. The members, officers, and employees of the Grantee shall comply with all applicable state statutory and regulatory conflict of interest laws and provisions.

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TRANSIT ORIENTED DEVELOPMENT (TOD) PROGRAM

6.03. Liability. Subject to the limitations provided in Minnesota Statutes chapter 466, to the fullest extent permitted by law, the Grantee shall defend, indemnify, and hold harmless the Council and its members, employees, and agents from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the conduct or implementation of the Project activities funded by this Grant, except to the extent the claims, damages, losses, and expenses arise from the Council's own negligence. Claims included in this indemnification include, without limitation, any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes chapter 115B, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, United States Code, title 42, sections 9601 *et seq.*, and the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code, title 42, sections 6901 *et seq.* This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which otherwise would exist between the Council and the Grantee. The provisions of this Section shall survive the expiration or termination of this Agreement. This indemnification shall not be construed as a waiver on the part of either the Grantee or the Council of any immunities or limits on liability provided by Minnesota Statutes chapter 466, or other applicable state or federal law.

6.04. Acknowledgments and Signage. The Grantee will acknowledge the financial assistance provided by the Council in promotional materials, press releases, reports, and publications relating to the Project. The acknowledgment will contain the following or comparable language:

*Financing for this project was provided by the Metropolitan Council
Metropolitan Livable Communities Fund*

Until the Project is completed, the Grantee shall ensure the above acknowledgment language, or alternative language approved by the Council's authorized agent, is included on all signs (if any) located at Project or construction sites that identify Project funding partners or entities providing financial support for the Project. The acknowledgment and signage should refer to the "Metropolitan Council" (not "Met Council" or "Metro Council").

6.05. Permits, Bonds, and Approvals. The Council assumes no responsibility for obtaining any applicable local, state, or federal licenses, permits, bonds, authorizations, or approvals necessary to perform or complete the Project activities described or identified in Attachments A and B. The Grantee and its developer(s), if any, must comply with all applicable licensing, permitting, bonding, authorization, and approval requirements of federal, state, and local governmental and regulatory agencies, including conservation districts.

6.06. Subgrantees, Contractors, and Subcontractors. The Grantee shall include in any subgrant, contract, or subcontract for Project activities appropriate provisions to ensure subgrantee, contractor, and subcontractor compliance with all applicable state and federal laws and this Agreement. Along with such provisions, the Grantee shall require that contractors and subcontractors performing work covered by this Grant comply with all applicable state and federal Occupational Safety and Health Act regulations. If the Project for which the grant funds were awarded includes affordable units, the

DEMONSTRATION ACCOUNT
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Grantee's subgrant agreement(s) shall expressly include the affordability and affirmative fair housing marketing plan requirements of Sections 3.02 and 3.03.

6.07 Stormwater Discharge and Water Management Plan Requirements. If any grant funds are used for urban site redevelopment, the Grantee shall at such redevelopment site meet or require to be met all applicable requirements of:

- (a) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, title 40, parts 122 and 123; and
- (b) The Council's *2040 Water Resources Policy Plan* and the local water management plan for the jurisdiction within which the redevelopment site is located.

6.08. Authorized Agent. Payment request forms, written reports and correspondence submitted to the Council pursuant to this Agreement shall be directed to:

Metropolitan Council
Attn: LCA Grants Administration
390 Robert Street North
Saint Paul, Minnesota 55101-1805

6.09. Authorization to Reproduce Images. The Grantee certifies that the Grantee: (a) is the owner of any renderings, images, perspectives, sections, diagrams, photographs, or other copyrightable materials (collectively, "copyrightable materials") that are in the Grantee's application or are submitted to the Council as part of the grant application review process or after grant award, or that the Grantee is fully authorized to grant permissions regarding the copyrightable materials; and (b) the copyrightable materials do not infringe upon the copyrights of others. The Grantee agrees the Council has a nonexclusive royalty-free license and all necessary permissions to reproduce and publish the copyrightable materials for noncommercial purposes, including but not limited to press releases, presentations, reports, and on the internet. The Grantee also agrees the Grantee will not hold the Council responsible for the unauthorized use of the copyrightable materials by third parties.

6.10. Non-Assignment. Minnesota Statutes section 473.253, subdivision 2 requires the Council to distribute grant funds to eligible "municipalities," metropolitan-area counties, or "development authorities" for projects in municipalities participating in the Local Housing Incentives Account program. Accordingly, this Agreement is not assignable and shall not be assigned by the Grantee.

6.11. Warranty of Legal Capacity. The individuals signing this Agreement on behalf of the Grantee and on behalf of the Council represent and warrant on the Grantee's and the Council's behalf respectively that the individuals are duly authorized to execute this Agreement on the Grantee's and the Council's behalf respectively and that this Agreement constitutes the Grantee's and the Council's valid, binding, and enforceable agreements.

DEMONSTRATION ACCOUNT
DEVELOPMENT GRANT PROGRAM
TRANSIT ORIENTED DEVELOPMENT (TOD) PROGRAM

IN WITNESS WHEREOF, the Grantee and the Council have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective on the date of final execution by the Council.

CITY OF MINNETONKA

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

METROPOLITAN COUNCIL

By: _____

LisaBeth Barajas, Director
Community Development Division

Date: _____

ATTACHMENT A

TOD PROJECT SUMMARY

This attachment comprises this page and the succeeding page(s) which contain(s) a summary of the Project identified in the application for Livable Communities Demonstration Account TOD program grant funds submitted in response to the Council's notice of availability of Demonstration Account grant funds for the Funding Cycle identified at Page 1 of this Agreement. The summary reflects the proposed Project for which the Grantee was awarded grant funds by the Council Action, and may reflect changes in Project funding sources, changes in funding amounts, or minor changes in the proposed Project that occurred subsequent to application submission. The application is incorporated into this Agreement by reference and is made a part of this Agreement as follows. If the application or any provision of the application conflicts with or is inconsistent with the Council Action, other provisions of this Agreement, or the TOD Project Summary contained in this Attachment A, the terms, descriptions, and dollar amounts reflected in the Council Action or contained in this Agreement and the TOD Project Summary shall prevail. For the purposes of resolving conflicts or inconsistencies, the order of precedence is: (1) the Council Action; (2) this Agreement; (3) the TOD Project Summary; and (4) the grant application.

Livable Communities Project Summary

Grant # SG-10882
Type: LCDA-TOD Development
Applicant: City of Minnetonka
Project Name: The Legends of Minnetonka
Project Location: Green Line Extension – Opus Station
Council District: District 3 – Jennifer Munt

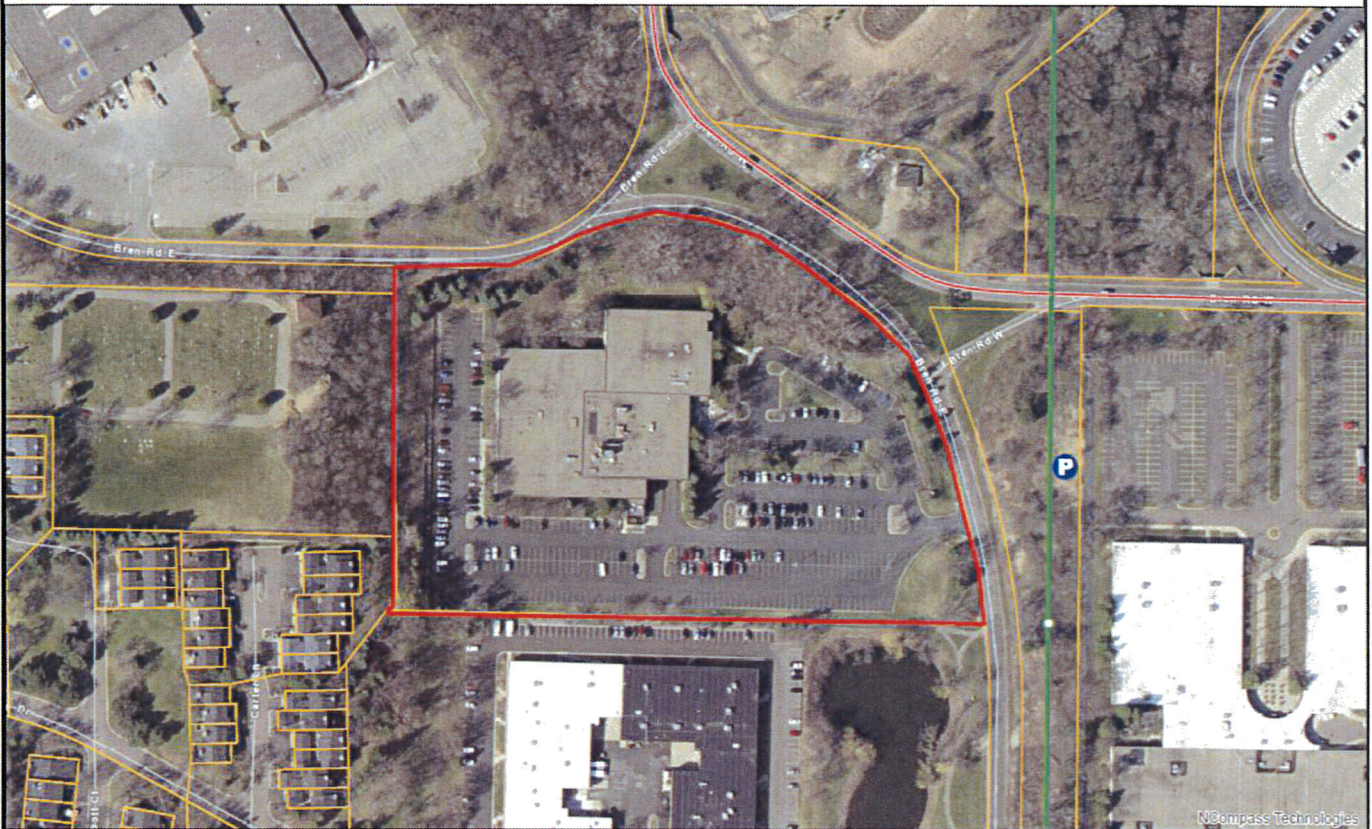
Project Detail	
Project Overview	Redevelopment of existing office building to affordable housing development directly across from the future Opus LRT station along the Green Line Extension. Project includes three buildings catering to families, individuals and seniors.
Jobs (FTEs)	Temporary (construction): 550 Permanent: 9
Net tax capacity increase	\$503,780
Total housing units	482
Affordable units	482 @ 51-60% AMI
Anticipated # bedrooms	114-studio/1 BR, 269-2 BR, 99-3+ BR
Est. total development	\$134,252,000
Est. private funds	\$124,592,000
Est. other public funds	\$7,660,000
TOD metrics	Floor-area ratio: 2.00 Dwelling units per acre: 68.76 Distance to platform: 100 ft Residential parking ratio: 1.15 stalls/unit
Comments/ Demonstration value	<ul style="list-style-type: none"> • Demonstration in number of affordable units being built near transit station, and in a station area with minimal housing. • Potential to catalyze additional redevelopment in this station area. • Project utilizing environmental best practices in reuse of stormwater for irrigation and installing a solar system projected to cover 20% of power needs with the ability to reduce tenant utility bills.
Funding Request	
\$2,000,000	TOTAL
\$1,100,000	Solar panels
\$525,000	Site Preparation: demolition, grading, piers, piling
\$300,000	Stormwater Management: underground retention
\$75,000	Architecture/Engineering for stormwater management

ATTACHMENT B

TOD PROJECT LOCATION(S)

This attachment comprises this page and the succeeding page(s) which contain aerial photography or drawings that identify the specific location(s) within the Project boundaries for which the Grantee must use the grant funds. The attached photography or drawings also may identify the types of eligible activities for which the grant funds must be used at specific locations within the Project boundaries.

LCA Aerial LCDA Project: Preserve at Shady Oak/Legends of Minnetonka | Map ID: 1527772048391



NCompass Technologies

- | | | | | | | | | |
|---|--|--|--|--|---|--|--|---|
| <ul style="list-style-type: none"> Walk Route TOO Area Project Aerial BRT, A Line | <ul style="list-style-type: none"> BRT, Red Line Commuter Rail, Northstar Line Light Rail, Blue / Green Line Light Rail, Blue / Red Line | <ul style="list-style-type: none"> Light Rail, Blue Line Light Rail, Green Line Planned Stations Blue Line Extension | <ul style="list-style-type: none"> C Line Gold Line Green Line Extension Orange Line | <ul style="list-style-type: none"> Red Line - Future Stages Red Rock BRT Park & Ride Lots | <ul style="list-style-type: none"> Transitway Alignments A Line Blue / Green Line Blue Line | <ul style="list-style-type: none"> Green Line Northstar Line Red Line BRT, Gold Line Green Line Extension | <ul style="list-style-type: none"> BRT, Orange Line BRT, Red Line - Phase 2 Blue Line Extension | <ul style="list-style-type: none"> Aerial BRT Transit Routes (All) Parcels |
|---|--|--|--|--|---|--|--|---|



Created: 5/31/2018
LandscapeLCA4



For complete disclaimer of accuracy, please visit
<http://giswebsite.metro.state.mn.us/gis/etna/notice.aspx>





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

GINA FIORINI

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

March 25, 2019

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

Re: Resolution approving the execution and delivery of documents in connection with a Livable Communities Demonstration Account grant from the Metropolitan Council for the benefit of Minnetonka Leased Housing Associates III, LLLP

Dear Alisha,

As you know, Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the "Borrower"), is working with the City of Minnetonka (the "City") and the Metropolitan Council (the "Council") to provide additional financing for the acquisition, construction, and equipping of approximately 262 affordable apartment units intended to be occupied by at least one individual who, at the time of initial occupancy of such unit, is 55 years of age or older, to be located at 11001 Bren Road East in the City (the "Project"). The Project will be adjacent to the workforce housing project being developed by Minnetonka Leased Housing Associates II, LLLP. The Borrower and Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, in cooperation with the City, applied for and received a Livable Communities Demonstration Account (LCDA) grant in the total sum of \$2,000,000.00, \$1,055,000.00 of which will be allocated to the Project (the "LCDA Grant"), from the Council in connection with the Council's Transit Oriented Development (TOD) Program. The proceeds of the LCDA Grant may be used for eligible project components of the Project (the "Grant-Eligible Activities") as further described in the Metropolitan Livable Communities Act Grant Agreement ("Grant Agreement"), proposed to be entered into between the City and the Council.

As allowed by the Council's Transit Oriented Development (TOD) Program, the Borrower has requested that the LCDA financing be structured as a loan to be repaid in 30 years. The City intends to loan the proceeds of the LCDA Grant to the Borrower to provide financing for the Grant-Eligible Activities pursuant to a Loan Agreement (the "Loan Agreement") proposed to be entered into between the City and the Borrower and a Sub-Recipient Funding Agreement (the "Funding Agreement") proposed to be entered into between the City and the Borrower. To secure the repayment of the loan of the proceeds of the LCDA Grant, the Borrower will execute and deliver to the City a Promissory Note (the "Note") in the original aggregate principal amount of \$1,055,000, and a Combination Mortgage and Security Agreement (the "Mortgage" and together with the Loan Agreement, Funding Agreement, and Note, the "Loan Documents"), providing the City with a secured interest in the Project.

The Borrower has requested that the City agree to subordinate the Loan Documents to the conduit revenue bonds issued by the City on behalf of the Borrower last fall including the City's (i) Multifamily Housing Revenue Refunding Note (Legends of Minnetonka Project), Series 2018A-1 (the "Series 2018A-1 Note"), in the original aggregate principal amount of \$16,205,000; (ii) Multifamily Housing Revenue Refunding Note (Legends of Minnetonka Project), Series 2018A-2 (the "Series 2018A-2 Note"), in the original aggregate principal amount of \$16,205,000; (iii) Taxable Multifamily Housing Revenue Refunding Note (Legends of Minnetonka Project), Series 2018B-1 (the "Series 2018B-1 Note"), in the original aggregate principal amount of \$13,189,904; (iv) Taxable Multifamily Housing Revenue Refunding Note (Legends of Minnetonka Project), Series 2018B-2 (the "Series 2018B-2 Note"), in the original aggregate principal amount of \$13,189,904; and (v) Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Legends of Minnetonka Project), Series 2018C (the "Subordinate Bonds"), in the original aggregate principal amount of \$4,090,000.

A resolution is attached authorizing the City to enter into the Grant Agreement, the Loan Agreement and the Subordination Agreement – Governmental Entity (Tax-Exempt Loan) proposed to be entered into between the City and U.S. Bank National Association, as fiscal agent for the Series 2018A-1 Note and the Series 2018A-2 Note, the Subordination Agreement – Governmental Entity (Taxable Loan) proposed to be entered into between the City and U.S. Bank National Association, as fiscal agent for the Series 2018B-1 Note and the Series 2018B-2 Note, and the Subordination Agreement proposed to be entered into between the City and U.S. Bank National Association, as trustee for the Subordinate Bonds. The resolution provides that the Mayor and City Manager may sign the documents in substantially the forms on file as of the date hereof.

Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,

Gina Fiorini

**SUB-RECIPIENT FUNDING AGREEMENT BETWEEN
CITY OF MINNETONKA
AND**

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP
FOR THE**

**METROPOLITAN COUNCIL
METROPOLITAN LIVABLE COMMUNITIES FUND**

TRANSIT ORIENTED DEVELOPMENT

THIS SUB-RECIPIENT FUNDING AGREEMENT (the "Contract") is entered into this ____ day of _____, 2019, by and between the CITY OF MINNETONKA, a Minnesota municipal corporation (the "City"), and MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (the "Borrower").

WHEREAS, the City and the Borrower applied to and received approval for funds in the amount of \$2,000,000 from the Metropolitan Council ("Council") under its Metropolitan Livable Communities Fund, Transit Oriented Development grant program (the "Housing Grant"), \$1,055,000.00 of which will be allocated to the Project (as defined below); and

WHEREAS, the City desires to award proceeds of the Housing Grant in the amount of \$1,055,000 (the "Loan") to Borrower, to assist Borrower with site preparation, stormwater management, and solar panel acquisition and installation (the "Project") in connection with the Borrower's development of approximately 262 affordable apartment units intended to be occupied by at least one individual who, at the time of initial occupancy of such unit, is 55 years of age or older to be located at or about 11001 Bren Road East in the City (the "Property").

NOW, THEREFORE, the parties agree to the following terms:

1. **AWARD.** The City will make the Loan to Borrower for site preparation, stormwater management, and solar panel acquisition and installation for an affordable housing development as described in Grant Agreement No. SG-10882 between the City and the Council attached to this Contract as Exhibit A (the "Housing Grant Agreement") which is incorporated into this Contract. The proceeds of the Loan must be used exclusively to pay or reimburse only expenses authorized under the Housing Grant Agreement. Administration costs incurred by the Borrower are not eligible for reimbursement via this Contract. Notwithstanding anything to the contrary, the Borrower understands and agrees that any reduction or termination of the Housing Grant may result in a like reduction or termination of the Loan, and that any material change in the timeline or scope of the Project in the Housing Grant Agreement must be approved in writing by the City and the Council.
2. **PERFORMANCE.** The Borrower must comply with all requirements applicable to the City in the Housing Grant Agreement unless such obligations can only be reasonably performed by the City. Borrower's default under the Housing Grant Agreement will constitute noncompliance with this Contract. If the City finds that there has been a failure to comply with the provisions of this Contract, the City may take action to protect its interests, including refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed. If action to correct a default is not taken by the Borrower within 60 calendar days (or such longer period specified by the City) after written notice by the City, the City may terminate this Contract.

3. **TIME OF PERFORMANCE.** Borrower must start the Project upon execution of this Contract and complete the Project on or before December 31, 2021. The City is not obligated to pay for any Project costs incurred after that date or any earlier termination, whichever occurs first.
4. **CONDITIONS PRECEDENT TO DISBURSEMENT.** The following requirements are conditions precedent to the City's disbursement of any of the Loan proceeds.
 - A. The Borrower must have provided evidence satisfactory to the City showing that Borrower has title in fee simple and site control of the Property.
 - B. The Borrower must have provided the City with evidence of compliance with the insurance requirements required by the Loan Agreement (as defined below).
 - C. The Borrower must have provided to the City such documentation and information reasonably necessary to evidence of compliance with all of the provisions of this Contract as the City may reasonably request.
 - D. The Borrower has delivered fully executed copies of the following documents:
 1. The Loan Agreement of even date herewith (the "Loan Agreement") between the City and the Borrower.
 2. The Combination Mortgage and Security Agreement of even date herewith (the "Mortgage") from the Borrower to the City.
 3. The Note of even date herewith (the "Note" and together with this Contract, the Loan Agreement and the Mortgage, the "Loan Documents") from the Borrower to the City.
5. **DISBURSEMENT.** It is expressly agreed and understood that the total amount to be paid by the City under this Contract will not exceed \$1,055,000. The City will make disbursements only in accordance with the Grant Agreement and the Loan Documents.
6. **NOTICES.** Communication and details concerning this Contract must be directed to the following Contract representatives:

City: City of Minnetonka
Community Development Department
14600 Minnetonka Blvd.
Minnetonka, MN 55345
Attn: Alisha Gray
Phone: (952) 939-8285

Borrower: Minnetonka Leased Housing Associates III, LLLP
2905 Northwest Blvd. Suite 150
Plymouth, MN 55441-2644
Attention: Ryan J. Lunderby
Phone: (763) 354-5500

and a copy to: John Stern, Esq.
Winthrop & Weinstine, P.A.

Capella Tower, Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629

U.S. Bank National Association
BC-MN-HO3A
800 Nicollet Mall, 3rd Floor
Minneapolis, Minnesota 55402-7020
Attention: U.S. Bancorp Community Development
Corporation, Community Lending Division

Stinson Leonard Street LLP
50 South 6th Street, Suite 2600
Minneapolis, Minnesota 55402
Attention: David W. Kelley

Citibank, N.A.
388 Greenwich St., 8th Floor
New York, NY 10013
Attention: Mark Sherman

Nixon Peabody LLP
779 9th Street, NW, Suite 500
Washington, DC 20001-4501
Attention: Matthew W. Mullen, Esq.

TCAM
30 Federal Street, Floor 6
Boston, MA 02110-2508
Attention: Jenny Netzer

The Borrower's investor limited partner and special limited partner, Citibank, N.A., a national banking association, and LP Purchaser LLC, a Delaware limited liability company, shall have an opportunity, but not an obligation, to cure any defaults under this Agreement, and such cure shall be accepted by the City as if cured by the Borrower itself.

7. GENERAL CONDITIONS.

A. General Compliance. The Borrower agrees to comply with all applicable federal, state and local laws and regulations governing the Project and funds provided under this Contract.

B. Subcontracts.

1. *Monitoring.* The City may monitor, at the City's sole cost and expense, contracted and subcontracted services on a regular basis to ensure contract compliance. Results of monitoring efforts will be summarized in written reports and provided to the Borrower. The Borrower must provide documented evidence of follow-up actions taken to correct areas of noncompliance noted in the monitoring reports.

2. **OSHA.** Borrower must require that contractors performing work being paid with the Loan funds be in compliance with all applicable OSHA regulations.
- C. **Anti-discrimination.** The Borrower agrees during the life of this Contract not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin.
- D. **Equal Opportunity.** The Borrower recognizes the City is an equal opportunity employer and agrees during the life of this Contract to take affirmative action to provide equal employment opportunities without regard to race, color, sex, creed, national origin, religion, disability, age, marital status, sexual preference, or status with regard to public assistance.
- E. **Independent Contractor.** Nothing contained in this Contract is intended to, or may be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Borrower will at all times remain an independent contractor with respect to the services to be performed under this Contract. The City is exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance because the Borrower is an independent contractor.
- F. **Indemnification and Hold Harmless.** Except for any willful misrepresentation or any willful, wanton, or grossly negligent misconduct of the Indemnified Parties (as defined below), the Borrower must hold harmless, defend and indemnify the City, and its officers, councilmembers, agents, and employees including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section, collectively the "Indemnified Parties"), from any and all liability, claims, actions, suits, charges, damages, losses, costs, expenses, and judgments whatsoever, including reasonable attorney's fees, that arise directly or indirectly out of the Borrower's, its contractors or subcontractors performance or nonperformance of the services or subject matter called for in this Contract. This clause may not be construed to bar any legal remedies Borrower may have for the City's or the Council's failure to fulfill its obligations pursuant to this Contract.

Claims included in this indemnification include any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B, the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended, United States Code, title 42, Sections 9601 et. seq., and the Federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code, title 42, Sections 6901 et. seq. This indemnification cannot be construed as a waiver on the part of either the City or the Council of any immunities or limits on liability provided by Minnesota Statutes Chapter 466 or other applicable state or federal law.

8. **ADMINISTRATIVE REQUIREMENTS.**

- A. **Accounting Standards.** The Borrower agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this Contract.

B. Records.

1. *Retention.* The Borrower must retain all records pertinent to expenditures incurred under this Contract in accordance with Section 4.01 of the Grant Agreement.
2. *Inspections.* All Borrower records with respect to any matters covered by this Contract must be made available to the City, the Council or their designees at any time during normal business hours with reasonable notice, as often as the City or the Council deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.
3. *Financial Information.* If requested by the City, the Borrower will provide all receipts, books, records, financial statements, documents, and information necessary to City in order to allow the City to comply with Article IV of the Grant Agreement.
4. *Data Practices Act.* The Borrower must comply with the Minnesota Government Data Practices Act, Chapter 13 in accordance with Article X of the Loan Agreement.
5. *Close-Outs.* The Borrower's obligation to the City does not end until all close-out requirements are completed in accordance with Met Council's policies and procedures. Activities during this close-out period include: making final payments, determining the custodianship of records and the Borrower's cooperation with the City's preparation of a final report to be submitted to the Met Council.

C. **Payments.** The Borrower will make all payments required under the Loan Documents.

D. **Procurement.** The Borrower must maintain an inventory record of all nonexpendable personal property procured with proceeds of the Loan provided under this Contract.

9. MISCELLANEOUS.

A. **Assignability.** The Borrower may not assign or transfer any interest in this Contract (whether by assignment or novation) without the prior written consent of the City; provided, however, that claims for money due or to become due to the Borrower from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer must be furnished promptly to the City.

B. **Religious Organization.** The Borrower agrees that funds provided under this Contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization.

C. **Governing Law.** This Contract will be governed by, and construed in accordance with, the laws of the State of Minnesota.

- D. **Counterparts.** This Contract may be executed in two or more counterparts, each of which is deemed an original, but all of which taken together constitute one and the same agreement.

CITY OF MINNETONKA

By _____
Its Mayor

And _____
Its City Manager

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

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

By: _____
Ryan J. Lunderby
Its: Vice President

Exhibit A
Housing Grant Agreement

LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is made and entered into this ___ day of _____, 2019 ("Effective Date") by and between 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 "City"), and MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (the "Borrower").

WITNESSETH:

WHEREAS, the Borrower intends to develop approximately 262 affordable apartment units intended to be occupied by at least one individual who, at the time of initial occupancy of such unit, is 55 years of age or older to be located at or about 11001 Bren Road East, Minnetonka, Minnesota (the "Project") on property legally described on EXHIBIT D attached hereto (the "Property"); and

WHEREAS, to assist with the costs of the Project, the Borrower and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, applied for and received a Livable Communities Demonstration Account (LCDA) grant in the total sum of \$2,000,000.00, \$1,055,000.00 of which will be allocated to the Project (the "LCDA Grant"), from the Metropolitan Council ("Council") in connection with the Council's Transit Oriented Development (TOD) Program; and

WHEREAS, on _____, 2019, the Council and the City entered into a Metropolitan Livable Communities Act Grant Agreement, with an expiration date of December 31, 2021 ("Grant Agreement") attached hereto as EXHIBIT B; and

WHEREAS, the proceeds of the LCDA Grant may be used for eligible project components of the Project to be constructed on the Property, as set forth in EXHIBIT A attached hereto and as further described in the Grant Agreement (the "Grant-Eligible Activities"), which amounts may be reallocated pursuant to Section 2.09 of the Grant Agreement; and

WHEREAS, the City desires to loan the proceeds of the LCDA Grant to the Borrower to provide financing for the Grant-Eligible Activities on the terms and conditions contained in this Agreement; and

WHEREAS, the City believes that the development of the Project, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the City and the Borrower desire to enter into this Agreement for the purpose of setting forth their respective responsibilities with respect to the loan of the LCDA Grant.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

**ARTICLE I
DEFINITIONS**

As used in this Agreement, the following terms shall have the following meaning:

Borrower Documents: any and all documents and instruments in connection with the Project as reasonably requested by the City.

Disbursement Request Form: the form, substantially in the form attached hereto as EXHIBIT C, to be submitted to the City when a disbursement of the Loan is requested and which is referred to in Article VI hereof, together with such other request forms as may be reasonably required from the Council and the City.

Grant-Eligible Activities: the activities on the Property funded in full or in part by the LCDA Grant, as set forth in EXHIBIT A and set forth in the Grant Agreement.

Project: has the meaning set forth in the sixth recital above.

Loan: the sum of \$1,055,000.00 to be loaned by the City to the Borrower under this Agreement.

Loan Documents: collectively, this Agreement, the Mortgage, the Sub-Recipient Funding Agreement, and the Note.

Mortgage: the Combination Mortgage and Security Agreement of even date herewith from the Borrower to the City securing repayment of the Note in the form approved by the City.

Note: the Note of even date herewith from the Borrower to the City in the amount of the Loan evidencing Borrower's obligation to repay the Loan in the form approved by the City.

Plans and Specifications: the final plans and specifications for the construction and installation of the Grant-Eligible Activities.

Project Costs: the costs of the Grant-Eligible Activities eligible to be reimbursed with the proceeds of the LCDA Grant under the Grant Agreement and as authorized by law.

Sub-Recipient Funding Agreement: the Sub-Recipient Funding Agreement of even date herewith between the City and the Borrower.

ARTICLE II

TERM OF AGREEMENT

This Agreement shall take effect and be in force from and after the Effective Date, and shall remain in effect until the Borrower has performed all of its obligations under this Agreement, the Loan Documents, and the Grant Agreement, unless earlier terminated as provided in this Agreement or the Grant Agreement.

ARTICLE III

THE LOAN

Subject to the terms and conditions of this Agreement, the City will make the Loan to the Borrower to be used for payment of Project Costs, which Loan shall be disbursed pursuant to this Agreement. In consideration for the Loan, the Borrower agrees to perform all of their obligations under this Agreement. The Loan shall be evidenced by the Note payable by the Borrower to the Lender which shall be dated as of the date of closing on the Loan (the "Loan Closing Date"). Proceeds of the Loan shall be disbursed in accordance with Articles V and VI hereof.

ARTICLE IV

STATEMENT OF WORK

The Borrower shall construct all improvements described on EXHIBIT A at the Property in accordance with the terms set forth herein. In accordance with the Grant Agreement, the Borrower will commence construction of the Grant-Eligible Activities and pay the Project Costs prior to December 31, 2021.

ARTICLE V

CONDITIONS OF DISBURSEMENT

The obligation of the City to make or cause to be made disbursements of the proceeds of the Loan pursuant to Article VI hereof shall be subject to the conditions precedent that it shall have received on or before the date of the disbursement hereunder the following:

- a. the Borrower Documents, the Mortgage, and the Note, duly executed and delivered by the Borrower;
- b. evidence satisfactory to the City that the Grant-Eligible Activities and the construction and contemplated use thereof are permitted by and comply in all material respects with all applicable restrictions and requirements in prior conveyances, zoning ordinances, subdivision and platting requirements and other laws and regulations;

c. all other conditions specified in the authorizing City resolution and the Grant Agreement shall have been duly satisfied by the Borrower or waived in writing by the City or the Council, as applicable;

d. no uncured Event of Default (as defined in Article IX), and no event which with the giving of notice or the lapse of time or both would constitute an Event of Default, shall have occurred and be continuing and all representations and warranties made by the Borrower in Article VII hereof shall continue to be true and correct as of the date of such disbursement;

e. if required by the City, the City shall have been furnished with a statement of the Borrower and of any contractor, in form and substance acceptable to the City, 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 Grant-Eligible Activities; and

f. the Borrower shall have provided to the City such documentation and information reasonably necessary to evidence its compliance with all of the provisions of this Agreement, including without limitation the provisions of the Grant Agreement applicable to the Borrower, as the City may reasonably request.

ARTICLE VI

REQUESTS FOR DISBURSEMENT

6.01. Disbursement. The City and the Borrower agree that, on the terms and subject to the conditions hereinafter set forth and the conditions set forth in the Grant Agreement, including the reallocation of Project Costs amongst the Grant-Eligible Activities pursuant to Section 2.09 of the Grant Agreement, the Loan shall be disbursed from the City to the Borrower, or the Borrower's agent or designee, in disbursements, with the last disbursement being made upon one hundred percent (100%) completion of the Grant-Eligible Activities. Disbursements of the Loan shall not be made more often than monthly. Notwithstanding anything to the contrary contained herein, the City shall only be obligated to make the disbursements hereunder to pay Project Costs in an amount up to or equal to the lesser of the amount of the Loan or the amount actually disbursed by the Council to the City under the Grant Agreement and such obligation is further subject to the conditions of Article V hereof.

6.02. Disbursement Request.

a. When the Borrower desires to obtain a disbursement of the Loan, the Borrower shall submit to the City, and the Council if required, the Disbursement Request Form, together with any additional documents required by the City or the Council, duly signed by the Borrower.

The Disbursement Request Form shall be submitted by the Borrower at least forty-five (45) days prior to the date of the requested disbursement. The Disbursement Request Form shall constitute a representation and warranty by the Borrower to the City that all representations and warranties of the Borrower set forth in the Borrower Documents are true and correct as of the date of such Disbursement Request Form, except for such representations and warranties which, by their nature, would not be applicable as of the date of such Disbursement Request.

b. At the time of submission of the Disbursement Request Form, the Borrower shall also submit the following to the City:

1. a written lien waiver from the general contractor for work done and materials supplied by it which were paid or a conditional lien waiver from the general contractor for work done and materials supplied by it which are to be paid pursuant to the current Disbursement Request Form and from each subcontractor for work done and materials supplied by it which were paid or are to be paid for pursuant to the prior Disbursement Request Form;

2. evidence satisfactory to the City that the Grant-Eligible Activities completed as of the date of the Disbursement Request Form have been constructed in accordance with the Plans and Specifications in all material respects;

3. an executed Sworn Construction Statement, in form and substance acceptable to such parties, signed by the Borrower showing all costs and expenses of any kind theretofore actually paid or incurred in constructing the Grant-Eligible Activities; and

4. a certified statement of the Borrower reflecting the use to which the proceeds of the Loan have been applied in addition to those uses reflected in the Sworn Construction Statement referred to in (b)(3) above.

c. Upon receipt of the Disbursement Request Form, if the City has determined that all the conditions set forth in Articles V and VI have been satisfied, a request for disbursement shall be submitted to the Council. The adequacy of the request for disbursement shall be determined by the City and the Council in their sole discretion. After submission of the Disbursement Request Form, if the Borrower has performed all of its agreements and complied with all requirements to be performed or complied with under this Agreement and the Grant Agreement, including satisfaction of all applicable conditions precedent contained in Article V hereof, the City shall make a disbursement to the Borrower, or the Borrower's agent or designee, in the amount of the requested disbursement or such lesser amount as shall be approved, within forty-five (45) days after the date of the City's receipt of the Disbursement Request Form, or, if later, upon receipt of grant proceeds from the Council. Each disbursement shall be paid from the proceeds of the LCDA Grant, subject to the City's and the Council's determination that the relevant Project Cost is payable from the LCDA Grant under the Grant Agreement. The City is under no obligation to disburse any proceeds of the Loan until it receives a disbursement of the LCDA Grant from the Council.

Notwithstanding anything to the contrary herein, if the Project Costs of the Grant-Eligible Activities exceeds the amount to be reimbursed under this Agreement, such excess shall be the sole responsibility of the Borrower.

ARTICLE VII

BORROWER'S COVENANTS, REPRESENTATIONS, WARRANTIES AND AGREEMENTS

The Borrower covenants, represents, warrants and agrees that:

a. The Borrower is a limited liability limited partnership duly organized and validly existing under the laws of the State of Minnesota, is duly authorized to operate in the State of Minnesota, has the power to enter into and execute this Agreement and by appropriate action has authorized the execution and delivery of this Agreement.

b. The Borrower Documents will not result in any breach of or constitute a default under any other mortgage, lease, loan, grant or credit agreement, organizational documents, or other instrument to which the Borrower is a party or by which it may be bound or affected.

c. The Loan Documents will constitute valid, legal and binding obligations of the Borrower enforceable against the Borrower.

d. The Borrower has or will have all necessary approvals, licenses and permits required for construction and operation of the Project except those which cannot be obtained until completion of the Grant-Eligible Activities or the Project, as the case may be.

e. The Borrower shall permit the City, upon reasonable notice, to examine all books, records, contracts, plans, permits, bills and statements of account pertaining to the Grant-Eligible Activities and to make copies as the City may require.

f. The Borrower shall obey and comply with all federal, state and local laws, rules and regulations in connection with the Project.

g. The City's actions in approving the Loan shall not be construed as an approval by the City of providing any additional funds for the Project or other improvements to the Property.

h. The Borrower agrees to pay for all of the costs incurred to construct the Grant-Eligible Activities including any cost overruns. There are no public funds for the Grant-Eligible Activities except for the Loan.

ARTICLE VIII

DEFAULT

Any one or more of the following shall constitute an event of default (an “Event of Default”) under this Agreement:

a. The Borrower shall herein default in the performance or observance of any agreement, covenant or condition required to be performed or observed by the Borrower under the terms of this Agreement or the Grant Agreement, to the extent such obligations exist, and such default shall not be remedied within sixty (60) days after written notice to the Borrower from the City specifying such default.

b. The Borrower shall be in default of any term of any other agreement relating to the Grant-Eligible Activities which is not cured within sixty (60) days after written notice from the City or if the default cannot be cured within sixty (60) days within such reasonable time as is required to cure the default, provided that the Borrower is diligently pursuing a cure.

c. Any representation or warranty made by the Borrower herein or any document or certificate furnished to the City shall prove at any time to be incorrect or misleading as of the date made.

d. The Borrower engages in any illegal activities.

e. The Borrower uses any of the Loan funds contrary to this Agreement or the Grant Agreement which is not cured within sixty (60) days after written notice from the City.

f. The Borrower shall fail to obtain and/or keep in force insurance of the types and in the amounts as specified within this Agreement, or shall fail to indemnify and hold harmless the City as set forth herein which is not cured within ten (10) business days after written notice from the City.

g. The failure to repay any principal of the Loan when due.

The Borrower’s investor limited partner and special limited partner, Citibank, N.A., a national banking association, and LP Purchaser LLC, a Delaware limited liability company, shall have an opportunity, but not an obligation, to cure any defaults under this Agreement, and such cure shall be accepted by the City as if cured by the Borrower itself.

ARTICLE IX

REMEDIES

Whenever any Event of Default shall have happened and is continuing beyond any applicable cure period any one or more of the following remedial steps may be taken by the City:

- a. The City may terminate this Agreement;
- b. The City may suspend or terminate any further disbursements to be made under this Agreement;
- c. The City may suspend its performance under this Agreement during the continuance of the Event of Default; and/or
- d. The City may take whatever action at law or in equity may be necessary or appropriate to seek repayment or reimbursement of the Loan funds disbursed to the Borrower, to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the Borrower under this Agreement, or any related instrument; or to otherwise compensate the City for any damages on account of such Event of Default.

No remedy conferred upon or reserved to the City 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 Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, nor 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 City to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or be required by law.

ARTICLE X

ADDITIONAL PROVISIONS

a. Indemnity, Hold Harmless. The Borrower shall and does hereby agree to indemnify against and to hold City, and its officers, councilmembers, agents, and employees including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section, collectively the “Indemnified Parties”), harmless of and from any and all liability, loss, or damage that it may incur under or by reason of this Agreement and against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Grant-Eligible Activities, and of and from any and all claims and demands whatsoever that may be asserted against City by reason of any alleged obligations or undertakings on the Borrower’s part to perform or discharge any of the terms, covenants, or agreements contained herein.

Except for any willful misrepresentation or any willful, wanton, or grossly negligent misconduct of the Indemnified Parties, the Borrower agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever under this Agreement, the Grant Agreement or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project or the Grant-Eligible Activities.

This indemnification and hold harmless provision shall survive the execution, delivery, and performance of this Agreement and the creation and repayment of any indebtedness to City under this Agreement.

b. Independent Contractor. For the purpose of this Agreement, the Borrower shall be deemed an independent contractor and not an employee or agent of the City. Any and all employees or agents of the Borrower shall not be considered employees or agents of the City.

c. Compliance With Minnesota Laws. All of the data created, collected, received, stored, used, maintained or disseminated by the Borrower with respect to the Grant-Eligible Activities are subject to the requirements of Chapter 13, Minnesota Statutes, and, except as provided in Minnesota Statute Section 13.05, subdivision 11(b), the Borrower agrees to comply with those requirements under Chapter 13, Minnesota Statutes to the extent applicable. The remedies in Minnesota Statutes, Section 13.08 may apply to the Borrower. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota State laws, state law shall control. The Borrower shall comply with the conflict of interest provisions of Minnesota Statutes, Sections 471.87-471.88.

d. Contractor and Subcontractor Compliance. The Borrower shall comply with and shall cause all contractors and subcontractors to comply with all applicable state and federal laws, and to the extent applicable to the Borrower, the Grant Agreement. The Borrower shall require all contractors and subcontractors performing work covered by the Loan to obtain all required permits, licenses and certifications and comply with all applicable state and federal Occupational Safety and Health Act regulations.

e. Site Compliance. The Borrower shall meet or require to be met all applicable requirements of:

- (1) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, title 40, parts 122 and 123; and
- (2) The Council's *2030 Water Resources Management Policy Plan* and the local water management plan for the jurisdiction within which the Property is located.

f. Fair Housing Compliance. The Borrower shall comply in all respects with the affordability and fair housing marketing plan requirements set forth in Sections 3.02 and 3.03 of the Grant Agreement.

ARTICLE XI

INSURANCE

With respect to the Project, the Borrower shall maintain all insurance required by Section 5.1 of that certain Contract for Private Development, October 2, 2018, between the Economic Development Authority in and for the City of Minnetonka, Minnesota, the City, and the Borrower.

ARTICLE XII

RECORDS AND REPORTS

Upon request, the Borrower shall submit to the City a full account of the status of the activities undertaken as part of this Agreement. The following records shall be maintained by the Borrower, copies of which shall be submitted in such form as City staff may prescribe:

- a. All receipts and invoices relating to expenditure of Loan funds.
- b. Records shall be sufficient to reflect all costs incurred in performance of the Loan. The books, records, documents, and accounting procedures, relevant to the Loan shall be subject to examination by the City, the Council and state agencies and the legislative auditor.
- c. Records of insurance required under this Agreement, including proof of insurance in effect, and proof of payment of insurance premiums.

ARTICLE XIII

AMENDMENT

This Agreement shall not be amended or modified without the prior written approval of the City and the Borrower.

ARTICLE XIV

INCORPORATION OF GRANT AGREEMENT

The Borrower acknowledges and agrees that all terms, conditions and obligations contained in the Grant Agreement are incorporated herein, and made a part of this Agreement. In addition to the terms, conditions and obligations described herein, the Borrower further acknowledges, accepts and assumes all of the City's obligations described in the Grant Agreement, unless such obligations can only be reasonably performed by the City, including but not limited to, the obligation to repay the LCDA Grant if required by the Council. For purposes of enforcing this

TCAM
30 Federal Street, Floor 6
Boston, MA 02110-2508
Attention: Jenny Netzer

If to City: City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attention: Alisha Gray

or addressed to any such party at such other address as such party shall hereafter furnish by notice to the other parties as above provided.

b. Binding Effect; Waiver. The provisions of this Agreement shall inure to the benefit of and be binding upon the Borrower and the City and their respective successors and assigns. No delay on the part of the City in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege constitute such waiver nor exhaust the same, which shall be continuing. The rights and remedies of the City specified in this Agreement shall be in addition to and not exclusive of any other right and remedies which the City, by operation of law, would otherwise have.

c. Survival of Agreements, Representations and Warranties. All agreements, representations and warranties made in this Agreement by the Borrower shall survive its termination.

d. Governing Law. This Agreement and the attachments are to be construed and enforced according to and governed by the laws of the State of Minnesota.

e. Counterparts, Electronic Signatures. This Agreement may be executed in any number of counterparts, all of which shall constitute a single agreement, any one of which bearing signatures of all parties shall be deemed an original. An electronic or facsimile signature is deemed to be the same as an original signature.

f. Time. Time is of the essence in the performance of this Agreement.

g. Entire Agreement. This Agreement contains the entire agreement of the parties hereto on the matters covered herein. No other agreement, statement or promise made by any party or by any employee, officer or agent of any party hereto that is not in writing and signed by all the parties to this Agreement shall be binding.

h. No Joint Venture. The relationship between the City and the Borrower is solely that of grantor and grantee and the relationship by and between the City and the Borrower is not, nor shall it be deemed to create, a partnership or joint venture in the Project.

i. Venue. All matters whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and

determined in accordance with the laws of the State of Minnesota, and the Borrower agrees that all legal actions initiated by the Borrower with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State of Minnesota, Hennepin County, District Court.

j. Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Agreement and the City 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 City the reasonable fee of such attorneys and such other expenses so incurred, but only in the event the City prevails in pursuing such claims.

k. Assignment. This Agreement may not be assigned by the Borrower without the prior written consent of City, which consent shall be in the sole discretion of the City.

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

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

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

By: _____
Ryan J. Lunderby
Its: Vice President

CITY OF MINNETONKA, MINNESOTA

By: _____
Its Mayor

By: _____
Its City Manager

EXHIBIT A

Grant-Eligible Activities include those costs outlined in the Grant Agreement including:

\$480,000 for Solar panels

\$325,000 for Site Preparation: demolition, grading, piers, piling

\$200,000 for Stormwater Management: underground retention

\$50,000 for Architecture/Engineering for stormwater management

EXHIBIT B

Grant Agreement

EXHIBIT C

DISBURSEMENT REQUEST FORM

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attn: _____

The undersigned, Minnetonka Leased Housing Associates III, LLLP (the “Borrower”) pursuant to that certain Loan Agreement, dated as of _____, 2019 between the City of Minnetonka, Minnesota (“City”), and the Borrower, hereby requests payment of the expenses listed on the attached Expense Listing.

The total amount to be disbursed for this draw is \$_____.

In connection with this draw, the undersigned hereby represents as follows:

- a. each obligation listed in the attached Exhibit II has been incurred and is a Project Cost related to the Grant-Eligible Activities,
- b. no license or permit necessary for construction of the Grant-Eligible Activities previously issued has been revoked or the issuance thereof subjected to challenge before any court of other governmental authority having or asserting jurisdiction thereover;
- c. no event has occurred and is continuing which, but for the giving of notice, the expiration of any cure period, or both, would constitute an event of default under the Loan Agreement or the Grant Agreement;
- d. all funds of the Borrower’s match, if any, have been fully disbursed for the payment of Project Costs; and
- e. _____% of the Grant-Eligible Activities have been completed.

**MINNETONKA LEASED HOUSING ASSOCIATES
III, LLLP**

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

By: _____
Ryan J. Lunderby
Its: Vice President

Approved:

City of Minnetonka

By _____

Its: _____

Exhibit II

Expense Listing

Item

Amount

EXHIBIT D

LEGAL DESCRIPTION

The land referred to is situated in the State of Minnesota, County of Hennepin, and is described as follows:

Lot 1, Block 1, DOMINIUM 2ND ADDITION

Hennepin County, Minnesota
Torrens Property

COMBINATION MORTGAGE AND SECURITY AGREEMENT

THIS COMBINATION MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the “Mortgage”) is made and given as of the ____ day of _____, 2019, by MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (the “Mortgagor”) in favor of THE CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (hereinafter designated as “Mortgagee”).

RECITALS:

WHEREAS, Mortgagor hereby mortgages and conveys to Mortgagee the real property and improvements situated in the County of Hennepin, State of Minnesota, and legally described on EXHIBIT A attached hereto and made a part hereof, the leases and rents with respect to the real property and improvements and all personal property and equipment, and all products and proceeds thereof owned by Mortgagor and used in the operation of the Project (as defined in the Loan Agreement) (herein, collectively the “Property”); and

WHEREAS, this Mortgage, together with the Loan Agreement (the “Loan Agreement”) of even date herewith between the Mortgagor and the Mortgagee and all other documents securing the Loan as defined below (collectively, the “Loan Documents”) are given in consideration of and as security for the payment of One Million Fifty Five Thousand and No/100 Dollars (\$1,055,000.00) (the “Loan”), receipt of which is hereby acknowledged and which is made to enable Mortgagor to develop the Grant-Eligible Activities (as defined in the Loan Agreement). The Loan is evidenced by a Note (the “Note”) in the amount of One Million Fifty Five Thousand and No/100 Dollars (\$1,055,000.00) executed by the Mortgagor, to the order of the Mortgagee of even date herewith. The unpaid principal sum shall be due and payable by the Mortgagor in full on December 31, 2049 unless forgiven in accordance with the Note (the “Maturity Date”).

AGREEMENTS:

NOW, THEREFORE, to secure (a) the due and punctual payment of principal on the Note and the obligations of Mortgagor under the Loan Agreement and all renewals, extensions and modifications thereof any agreements or obligations issued in substitution therefore (provided the principal amount secured by this Mortgage shall not exceed \$1,055,000.00) and (b) the performance of all the covenants and agreements of Mortgagor herein, in the Loan Agreement and in any other agreement now or hereafter entered into between the Mortgagor and Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein (the payment and other obligations evidenced by the Loan Agreement, this Mortgage and all such other agreements are hereinafter collectively referred to as the “Indebtedness”), the Mortgagor does hereby mortgage, grant, bargain, sell, assign, transfer and convey unto the Mortgagee forever, with power of sale the following:

I.

All of Mortgagor's right, title and interest in and to the Property and the buildings, structures, other improvements, fixtures and personal property now standing or at any time hereafter constructed or placed upon the Property (the "Improvements"), including but not limited to (i) all building materials, supplies and equipment now or hereafter located on the Property and suitable or intended to be incorporated in any Improvements located or to be erected on the Property, (ii) all heating, plumbing and lighting apparatus, motors, engines and machinery, electrical equipment, incinerator apparatus, air-conditioning equipment, water and gas apparatus, pipes, faucets, and all other fixtures of every description which are now or may hereafter be placed or used upon the Property or in any of the Improvements now or hereinafter located thereon, (iii) all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to and of any and all of the foregoing, (iv) all hereditaments, easements, appurtenances; estates, and other rights and interests now or hereafter belonging to or in any way pertaining to the Property or to any of the Improvements now or hereafter located thereof, and (v) all tangible personal property owned by the Mortgagor and now or at any time hereafter located on or relating to the Property.

II.

All rents, issues, profits, condemnation awards, revenues and income arising from the ownership, operation or sale of the Property and the Improvements and all proceeds and products thereof (herein collectively called "Revenues and Income").

To Have and To Hold the Property and the Improvements (together the "Mortgaged Property"), and the Revenues and Income unto the Mortgagee forever; provided, nevertheless, that this Mortgage is granted upon the express condition that if the Mortgagor shall cause to be paid to the Mortgagee as and when due and payable the Indebtedness, and shall also keep and perform each and every covenant and agreement of Mortgagor herein contained, then, this Mortgage and the estate hereby granted shall cease and be and become void and shall be released of record at the expense of the Mortgagor; otherwise this Mortgage shall be and remain in full force and effect.

The Mortgagor represents, warrants and covenants to and with the Mortgagee that Mortgagor is lawfully seized of the Property and has good right and full power and authority to execute this Mortgage and to mortgage the Mortgaged Property; that the Mortgagor owns the Mortgaged Property free from all liens; security interests and encumbrances except as agreed to by Mortgagee (the "Permitted Encumbrances"); that the Mortgagor will warrant and defend the title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons whomsoever, whether now existing or hereafter arising, except the Permitted Encumbrances. The covenants and warranties of this paragraph shall survive foreclosure of this Mortgage and shall run with the Property.

The Mortgagor further covenants and agrees as follows:

1. Payment of the Indebtedness and Compliance with Other Agreements.

(a) Mortgagor will cause the principal on the Indebtedness to be duly and punctually paid in accordance with the terms of the Note, the Loan Agreement and this Mortgage,

when and as due and payable. The provisions of the Note and Loan Agreement are hereby incorporated by reference into this Mortgage as fully as if set forth at length herein.

(b) Mortgagor will duly and punctually perform each and every obligation under the Loan Agreement and any other agreement on or hereafter entered into by the Mortgagor and Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein.

2. Payment of Taxes, Assessments and Other Charges; Escrow. Subject to paragraph 6 relating to contests, the Mortgagor shall pay before a penalty might attach for nonpayment thereof, all taxes and assessments and all other charges whatsoever levied upon or assessed or placed against the Mortgaged Property, except that assessments may be paid in installments so long as no fine or penalty is added to any installment for the nonpayment thereof. Mortgagor shall likewise pay all taxes, assessments and other charges, levied upon or assessed, placed or made against, or measured by, this Mortgage, or the recordation hereof, or the Indebtedness secured hereby, provided that the Mortgagor shall not be obliged to pay such tax, assessment or charge if such payment would be contrary to law or would result in the payment of an unlawful rate of interest on the Indebtedness secured hereby; and provided further that nothing herein contained shall be construed as requiring Mortgagor to pay any net income, profits or revenues taxes of the Mortgagee. Mortgagor shall promptly furnish to the Mortgagee all notices received by the Mortgagor of amounts due under this paragraph and shall furnish receipts evidencing such payments within 10 days after such payments are made.

3. Payment of Utility Charges. Subject to paragraph 6 relating to contests, the Mortgagor shall pay all charges made by utility companies, whether public or private, for electricity, gas, heat, water, or sewer, furnished or used in connection with the Mortgaged Property or any part thereof, and will upon written request of Mortgagee, furnish proper receipts evidencing such payment.

4. Liens. Subject to paragraph 6 hereof relating to contests, the Mortgagor shall not create, incur or suffer to exist any lien, encumbrance or charge on the Mortgaged Property or Revenues and Income or any part thereof which may have priority over the lien hereof, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable, the General Contractor Fee Mortgage and the Development Fee Mortgage, as such terms are defined in the Amended and Restated Agreement of Limited Partnership of the Mortgagor (the "Mortgagor's LPA"), and other than any lien granted in connection with the current financing secured by the Property, and Permitted Encumbrances. Subject to paragraph 6 relating to contests, Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

5. Compliance with Laws. Subject to paragraph 6 relating to contests, Mortgagor shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof. Mortgagor shall not use or occupy nor permit the use and occupancy of the Property without a current Certificate of Occupancy issued by the City of Minnetonka.

6. Permitted Contests. The Mortgagor shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 2 hereof, (ii) pay any charges referred to in paragraph 3 hereof, (iii) discharge or remove any lien, encumbrance or charge referred to in paragraph 4 hereof, or (iv) comply with any statute, law, rule, order, regulation or ordinance referred to in paragraph 5 hereof, so long as Mortgagor shall (a) contest, in good faith, the existence, or the validity thereof, the amount of damages caused thereby or the extent of Mortgagor's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrance or charge so contested, (B) the sale, forfeiture or loss of the Mortgaged Property or any part thereof, and (C) any interference with the use or occupancy of the Mortgaged Property or any part thereof, and (b) shall give such security to the Mortgagee as may be reasonably demanded by the Mortgagee to insure compliance with the foregoing provisions of this paragraph 6. Mortgagor shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph 6.

7. Insurance. The Mortgagor shall keep the improvements now existing or hereafter erected on the Mortgaged Property insured against loss by fire and any other hazards for which the Mortgagee requires insurance for full replacement value of the improvements. This insurance shall be maintained in the amounts and for the periods as required under the terms of the Loan Agreement. If the Mortgagor fails to maintain coverage described above, the Mortgagee may, at the Mortgagee's option, obtain coverage to protect the Mortgagee's rights in the Mortgaged Property in accordance with paragraph 6.

All insurance policies and renewals shall be reasonably acceptable to the Mortgagee and shall include a standard mortgage clause. If the Mortgagee requires, the Mortgagor shall promptly give to the Mortgagee all receipts of paid premiums and renewal notices. In the event of loss, the Mortgagor shall give prompt notice to the insurance carrier and the Mortgagee. The Mortgagee may make proof of loss if not made promptly by the Mortgagor.

If the Mortgaged Property is acquired by the Mortgagee, the Mortgagor's rights to any insurance policies and proceeds resulting from damage to the Mortgaged Property prior to the acquisition shall pass to the Mortgagee to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

8. Preservation and Maintenance of Mortgaged Property. Mortgagor (i) shall keep the buildings and other Improvements hereafter erected as part of the Project on the Property in safe and good repair and condition, ordinary wear and tear and damage by insured casualty excepted (provided that Mortgagor may proceed to demolish the existing buildings when vacant), (ii) shall reasonably maintain the parking and landscaped areas of the Mortgaged Property, (iii) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, and (iv) shall not remove from the Property any of the fixtures and personal property included in the Mortgaged Property unless the same is immediately replaced with like property of at least equal value and utility (provided that Mortgagor may proceed to demolish and remove all existing personal property and fixtures located on the Property).

9. Inspection. The Mortgagee, or its agents, shall have the right at all reasonable times, to enter upon the Mortgaged Property for the purposes of inspecting the Mortgaged Property or any part thereof. The Mortgagee shall, however, have no duty to make such inspection.

10. Protection of Mortgagee's Security. Subject to the rights of the Mortgagor under paragraph 6 hereof, if the Mortgagor fail to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects the Mortgaged Property or the interest of the Mortgagee therein, or the title thereto, then the Mortgagee, at Mortgagee's option, upon advance written notice to Mortgagor, may perform such covenants and agreements, defend against and/or investigate such action or proceeding, and take such other action as the Mortgagee deems necessary to protect the Mortgagee's interest. Mortgagee shall be the sole judge of the legality, validity and priority of any claim, lien, encumbrance, tax assessment, charge and premium paid by it and of the amount necessary to be paid in satisfaction thereof. Mortgagee is hereby given the irrevocable power of attorney (which power is coupled with an interest and is irrevocable) effective upon the occurrence of an Event of Default, to enter upon the Mortgaged Property as the Mortgagor's agent in the Mortgagor's name to perform any and all covenants and agreement to be performed by the Mortgagor as herein provided. Any amounts disbursed or incurred by the Mortgagee pursuant to this paragraph 10, shall become additional Indebtedness of the Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree in writing to other terms of repayment, such amounts shall be immediately due and payable. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Indebtedness or by the Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph 10 shall require the Mortgagee to incur any expense or do any act hereunder, and the Mortgagee shall not be liable to the Mortgagor for any damages or claims arising out of action taken by the Mortgagee pursuant to this paragraph 10.

11. Condemnation.

(a) Mortgagor hereby irrevocably assigns to the Mortgagee any award or payment which becomes payable by reason of any taking of the Mortgaged Property, or any part thereof, whether directly or indirectly or temporarily or permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings (hereinafter called "Taking"). Forthwith upon receipt by Mortgagor of notice of the institution of any proceeding or negotiations for a Taking, Mortgagor shall give notice thereof to Mortgagee. Mortgagee may appear in any such proceedings and participate in any such negotiations and may be represented by counsel. Mortgagor, notwithstanding that Mortgagee may not be a party to any such proceeding, will promptly give to Mortgagee copies of all notices, pleadings, judgments, determinations, and other papers received by Mortgagor therein. Mortgagor will not enter into any agreement permitting or consenting to the Taking of the Mortgaged Property, or any part thereof, or providing for the conveyance thereof in lieu of condemnation, with anyone authorized to acquire the same in condemnation or by eminent domain unless Mortgagee shall first have consented thereto in writing, which consent will not be unreasonably withheld. All Taking awards shall be adjusted jointly by Mortgagor and Mortgagee. All awards payable as a result of a Taking shall be paid to Mortgagee, which may, at its option, apply them after first deducting Mortgagee's expenses incurred in the collection thereof, to the payment of the Indebtedness, whether or not due and in

such order of application as Mortgagee may determine, or to the repair or restoration of the Mortgaged Property, in such manner as Mortgagee may determine. Any application of Taking awards to principal of the Indebtedness shall not extend or postpone the due date of the installments payable under the Indebtedness or change the amount of such installments.

(b) If the Taking involves a taking of any building or other Improvements now or hereafter located on the Property, Mortgagor shall proceed, with reasonable diligence, to demolish and remove any ruins and complete repair or restoration of the Mortgaged Property as nearly as possible to its size, type and character immediately prior to the Taking, but only to the extent that the condemnation awards are available or adequate to complete such repair or restoration.

(c) Mortgagor shall promptly reimburse Mortgagee upon demand for all of Mortgagee's expense (including reasonable attorneys' fees) incurred in the collection of awards.

12. Information; Books and Records. Mortgagor will prepare or cause to be prepared at Mortgagor's expense and deliver to Mortgagee immediately upon becoming aware of the existence of any condition or event which constitutes, or which after notice or lapse of time or both would constitute, an Event of Default, written notice specifying the nature and period of existence thereof and what action Mortgagor have taken, is taking or proposes to take with respect thereto. Mortgagor shall keep and maintain at all times at Mortgagor's address stated below or at such other place as Mortgagee may approve in writing, complete and accurate books of accounts and records in sufficient detail to reflect correctly the receipts and expenses in connection with the acquisition, construction, operation and/or sale of the Mortgaged Property and copies of all written contracts, leases and other instruments which affect the Mortgaged Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection by the Mortgagee or its representative during ordinary business hours.

13. Indemnification by the Mortgagor. The Mortgagor shall bear all loss, expense (including reasonable attorneys' fees) and damage in connection with, and agrees to indemnify and hold harmless the Mortgagee and its agents, servants and employees (the "Indemnified Parties") from, all claims, demands and judgments made or recovered against the Indemnified Parties because of bodily injuries, including death at any time resulting therefrom, and/or because of damages to property of the Mortgagee or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the construction and/or operation of the Improvements prior to appointment of a receiver or foreclosure of this Mortgage or arising by reason of the presence of hazardous or toxic substances on the Property or in the Improvements or releases thereof from the Mortgaged Property, whether or not due to any act of omission or commission, including negligence of the Mortgagor or Mortgagor's employee, servants or agents. The Mortgagor's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Mortgagor or subject to any exclusion from coverage in any insurance policy. The obligations of the Mortgagor under this paragraph shall survive the payment of the Note. Provided, however, that Mortgagor shall not be required to indemnify, defend, and hold harmless the Indemnified Parties from and against any of the foregoing if such claims, demands, losses, expenses, and/or judgements made or recovered against or suffered by the Indemnified Parties are the result of the gross negligence of intentional misconduct of such Indemnified Parties.

14. Security Interest. This Mortgage shall constitute a security agreement with respect to (and the Mortgagor hereby grants the Mortgagee a security interest in) the tangible personal property and fixtures included in the Mortgaged Property (as more particularly described in Granting Clause I of this Mortgage) and the Revenues and Income (as more particularly described in Granting Clause II). The Mortgagor will from time to time, at the request of the Mortgagee, execute any and all financing statements covering such personal property and fixtures (in a form satisfactory to the Mortgagee) which the Mortgagee may reasonably consider necessary or appropriate to perfect its interest.

15. Events of Default. Each of the following occurrences shall constitute an event of default hereunder (herein called an “Event of Default”):

(a) Mortgagor shall fail to duly and punctually pay any obligation payable under the Note or Loan Agreement which is not cured within ten (10) business days after written notice from Mortgagee.

(b) Mortgagor shall fail duly to perform or observe any of the covenants or agreements contained in this Mortgage (other than default in the performance, or breach, of any covenant of the Mortgagor in paragraph 1(a) hereof) and such failure shall continue for a period of sixty (60) days after the Mortgagee has given written notice to the Mortgagor specifying such default or breach.

(c) Mortgagor shall make assignment for the benefit of Mortgagor’s creditors, or shall admit in writing Mortgagor’s inability to pay Mortgagor’s debts as they become due, or shall file a petition in bankruptcy, or shall become or be adjudicated bankrupt or insolvent, however defined, or shall file a petition seeking any reorganization, dissolution, liquidation, arrangement, composition, readjustment or similar relief under any present or future bankruptcy or insolvency statute, law or regulation or shall file an answer admitting to or not contesting the material allegations of petition filed against the Mortgagor in such proceedings, or shall not, within 90 days after the filing of such petition against the Mortgagor, have same dismissed or vacated, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of the Mortgagor’s properties or of the Mortgaged Property or shall not, within 90 days after the appointment (without the Mortgagor’s consent or acquiescence) of a trustee, receiver or liquidator of any material part of the Mortgagor’s properties or of the Mortgaged Property, have such appointment vacated.

(d) An Event of Default under the Loan Agreement (as defined in the Loan Agreement) or Note shall have occurred and be continuing or the Mortgagor shall be in default under any other agreement now or hereafter entered into by the Mortgagor and the Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein after expiration of any applicable cure periods.

(e) The Mortgagor’s investor limited partner and special limited partner, Citibank, N.A., a national banking association, and LP Purchaser LLC, a Delaware limited liability company, shall have an opportunity, but not an obligation, to cure any defaults under this Mortgage, and such cure shall be accepted by the Mortgagee as if cured by the Mortgagor itself.

16. Remedies. Whenever any Event of Default shall have occurred and be subsisting, the Mortgagee may, at its option, exercise one or more of the following rights and remedies (and/or any other rights and remedies available to it):

(a) Mortgagee may, by written notice to the Mortgagor, declare immediately due and payable all Indebtedness secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand.

(b) Mortgagee shall have and may exercise with respect to all personal property and fixtures which are part of the Mortgaged Property and with respect to the Revenues and Income all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code, as in effect in the State of Minnesota. If notice to the Mortgagor of the intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Mortgagor (in the manner specified in paragraph 20) at least ten (10) calendar days prior to the date of intended disposition. Mortgagor shall pay on demand all costs and expenses incurred by Mortgagee in exercising such rights and remedies, including without limitation, reasonable attorneys' fees and legal expenses.

(c) Mortgagee may (and is hereby authorized and empowered to) foreclose this Mortgage by action or advertisement, pursuant to the statutes of the State of Minnesota in such case made and provided, power being expressly granted to sell the Mortgaged Property at public auction and convey the same to the purchaser in tenant interest or in fee simple as the case may be of the Mortgagor's interest in the Property at the time of such sale and, out of the proceeds arising from such sale, to pay all Indebtedness secured hereby, and all legal costs and charges of such foreclosure and the maximum attorneys' fees permitted by law, which costs, charges and fees the Mortgagor agree to pay.

THE MORTGAGOR HEREBY CONSENTS TO AND ACKNOWLEDGES THE RIGHT OF THE MORTGAGEE, AT MORTGAGEE'S OPTION, TO ACT TO FORECLOSE THIS MORTGAGE BY ACTION OR ADVERTISEMENT PURSUANT TO MINNESOTA STATUTES CHAPTERS 580 OR 581. A POWER OF SALE BEING HEREIN EXPRESSLY GRANTED WHICH SHALL ALLOW THE MORTGAGEE TO SELL AT PUBLIC AUCTION AFTER SERVICE OF NOTICE THEREOF UPON THE OCCUPANT OF THE MORTGAGED PROPERTY, MORTGAGOR ACKNOWLEDGES THAT SUCH SERVICE NEED NOT BE MADE ON THE MORTGAGOR PERSONALLY UNLESS THE MORTGAGOR IS AN OCCUPANT OF THE MORTGAGED PROPERTY AND THAT NO HEARING IS REQUIRED IN CONNECTION WITH THE SALE. MORTGAGOR EXPRESSLY WAIVES ANY AND ALL RIGHTS TO PRIOR NOTICE OF SALE AND ANY AND ALL RIGHTS TO PRIOR HEARING IN CONNECTION WITH THE SALE. OUT OF THE PROCEEDS OF SUCH SALE THE PRINCIPAL AMOUNT OF THE LOAN SHALL BE PAID TOGETHER WITH ALL LEGAL COSTS AND CHARGES OF FORECLOSURE WITH MAXIMUM ATTORNEY'S FEES PERMITTED BY LAW.

(d) The Mortgagee shall be entitled, without notice and without any showing of waste of the Mortgaged Property, inadequacy of the Mortgaged Property as security for the Indebtedness, or insolvency of the Mortgagor, to the appointment of a receiver of the rents and profits of the Mortgaged Property, including those past due.

(e) Mortgagee may pursue one or more of the remedies provided for in the Loan Agreement or any other agreement now or hereafter entered into between the Mortgagor and Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated herein.

17. Estoppel Certificate. Mortgagor agrees at any time and from time to time, upon not less than fifteen (15) days' prior notice by Mortgagee, to execute, acknowledge and deliver, without charge, to Mortgagee or to any person designated by Mortgagee, a statement in writing certifying, to the best of its knowledge, that this Mortgage is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), the principal amount then secured hereby, that Mortgagor has not received any notice of default or notice of acceleration or foreclosure of this Mortgage (or if Mortgagor has received such a notice, that it has been revoked, if such be the case), that to the knowledge of Mortgagor no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same and stating that the same has been cured, if such be the case), the Mortgagor to Mortgagee's knowledge have no claims or offsets against Mortgagee (or if Mortgagor have any such claims, specifying the same), and the dates to which the principal and the other sums and charges payable by Mortgagor pursuant to the Loan Agreement have been paid. In the event Mortgagor fails to execute, acknowledge and deliver such statement within the time above required, Mortgagor hereby appoint and constitute Mortgagee as Mortgagor's attorney-in-fact to do so (which power of attorney is coupled with an interest and is irrevocable), the Mortgagor shall be fully bound by any such statement executed by Mortgagee on Mortgagor's behalf to the same extent as if Mortgagor had executed, acknowledged and delivered the same. Mortgagee agrees to provide statements of the principal balance payable pursuant to the Note from time to time upon request of Mortgagor.

18. Forbearance Not a Waiver, Rights and Remedies Cumulative. No delay by the Mortgagee in exercising any right shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by the Mortgagee of any particular provision of this Mortgage shall be deemed effective unless in writing signed by the Mortgagee. All such rights and remedies provided for herein or which the Mortgagee may have otherwise, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises. The Mortgagee's taking action pursuant to paragraph 10 or receiving proceeds, awards or damages pursuant to paragraph 7 or 11 shall not impair any right or remedy available to the Mortgagee under paragraph 16 hereof. Acceleration of maturity of the Indebtedness, once claimed hereunder by the Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity of the Indebtedness.

19. Successors and Assigns Bound; Number; Gender; Agents; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, legal representatives, successors and assignees of the Mortgagee and the Mortgagor. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall apply to all genders. In exercising any rights hereunder or taking any actions provided for herein, Mortgagee may act through its employees, agents or independent contractor as authorized by Mortgagee. The captions and headings of the paragraphs

of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

20. Notice. Any notice from the Mortgagee to the Mortgagor under this Mortgage shall be deemed to have been given by the Mortgagee and received by the Mortgagor when mailed by certified mail by the Mortgagee or its agents to the Mortgagor at the address set forth in paragraph 26(a) below or at such other address as the Mortgagor may designate in writing to the Mortgagee. Any notice from the Mortgagee to the Mortgagor shall also be provided to Mortgagor's investor limited partner and special limited partner, Citibank, N.A., a national banking association, and LP Purchaser LLC, a Delaware limited liability company, at the following address: 388 Greenwich St., 8th Floor, New York, NY 10013, Attn: Mark Sherman, with a copy to Nixon Peabody LLP, 779 9th Street, NW, Suite 500, Washington, DC 20001, Attn: Matthew W. Mullen.

21. Governing Law; Severability. This Mortgage shall be governed by the laws of the State of Minnesota. In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provisions and to this end the provisions of the Mortgage are declared to be severable.

22. Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

23. Waiver of Marshaling. Mortgagor, any party who consents to this Mortgage and any party who now or hereafter acquires a lien on the Mortgaged Property and who has actual or constructive notice of this Mortgage hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein and waives any right to have the Mortgaged Property sold in separate tracts pursuant to Section 580.08, Minnesota Statute.

24. Construction Mortgage. This Mortgage secures an obligation incurred for the construction of an improvement on land and is a construction mortgage.

25. Application of Rents. Notwithstanding anything to the contrary herein, all Rents collected by the Mortgagee or any receiver each month shall be applied as determined by Mortgagor, or as otherwise determined by applicable law.

26. Fixture Filing. From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the Mortgaged Property (as more particularly described in Granting Clause I of this Mortgage) which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

(a) Name and Address of Mortgagor:

Minnetonka Leased Housing Associates III, LLLP
2905 Northwest Blvd. Suite 150
Plymouth, MN 55441-2644
Attention: Ryan J. Lunderby

and a copy to:

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

TCAM
30 Federal Street, Floor 6
Boston, MA 02110-2508
Attention: Jenny Netzer

(b) Name and Address of Secured Party:

City of Minnetonka, Minnesota
14600 Minnetonka Blvd
Minnetonka, Minnesota 55345
Attention: City Manager

(c) This document covers goods which are or are to become fixtures.

(d) The Mortgagor's federal organizational identification number is 82-2656566.

27. Additional Provisions.

(a) Mortgagee agrees, notwithstanding any other provision herein to the contrary, that in the event of a foreclosure of the Property, that no tenant may be evicted or tenancy terminated (other than for good cause), and the rent on no apartment unit may be increased, for the three year period following foreclosure if such eviction, termination of tenancy or increase in rent would be contrary to the provisions of Section 42(h)(6)(E) of the Internal Revenue Code of 1986, as amended. This Mortgage is expressly subordinate to this provision.

(b) This Mortgage and the Note shall be construed according to the laws of the State of Minnesota.

(c) In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part hereof, Mortgagor shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefor, provided that no material default then exists under the Loan Documents. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to Mortgagee for repayment of the remaining balance of the Loan.

(d) The Mortgagor will permit the Mortgagee's authorized representatives to enter the Property at all times during normal business hours for the purpose of inspecting the same;

provided the Mortgagee shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

(e) Mortgagor hereby agrees to defend, indemnify, and hold harmless Mortgagee from and against any and all claims, losses, damages, liabilities, costs, and expenses (including without limitation reasonable attorneys' fees) incurred by Mortgagee as a result of any hazardous materials or substances which are on the Property in violation of applicable environmental laws at any time during which Mortgagor shall be in custody or control of the Property; and this indemnification shall remain in full force and effect and shall survive the repayment of the Loan and the exercise of any remedy by the Mortgagee hereunder including a foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure.

(f) Mortgagor shall have the right and privilege, but not the obligation, to borrow additional funds and to further encumber the security and collateral given and pledged to Mortgagee hereunder at any time, from time to time, and as often as Mortgagor shall determine, but only with the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, delayed and conditioned, except for the Permitted Encumbrances identified in EXHIBIT B.

(g) If the Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, subject to any applicable cure periods and rights of Mortgagor's partners to cure, or if any action or proceeding is commenced which effects the Property or the interest of the Mortgagee therein, or the title thereto, then the Mortgagee, at Mortgagee's option, upon sixty (60) days advance written notice to Mortgagor, may perform such covenants and agreements to defend against and/or investigate such action or proceeding, and take such other action as the Mortgagee deems necessary to protect the Mortgagee's interest. Mortgagee shall be the sole judge of the legality, validity and priority of any claim, lien, encumbrance, tax assessment, charge and premium paid by it and of the amount necessary to be paid in satisfaction thereof. Mortgagee is hereby given the irrevocable power of attorney (which power is coupled with an interest and is irrevocable) effective sixty (60) days after written notice, to enter upon the Property as the Mortgagor's agent in the Mortgagor's name to perform any and all covenants and agreements to be performed by the Mortgagor as herein provided. Any amounts disbursed or incurred by the Mortgagee pursuant to this paragraph shall become additional indebtedness of the Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree in writing to other terms of repayment, such amounts shall be immediately due and payable. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the indebtedness or by the Mortgagee under the provisions hereof, and any such subrogation rights shall require the Mortgagee to incur any expense or do any act hereunder, and the Mortgagee shall not be liable to the Mortgagor for any damages or claims arising out of action taken by the Mortgagee pursuant to this paragraph.

28. Removal of General Partner. Notwithstanding anything to the contrary contained in the Loan Documents, the removal, or withdrawal in lieu of removal, of Mortgagor's general partner and/or class B limited partner, for cause shall be permitted as set forth in accordance with the Mortgagor's LPA and shall not constitute a default under the Loan Documents and any amendment to Mortgagor's LPA to effectuate such transfers shall not require Mortgagee consent

29. Assignment of Limited Partner Interest. Notwithstanding anything to the contrary contained in the Loan Documents, the interest of the Mortgagor's investor limited partner shall be freely transferable and any amendment to Mortgagor's LPA to effectuate such transfers shall not require Mortgagee consent.

30. Subordination. The Mortgagee agrees to subordinate its rights under this Mortgage to the holder of any mortgage securing the Property relating to the construction or permanent financing, under terms and conditions reasonably acceptable to the Mortgagee. Any subordination agreement must be approved by the City Council.

MORTGAGOR ACKNOWLEDGES THAT THIS IS A LEGAL DOCUMENT AND THAT BEFORE SIGNING MORTGAGOR HAS FULLY UNDERSTOOD THE TERMS AND CONDITIONS HEREIN, AND THE RIGHTS WAIVED HEREBY AND THE EFFECT OF SUCH WAIVER OR HAS SOUGHT LEGAL COUNSEL TO EXPLAIN SUCH TERMS AND CONDITIONS, RIGHTS AND THE WAIVER OF SUCH RIGHTS.

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EXHIBIT A
LEGAL DESCRIPTION

The land referred to is situated in the State of Minnesota, County of Hennepin, and is described as follows:

Lot 1, Block 1, DOMINIUM 2ND ADDITION

Hennepin County, Minnesota
Torrens Property

EXHIBIT B

PERMITTED ENCUMBRANCES

1. Real estate taxes and installments of special assessments payable in 2019 not yet due and payable.
2. Rights or claims of tenants, as tenants only, in possession under unrecorded leases.
3. Subject to an easement for sanitary sewer purposes, in favor of the City of Minnetonka, as contained in CR Book 73, Page 3995823, over that part of the following described land lying 15 feet on each side of the following described center line: Commencing at the Northwest corner of the Southwest Quarter of said Section 36; thence on an assumed bearing of South 88 degrees, 11 minutes and 18 seconds East along the North line of said Southwest Quarter a distance of 1329.73 feet; thence North 18 degrees, 03 minutes and 00 seconds East a distance of 50.00 feet to the beginning of the centerline to be described; thence South 18 degrees, 03 minutes and 00 seconds West, a distance of 244.93 feet; thence South 10 degrees, 00 minutes and 29 seconds East a distance of 262.00 feet; thence South 39 degrees 34 minutes and 31 seconds West a distance of 165.00 feet; thence South 1 degree 01 minutes and 56 seconds East, a distance of 236.18 feet; thence South 17 degrees 04 minutes and 15 seconds East, a distance of 423.42 feet; thence South 71 degrees, 40 minutes and 13 seconds East a distance of 223.80 feet; thence South 0 degrees, 00 minutes and 17 seconds West a distance of 10.00 feet and said centerline there terminating (Now on part of above Lots). (Shown by recital on the Certificate of Title)

Partially vacated by Resolution No. 81-6541 adopted April 20, 1981, filed May 6, 1981, as Document No. 1423875.

4. Subject to a 30 foot sanitary sewer easement, in favor of the City of Minnetonka, as described in Parcel No. 25 in Final Certificate filed January 12, 1973, as CR Document No. 3995823 (Now as to part of Lot 1).(Shown by recital on the Certificate of Title)

Partially vacated by Resolution No. 81-6541 adopted April 20, 1981, filed May 6, 1981, as Document No. 1423875.

5. Subject to a reservation unto Clover Drive, Inc., and its successors and assigns, of an easement for secondary road purposes over, under and across that portion of Lot 2 lying Southerly of a line drawn parallel to and 3.00 feet Northerly of (as measured at right angles to) the following described line: Commencing at the Southeast corner of Lot 2; thence North 88 degrees 11 minutes 18 seconds West along the South line of Lot 2 a distance of 475.00 feet; and there terminating. (Shown by recital on the Certificate of Title)

6. Subject to a reservation unto Clover Drive, Inc., its successors and assigns, of an easement 2.00 feet in width for concrete edging purposes over, under and across that portion of said Lots 1 and 2 lying adjacent to the public right-of-way designated as Bren Road West and Bren Road on the recorded plat of Opus 2 Eighth Addition. (Shown by recital on the Certificate of Title)

7. Easements for utilities and drainage as shown on the recorded plat of Opus 2 Eighth Addition. As affected by Resolution No. 2018-083 approving the vacation of public right of way

and utility easements at 11001 Bren Road East adopted July 23, 2018, filed August 2, 2018, as Document No. T05550564.

8. Easement for public right-of-way purposes, in favor of the City of Minnetonka, a municipal corporation, as created in Quit Claim Deed dated May 27, 1976, filed August 30, 1976, as Document No. 1188617. As affected by Resolution No. 2018-083 approving the vacation of public right of way and utility easements at 11001 Bren Road East adopted July 23, 2018, filed August 2, 2018, as Document No. T05550564.

9. Permanent easement reserved as Article IX in Declaration of Industrial Standards and Protective Covenants dated April 7, 1981, filed April 8, 1981, as Document No. 1420987.

Assigned as shown by Assignment dated September 6, 1983, filed April 3, 1984, as Document No. 1570465.

10. Easements for utilities and drainage as shown on the recorded plat of Dominion 2nd Addition.

11. Resolution No. 2018-081 approving final site and building plans for a multi-family residential development at 11001 Bren Road East, adopted July 23, 2018, filed August 2, 2018, as Document No. T05550562.

12. Resolution No. 2018-082 approving the preliminary and final plat of Dominion 2nd Addition, adopted July 23, 2018, filed August 2, 2018, as Document No. T05550565.

13. Ordinance No. 2018-10 rezoning the property at 11001 Bren Road East From 1-1, industrial, to PUD, planned unit development, adopted July 23, 2018, filed August 2, 2018, as Document No. T05550563.

14. Parcel 327 Easement Agreement between Digi International Inc., a corporation under the laws of the State of Delaware and the Metropolitan Council, a political subdivision under the law of the State of Minnesota, dated September 17, 2018, filed September 18, 2018, as Document No. T05560873.

15. Terms and conditions of, and easements set forth in Reciprocal Easement Agreement between Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, dated October 2, 2018, filed October 4, 2018, as Document No. T05564924.

16. Contract for Private Development between Economic Development Authority in and for the City of Minnetonka, Minnesota, the City of Minnetonka, Minnesota and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, dated September 14, 2018, filed October 4, 2018, as Document No. T05564930.

As affected by Subordination Agreement - Governmental Entity (Taxable Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564942, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of

Minnetonka, Minnesota.

As affected by Subordination Agreement - Governmental Entity (Tax Exempt Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564941, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of Minnetonka, Minnesota.

17. Declaration of Restrictive Covenants by Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, to the Economic Development Authority in and for the City of Minnetonka, dated September 14, 2018, filed October 4, 2018, as Document No. T05564931.

As affected by Subordination Agreement - Governmental Entity (Taxable Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564942, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of Minnetonka, Minnesota.

As affected by Subordination Agreement - Governmental Entity (Tax Exempt Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564941, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of Minnetonka, Minnesota.

18. Minimum Assessment Agreement and Assessor's Certification between the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, and the City Assessor for the City of Minnetonka, Minnesota, dated September 14, 2018, filed October 4, 2018, as Document No. T05564932.

As affected by Subordination Agreement - Governmental Entity (Taxable Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564942, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of Minnetonka, Minnesota.

As affected by Subordination Agreement - Governmental Entity (Tax Exempt Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564941, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of Minnetonka, Minnesota.

19. Underground Stormwater Facility Easement Agreement between Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership organized under the laws of Minnesota, and City of Minnetonka, a Minnesota municipal corporation, dated October 2, 2018, filed October 4, 2018, as Document No. T05564933.

20. Declaration of Restrictive Covenants and Easement Related to Privately Owned Fire Hydrant dated October 2, 2018, filed October 4, 2018, as Document No. T05564934.

21. Declaration by Minnetonka Leased Housing Associates II, LLLP and Minnetonka Leased Housing Associates III, LLLP in favor of Nine Mile Creek Watershed District, dated October 2, 2018, filed October 4, 2018, as Document No. T05564935.

22. Regulatory Agreement dated September 14, 2018, filed October 4, 2018, as Document No. T05564936, between City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota, Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, and U.S. Bank National Association, a national banking association, as fiscal agent and U.S. Bank National Association, as bond trustee.

23. Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated as of September 14, 2018, filed October 4, 2018, as Document No. T05564937, in the office of Registrar of Titles for Hennepin County, Minnesota, executed by Minnetonka Leased Housing Associates, III, LLLP, a Minnesota limited liability limited partnership, in favor of the City of Minnetonka, a municipal corporation organized and existing under the laws of the State of Minnesota, in the original principal amount of \$32,410,000.00.

Assigned to U.S. Bank National Association, a national banking association, in its capacity as fiscal agent, pursuant to that certain Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of September 14, 2018, filed October 4, 2018, as Document No. T05564938, in the office of the Registrar of Titles for Hennepin County, Minnesota, executed by the City of Minnetonka, a municipal corporation organized and existing under the laws of the State of Minnesota.

24. Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated as of September 14, 2018, filed October 4, 2018, 2018, as Document No. T05564939, in the office of Registrar of Titles for Hennepin County, Minnesota, executed by Minnetonka Leased Housing Associates, III, LLLP, a Minnesota limited liability limited partnership, in favor of the City of Minnetonka, a municipal corporation organized and existing under the laws of the State of Minnesota, in the original principal amount of \$26,379,808.00.

Assigned to U.S. Bank National Association, a national banking association, in its capacity as fiscal agent, pursuant to that certain Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of September 14, 2018, filed October 4, 2018, as Document No. T05564940, in the office of the Registrar of Titles for Hennepin County, Minnesota, executed by the City of Minnetonka, a municipal corporation organized and existing under the laws of the State of Minnesota.

25. Subordinate Combination Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (Series C), in the original principal amount of \$4,090,000, dated as of September 1, 2018, executed by Minnetonka Leased Housing Associates, III, LLLP, a Minnesota limited liability limited partnership, in favor of the City of Minnetonka, a municipal corporation

organized and existing under the laws of the State of Minnesota, recorded in the office of Registrar of Titles for Hennepin County, Minnesota, on October 4, 2018, as Document No. T05564943.

Assigned to U.S. Bank National Association, a national banking association, by Assignment of Mortgage dated September 1, 2018, filed October 4, 2018, as Document No. T05564944.

As affected by Subordination Agreement - Private Entity (Tax Exempt Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564945, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent and U.S. Bank National Association, a national banking association, in its capacity as Trustee for the City of Minnetonka, Minnesota, pursuant to that certain Subordinate Indenture of Trust dated September 1, 2018.

As affected by Subordination Agreement - Private Entity (Taxable Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564946, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent and U.S. Bank National Association, a national banking association, in its capacity as Trustee for the City of Minnetonka, Minnesota, pursuant to that certain Subordinate Indenture of Trust dated September 1, 2018.

NOTE

\$1,055,000

Minnetonka, Minnesota
_____, 2019

FOR VALUE RECEIVED, the undersigned (herein called the “Borrower”), promises to pay to the order of the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Lender”) or its assigns, the sum of One Million Fifty Five Thousand and No/100 Dollars (\$1,055,000.00) (the “Loan”). Said sum was made available to the Borrower pursuant to the terms of a Loan Agreement of even date herewith (the “Loan Agreement”) between the Lender and the Borrower to enable the Borrower to undertake the development of the Grant-Eligible Activities (as defined in the Loan Agreement) on Property (as defined in the Loan Agreement) located in the City of Minnetonka, Minnesota.

1. This Note shall not bear interest.
2. The principal and accrued interest on the Loan shall be due and payable in one lump sum on the earlier of: (a) December 31, 2049, or (b) upon the sale of any portion of the Property by the Borrower without the Lender’s prior consent, (c) upon the Borrower’s default under the Loan Agreement or Combination Mortgage and Security Agreement of even date herewith (the “Mortgage”) from the Borrower to the Lender (the “Maturity Date”), at which time all unpaid principal and interest is due and payable. This Note may also be required to be repaid in whole or in part in accordance with Article XIV of the Loan Agreement. The Note may be prepaid at any time without penalty.
3. If suit is instituted by Lender, or its successors or assigns, to recover on this Note, the Borrower agrees to pay all costs of such collection actually incurred, including reasonable attorney’s fees and court costs. If this Note be reduced to judgment, such judgment shall bear the lawful interest rate pertaining to judgments, but not to exceed 6% per annum.
4. The Borrower hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note.
5. This Note is given pursuant to the Loan Agreement and the Mortgage delivered by the Borrower. If either the Loan Agreement or the Mortgage is found to be invalid for whatever reason, such invalidity shall constitute an Event of Default hereunder. This Note is secured by the Mortgage and such Mortgage describes the rights of the Lender as to the acceleration of the indebtedness evidenced by this Note.

All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement, the Mortgage, or any other instrument securing this Note 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. It is agreed that time is of the essence of this Note. If an Event of Default occurs under the Loan Agreement, the Mortgage, or any other instrument securing this Note, then the Lender may at its right and option, without notice, declare immediately due and payable the

principal balance of this Note and interest accrued thereon, together with reasonable attorneys' fees and expenses incurred by the Lender in collecting or enforcing payment hereof, whether by lawsuit or otherwise, and all other sums due hereunder or any instrument securing this Note.

6. The remedies of the Lender as provided herein and in the Loan Agreement, the Mortgage, or any other instrument securing this Note shall be cumulative and concurrent and may be pursued singly, successively, or together, and, at the sole discretion of the Lender, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Lender 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 Lender 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. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

7. If any term of this Note, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

8. This Note shall be governed by and construed in accordance with the laws of the State of Minnesota.

9. Neither the Borrower nor any partner shall have any personal liability for the Borrower's obligations hereunder, it being recognized by the Lender the obligations of the Borrower hereunder are non-recourse obligations and that the remedies of the Lender are limited to the collateral security provided in connection with the Loan.

10. IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and 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.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of the day and year above first written.

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

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

By: _____
Ryan J. Lunderby
Its: Vice President

Freddie Mac Loan Number: 502836040
Property Name: Legends of Minnetonka

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Direct Purchase of Tax-Exempt Loans)
(Revised 10-1-2018)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this ___ day of _____, 2019, by and between **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as Fiscal Agent under the Funding Loan Agreement (as defined herein) (in such capacity, “**Senior Lender**”), and 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 (“**Subordinate Lender**”).

RECITALS

- A. Minnetonka Leased Housing Associates III, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota (“**Borrower**”) is the owner of certain land located in Hennepin County, Minnesota, described in Exhibit A (“**Land**”). The Land is or will be improved with a multifamily rental housing project (“**Improvements**”).
- B. The City of Minnetonka, Minnesota, in its capacity as governmental lender (“**Governmental Lender**”), and the original holder of the Senior Note (as defined herein), has made a loan to Borrower in the original principal amount of \$32,410,000 (“**Senior Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of September 1, 2018 (“**Project Loan Agreement**”) among Governmental Lender, Senior Lender and Borrower in connection with the Mortgaged Property. The Senior Loan is secured by a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A) dated as of September 14, 2018 (“**Senior Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the “**Mortgaged Property.**”
- C. Pursuant to a Loan Agreement dated [_____], 2019 between Subordinate Lender and Borrower (“**Subordinate Loan Agreement**”), Subordinate Lender has made or is making a loan to Borrower in a principal amount not to exceed \$[1,055,000] (“**Subordinate Loan**”). The Subordinate Loan is or will be secured by a Combination Mortgage and Security Agreement dated [_____], 2019 (“**Subordinate Mortgage**”) from the Borrower to the Subordinate Lender encumbering all or a portion of the Mortgaged Property.

- D. The Senior Mortgage was recorded in the Office of the Register of Titles of Hennepin County, Minnesota (“**Recording Office**”) on October 4, 2018 as Document No. T05564937. The Subordinate Mortgage will be recorded in the Recording Office following the closing of the Subordinate Loan.
- E. The Senior Note was assigned by the Governmental Lender to Senior Lender as security for the loan made by the Initial Funding Lender (as defined herein) to the Governmental Lender pursuant to the Funding Loan Agreement (the “**Funding Loan**”). The Senior Mortgage was assigned by the Governmental Lender to Senior Lender as security for the Funding Loan pursuant to an Assignment of Security Instrument dated as of September 14, 2018 (the “Assignment”). The Assignment was recorded in the Recording Office on October 4, 2018 as Document No. T05564938.
- F. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the “**Construction Phase Financing Agreement**”) dated as of October 1, 2018 between Borrower, Administrative Agent (as defined herein) on behalf of Initial Funding Lender, Federal Home Loan Mortgage Corporation and KeyBank National Association, a national banking association (“**Permanent Funding Lender**”), Administrative Agent and Initial Funding Lender shall subsequently assign and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior Note and the Senior Mortgage will be amended and restated, and thereafter assigned to the Fiscal Agent (“**Conversion**”).
- G. Upon Conversion, the Permanent Funding Lender shall have the right to amend and restate the Senior Note and the Senior Mortgage, and the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents (as defined herein), without notice to or the consent or joinder of the Subordinate Lender.
- H. The execution and delivery of this Agreement is a condition of Funding Lender’s (as defined herein) consenting to Subordinate Lender’s making of the Subordinate Loan and Borrower’s granting of the Subordinate Mortgage.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.

The terms “**Condemnation**,” “**Imposition Reserve Deposits**,” “**Impositions**,” “**Leases**,” “**Rents**” and “**Restoration**,” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Agreement.

“Administrative Agent” means U.S. Bank National Association, a national banking association, in its capacity as Administrative Agent for the Initial Funding Lender under the Construction Continuing Covenant Agreement, its successors and assigns.

“Bankruptcy Proceeding” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

“Borrower” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Senior Lender or Funding Lender if Senior Lender or Funding Lender acquires title to the Mortgaged Property.

“Casualty” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

“Construction Continuing Covenant Agreement” means the Construction Loan Agreement dated as of September 14, 2018 by and among Borrower, Administrative Agent and Initial Funding Lender, together with any amendment thereto.

“Continuing Covenant Agreement” means the Continuing Covenant Agreement to be executed by Borrower and Permanent Funding Lender at Conversion.

“Enforcement Action” means any of the following actions taken by or at the direction of Subordinate Lender: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

“Enforcement Action Notice” means a Notice given from Subordinate Lender to Senior Lender and Funding Lender, following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

“Funding Lender” shall mean, prior to Conversion, Administrative Agent on behalf of Initial Funding Lender and Permanent Funding Lender from and after Conversion, and any successor holder of the Governmental Note.

“Funding Loan Agreement” means the Funding Loan Agreement dated as of September 1, 2018 among Funding Lender, Governmental Lender and Senior Lender.

“Governmental Note” means, prior to Conversion, the (i) Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 in the maximum principal amount of \$16,205,000 and (ii) the Multifamily Housing Revenue Note (Legends of Minnetonka Project) Series 2018A-2 in the maximum principal amount of \$16,205,000. From and after Conversion, “Governmental Note” means the Multifamily Note delivered by the Governmental Lender evidencing the Funding Loan.

“Initial Funding Lender” means, together, U.S. Bank National Association, a national banking association, in its capacity as a lender under the Construction Continuing Covenant Agreement, and BMO Harris Bank, N.A., a national banking association.

“Lien” means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

“Loss Proceeds” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

“Notice” means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

“Senior Indebtedness” means the “Indebtedness” of Borrower as evidenced by the Senior Loan Documents.

“Senior Lender” is defined above. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Lender.

“Senior Loan Agreement” collectively means, prior to Conversion, the Project Loan Agreement and the Construction Continuing Covenant Agreement. From and after Conversion, “Senior Loan Agreement” means the Project Loan Agreement and/or the Continuing Covenant Agreement.

“Senior Loan Documents” means prior to Conversion, the “Project Loan Documents” as defined in the Construction Phase Financing Agreement, together with the “Loan Documents” as defined in the Construction Continuing Covenant Agreement. From and after Conversion, “Senior Loan Documents” shall mean the “Financing Documents” as defined in the Continuing Covenant Agreement, as such documents may be amended.

“Senior Mortgage Default” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Loan Documents.

“Senior Note” means the Project Notes as that term is defined in the Funding Loan Agreement.

“Subordinate Indebtedness” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

“Subordinate Lender” means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Documents” means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Sub-Recipient Funding Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

“Subordinate Mortgage Default” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement) Subordinate Lender to take an Enforcement Action.

“Subordinate Note” means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

“Surplus Cash” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (i) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves and Imposition Reserve Deposits.
- (ii) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

2. Subordinate Lender’s Representations and Warranties.

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
 - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
 - (ii) No Subordinate Mortgage Default has occurred and is continuing.

- (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$0.00.
- (iv) No scheduled payments under the Subordinate Note have been prepaid.
- (b) Without the prior written consent of Senior Lender, Subordinate Lender will not do any of the following:
 - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
 - (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
 - (iii) Accept any prepayment of the Subordinate Indebtedness.

3. Terms of Subordination.

- (a) Agreement to Subordinate. The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness. Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.
- (c) Payments Before Senior Loan Default; Soft Subordinate Debt. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 10 days in advance of its due date and provided further that Subordinate Lender will not accept any payment in an amount that exceeds 75% of then available Surplus Cash.
- (d) Payments After Senior Loan Default or Bankruptcy.

- (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of this Section 3(d) will apply.
- (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Senior Lender:
 - (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.
 - (B) Any proceeds from any Enforcement Action.
 - (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.
- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Senior Lender, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan.

4. Default Under Subordinate Loan Documents.

- (a) Notice of Subordinate Loan Default and Cure Rights.
 - (i) Subordinate Lender will deliver to Senior Lender and Funding Lender a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to Senior Lender or Funding Lender pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.

- (ii) For a period of 90 days following delivery to Senior Lender of an Enforcement Action Notice, Senior Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Senior Lender has commenced and is diligently pursuing such cure to completion, Senior Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Senior Lender takes either of the following actions:
 - (A) Discontinues its pursuit of any cure.
 - (B) Delivers to Subordinate Lender Senior Lender's written consent to the Enforcement Action described in the Enforcement Action Notice.
 - (iii) Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Senior Lender having cured any Subordinate Mortgage Default.
 - (iv) Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.
- (b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.
- (i) In the event of a Subordinate Mortgage Default prior to Conversion, Subordinate Lender will not commence any Enforcement Action without Senior Lender's prior written consent, which may be granted or withheld in Senior Lender's sole and absolute discretion.
 - (ii) From and after Conversion, in the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until 90 days after Subordinate Lender has delivered to Senior Lender and Funding Lender an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Loan Documents, subject to Senior Lender's right to cure a Subordinate Mortgage Default set forth in Section 4(a).
 - (iii) From and after Conversion, Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:

- (A) The expiration of such 90-day period or such longer period as provided in Section 4(a).
 - (B) The delivery by Senior Lender to Subordinate Lender of Senior Lender's written consent to such Enforcement Action by Subordinate Lender.
- (iv) Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender's Enforcement Action in Senior Lender's sole and absolute discretion. From and after Conversion, at the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Senior Lender's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.
- (v) Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.
- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies Senior Lender and Funding Lender in writing that any Subordinate Loan Default of which Senior Lender has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Senior Loan will be reinstated.

5. Default Under Senior Loan Documents.

- (a) Notice of Senior Loan Default and Cure Rights.
- (i) Senior Lender or Funding Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender or Funding Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender or Funding Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents.

- (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Senior Lender will be entitled to continue to pursue its remedies under the Senior Loan Documents.
- (iii) Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required under the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property.
- (iv) All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

(b) Release of Mortgaged Property.

- (i) Subordinate Lender consents to and authorizes any future release by Senior Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Senior Lender to do any of the following:
 - (A) To conduct a separate sale of any portion of the Mortgaged Property.
 - (B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.
 - (C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or

such portions or combination of portions of the Mortgaged Property as Senior Lender determines.

- (ii) Subordinate Lender consents to and authorizes, at the option of Senior Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender may do any of the following:
 - (A) Extend the time for or waive any payment or performance under the Senior Loan Documents.
 - (B) Modify or amend in any respect any provision of the Senior Loan Documents.
 - (C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

6. Conflicts. If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:

- (a) Extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default.
- (b) Give Borrower the right to receive notice of any Senior Loan Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.
- (c) Create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

7. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

- (a) Insurance.
 - (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Senior Lender and Funding Lender.
 - (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender or Funding Lender.

(iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

- (i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Senior Lender.
- (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Senior Lender in its sole discretion; provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, will prevail.
- (iii) If Senior Lender or Funding Lender holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.
- (iv) If Senior Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.

- (c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender or Funding Lender under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Senior Lender's consent then such amendment or assignment will be void ab initio and of no effect whatsoever.
- (d) Modification of Senior Loan Documents. Senior Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Lender to protect the security or lien priority of Senior Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
- (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Lender.
- (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter, and a right of approval or consent for the same or substantially the same matter is also granted to Senior Lender or Funding Lender pursuant to the Senior Loan Documents or otherwise, Senior Lender's or Funding Lender's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).
- (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender or Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Lender may collect escrow payments for such Impositions; provided

that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such Impositions.

- (h) **Certification.** Within 10 days after request by Senior Lender or Funding Lender, Subordinate Lender will furnish Senior Lender and Funding Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Senior Lender may request.

8. Refinancing. Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

9. Governmental Powers. Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

10. Notices.

- (a) Any Notice required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

Notices intended for Senior Lender will be addressed to:

U.S. Bank National Association, Fiscal Agent
Corporate Trust Services
60 Livingston Avenue, Third Floor
EP-MN-WS3C
Saint Paul, MN 55107-2292
Attn: Dan Sheff, Vice President

Notices intended for Subordinate Lender will be addressed to:

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard, Minnetonka, MN 55345
Attention: Alisha Gray

Notices intended for Funding Lender will be addressed to:

Prior to Conversion:

U.S. Bank National Association
BC-MN-HO3A
800 Nicollet Mall, 3rd Floor
Minneapolis, Minnesota 55402-7020
Attention: U.S. Bancorp Community Development Corporation,
Community Lending Division

From and after Conversion:

KeyBank National Association
8115 Preston Road, Suite 500
Dallas, Texas 75225
Attention: Randall W. Conley, Senior Vice President

- (b) Any party, by Notice given pursuant to this Section 10, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 10.

11. Miscellaneous Provisions.

- (a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. Except for Funding Lender, no other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note.
- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to

constitute Senior Lender or Funding Lender as a joint venturer or partner of Subordinate Lender.

- (c) Further Assurances. Upon Notice from Senior Lender or Funding Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Senior Lender or Funding Lender to further evidence or implement the provisions and intent of this Agreement.
- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law. This Agreement will be governed by the laws of the State in which the Land is located.
- (f) Severable Provisions. If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (g) Term. The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events:
 - (i) The payment of all the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Lender.
 - (ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement.
 - (iii) The acquisition by Senior Lender or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.
 - (iv) With the prior written consent of Senior Lender, without limiting any other provisions on this Agreement, the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.

- (h) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (m) Funding Lender's Rights to Control. Notwithstanding anything herein to the contrary, pursuant to the Senior Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Lender hereunder shall be solely at the written direction of the Funding Lender. The parties hereto acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SENIOR LENDER:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ of U.S. Bank National Association, a national banking association, on behalf of the association.

Notary Public

CONSENT OF BORROWER

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

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

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

By: _____
Name: Ryan Lunderby
Title: Authorized Representative

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Ryan Lunderby, the authorized representative of Minnetonka Leased Housing Associates III, LLC, a Minnesota limited liability company and the General Partner of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, on behalf of the limited liability company and the partnership.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

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

PREPARED BY AND WHEN
RECORDED RETURN TO:

Stinson Leonard Street LLP
50 South 6th Street, Suite 2600
Minneapolis, MN 55402
Attention: David W. Kelley

[Space above reserved for recorder's use.]

Freddie Mac Loan Number: 502836180
Property Name: Legends of Minnetonka

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Taxable Loan)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this ___ day of _____, 2019, by and between **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as Fiscal Agent under the Funding Loan Agreement (as defined herein) (in such capacity, “**Senior Lender**”), and 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 (“**Subordinate Lender**”).

RECITALS

- A. Minnetonka Leased Housing Associates III, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota (“**Borrower**”) is the owner of certain land located in Hennepin County, Minnesota, described in Exhibit A (“**Land**”). The Land is or will be improved with a multifamily rental housing project (“**Improvements**”).
- B. The City of Minnetonka, Minnesota, in its capacity as governmental lender (“**Governmental Lender**”), and the original holder of the Senior Note (as defined herein), has made a loan to Borrower in the original principal amount of \$26,379,808 (“**Senior Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of September 1, 2018 (“**Project Loan Agreement**”) among Governmental Lender, Senior

Lender and Borrower in connection with the Mortgaged Property. The Senior Loan is secured by a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B) dated as of September 14, 2018 (“**Senior Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the “**Mortgaged Property.**”

- C. Pursuant to a Loan Agreement dated [_____], 2019 between Subordinate Lender and Borrower (“**Subordinate Loan Agreement**”), Subordinate Lender has made or is making a loan to Borrower in a principal amount not to exceed \$[**1,055,000**] (“**Subordinate Loan**”). The Subordinate Loan is or will be secured by a Combination Mortgage and Security Agreement dated [_____], 2019 (“**Subordinate Mortgage**”) from the Borrower to the Subordinate Lender encumbering all or a portion of the Mortgaged Property.
- D. The Senior Mortgage was recorded in the Office of the Register of Titles of Hennepin County, Minnesota (“**Recording Office**”) on October 4, 2018 as Document No. _____. The Subordinate Mortgage will be recorded in the Recording Office following the closing of the Subordinate Loan.
- E. The Senior Note was assigned by the Governmental Lender to Senior Lender as security for the loan made by the Initial Funding Lender (as defined herein) to the Governmental Lender pursuant to the Funding Loan Agreement (the “**Funding Loan**”). The Senior Mortgage was assigned by the Governmental Lender to Senior Lender as security for the Funding Loan pursuant to an Assignment of Security Instrument dated as of September 14, 2018 (the “**Assignment**”). The Assignment was recorded in the Recording Office on October 4, 2018 as Document No. _____.
- F. Subject to the terms and conditions of that certain [**Commitment**] (the “**Freddie Mac Taxable Loan Commitment**”) dated as of [**September 28**], 2018 between Borrower, Administrative Agent (as defined herein) on behalf of Initial Funding Lender, Federal Home Loan Mortgage Corporation and KeyBank National Association, a national banking association (“**Permanent Funding Lender**”), Administrative Agent and Initial Funding Lender shall subsequently assign and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior Note and the Senior Mortgage will be amended and restated, and thereafter assigned to the Fiscal Agent (“**Conversion**”).
- G. Upon Conversion, the Permanent Funding Lender shall have the right to amend and restate the Senior Note and the Senior Mortgage, and the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents (as defined herein), without notice to or the consent or joinder of the Subordinate Lender.
- H. The execution and delivery of this Agreement is a condition of Funding Lender’s (as defined herein) consenting to Subordinate Lender’s making of the Subordinate Loan and Borrower’s granting of the Subordinate Mortgage.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- 1. Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.

The terms “**Condemnation**,” “**Imposition Reserve Deposits**,” “**Impositions**,” “**Leases**,” “**Rents**” and “**Restoration**,” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Agreement.

“**Administrative Agent**” means U.S. Bank National Association, a national banking association, in its capacity as Administrative Agent for the Initial Funding Lender under the Construction Continuing Covenant Agreement, its successors and assigns.

“**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

“**Borrower**” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Senior Lender or Funding Lender if Senior Lender or Funding Lender acquires title to the Mortgaged Property.

“**Casualty**” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

“**Construction Continuing Covenant Agreement**” means the Construction Loan Agreement dated as of September 14, 2018 by and among Borrower, Administrative Agent and Initial Funding Lender, together with any amendment thereto.

“**Continuing Covenant Agreement**” means the Continuing Covenant Agreement to be executed by Borrower and Permanent Funding Lender at Conversion. **[Question: Ann/Josh, is this the proper term for the permanent taxable loan agreement?]**

“**Enforcement Action**” means any of the following actions taken by or at the direction of Subordinate Lender: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or

arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

"Enforcement Action Notice" means a Notice given from Subordinate Lender to Senior Lender and Funding Lender, following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

"Funding Lender" shall mean, prior to Conversion, Administrative Agent on behalf of Initial Funding Lender and Permanent Funding Lender from and after Conversion, and any successor holder of the Governmental Note.

"Funding Loan Agreement" means the Funding Loan Agreement dated as of September 1, 2018 among Funding Lender, Governmental Lender and Senior Lender.

"Governmental Note" means, prior to Conversion, the (i) Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 in the maximum principal amount of \$13,189,904 and (ii) the Multifamily Housing Revenue Note (Legends of Minnetonka Project) Series 2018B-2 in the maximum principal amount of \$13,189,904. From and after Conversion, "Governmental Note" means the Multifamily Note delivered by the Governmental Lender evidencing the Funding Loan.

"Initial Funding Lender" means, together, U.S. Bank National Association, a national banking association, in its capacity as a lender under the Construction Continuing Covenant Agreement, and BMO Harris Bank, N.A., a national banking association.

"Lien" means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

"Loss Proceeds" means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

"Notice" means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

"Senior Indebtedness" means the "Indebtedness" of Borrower as evidenced by the Senior Loan Documents.

"Senior Lender" is defined above. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Lender.

“Senior Loan Agreement” collectively means, prior to Conversion, the Project Loan Agreement and the Construction Continuing Covenant Agreement. From and after Conversion, “Senior Loan Agreement” means the Project Loan Agreement and/or the Continuing Covenant Agreement.

“Senior Loan Documents” means prior to Conversion, the “Project Loan Documents” as defined in the Construction Phase Financing Agreement, together with the “Loan Documents” as defined in the Construction Continuing Covenant Agreement. From and after Conversion, “Senior Loan Documents” shall mean the “Financing Documents” as defined in the Continuing Covenant Agreement, as such documents may be amended.

“Senior Mortgage Default” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Loan Documents.

“Senior Note” means the Taxable Project Note as that term is defined in the Funding Loan Agreement.

“Subordinate Indebtedness” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

“Subordinate Lender” means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Documents” means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Sub-Recipient Funding Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

“Subordinate Mortgage Default” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement) Subordinate Lender to take an Enforcement Action.

“Subordinate Note” means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

“Surplus Cash” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (i) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves and Imposition Reserve Deposits.
- (ii) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses,

legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

2. Subordinate Lender's Representations and Warranties.

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
 - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
 - (ii) No Subordinate Mortgage Default has occurred and is continuing.
 - (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$0.
 - (iv) No scheduled payments under the Subordinate Note have been prepaid.
- (b) Without the prior written consent of Senior Lender, Subordinate Lender will not do any of the following:
 - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
 - (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
 - (iii) Accept any prepayment of the Subordinate Indebtedness.

3. Terms of Subordination.

- (a) Agreement to Subordinate. The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness. Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.

- (c) Payments Before Senior Loan Default ; Soft Subordinate Debt. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 10 days in advance of its due date and provided further that Subordinate Lender will not accept any payment in an amount that exceeds 75% of then available Surplus Cash.
- (d) Payments After Senior Loan Default or Bankruptcy.
- (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of this Section 3(d) will apply.
- (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Senior Lender:
- (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.
- (B) Any proceeds from any Enforcement Action.
- (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.
- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Senior Lender, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan.

4. **Default Under Subordinate Loan Documents.**

(a) Notice of Subordinate Loan Default and Cure Rights.

- (i) Subordinate Lender will deliver to Senior Lender and Funding Lender a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to Senior Lender or Funding Lender pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.
- (ii) For a period of 90 days following delivery to Senior Lender of an Enforcement Action Notice, Senior Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Senior Lender has commenced and is diligently pursuing such cure to completion, Senior Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Senior Lender takes either of the following actions:
 - (A) Discontinues its pursuit of any cure.
 - (B) Delivers to Subordinate Lender Senior Lender's written consent to the Enforcement Action described in the Enforcement Action Notice.
- (iii) Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Senior Lender having cured any Subordinate Mortgage Default.
- (iv) Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.

(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.

- (i) In the event of a Subordinate Mortgage Default prior to Conversion, Subordinate Lender will not commence any Enforcement Action without Senior Lender's prior written consent, which may be granted or withheld in Senior Lender's sole and absolute discretion.
- (ii) From and after Conversion, in the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action

until 90 days after Subordinate Lender has delivered to Senior Lender and Funding Lender an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Loan Documents, subject to Senior Lender's right to cure a Subordinate Mortgage Default set forth in Section 4(a).

- (iii) From and after Conversion, Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:
 - (A) The expiration of such 90-day period or such longer period as provided in Section 4(a).
 - (B) The delivery by Senior Lender to Subordinate Lender of Senior Lender's written consent to such Enforcement Action by Subordinate Lender.
- (iv) Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender's Enforcement Action in Senior Lender's sole and absolute discretion. From and after Conversion, at the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Senior Lender's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.
- (v) Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.
- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies Senior Lender and Funding Lender in writing that any Subordinate Loan Default of which Senior Lender has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Senior Loan will be reinstated.

5. Default Under Senior Loan Documents.

(a) Notice of Senior Loan Default and Cure Rights.

- (i) Senior Lender or Funding Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender or Funding Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender or Funding Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents.
- (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Senior Lender will be entitled to continue to pursue its remedies under the Senior Loan Documents.
- (iii) Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required under the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property.
- (iv) All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

(b) Release of Mortgaged Property.

- (i) Subordinate Lender consents to and authorizes any future release by Senior Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Senior Lender to do any of the following:

- (A) To conduct a separate sale of any portion of the Mortgaged Property.
 - (B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.
 - (C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Lender determines.
- (ii) Subordinate Lender consents to and authorizes, at the option of Senior Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender may do any of the following:
- (A) Extend the time for or waive any payment or performance under the Senior Loan Documents.
 - (B) Modify or amend in any respect any provision of the Senior Loan Documents.
 - (C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

6. Conflicts. If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:

- (a) Extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default.
- (b) Give Borrower the right to receive notice of any Senior Loan Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.
- (c) Create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

7. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

(a) Insurance.

- (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Senior Lender and Funding Lender.
- (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender or Funding Lender.
- (iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

- (i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Senior Lender.
- (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Senior Lender in its sole discretion; provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, will prevail.

- (iii) If Senior Lender or Funding Lender holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.
- (iv) If Senior Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.
- (c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender or Funding Lender under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Senior Lender's consent then such amendment or assignment will be void ab initio and of no effect whatsoever.
- (d) Modification of Senior Loan Documents. Senior Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Lender to protect the security or lien priority of Senior Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
- (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Lender.
- (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter, and a right of

approval or consent for the same or substantially the same matter is also granted to Senior Lender or Funding Lender pursuant to the Senior Loan Documents or otherwise, Senior Lender's or Funding Lender's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).

- (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender or Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Lender may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such Impositions.
- (h) Certification. Within 10 days after request by Senior Lender or Funding Lender, Subordinate Lender will furnish Senior Lender and Funding Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Senior Lender may request.

8. Refinancing. Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

9. Governmental Powers. Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

10. Notices.

- (a) Any Notice required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery

(any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

Notices intended for Senior Lender will be addressed to:

U.S. Bank National Association, Fiscal Agent
Corporate Trust Services
60 Livingston Avenue, Third Floor
EP-MN-WS3C
Saint Paul, MN 55107-2292
Attn: Dan Sheff, Vice President

Notices intended for Subordinate Lender will be addressed to:

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard, Minnetonka, MN 55345
Attention: Alisha Gray

Notices intended for Funding Lender will be addressed to:

Prior to Conversion:

U.S. Bank National Association
BC-MN-HO3A
800 Nicollet Mall, 3rd Floor
Minneapolis, Minnesota 55402-7020
Attention: U.S. Bancorp Community Development Corporation,
Community Lending Division

From and after Conversion:

KeyBank National Association
8115 Preston Road, Suite 500
Dallas, Texas 75225
Attention: Randall W. Conley, Senior Vice President

- (b) Any party, by Notice given pursuant to this Section 10, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 10.

11. Miscellaneous Provisions.

- (a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. Except for Funding Lender, no other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note.
- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Lender or Funding Lender as a joint venturer or partner of Subordinate Lender.
- (c) Further Assurances. Upon Notice from Senior Lender or Funding Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Senior Lender or Funding Lender to further evidence or implement the provisions and intent of this Agreement.
- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law. This Agreement will be governed by the laws of the State in which the Land is located.
- (f) Severable Provisions. If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (g) Term. The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events:
 - (i) The payment of all the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Lender as described in Section _____ of this Agreement.
 - (ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement.

- (iii) The acquisition by Senior Lender or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.
- (iv) With the prior written consent of Senior Lender, without limiting the provisions of Section _____, the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (h) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (m) Funding Lender's Rights to Control. Notwithstanding anything herein to the contrary, pursuant to the Senior Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Lender hereunder shall be solely at the written direction of the Funding Lender. The parties hereto acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SENIOR LENDER:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2019, by _____, the _____ of
U.S. Bank National Association, a national banking association, on behalf of the association.

Notary Public

SUBORDINATE LENDER:

**CITY OF MINNETONKA,
MINNESOTA**

By: _____
Name:
Title: Mayor

By: _____
Name:
Title: City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2019, by _____, the _____ of
the City of Minnetonka, Minnesota, on behalf of the City.

Notary Public

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated _____, 2019, by and between U.S. Bank National Association, a national banking association and the City of Minnetonka, Minnesota and consents to the agreement of the parties set forth in this Agreement.

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

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

By: _____
Name: Ryan Lunderby
Title: Authorized Representative

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Ryan Lunderby, the authorized representative of Minnetonka Leased Housing Associates III, LLC, a Minnesota limited liability company and the General Partner of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, on behalf of the limited liability company and the partnership.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

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

Property Name: Legends of Minnetonka

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this ___ day of _____, 2019, by and between **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as trustee (the “**Trustee**”) and 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 (“**Subordinate Lender**”).

RECITALS

- A. Minnetonka Leased Housing Associates III, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota (“**Borrower**”) is the owner of certain land located in Hennepin County, Minnesota, described in Exhibit A (“**Land**”). The Land is or will be improved with a multifamily rental housing project (“**Improvements**”).
- B. The City of Minnetonka, Minnesota, in its capacity as governmental lender (“**Governmental Lender**”), issued its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (“**Series 2018C Bonds**”) in the original principal amount of \$4,090,000 pursuant to a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “**Indenture**”), between the Issuer and the Trustee. The proceeds of the Series 2018C Bonds were loaned to the Borrower upon the terms and conditions of a Loan Agreement dated as of September 1, 2018 (the “**Senior Loan Agreement**”) between the Governmental Lender and the Trustee (the “**Senior Loan**”). The Series 2018C Bonds are secured by a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (“**Senior Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the “**Mortgaged Property**.”
- C. Pursuant to a Loan Agreement dated [_____], 2019 between Subordinate Lender and Borrower (“**Subordinate Loan Agreement**”), Subordinate Lender has made or is making a loan to Borrower in a principal amount not to exceed \$[945,000] (“**Subordinate Loan**”). The Subordinate Loan is or will be secured by a Combination Mortgage and Security Agreement dated [_____], 2019 (“**Subordinate Mortgage**”) from the Borrower to the Subordinate Lender encumbering all or a portion of the Mortgaged Property.
- D. The Senior Mortgage was recorded in the Office of the Register of Titles of Hennepin County, Minnesota (“**Recording Office**”) on October 4, 2018 as Document No. T05564943. The Subordinate Mortgage will be recorded in the Recording Office following the closing of the Subordinate Loan.
- E. The execution and delivery of this Agreement is a condition of the Trustee consenting to Subordinate Lender’s making of the Subordinate Loan and Borrower’s granting of the Subordinate Mortgage.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.

The terms “**Condemnation**,” “**Leases**,” “**Rents**” and “**Restoration**,” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Documents.

“**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

“**Borrower**” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Trustee if Trustee acquires title to the Mortgaged Property.

“**Casualty**” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

“**Enforcement Action**” means any of the following actions taken by or at the direction of Subordinate Lender: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

“**Enforcement Action Notice**” means a Notice given from Subordinate Lender to Trustee, following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

“**Guaranty**” means the Subordinate Guaranty Agreement, dated as of September 1, 2018, by Dominion Holdings II, LLC, a Minnesota limited liability company in favor of the Trustee.

“**Lien**” means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

“**Loss Proceeds**” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

“**Notice**” means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

“**Senior Indebtedness**” means the “Indebtedness” of Borrower as evidenced by the Senior Loan Documents.

“**Senior Loan Documents**” means the Indenture, the Senior Loan Agreement, the Guaranty, the Senior Mortgage and the Series 2018C Bonds and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Series 2018C Bonds, as such documents may be amended.

“**Senior Mortgage Default**” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Loan Documents.

“**Series 2018C Bonds**” means, the Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C issued in the original aggregate principal amount of \$4,090,000 by the Governmental Lender.

“**Subordinate Indebtedness**” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

“**Subordinate Lender**” means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“**Subordinate Loan Documents**” means the Subordinate Loan Agreement, Subordinate Mortgage and the Subordinate Note and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

“**Subordinate Mortgage Default**” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement) Subordinate Lender to take an Enforcement Action.

“**Subordinate Note**” means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

“**Surplus Cash**” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (i) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves.
- (ii) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

“**Trustee**” means U.S. Bank National Association, a national banking association, and its successors and assigns.

2. Subordinate Lender's Representations and Warranties.

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
 - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
 - (ii) No Subordinate Mortgage Default has occurred and is continuing.
 - (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$0.
 - (iv) No scheduled payments under the Subordinate Note have been prepaid.
- (b) Without the prior written consent of Trustee, Subordinate Lender will not do any of the following:
 - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
 - (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
 - (iii) Accept any prepayment of the Subordinate Indebtedness.

3. Terms of Subordination.

- (a) Agreement to Subordinate. The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness. Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Trustee of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.
- (c) Payments Before Series 2018C Bonds Default; Soft Subordinate Debt. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 10 days in advance of its due date and provided further that Subordinate Lender will not accept any payment in an amount that exceeds 75% of then available Surplus Cash.
- (d) Payments After Series 2018C Bonds Default or Bankruptcy.

- (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of this Section 3(d) will apply.
- (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Trustee:
 - (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.
 - (B) Any proceeds from any Enforcement Action.
 - (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.
- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Trustee. Trustee will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Trustee determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Trustee, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Trustee has also voted affirmatively in favor of such plan.

4. Default Under Subordinate Loan Documents.

- (a) Notice of Subordinate Loan Default and Cure Rights.
 - (i) Subordinate Lender will deliver to Trustee a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to the Trustee pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.
 - (ii) For a period of 120 days following delivery to Trustee of an Enforcement Action Notice, Trustee will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Trustee has commenced and is diligently pursuing such cure to completion, Trustee will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Trustee takes either of the following actions:
 - (A) Discontinues its pursuit of any cure.

- (B) Delivers to Subordinate Lender Trustee's written consent to the Enforcement Action described in the Enforcement Action Notice.
 - (iii) Trustee will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Trustee having cured any Subordinate Mortgage Default.
 - (iv) Subordinate Lender acknowledges that all amounts advanced or expended by Trustee in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.
- (b) Subordinate Lender's Exercise of Remedies After Notice to Trustee.
- (i) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action without Trustee's prior written consent, which may be granted or withheld in Trustee's sole and absolute discretion.
 - (ii) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until 90 days after Subordinate Lender has delivered to Trustee an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Loan Documents, subject to Trustee's right to cure a Subordinate Mortgage Default set forth in Section 4(a).
 - (iii) Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:
 - (A) The expiration of such 120-day period or such longer period as provided in Section 4(a).
 - (B) The delivery by Trustee to Subordinate Lender of Trustee's written consent to such Enforcement Action by Subordinate Lender.
 - (iv) Subordinate Lender acknowledges that Trustee may grant or refuse consent to Subordinate Lender's Enforcement Action in Trustee's sole and absolute discretion. At the expiration of such 120-day period or such longer period as provided in Section 4(a) and, subject to Trustee's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.
 - (v) Trustee may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Lender. No action or failure to act on the part of Trustee in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Trustee of any provision of the Senior Loan Documents or this Agreement.

- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies the Trustee in writing that any Subordinate Loan Default of which Trustee has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Trustee has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Series 2018C Bonds Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Series 2018C Bonds will be reinstated.

5. Default Under Senior Loan Documents.

- (a) Notice of Series 2018C Bonds Default and Cure Rights.
 - (i) Trustee will deliver to Subordinate Lender a copy of any Notice sent by Trustee to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Trustee to send Notice to Subordinate Lender will not prevent the exercise of Trustee's rights and remedies under the Senior Loan Documents.
 - (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Trustee will be entitled to continue to pursue its remedies under the Senior Loan Documents.
 - (iii) Subordinate Lender may, within 120 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 120-day period, Subordinate Lender keeps current all payments required under the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Trustee's secured position relative to the Mortgaged Property, as determined by Trustee in its sole discretion, then during such 120-day period Trustee may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property.
 - (iv) All amounts paid by Subordinate Lender to Trustee to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.
- (b) Release of Mortgaged Property.
 - (i) Subordinate Lender consents to and authorizes any future release by Trustee of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Trustee to do any of the following:

- (A) To conduct a separate sale of any portion of the Mortgaged Property.
 - (B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.
 - (C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Trustee determines.
- (ii) Subordinate Lender consents to and authorizes, at the option of Trustee, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Trustee may do any of the following:
- (A) Extend the time for or waive any payment or performance under the Senior Loan Documents.
 - (B) Modify or amend in any respect any provision of the Senior Loan Documents.
 - (C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

6. Conflicts. If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:

- (a) Extend Borrower's time to cure any Senior Mortgage Default or Subordinate Loan Default.
- (b) Give Borrower the right to receive notice of any Senior Mortgage Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.
- (c) Create any other right or benefit for Borrower as against Trustee or Subordinate Lender.

7. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Trustee under the Senior Loan Documents.

- (a) Insurance.
 - (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles

and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Trustee.

- (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Trustee.
- (iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

- (i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Trustee's rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Trustee.
- (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Trustee in its sole discretion; provided however, Trustee agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Trustee and Subordinate Lender over the application of Casualty proceeds, the decision of Trustee, in its sole discretion, will prevail.
- (iii) If Trustee holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Trustee to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Trustee.
- (iv) If Trustee elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Trustee will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.

(c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Trustee, increase the amount of the Subordinate Loan, increase the required payments due under the

Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon the Trustee under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Trustee's consent then such amendment or assignment will be void ab initio and of no effect whatsoever.

- (d) Modification of Senior Loan Documents. Trustee may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Trustee may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Trustee to protect the security or lien priority of Trustee under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
 - (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Trustee has granted attornment and non-disturbance, on the same terms and conditions given by Trustee.
 - (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter, and a right of approval or consent for the same or substantially the same matter is also granted to Trustee pursuant to the Senior Loan Documents or otherwise, Trustee's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).
 - (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness.
 - (h) Certification. Within 10 days after request by Trustee, Subordinate Lender will furnish Trustee with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Trustee may request.
- 8. Refinancing.** Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Trustee will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

9. Governmental Powers. Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

10. Notices.

- (a) Any Notice required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

Notices intended for Trustee will be addressed to:

U.S. Bank National Association
Corporate Trust Services
60 Livingston Avenue, Third Floor
EP-MN-WS3C
Saint Paul, MN 55107-2292
Attn: Dan Sheff, Vice President

Notices intended for Subordinate Lender will be addressed to:

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard, Minnetonka, MN 55345
Attention: Alisha Gray

- (b) Any party, by Notice given pursuant to this Section 10, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 10.

11. Miscellaneous Provisions.

- (a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. Except for the Trustee, no other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Trustee to any subsequent holder of the Senior Note.
- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Trustee as a joint venturer or partner of Subordinate Lender.
- (c) Further Assurances. Upon Notice from Trustee, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Trustee to further evidence or implement the provisions and intent of this Agreement.
- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law. This Agreement will be governed by the laws of the State in which the Land is located.
- (f) Severable Provisions. If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (g) Term. The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events:
 - (i) The payment of all the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Trustee.
 - (ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Trustee pursuant to this Agreement.
 - (iii) The acquisition by Trustee or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.
 - (iv) With the prior written consent of Trustee, without limiting any other provisions on this Agreement, the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.

- (h) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

SUBORDINATE LENDER:

CITY OF MINNETONKA, MINNESOTA

By: _____
Name: _____
Title: Mayor

By: _____
Name: _____
Title: City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by _____ and _____, the Mayor and City
Manager, respectively, of the City of Minnetonka, Minnesota, on behalf of the City.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

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

DMNORTH #6771656 v3



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

GINA FIORINI

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

March 25, 2019

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

Re: Resolution approving the execution and delivery of documents in connection with a Livable Communities Demonstration Account grant from the Metropolitan Council for the benefit of Minnetonka Leased Housing Associates II, LLLP

Dear Alisha,

As you know, Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the "Borrower"), is working with the City of Minnetonka (the "City") and the Metropolitan Council (the "Council") to provide additional financing for the acquisition, construction, and equipping of approximately 220 units of workforce housing to be located at 10987 and 11015 Bren Road East in the City (the "Project"). The Project will be adjacent to the senior housing project being developed by Minnetonka Leased Housing Associates III, LLLP. The Borrower and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, in cooperation with the City, applied for and received a Livable Communities Demonstration Account (LCDA) grant in the total sum of \$2,000,000.00, \$945,000.00 of which will be allocated to the Project (the "LCDA Grant"), from the Council in connection with the Council's Transit Oriented Development (TOD) Program. The proceeds of the LCDA Grant may be used for eligible project components of the Project (the "Grant-Eligible Activities") as further described in the Metropolitan Livable Communities Act Grant Agreement ("Grant Agreement"), proposed to be entered into between the City and the Council.

As allowed by the Council's Transit Oriented Development (TOD) Program, the Borrower has requested that the LCDA financing be structured as a loan to be repaid in 30 years. The City intends to loan the proceeds of the LCDA Grant to the Borrower to provide financing for the Grant-Eligible Activities pursuant to a Loan Agreement (the "Loan Agreement") proposed to be entered into between the City and the Borrower and a Sub-Recipient Funding Agreement (the "Funding Agreement") proposed to be entered into between the City and the Borrower. To secure the repayment of the loan of the proceeds of the LCDA Grant, the Borrower will execute and deliver to the City a Promissory Note (the "Note") in the original aggregate principal amount of \$945,000, and a Combination Mortgage and Security Agreement (the "Mortgage" and together with the Loan Agreement, Funding Agreement, and Note, the "Loan Documents"), providing the City with a secured interest in the Project.

The Borrower has requested that the City agree to subordinate the Loan Documents to the conduit revenue bonds issued by the City on behalf of the Borrower last fall including the City's (i) Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1 (the "Series 2018A-1 Note"), in the original aggregate principal amount of \$14,965,000; (ii) Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2 (the "Series 2018A-2 Note"), in the original aggregate principal amount of \$14,965,000; (iii) Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-1 (the "Series 2018B-1 Note"), in the original aggregate principal amount of \$10,503,209; (iv) Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-2 (the "Series 2018B-2 Note"), in the original aggregate principal amount of \$10,503,209; and (v) Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C (the "Subordinate Bonds"), in the original aggregate principal amount of \$3,570,000.

A resolution is attached authorizing the City to enter into the Grant Agreement, the Loan Agreement and the Subordination Agreement – Governmental Entity (Tax-Exempt Loan) proposed to be entered into between the City and U.S. Bank National Association, as fiscal agent for the Series 2018A-1 Note and the Series 2018A-2 Note, the Subordination Agreement – Governmental Entity (Taxable Loan) proposed to be entered into between the City and U.S. Bank National Association, as fiscal agent for the Series 2018B-1 Note and the Series 2018B-2 Note, and the Subordination Agreement proposed to be entered into between the City and U.S. Bank National Association, as trustee for the Subordinate Bonds. The resolution provides that the Mayor and City Manager may sign the documents in substantially the forms on file as of the date hereof.

Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,

Gina Fiorini

**SUB-RECIPIENT FUNDING AGREEMENT BETWEEN
CITY OF MINNETONKA
AND
MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP
FOR THE
METROPOLITAN COUNCIL
METROPOLITAN LIVABLE COMMUNITIES FUND
TRANSIT ORIENTED DEVELOPMENT**

THIS SUB-RECIPIENT FUNDING AGREEMENT (the "Contract") is entered into this ____ day of _____, 2019, by and between the CITY OF MINNETONKA, a Minnesota municipal corporation (the "City"), and MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (the "Borrower").

WHEREAS, the City and the Borrower applied to and received approval for funds in the amount of \$2,000,000 from the Metropolitan Council ("Council") under its Metropolitan Livable Communities Fund, Transit Oriented Development grant program (the "Housing Grant"), \$945,000.00 of which will be allocated to the Project (as defined below); and

WHEREAS, the City desires to award proceeds of the Housing Grant in the amount of \$945,000 (the "Loan") to Borrower, to assist Borrower with site preparation, stormwater management, and solar panel acquisition and installation (the "Project") in connection with the Borrower's development of approximately 220 affordable apartment units to be located at or about 10987 and 11015 Bren Road East in the City (the "Property").

NOW, THEREFORE, the parties agree to the following terms:

1. **AWARD.** The City will make the Loan to Borrower for site preparation, stormwater management, and solar panel acquisition and installation for an affordable housing development as described in Grant Agreement No. SG-10882 between the City and the Council attached to this Contract as **Exhibit A** (the "Housing Grant Agreement") which is incorporated into this Contract. The proceeds of the Loan must be used exclusively to pay or reimburse only expenses authorized under the Housing Grant Agreement. Administration costs incurred by the Borrower are not eligible for reimbursement via this Contract. Notwithstanding anything to the contrary, the Borrower understands and agrees that any reduction or termination of the Housing Grant may result in a like reduction or termination of the Loan, and that any material change in the timeline or scope of the Project in the Housing Grant Agreement must be approved in writing by the City and the Council.

2. **PERFORMANCE.** The Borrower must comply with all requirements applicable to the City in the Housing Grant Agreement unless such obligations can only be reasonably performed by the City. Borrower's default under the Housing Grant Agreement will constitute noncompliance with this Contract. If the City finds that there has been a failure to comply with the provisions of this Contract, the City may take action to protect its interests, including refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed. If action to correct a default is not taken by the Borrower within 60 calendar days (or such longer period specified by the City) after written notice by the City, the City may terminate this Contract.

3. **TIME OF PERFORMANCE.** Borrower must start the Project upon execution of this Contract and complete the Project on or before December 31, 2021. The City is not obligated to pay for any Project costs incurred after that date or any earlier termination, whichever occurs first.
4. **CONDITIONS PRECEDENT TO DISBURSEMENT.** The following requirements are conditions precedent to the City's disbursement of any of the Loan proceeds.
 - A. The Borrower must have provided evidence satisfactory to the City showing that Borrower has title in fee simple and site control of the Property.
 - B. The Borrower must have provided the City with evidence of compliance with the insurance requirements required by the Loan Agreement (as defined below).
 - C. The Borrower must have provided to the City such documentation and information reasonably necessary to evidence of compliance with all of the provisions of this Contract as the City may reasonably request.
 - D. The Borrower has delivered fully executed copies of the following documents:
 1. The Loan Agreement of even date herewith (the "Loan Agreement") between the City and the Borrower.
 2. The Combination Mortgage and Security Agreement of even date herewith (the "Mortgage") from the Borrower to the City.
 3. The Note of even date herewith (the "Note" and together with this Contract, the Loan Agreement and the Mortgage, the "Loan Documents") from the Borrower to the City.
5. **DISBURSEMENT.** It is expressly agreed and understood that the total amount to be paid by the City under this Contract will not exceed \$945,000. The City will make disbursements only in accordance with the Grant Agreement and the Loan Documents.
6. **NOTICES.** Communication and details concerning this Contract must be directed to the following Contract representatives:

City: City of Minnetonka
Community Development Department
14600 Minnetonka Blvd.
Minnetonka, MN 55345
Attn: Alisha Gray
Phone: (952) 939-8285

Borrower: Minnetonka Leased Housing Associates II, LLLP
2905 Northwest Blvd. Suite 150
Plymouth, MN 55441-2644
Attention: Ryan J. Lunderby
Phone: (763) 354-5500

and a copy to: John Stern, Esq.
Winthrop & Weinstine, P.A.

Capella Tower, Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629

U.S. Bank National Association
BC-MN-HO3A
800 Nicollet Mall, 3rd Floor
Minneapolis, Minnesota 55402-7020
Attention: U.S. Bancorp Community Development
Corporation, Community Lending Division

Stinson Leonard Street LLP
50 South 6th Street, Suite 2600
Minneapolis, Minnesota 55402
Attention: David W. Kelley

Citibank, N.A.
388 Greenwich St., 8th Floor
New York, NY 10013
Attention: Mark Sherman

Nixon Peabody LLP
779 9th Street, NW, Suite 500
Washington, DC 20001-4501
Attention: Matthew W. Mullen, Esq.

TCAM
30 Federal Street, Floor 6
Boston, MA 02110-2508
Attention: Jenny Netzer

The Borrower's investor limited partner and special limited partner, Citibank, N.A., a national banking association, and LP Purchaser LLC, a Delaware limited liability company, shall have an opportunity, but not an obligation, to cure any defaults under this Agreement, and such cure shall be accepted by the City as if cured by the Borrower itself.

7. GENERAL CONDITIONS.

A. General Compliance. The Borrower agrees to comply with all applicable federal, state and local laws and regulations governing the Project and funds provided under this Contract.

B. Subcontracts.

1. *Monitoring.* The City may monitor, at the City's sole cost and expense, contracted and subcontracted services on a regular basis to ensure contract compliance. Results of monitoring efforts will be summarized in written reports and provided to the Borrower. The Borrower must provide documented evidence of follow-up actions taken to correct areas of noncompliance noted in the monitoring reports.

2. **OSHA.** Borrower must require that contractors performing work being paid with the Loan funds be in compliance with all applicable OSHA regulations.
- C. **Anti-discrimination.** The Borrower agrees during the life of this Contract not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin.
- D. **Equal Opportunity.** The Borrower recognizes the City is an equal opportunity employer and agrees during the life of this Contract to take affirmative action to provide equal employment opportunities without regard to race, color, sex, creed, national origin, religion, disability, age, marital status, sexual preference, or status with regard to public assistance.
- E. **Independent Contractor.** Nothing contained in this Contract is intended to, or may be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Borrower will at all times remain an independent contractor with respect to the services to be performed under this Contract. The City is exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance because the Borrower is an independent contractor.
- F. **Indemnification and Hold Harmless.** Except for any willful misrepresentation or any willful, wanton, or grossly negligent misconduct of the Indemnified Parties (as defined below), the Borrower must hold harmless, defend and indemnify the City, and its officers, councilmembers, agents, and employees including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section, collectively the "Indemnified Parties"), from any and all liability, claims, actions, suits, charges, damages, losses, costs, expenses, and judgments whatsoever, including reasonable attorney's fees, that arise directly or indirectly out of the Borrower's, its contractors or subcontractors performance or nonperformance of the services or subject matter called for in this Contract. This clause may not be construed to bar any legal remedies Borrower may have for the City's or the Council's failure to fulfill its obligations pursuant to this Contract.

Claims included in this indemnification include any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B, the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended, United States Code, title 42, Sections 9601 et. seq., and the Federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code, title 42, Sections 6901 et. seq. This indemnification cannot be construed as a waiver on the part of either the City or the Council of any immunities or limits on liability provided by Minnesota Statutes Chapter 466 or other applicable state or federal law.

8. **ADMINISTRATIVE REQUIREMENTS.**

- A. **Accounting Standards.** The Borrower agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this Contract.

B. Records.

1. *Retention.* The Borrower must retain all records pertinent to expenditures incurred under this Contract in accordance with Section 4.01 of the Grant Agreement.
2. *Inspections.* All Borrower records with respect to any matters covered by this Contract must be made available to the City, the Council or their designees at any time during normal business hours with reasonable notice, as often as the City or the Council deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.
3. *Financial Information.* If requested by the City, the Borrower will provide all receipts, books, records, financial statements, documents, and information necessary to City in order to allow the City to comply with Article IV of the Grant Agreement.
4. *Data Practices Act.* The Borrower must comply with the Minnesota Government Data Practices Act, Chapter 13 in accordance with Article X of the Loan Agreement.
5. *Close-Outs.* The Borrower's obligation to the City does not end until all close-out requirements are completed in accordance with Met Council's policies and procedures. Activities during this close-out period include: making final payments, determining the custodianship of records and the Borrower's cooperation with the City's preparation of a final report to be submitted to the Met Council.

C. **Payments.** The Borrower will make all payments required under the Loan Documents.

D. **Procurement.** The Borrower must maintain an inventory record of all nonexpendable personal property procured with proceeds of the Loan provided under this Contract.

9. MISCELLANEOUS.

A. **Assignability.** The Borrower may not assign or transfer any interest in this Contract (whether by assignment or novation) without the prior written consent of the City; provided, however, that claims for money due or to become due to the Borrower from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer must be furnished promptly to the City.

B. **Religious Organization.** The Borrower agrees that funds provided under this Contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization.

C. **Governing Law.** This Contract will be governed by, and construed in accordance with, the laws of the State of Minnesota.

- D. **Counterparts.** This Contract may be executed in two or more counterparts, each of which is deemed an original, but all of which taken together constitute one and the same agreement.

CITY OF MINNETONKA

By _____
Its Mayor

And _____
Its City Manager

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

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

By: _____
Ryan J. Lunderby
Its: Vice President

Exhibit A
Housing Grant Agreement

LOAN AGREEMENT

THIS LOAN AGREEMENT (the “Agreement”) is made and entered into this ___ day of _____, 2019 (“Effective Date”) by and between 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 “City”), and MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (the “Borrower”).

WITNESSETH:

WHEREAS, the Borrower intends to develop approximately 220 affordable apartment units to be located at or about 10987 and 11015 Bren Road East, Minnetonka, Minnesota (the “Project”) on property legally described on EXHIBIT D attached hereto (the “Property”); and

WHEREAS, to assist with the costs of the Project, the City, on behalf of the Borrower and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, applied for and received a Livable Communities Demonstration Account (LCDA) grant in the total sum of \$2,000,000.00, \$945,000.00 of which will be allocated to the Project (the “LCDA Grant”), from the Metropolitan Council (“Council”) in connection with the Council’s Transit Oriented Development (TOD) Program; and

WHEREAS, on _____, 2019, the Council and the City entered into a Metropolitan Livable Communities Act Grant Agreement, with an expiration date of December 31, 2021 (“Grant Agreement”) attached hereto as EXHIBIT B; and

WHEREAS, the proceeds of the LCDA Grant may be used for eligible project components of the Project to be constructed on the Property, as set forth in EXHIBIT A attached hereto and as further described in the Grant Agreement (the “Grant-Eligible Activities”), which amounts may be reallocated pursuant to Section 2.09 of the Grant Agreement; and

WHEREAS, the City desires to loan the proceeds of the LCDA Grant to the Borrower to provide financing for the Grant-Eligible Activities on the terms and conditions contained in this Agreement; and

WHEREAS, the City believes that the development of the Project, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the City and the Borrower desire to enter into this Agreement for the purpose of setting forth their respective responsibilities with respect to the loan of the LCDA Grant.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I DEFINITIONS

As used in this Agreement, the following terms shall have the following meaning:

Borrower Documents: any and all documents and instruments in connection with the Project as reasonably requested by the City.

Disbursement Request Form: the form, substantially in the form attached hereto as EXHIBIT C, to be submitted to the City when a disbursement of the Loan is requested and which is referred to in Article VI hereof, together with such other request forms as may be reasonably required from the Council and the City.

Grant-Eligible Activities: the activities on the Property funded in full or in part by the LCDA Grant, as set forth in EXHIBIT A and set forth in the Grant Agreement.

Project: has the meaning set forth in the sixth recital above.

Loan: the sum of \$945,000.00 to be loaned by the City to the Borrower under this Agreement.

Loan Documents: collectively, this Agreement, the Mortgage, the Sub-Recipient Funding Agreement, and the Note.

Mortgage: the Combination Mortgage and Security Agreement of even date herewith from the Borrower to the City securing repayment of the Note in the form approved by the City.

Note: the Note of even date herewith from the Borrower to the City in the amount of the Loan evidencing Borrower's obligation to repay the Loan in the form approved by the City.

Plans and Specifications: the final plans and specifications for the construction and installation of the Grant-Eligible Activities.

Project Costs: the costs of the Grant-Eligible Activities eligible to be reimbursed with the proceeds of the LCDA Grant under the Grant Agreement and as authorized by law.

Sub-Recipient Funding Agreement: the Sub-Recipient Funding Agreement of even date herewith between the City and the Borrower.

ARTICLE II

TERM OF AGREEMENT

This Agreement shall take effect and be in force from and after the Effective Date, and shall remain in effect until the Borrower has performed all of its obligations under this Agreement,

the Loan Documents, and the Grant Agreement, unless earlier terminated as provided in this Agreement or the Grant Agreement.

ARTICLE III

THE LOAN

Subject to the terms and conditions of this Agreement, the City will make the Loan to the Borrower to be used for payment of Project Costs, which Loan shall be disbursed pursuant to this Agreement. In consideration for the Loan, the Borrower agrees to perform all of their obligations under this Agreement. The Loan shall be evidenced by the Note payable by the Borrower to the Lender which shall be dated as of the date of closing on the Loan (the “Loan Closing Date”). Proceeds of the Loan shall be disbursed in accordance with Articles V and VI hereof.

ARTICLE IV

STATEMENT OF WORK

The Borrower shall construct all improvements described on EXHIBIT A at the Property in accordance with the terms set forth herein. In accordance with the Grant Agreement, the Borrower will commence construction of the Grant-Eligible Activities and pay the Project Costs prior to December 31, 2021.

ARTICLE V

CONDITIONS OF DISBURSEMENT

The obligation of the City to make or cause to be made disbursements of the proceeds of the Loan pursuant to Article VI hereof shall be subject to the conditions precedent that it shall have received on or before the date of the disbursement hereunder the following:

- a. the Borrower Documents, the Mortgage, and the Note, duly executed and delivered by the Borrower;
- b. evidence satisfactory to the City that the Grant-Eligible Activities and the construction and contemplated use thereof are permitted by and comply in all material respects with all applicable restrictions and requirements in prior conveyances, zoning ordinances, subdivision and platting requirements and other laws and regulations;
- c. all other conditions specified in the authorizing City resolution and the Grant Agreement shall have been duly satisfied by the Borrower or waived in writing by the City or the Council, as applicable;
- d. no uncured Event of Default (as defined in Article IX), and no event which with the giving of notice or the lapse of time or both would constitute an Event of Default,

shall have occurred and be continuing and all representations and warranties made by the Borrower in Article VII hereof shall continue to be true and correct as of the date of such disbursement;

e. if required by the City, the City shall have been furnished with a statement of the Borrower and of any contractor, in form and substance acceptable to the City, 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 Grant-Eligible Activities; and

f. the Borrower shall have provided to the City such documentation and information reasonably necessary to evidence its compliance with all of the provisions of this Agreement, including without limitation the provisions of the Grant Agreement applicable to the Borrower, as the City may reasonably request.

ARTICLE VI

REQUESTS FOR DISBURSEMENT

6.01. Disbursement. The City and the Borrower agree that, on the terms and subject to the conditions hereinafter set forth and the conditions set forth in the Grant Agreement, including the reallocation of Project Costs amongst the Grant-Eligible Activities pursuant to Section 2.09 of the Grant Agreement, the Loan shall be disbursed from the City to the Borrower, or the Borrower's agent or designee, in disbursements, with the last disbursement being made upon one hundred percent (100%) completion of the Grant-Eligible Activities. Disbursements of the Loan shall not be made more often than monthly. Notwithstanding anything to the contrary contained herein, the City shall only be obligated to make the disbursements hereunder to pay Project Costs in an amount up to or equal to the lesser of the amount of the Loan or the amount actually disbursed by the Council to the City under the Grant Agreement and such obligation is further subject to the conditions of Article V hereof.

6.02. Disbursement Request.

a. When the Borrower desires to obtain a disbursement of the Loan, the Borrower shall submit to the City, and the Council if required, the Disbursement Request Form, together with any additional documents required by the City or the Council, duly signed by the Borrower.

The Disbursement Request Form shall be submitted by the Borrower at least forty-five (45) days prior to the date of the requested disbursement. The Disbursement Request Form shall constitute a representation and warranty by the Borrower to the City that all representations and warranties of the Borrower set forth in the Borrower Documents are true and correct as of the date of such Disbursement Request Form, except for such representations and warranties which, by their nature, would not be applicable as of the date of such Disbursement Request.

b. At the time of submission of the Disbursement Request Form, the Borrower shall also submit the following to the City:

1. a written lien waiver from the general contractor for work done and materials supplied by it which were paid or a conditional lien waiver from the general contractor for work done and materials supplied by it which are to be paid pursuant to the current Disbursement Request Form and from each subcontractor for work done and materials supplied by it which were paid or are to be paid for pursuant to the prior Disbursement Request Form;

2. evidence satisfactory to the City that the Grant-Eligible Activities completed as of the date of the Disbursement Request Form have been constructed in accordance with the Plans and Specifications in all material respects;

3. an executed Sworn Construction Statement, in form and substance acceptable to such parties, signed by the Borrower showing all costs and expenses of any kind theretofore actually paid or incurred in constructing the Grant-Eligible Activities; and

4. a certified statement of the Borrower reflecting the use to which the proceeds of the Loan have been applied in addition to those uses reflected in the Sworn Construction Statement referred to in (b)(3) above.

c. Upon receipt of the Disbursement Request Form, if the City has determined that all the conditions set forth in Articles V and VI have been satisfied, a request for disbursement shall be submitted to the Council. The adequacy of the request for disbursement shall be determined by the City and the Council in their sole discretion. After submission of the Disbursement Request Form, if the Borrower has performed all of its agreements and complied with all requirements to be performed or complied with under this Agreement and the Grant Agreement, including satisfaction of all applicable conditions precedent contained in Article V hereof, the City shall make a disbursement to the Borrower, or the Borrower's agent or designee, in the amount of the requested disbursement or such lesser amount as shall be approved, within forty-five (45) days after the date of the City's receipt of the Disbursement Request Form, or, if later, upon receipt of grant proceeds from the Council. Each disbursement shall be paid from the proceeds of the LCDA Grant, subject to the City's and the Council's determination that the relevant Project Cost is payable from the LCDA Grant under the Grant Agreement. The City is under no obligation to disburse any proceeds of the Loan until it receives a disbursement of the LCDA Grant from the Council. Notwithstanding anything to the contrary herein, if the Project Costs of the Grant-Eligible Activities exceeds the amount to be reimbursed under this Agreement, such excess shall be the sole responsibility of the Borrower.

ARTICLE VII

BORROWER'S COVENANTS, REPRESENTATIONS, WARRANTIES AND AGREEMENTS

The Borrower covenants, represents, warrants and agrees that:

a. The Borrower is a limited liability limited partnership duly organized and validly existing under the laws of the State of Minnesota, is duly authorized to operate in the State of Minnesota, has the power to enter into and execute this Agreement and by appropriate action has authorized the execution and delivery of this Agreement.

b. The Borrower Documents will not result in any breach of or constitute a default under any other mortgage, lease, loan, grant or credit agreement, organizational documents, or other instrument to which the Borrower is a party or by which it may be bound or affected.

c. The Loan Documents will constitute valid, legal and binding obligations of the Borrower enforceable against the Borrower.

d. The Borrower has or will have all necessary approvals, licenses and permits required for construction and operation of the Project except those which cannot be obtained until completion of the Grant-Eligible Activities or the Project, as the case may be.

e. The Borrower shall permit the City, upon reasonable notice, to examine all books, records, contracts, plans, permits, bills and statements of account pertaining to the Grant-Eligible Activities and to make copies as the City may require.

f. The Borrower shall obey and comply with all federal, state and local laws, rules and regulations in connection with the Project.

g. The City's actions in approving the Loan shall not be construed as an approval by the City of providing any additional funds for the Project or other improvements to the Property.

h. The Borrower agrees to pay for all of the costs incurred to construct the Grant-Eligible Activities including any cost overruns. There are no public funds for the Grant-Eligible Activities except for the Loan.

ARTICLE VIII

DEFAULT

Any one or more of the following shall constitute an event of default (an "Event of Default") under this Agreement:

a. The Borrower shall herein default in the performance or observance of any agreement, covenant or condition required to be performed or observed by the Borrower under the terms of this Agreement or the Grant Agreement, to the extent such obligations exist, and such default shall not be remedied within sixty (60) days after written notice to the Borrower from the City specifying such default.

b. The Borrower shall be in default of any term of any other agreement relating to the Grant-Eligible Activities which is not cured within sixty (60) days after written notice from the City or if the default cannot be cured within sixty (60) days within such reasonable time as is required to cure the default, provided that the Borrower is diligently pursuing a cure.

c. Any representation or warranty made by the Borrower herein or any document or certificate furnished to the City shall prove at any time to be incorrect or misleading as of the date made.

d. The Borrower engages in any illegal activities.

e. The Borrower uses any of the Loan funds contrary to this Agreement or the Grant Agreement which is not cured within sixty (60) days after written notice from the City.

f. The Borrower shall fail to obtain and/or keep in force insurance of the types and in the amounts as specified within this Agreement, or shall fail to indemnify and hold harmless the City as set forth herein which is not cured within ten (10) business days after written notice from the City.

g. The failure to repay any principal of the Loan when due.

The Borrower's investor limited partner and special limited partner, Citibank, N.A., a national banking association, and LP Purchaser LLC, a Delaware limited liability company, shall have an opportunity, but not an obligation, to cure any defaults under this Agreement, and such cure shall be accepted by the City as if cured by the Borrower itself.

ARTICLE IX

REMEDIES

Whenever any Event of Default shall have happened and is continuing beyond any applicable cure period any one or more of the following remedial steps may be taken by the City:

a. The City may terminate this Agreement;

b. The City may suspend or terminate any further disbursements to be made under this Agreement;

c. The City may suspend its performance under this Agreement during the continuance of the Event of Default; and/or

d. The City may take whatever action at law or in equity may be necessary or appropriate to seek repayment or reimbursement of the Loan funds disbursed to the Borrower, to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the Borrower under this Agreement, or any related instrument; or to otherwise compensate the City for any damages on account of such Event of Default.

No remedy conferred upon or reserved to the City 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 Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, nor 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 City to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or be required by law.

ARTICLE X

ADDITIONAL PROVISIONS

a. Indemnity, Hold Harmless. The Borrower shall and does hereby agree to indemnify against and to hold City, and its officers, councilmembers, agents, and employees including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section, collectively the “Indemnified Parties”), harmless of and from any and all liability, loss, or damage that it may incur under or by reason of this Agreement and against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Grant-Eligible Activities, and of and from any and all claims and demands whatsoever that may be asserted against City by reason of any alleged obligations or undertakings on the Borrower’s part to perform or discharge any of the terms, covenants, or agreements contained herein.

Except for any willful misrepresentation or any willful, wanton, or grossly negligent misconduct of the Indemnified Parties, the Borrower agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever under this Agreement, the Grant Agreement or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project or the Grant-Eligible Activities.

This indemnification and hold harmless provision shall survive the execution, delivery, and performance of this Agreement and the creation and repayment of any indebtedness to City under this Agreement.

b. Independent Contractor. For the purpose of this Agreement, the Borrower shall be deemed an independent contractor and not an employee or agent of the City. Any and all employees or agents of the Borrower shall not be considered employees or agents of the City.

c. Compliance With Minnesota Laws. All of the data created, collected, received, stored, used, maintained or disseminated by the Borrower with respect to the Grant-Eligible Activities are subject to the requirements of Chapter 13, Minnesota Statutes, and, except as provided in Minnesota Statute Section 13.05, subdivision 11(b), the Borrower agrees to comply with those requirements under Chapter 13, Minnesota Statutes to the extent applicable. The remedies in Minnesota Statutes, Section 13.08 may apply to the Borrower. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota State laws, state law shall control. The Borrower shall comply with the conflict of interest provisions of Minnesota Statutes, Sections 471.87-471.88.

d. Contractor and Subcontractor Compliance. The Borrower shall comply with and shall cause all contractors and subcontractors to comply with all applicable state and federal laws, and to the extent applicable to the Borrower, the Grant Agreement. The Borrower shall require all contractors and subcontractors performing work covered by the Loan to obtain all required permits, licenses and certifications and comply with all applicable state and federal Occupational Safety and Health Act regulations.

e. Site Compliance. The Borrower shall meet or require to be met all applicable requirements of:

- (1) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, title 40, parts 122 and 123; and
- (2) The Council's *2030 Water Resources Management Policy Plan* and the local water management plan for the jurisdiction within which the Property is located.

f. Fair Housing Compliance. The Borrower shall comply in all respects with the affordability and fair housing marketing plan requirements set forth in Sections 3.02 and 3.03 of the Grant Agreement.

ARTICLE XI

INSURANCE

With respect to the Project, the Borrower shall maintain all insurance required by Section 5.1 of that certain Contract for Private Development, October 2, 2018, between the Economic Development Authority in and for the City of Minnetonka, Minnesota, the City, and the Borrower.

ARTICLE XII

RECORDS AND REPORTS

Upon request, the Borrower shall submit to the City a full account of the status of the activities undertaken as part of this Agreement. The following records shall be maintained by the Borrower, copies of which shall be submitted in such form as City staff may prescribe:

- a. All receipts and invoices relating to expenditure of Loan funds.
- b. Records shall be sufficient to reflect all costs incurred in performance of the Loan. The books, records, documents, and accounting procedures, relevant to the Loan shall be subject to examination by the City, the Council and state agencies and the legislative auditor.
- c. Records of insurance required under this Agreement, including proof of insurance in effect, and proof of payment of insurance premiums.

ARTICLE XIII

AMENDMENT

This Agreement shall not be amended or modified without the prior written approval of the City and the Borrower.

ARTICLE XIV

INCORPORATION OF GRANT AGREEMENT

The Borrower acknowledges and agrees that all terms, conditions and obligations contained in the Grant Agreement are incorporated herein, and made a part of this Agreement. In addition to the terms, conditions and obligations described herein, the Borrower further acknowledges, accepts and assumes all of the City's obligations described in the Grant Agreement, unless such obligations can only be reasonably performed by the City, including but not limited to, the obligation to repay the LCDA Grant if required by the Council. For purposes of enforcing this Agreement, the Borrower acknowledges, accepts and agrees that the City shall inure to, and possess the rights and authority of the Council as described in the Grant Agreement.

ARTICLE XV

MISCELLANEOUS

a. Notices. All notices provided for herein shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to Borrower: Minnetonka Leased Housing Associates II, LLLP
2905 Northwest Blvd. Suite 150
Plymouth, MN 55441-2644
Attention: Ryan J. Lunderby

and a copy to: John Stern, Esq.
Winthrop & Weinstine, P.A.
Capella Tower, Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629

U.S. Bank National Association
BC-MN-HO3A
800 Nicollet Mall, 3rd Floor
Minneapolis, Minnesota 55402-7020
Attention: U.S. Bancorp Community Development
Corporation, Community Lending Division

Stinson Leonard Street LLP
50 South 6th Street, Suite 2600
Minneapolis, Minnesota 55402
Attention: David W. Kelley

Citibank, N.A.
388 Greenwich St., 8th Floor
New York, NY 10013
Attention: Mark Sherman

Nixon Peabody LLP
779 9th Street, NW, Suite 500
Washington, DC 20001-4501
Attention: Matthew W. Mullen, Esq.

TCAM
30 Federal Street, Floor 6
Boston, MA 02110-2508
Attention: Jenny Netzer

If to City: City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attention: Alisha Gray

or addressed to any such party at such other address as such party shall hereafter furnish by notice to the other parties as above provided.

b. Binding Effect; Waiver. The provisions of this Agreement shall inure to the benefit of and be binding upon the Borrower and the City and their respective successors and assigns. No delay on the part of the City in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege constitute such waiver nor exhaust the same, which shall be continuing. The rights and remedies of the City specified in this Agreement shall be in addition to and not exclusive of any other right and remedies which the City, by operation of law, would otherwise have.

c. Survival of Agreements, Representations and Warranties. All agreements, representations and warranties made in this Agreement by the Borrower shall survive its termination.

d. Governing Law. This Agreement and the attachments are to be construed and enforced according to and governed by the laws of the State of Minnesota.

e. Counterparts, Electronic Signatures. This Agreement may be executed in any number of counterparts, all of which shall constitute a single agreement, any one of which bearing signatures of all parties shall be deemed an original. An electronic or facsimile signature is deemed to be the same as an original signature.

f. Time. Time is of the essence in the performance of this Agreement.

g. Entire Agreement. This Agreement contains the entire agreement of the parties hereto on the matters covered herein. No other agreement, statement or promise made by any party or by any employee, officer or agent of any party hereto that is not in writing and signed by all the parties to this Agreement shall be binding.

h. No Joint Venture. The relationship between the City and the Borrower is solely that of grantor and grantee and the relationship by and between the City and the Borrower is not, nor shall it be deemed to create, a partnership or joint venture in the Project.

i. Venue. All matters whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the laws of the State of Minnesota, and the Borrower agrees that all legal actions initiated by the Borrower with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State of Minnesota, Hennepin County, District Court.

j. Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Agreement and the City 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 City the reasonable fee of such attorneys and such other expenses so incurred, but only in the event the City prevails in pursuing such claims.

k. Assignment. This Agreement may not be assigned by the Borrower without the prior written consent of City, which consent shall be in the sole discretion of the City.

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

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

By: Minnetonka Leased Housing Associates SPE II,
LLC, a Delaware limited liability company

Its: General Partner

By: _____

Ryan J. Lunderby

Its: Vice President

CITY OF MINNETONKA, MINNESOTA

By: _____
Its Mayor

By: _____
Its City Manager

EXHIBIT A

Grant-Eligible Activities include those costs outlined in the Grant Agreement including:

\$620,000 for Solar panels

\$200,000 for Site Preparation: demolition, grading, piers, piling

\$100,000 for Stormwater Management: underground retention

\$25,000 for Architecture/Engineering for stormwater management

EXHIBIT B

Grant Agreement

EXHIBIT C

DISBURSEMENT REQUEST FORM

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attn: _____

The undersigned, Minnetonka Leased Housing Associates II, LLLP (the “Borrower”) pursuant to that certain Loan Agreement, dated as of _____, 2019 between the City of Minnetonka, Minnesota (“City”), and the Borrower, hereby requests payment of the expenses listed on the attached Expense Listing.

The total amount to be disbursed for this draw is \$_____.

In connection with this draw, the undersigned hereby represents as follows:

- a. each obligation listed in the attached Exhibit II has been incurred and is a Project Cost related to the Grant-Eligible Activities,
- b. no license or permit necessary for construction of the Grant-Eligible Activities previously issued has been revoked or the issuance thereof subjected to challenge before any court of other governmental authority having or asserting jurisdiction thereover;
- c. no event has occurred and is continuing which, but for the giving of notice, the expiration of any cure period, or both, would constitute an event of default under the Loan Agreement or the Grant Agreement;
- d. all funds of the Borrower’s match, if any, have been fully disbursed for the payment of Project Costs; and
- e. _____% of the Grant-Eligible Activities have been completed.

**MINNETONKA LEASED HOUSING ASSOCIATES
II, LLLP**

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

By: _____
Ryan J. Lunderby
Its: Vice President

Approved:

City of Minnetonka

By _____

Its: _____

Exhibit II

Expense Listing

Item

Amount

EXHIBIT D

LEGAL DESCRIPTION

The land referred to is situated in the State of Minnesota, County of Hennepin, and is described as follows:

Lot 2, Block 1, DOMINIUM 2ND ADDITION

Hennepin County, Minnesota
Torrens Property

COMBINATION MORTGAGE AND SECURITY AGREEMENT

THIS COMBINATION MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the “Mortgage”) is made and given as of the ____ day of _____, 2019, by MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (the “Mortgagor”) in favor of THE CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (hereinafter designated as “Mortgagee”).

RECITALS:

WHEREAS, Mortgagor hereby mortgages and conveys to Mortgagee the real property and improvements situated in the County of Hennepin, State of Minnesota, and legally described on EXHIBIT A attached hereto and made a part hereof, the leases and rents with respect to the real property and improvements and all personal property and equipment, and all products and proceeds thereof owned by Mortgagor and used in the operation of the Project (as defined in the Loan Agreement) (herein, collectively the “Property”); and

WHEREAS, this Mortgage, together with the Loan Agreement (the “Loan Agreement”) of even date herewith between the Mortgagor and the Mortgagee and all other documents securing the Loan as defined below (collectively, the “Loan Documents”) are given in consideration of and as security for the payment of Nine Hundred Forty Five Thousand and No/100 Dollars (\$945,000.00) (the “Loan”), receipt of which is hereby acknowledged and which is made to enable Mortgagor to develop the Grant-Eligible Activities (as defined in the Loan Agreement). The Loan is evidenced by a Note (the “Note”) in the amount of Nine Hundred Forty Five Thousand and No/100 Dollars (\$945,000.00) executed by the Mortgagor, to the order of the Mortgagee of even date herewith. The unpaid principal sum shall be due and payable by the Mortgagor in full on December 31, 2049 unless forgiven in accordance with the Note (the “Maturity Date”).

AGREEMENTS:

NOW, THEREFORE, to secure (a) the due and punctual payment of principal on the Note and the obligations of Mortgagor under the Loan Agreement and all renewals, extensions and modifications thereof any agreements or obligations issued in substitution therefore (provided the principal amount secured by this Mortgage shall not exceed \$945,000.00) and (b) the performance of all the covenants and agreements of Mortgagor herein, in the Loan Agreement and in any other agreement now or hereafter entered into between the Mortgagor and Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein (the payment and other obligations evidenced by the Loan Agreement, this Mortgage and all such other agreements are hereinafter collectively referred to as the “Indebtedness”), the Mortgagor does hereby mortgage, grant, bargain, sell, assign, transfer and convey unto the Mortgagee forever, with power of sale the following:

I.

All of Mortgagor's right, title and interest in and to the Property and the buildings, structures, other improvements, fixtures and personal property now standing or at any time hereafter constructed or placed upon the Property (the "Improvements"), including but not limited to (i) all building materials, supplies and equipment now or hereafter located on the Property and suitable or intended to be incorporated in any Improvements located or to be erected on the Property, (ii) all heating, plumbing and lighting apparatus, motors, engines and machinery, electrical equipment, incinerator apparatus, air-conditioning equipment, water and gas apparatus, pipes, faucets, and all other fixtures of every description which are now or may hereafter be placed or used upon the Property or in any of the Improvements now or hereinafter located thereon, (iii) all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to and of any and all of the foregoing, (iv) all hereditaments, easements, appurtenances; estates, and other rights and interests now or hereafter belonging to or in any way pertaining to the Property or to any of the Improvements now or hereafter located thereof, and (v) all tangible personal property owned by the Mortgagor and now or at any time hereafter located on or relating to the Property.

II.

All rents, issues, profits, condemnation awards, revenues and income arising from the ownership, operation or sale of the Property and the Improvements and all proceeds and products thereof (herein collectively called "Revenues and Income").

To Have and To Hold the Property and the Improvements (together the "Mortgaged Property"), and the Revenues and Income unto the Mortgagee forever; provided, nevertheless, that this Mortgage is granted upon the express condition that if the Mortgagor shall cause to be paid to the Mortgagee as and when due and payable the Indebtedness, and shall also keep and perform each and every covenant and agreement of Mortgagor herein contained, then, this Mortgage and the estate hereby granted shall cease and be and become void and shall be released of record at the expense of the Mortgagor; otherwise this Mortgage shall be and remain in full force and effect.

The Mortgagor represents, warrants and covenants to and with the Mortgagee that Mortgagor is lawfully seized of the Property and has good right and full power and authority to execute this Mortgage and to mortgage the Mortgaged Property; that the Mortgagor owns the Mortgaged Property free from all liens; security interests and encumbrances except as agreed to by Mortgagee (the "Permitted Encumbrances"); that the Mortgagor will warrant and defend the title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons whomsoever, whether now existing or hereafter arising, except the Permitted Encumbrances. The covenants and warranties of this paragraph shall survive foreclosure of this Mortgage and shall run with the Property.

The Mortgagor further covenants and agrees as follows:

1. Payment of the Indebtedness and Compliance with Other Agreements.

(a) Mortgagor will cause the principal on the Indebtedness to be duly and punctually paid in accordance with the terms of the Note, the Loan Agreement and this Mortgage,

when and as due and payable. The provisions of the Note and Loan Agreement are hereby incorporated by reference into this Mortgage as fully as if set forth at length herein.

(b) Mortgagor will duly and punctually perform each and every obligation under the Loan Agreement and any other agreement on or hereafter entered into by the Mortgagor and Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein.

2. Payment of Taxes, Assessments and Other Charges; Escrow. Subject to paragraph 6 relating to contests, the Mortgagor shall pay before a penalty might attach for nonpayment thereof, all taxes and assessments and all other charges whatsoever levied upon or assessed or placed against the Mortgaged Property, except that assessments may be paid in installments so long as no fine or penalty is added to any installment for the nonpayment thereof. Mortgagor shall likewise pay all taxes, assessments and other charges, levied upon or assessed, placed or made against, or measured by, this Mortgage, or the recordation hereof, or the Indebtedness secured hereby, provided that the Mortgagor shall not be obliged to pay such tax, assessment or charge if such payment would be contrary to law or would result in the payment of an unlawful rate of interest on the Indebtedness secured hereby; and provided further that nothing herein contained shall be construed as requiring Mortgagor to pay any net income, profits or revenues taxes of the Mortgagee. Mortgagor shall promptly furnish to the Mortgagee all notices received by the Mortgagor of amounts due under this paragraph and shall furnish receipts evidencing such payments within 10 days after such payments are made.

3. Payment of Utility Charges. Subject to paragraph 6 relating to contests, the Mortgagor shall pay all charges made by utility companies, whether public or private, for electricity, gas, heat, water, or sewer, furnished or used in connection with the Mortgaged Property or any part thereof, and will upon written request of Mortgagee, furnish proper receipts evidencing such payment.

4. Liens. Subject to paragraph 6 hereof relating to contests, the Mortgagor shall not create, incur or suffer to exist any lien, encumbrance or charge on the Mortgaged Property or Revenues and Income or any part thereof which may have priority over the lien hereof, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable, the General Contractor Fee Mortgage and the Development Fee Mortgage, as such terms are defined in the Amended and Restated Agreement of Limited Partnership of the Mortgagor (the "Mortgagor's LPA"), and other than any lien granted in connection with the current financing secured by the Property, and Permitted Encumbrances. Subject to paragraph 6 relating to contests, Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

5. Compliance with Laws. Subject to paragraph 6 relating to contests, Mortgagor shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof. Mortgagor shall not use or occupy nor permit the use and occupancy of the Property without a current Certificate of Occupancy issued by the City of Minnetonka.

6. Permitted Contests. The Mortgagor shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 2 hereof, (ii) pay any charges referred to in paragraph 3 hereof, (iii) discharge or remove any lien, encumbrance or charge referred to in paragraph 4 hereof, or (iv) comply with any statute, law, rule, order, regulation or ordinance referred to in paragraph 5 hereof, so long as Mortgagor shall (a) contest, in good faith, the existence, or the validity thereof, the amount of damages caused thereby or the extent of Mortgagor's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrance or charge so contested, (B) the sale, forfeiture or loss of the Mortgaged Property or any part thereof, and (C) any interference with the use or occupancy of the Mortgaged Property or any part thereof, and (b) shall give such security to the Mortgagee as may be reasonably demanded by the Mortgagee to insure compliance with the foregoing provisions of this paragraph 6. Mortgagor shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph 6.

7. Insurance. The Mortgagor shall keep the improvements now existing or hereafter erected on the Mortgaged Property insured against loss by fire and any other hazards for which the Mortgagee requires insurance for full replacement value of the improvements. This insurance shall be maintained in the amounts and for the periods as required under the terms of the Loan Agreement. If the Mortgagor fails to maintain coverage described above, the Mortgagee may, at the Mortgagee's option, obtain coverage to protect the Mortgagee's rights in the Mortgaged Property in accordance with paragraph 6.

All insurance policies and renewals shall be reasonably acceptable to the Mortgagee and shall include a standard mortgage clause. If the Mortgagee requires, the Mortgagor shall promptly give to the Mortgagee all receipts of paid premiums and renewal notices. In the event of loss, the Mortgagor shall give prompt notice to the insurance carrier and the Mortgagee. The Mortgagee may make proof of loss if not made promptly by the Mortgagor.

If the Mortgaged Property is acquired by the Mortgagee, the Mortgagor's rights to any insurance policies and proceeds resulting from damage to the Mortgaged Property prior to the acquisition shall pass to the Mortgagee to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

8. Preservation and Maintenance of Mortgaged Property. Mortgagor (i) shall keep the buildings and other Improvements hereafter erected as part of the Project on the Property in safe and good repair and condition, ordinary wear and tear and damage by insured casualty excepted (provided that Mortgagor may proceed to demolish the existing buildings when vacant), (ii) shall reasonably maintain the parking and landscaped areas of the Mortgaged Property, (iii) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, and (iv) shall not remove from the Property any of the fixtures and personal property included in the Mortgaged Property unless the same is immediately replaced with like property of at least equal value and utility (provided that Mortgagor may proceed to demolish and remove all existing personal property and fixtures located on the Property).

9. Inspection. The Mortgagee, or its agents, shall have the right at all reasonable times, to enter upon the Mortgaged Property for the purposes of inspecting the Mortgaged Property or any part thereof. The Mortgagee shall, however, have no duty to make such inspection.

10. Protection of Mortgagee's Security. Subject to the rights of the Mortgagor under paragraph 6 hereof, if the Mortgagor fail to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects the Mortgaged Property or the interest of the Mortgagee therein, or the title thereto, then the Mortgagee, at Mortgagee's option, upon advance written notice to Mortgagor, may perform such covenants and agreements, defend against and/or investigate such action or proceeding, and take such other action as the Mortgagee deems necessary to protect the Mortgagee's interest. Mortgagee shall be the sole judge of the legality, validity and priority of any claim, lien, encumbrance, tax assessment, charge and premium paid by it and of the amount necessary to be paid in satisfaction thereof. Mortgagee is hereby given the irrevocable power of attorney (which power is coupled with an interest and is irrevocable) effective upon the occurrence of an Event of Default, to enter upon the Mortgaged Property as the Mortgagor's agent in the Mortgagor's name to perform any and all covenants and agreement to be performed by the Mortgagor as herein provided. Any amounts disbursed or incurred by the Mortgagee pursuant to this paragraph 10, shall become additional Indebtedness of the Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree in writing to other terms of repayment, such amounts shall be immediately due and payable. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Indebtedness or by the Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph 10 shall require the Mortgagee to incur any expense or do any act hereunder, and the Mortgagee shall not be liable to the Mortgagor for any damages or claims arising out of action taken by the Mortgagee pursuant to this paragraph 10.

11. Condemnation.

(a) Mortgagor hereby irrevocably assigns to the Mortgagee any award or payment which becomes payable by reason of any taking of the Mortgaged Property, or any part thereof, whether directly or indirectly or temporarily or permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings (hereinafter called "Taking"). Forthwith upon receipt by Mortgagor of notice of the institution of any proceeding or negotiations for a Taking, Mortgagor shall give notice thereof to Mortgagee. Mortgagee may appear in any such proceedings and participate in any such negotiations and may be represented by counsel. Mortgagor, notwithstanding that Mortgagee may not be a party to any such proceeding, will promptly give to Mortgagee copies of all notices, pleadings, judgments, determinations, and other papers received by Mortgagor therein. Mortgagor will not enter into any agreement permitting or consenting to the Taking of the Mortgaged Property, or any part thereof, or providing for the conveyance thereof in lieu of condemnation, with anyone authorized to acquire the same in condemnation or by eminent domain unless Mortgagee shall first have consented thereto in writing, which consent will not be unreasonably withheld. All Taking awards shall be adjusted jointly by Mortgagor and Mortgagee. All awards payable as a result of a Taking shall be paid to Mortgagee, which may, at its option, apply them after first deducting Mortgagee's expenses incurred in the collection thereof, to the payment of the Indebtedness, whether or not due and in

such order of application as Mortgagee may determine, or to the repair or restoration of the Mortgaged Property, in such manner as Mortgagee may determine. Any application of Taking awards to principal of the Indebtedness shall not extend or postpone the due date of the installments payable under the Indebtedness or change the amount of such installments.

(b) If the Taking involves a taking of any building or other Improvements now or hereafter located on the Property, Mortgagor shall proceed, with reasonable diligence, to demolish and remove any ruins and complete repair or restoration of the Mortgaged Property as nearly as possible to its size, type and character immediately prior to the Taking, but only to the extent that the condemnation awards are available or adequate to complete such repair or restoration.

(c) Mortgagor shall promptly reimburse Mortgagee upon demand for all of Mortgagee's expense (including reasonable attorneys' fees) incurred in the collection of awards.

12. Information; Books and Records. Mortgagor will prepare or cause to be prepared at Mortgagor's expense and deliver to Mortgagee immediately upon becoming aware of the existence of any condition or event which constitutes, or which after notice or lapse of time or both would constitute, an Event of Default, written notice specifying the nature and period of existence thereof and what action Mortgagor have taken, is taking or proposes to take with respect thereto. Mortgagor shall keep and maintain at all times at Mortgagor's address stated below or at such other place as Mortgagee may approve in writing, complete and accurate books of accounts and records in sufficient detail to reflect correctly the receipts and expenses in connection with the acquisition, construction, operation and/or sale of the Mortgaged Property and copies of all written contracts, leases and other instruments which affect the Mortgaged Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection by the Mortgagee or its representative during ordinary business hours.

13. Indemnification by the Mortgagor. The Mortgagor shall bear all loss, expense (including reasonable attorneys' fees) and damage in connection with, and agrees to indemnify and hold harmless the Mortgagee and its agents, servants and employees (the "Indemnified Parties") from, all claims, demands and judgments made or recovered against the Indemnified Parties because of bodily injuries, including death at any time resulting therefrom, and/or because of damages to property of the Mortgagee or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the construction and/or operation of the Improvements prior to appointment of a receiver or foreclosure of this Mortgage or arising by reason of the presence of hazardous or toxic substances on the Property or in the Improvements or releases thereof from the Mortgaged Property, whether or not due to any act of omission or commission, including negligence of the Mortgagor or Mortgagor's employee, servants or agents. The Mortgagor's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Mortgagor or subject to any exclusion from coverage in any insurance policy. The obligations of the Mortgagor under this paragraph shall survive the payment of the Note. Provided, however, that Mortgagor shall not be required to indemnify, defend, and hold harmless the Indemnified Parties from and against any of the foregoing if such claims, demands, losses, expenses, and/or judgements made or recovered against or suffered by the Indemnified Parties are the result of the gross negligence of intentional misconduct of such Indemnified Parties.

14. Security Interest. This Mortgage shall constitute a security agreement with respect to (and the Mortgagor hereby grants the Mortgagee a security interest in) the tangible personal property and fixtures included in the Mortgaged Property (as more particularly described in Granting Clause I of this Mortgage) and the Revenues and Income (as more particularly described in Granting Clause II). The Mortgagor will from time to time, at the request of the Mortgagee, execute any and all financing statements covering such personal property and fixtures (in a form satisfactory to the Mortgagee) which the Mortgagee may reasonably consider necessary or appropriate to perfect its interest.

15. Events of Default. Each of the following occurrences shall constitute an event of default hereunder (herein called an “Event of Default”):

(a) Mortgagor shall fail to duly and punctually pay any obligation payable under the Note or Loan Agreement which is not cured within ten (10) business days after written notice from Mortgagee.

(b) Mortgagor shall fail duly to perform or observe any of the covenants or agreements contained in this Mortgage (other than default in the performance, or breach, of any covenant of the Mortgagor in paragraph 1(a) hereof) and such failure shall continue for a period of sixty (60) days after the Mortgagee has given written notice to the Mortgagor specifying such default or breach.

(c) Mortgagor shall make assignment for the benefit of Mortgagor’s creditors, or shall admit in writing Mortgagor’s inability to pay Mortgagor’s debts as they become due, or shall file a petition in bankruptcy, or shall become or be adjudicated bankrupt or insolvent, however defined, or shall file a petition seeking any reorganization, dissolution, liquidation, arrangement, composition, readjustment or similar relief under any present or future bankruptcy or insolvency statute, law or regulation or shall file an answer admitting to or not contesting the material allegations of petition filed against the Mortgagor in such proceedings, or shall not, within 90 days after the filing of such petition against the Mortgagor, have same dismissed or vacated, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of the Mortgagor’s properties or of the Mortgaged Property or shall not, within 90 days after the appointment (without the Mortgagor’s consent or acquiescence) of a trustee, receiver or liquidator of any material part of the Mortgagor’s properties or of the Mortgaged Property, have such appointment vacated.

(d) An Event of Default under the Loan Agreement (as defined in the Loan Agreement) or Note shall have occurred and be continuing or the Mortgagor shall be in default under any other agreement now or hereafter entered into by the Mortgagor and the Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein after expiration of any applicable cure periods.

(e) The Mortgagor’s investor limited partner and special limited partner, Citibank, N.A., a national banking association, and LP Purchaser LLC, a Delaware limited liability company, shall have an opportunity, but not an obligation, to cure any defaults under this Mortgage, and such cure shall be accepted by the Mortgagee as if cured by the Mortgagor itself.

16. Remedies. Whenever any Event of Default shall have occurred and be subsisting, the Mortgagee may, at its option, exercise one or more of the following rights and remedies (and/or any other rights and remedies available to it):

(a) Mortgagee may, by written notice to the Mortgagor, declare immediately due and payable all Indebtedness secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand.

(b) Mortgagee shall have and may exercise with respect to all personal property and fixtures which are part of the Mortgaged Property and with respect to the Revenues and Income all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code, as in effect in the State of Minnesota. If notice to the Mortgagor of the intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Mortgagor (in the manner specified in paragraph 20) at least ten (10) calendar days prior to the date of intended disposition. Mortgagor shall pay on demand all costs and expenses incurred by Mortgagee in exercising such rights and remedies, including without limitation, reasonable attorneys' fees and legal expenses.

(c) Mortgagee may (and is hereby authorized and empowered to) foreclose this Mortgage by action or advertisement, pursuant to the statutes of the State of Minnesota in such case made and provided, power being expressly granted to sell the Mortgaged Property at public auction and convey the same to the purchaser in tenant interest or in fee simple as the case may be of the Mortgagor's interest in the Property at the time of such sale and, out of the proceeds arising from such sale, to pay all Indebtedness secured hereby, and all legal costs and charges of such foreclosure and the maximum attorneys' fees permitted by law, which costs, charges and fees the Mortgagor agree to pay.

THE MORTGAGOR HEREBY CONSENTS TO AND ACKNOWLEDGES THE RIGHT OF THE MORTGAGEE, AT MORTGAGEE'S OPTION, TO ACT TO FORECLOSE THIS MORTGAGE BY ACTION OR ADVERTISEMENT PURSUANT TO MINNESOTA STATUTES CHAPTERS 580 OR 581. A POWER OF SALE BEING HEREIN EXPRESSLY GRANTED WHICH SHALL ALLOW THE MORTGAGEE TO SELL AT PUBLIC AUCTION AFTER SERVICE OF NOTICE THEREOF UPON THE OCCUPANT OF THE MORTGAGED PROPERTY, MORTGAGOR ACKNOWLEDGES THAT SUCH SERVICE NEED NOT BE MADE ON THE MORTGAGOR PERSONALLY UNLESS THE MORTGAGOR IS AN OCCUPANT OF THE MORTGAGED PROPERTY AND THAT NO HEARING IS REQUIRED IN CONNECTION WITH THE SALE. MORTGAGOR EXPRESSLY WAIVES ANY AND ALL RIGHTS TO PRIOR NOTICE OF SALE AND ANY AND ALL RIGHTS TO PRIOR HEARING IN CONNECTION WITH THE SALE. OUT OF THE PROCEEDS OF SUCH SALE THE PRINCIPAL AMOUNT OF THE LOAN SHALL BE PAID TOGETHER WITH ALL LEGAL COSTS AND CHARGES OF FORECLOSURE WITH MAXIMUM ATTORNEY'S FEES PERMITTED BY LAW.

(d) The Mortgagee shall be entitled, without notice and without any showing of waste of the Mortgaged Property, inadequacy of the Mortgaged Property as security for the Indebtedness, or insolvency of the Mortgagor, to the appointment of a receiver of the rents and profits of the Mortgaged Property, including those past due.

(e) Mortgagee may pursue one or more of the remedies provided for in the Loan Agreement or any other agreement now or hereafter entered into between the Mortgagor and Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated herein.

17. Estoppel Certificate. Mortgagor agrees at any time and from time to time, upon not less than fifteen (15) days' prior notice by Mortgagee, to execute, acknowledge and deliver, without charge, to Mortgagee or to any person designated by Mortgagee, a statement in writing certifying, to the best of its knowledge, that this Mortgage is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), the principal amount then secured hereby, that Mortgagor has not received any notice of default or notice of acceleration or foreclosure of this Mortgage (or if Mortgagor has received such a notice, that it has been revoked, if such be the case), that to the knowledge of Mortgagor no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same and stating that the same has been cured, if such be the case), the Mortgagor to Mortgagee's knowledge have no claims or offsets against Mortgagee (or if Mortgagor have any such claims, specifying the same), and the dates to which the principal and the other sums and charges payable by Mortgagor pursuant to the Loan Agreement have been paid. In the event Mortgagor fails to execute, acknowledge and deliver such statement within the time above required, Mortgagor hereby appoint and constitute Mortgagee as Mortgagor's attorney-in-fact to do so (which power of attorney is coupled with an interest and is irrevocable), the Mortgagor shall be fully bound by any such statement executed by Mortgagee on Mortgagor's behalf to the same extent as if Mortgagor had executed, acknowledged and delivered the same. Mortgagee agrees to provide statements of the principal balance payable pursuant to the Note from time to time upon request of Mortgagor.

18. Forbearance Not a Waiver, Rights and Remedies Cumulative. No delay by the Mortgagee in exercising any right shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by the Mortgagee of any particular provision of this Mortgage shall be deemed effective unless in writing signed by the Mortgagee. All such rights and remedies provided for herein or which the Mortgagee may have otherwise, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises. The Mortgagee's taking action pursuant to paragraph 10 or receiving proceeds, awards or damages pursuant to paragraph 7 or 11 shall not impair any right or remedy available to the Mortgagee under paragraph 16 hereof. Acceleration of maturity of the Indebtedness, once claimed hereunder by the Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity of the Indebtedness.

19. Successors and Assigns Bound; Number; Gender; Agents; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, legal representatives, successors and assignees of the Mortgagee and the Mortgagor. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall apply to all genders. In exercising any rights hereunder or taking any actions provided for herein, Mortgagee may act through its employees, agents or independent contractor as authorized by Mortgagee. The captions and headings of the paragraphs

of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

20. Notice. Any notice from the Mortgagee to the Mortgagor under this Mortgage shall be deemed to have been given by the Mortgagee and received by the Mortgagor when mailed by certified mail by the Mortgagee or its agents to the Mortgagor at the address set forth in paragraph 26(a) below or at such other address as the Mortgagor may designate in writing to the Mortgagee. Any notice from the Mortgagee to the Mortgagor shall also be provided to Mortgagor's investor limited partner and special limited partner, Citibank, N.A., a national banking association, and LP Purchaser LLC, a Delaware limited liability company, at the following address: 388 Greenwich St., 8th Floor, New York, NY 10013, Attn: Mark Sherman, with a copy to Nixon Peabody LLP, 779 9th Street, NW, Suite 500, Washington, DC 20001, Attn: Matthew W. Mullen.

21. Governing Law; Severability. This Mortgage shall be governed by the laws of the State of Minnesota. In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provisions and to this end the provisions of the Mortgage are declared to be severable.

22. Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

23. Waiver of Marshaling. Mortgagor, any party who consents to this Mortgage and any party who now or hereafter acquires a lien on the Mortgaged Property and who has actual or constructive notice of this Mortgage hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein and waives any right to have the Mortgaged Property sold in separate tracts pursuant to Section 580.08, Minnesota Statute.

24. Construction Mortgage. This Mortgage secures an obligation incurred for the construction of an improvement on land and is a construction mortgage.

25. Application of Rents. Notwithstanding anything to the contrary herein, all Rents collected by the Mortgagee or any receiver each month shall be applied as determined by Mortgagor, or as otherwise determined by applicable law.

26. Fixture Filing. From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the Mortgaged Property (as more particularly described in Granting Clause I of this Mortgage) which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

(a) Name and Address of Mortgagor:

Minnetonka Leased Housing Associates II, LLLP
2905 Northwest Blvd. Suite 150
Plymouth, MN 55441-2644
Attention: Ryan J. Lunderby

and a copy to:

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

TCAM
30 Federal Street, Floor 6
Boston, MA 02110-2508
Attention: Jenny Netzer

(b) Name and Address of Secured Party:

City of Minnetonka, Minnesota
14600 Minnetonka Blvd
Minnetonka, Minnesota 55345
Attention: City Manager

(c) This document covers goods which are or are to become fixtures.

(d) The Mortgagor's federal organizational identification number is 82-2656566.

27. Additional Provisions.

(a) Mortgagee agrees, notwithstanding any other provision herein to the contrary, that in the event of a foreclosure of the Property, that no tenant may be evicted or tenancy terminated (other than for good cause), and the rent on no apartment unit may be increased, for the three year period following foreclosure if such eviction, termination of tenancy or increase in rent would be contrary to the provisions of Section 42(h)(6)(E) of the Internal Revenue Code of 1986, as amended. This Mortgage is expressly subordinate to this provision.

(b) This Mortgage and the Note shall be construed according to the laws of the State of Minnesota.

(c) In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part hereof, Mortgagor shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefor, provided that no material default then exists under the Loan Documents. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to Mortgagee for repayment of the remaining balance of the Loan.

(d) The Mortgagor will permit the Mortgagee's authorized representatives to enter the Property at all times during normal business hours for the purpose of inspecting the same;

provided the Mortgagee shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

(e) Mortgagor hereby agrees to defend, indemnify, and hold harmless Mortgagee from and against any and all claims, losses, damages, liabilities, costs, and expenses (including without limitation reasonable attorneys' fees) incurred by Mortgagee as a result of any hazardous materials or substances which are on the Property in violation of applicable environmental laws at any time during which Mortgagor shall be in custody or control of the Property; and this indemnification shall remain in full force and effect and shall survive the repayment of the Loan and the exercise of any remedy by the Mortgagee hereunder including a foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure.

(f) Mortgagor shall have the right and privilege, but not the obligation, to borrow additional funds and to further encumber the security and collateral given and pledged to Mortgagee hereunder at any time, from time to time, and as often as Mortgagor shall determine, but only with the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, delayed and conditioned, except for the Permitted Encumbrances identified in EXHIBIT B.

(g) If the Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, subject to any applicable cure periods and rights of Mortgagor's partners to cure, or if any action or proceeding is commenced which effects the Property or the interest of the Mortgagee therein, or the title thereto, then the Mortgagee, at Mortgagee's option, upon sixty (60) days advance written notice to Mortgagor, may perform such covenants and agreements to defend against and/or investigate such action or proceeding, and take such other action as the Mortgagee deems necessary to protect the Mortgagee's interest. Mortgagee shall be the sole judge of the legality, validity and priority of any claim, lien, encumbrance, tax assessment, charge and premium paid by it and of the amount necessary to be paid in satisfaction thereof. Mortgagee is hereby given the irrevocable power of attorney (which power is coupled with an interest and is irrevocable) effective sixty (60) days after written notice, to enter upon the Property as the Mortgagor's agent in the Mortgagor's name to perform any and all covenants and agreements to be performed by the Mortgagor as herein provided. Any amounts disbursed or incurred by the Mortgagee pursuant to this paragraph shall become additional indebtedness of the Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree in writing to other terms of repayment, such amounts shall be immediately due and payable. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the indebtedness or by the Mortgagee under the provisions hereof, and any such subrogation rights shall require the Mortgagee to incur any expense or do any act hereunder, and the Mortgagee shall not be liable to the Mortgagor for any damages or claims arising out of action taken by the Mortgagee pursuant to this paragraph.

28. Removal of General Partner. Notwithstanding anything to the contrary contained in the Loan Documents, the removal, or withdrawal in lieu of removal, of Mortgagor's general partner and/or class B limited partner, for cause shall be permitted as set forth in accordance with the Mortgagor's LPA and shall not constitute a default under the Loan Documents and any amendment to Mortgagor's LPA to effectuate such transfers shall not require Mortgagee consent

29. Assignment of Limited Partner Interest. Notwithstanding anything to the contrary contained in the Loan Documents, the interest of the Mortgagor's investor limited partner shall be freely transferable and any amendment to Mortgagor's LPA to effectuate such transfers shall not require Mortgagee consent.

30. Subordination. The Mortgagee agrees to subordinate its rights under this Mortgage to the holder of any mortgage securing the Property relating to the construction or permanent financing, under terms and conditions reasonably acceptable to the Mortgagee. Any subordination agreement must be approved by the City Council.

MORTGAGOR ACKNOWLEDGES THAT THIS IS A LEGAL DOCUMENT AND THAT BEFORE SIGNING MORTGAGOR HAS FULLY UNDERSTOOD THE TERMS AND CONDITIONS HEREIN, AND THE RIGHTS WAIVED HEREBY AND THE EFFECT OF SUCH WAIVER OR HAS SOUGHT LEGAL COUNSEL TO EXPLAIN SUCH TERMS AND CONDITIONS, RIGHTS AND THE WAIVER OF SUCH RIGHTS.

16845832v2

EXHIBIT A

LEGAL DESCRIPTION

The land referred to is situated in the State of Minnesota, County of Hennepin, and is described as follows:

Lot 2, Block 1, DOMINIUM 2ND ADDITION

Hennepin County, Minnesota
Torrens Property

EXHIBIT B

PERMITTED ENCUMBRANCES

1. Real estate taxes and installments of special assessments payable in 2019 not yet due and payable.
2. Rights or claims of tenants, as tenants only, in possession under unrecorded leases.
3. Subject to an easement for sanitary sewer purposes, in favor of the City of Minnetonka, as contained in CR Book 73, Page 3995823, over that part of the following described land lying 15 feet on each side of the following described center line: Commencing at the Northwest corner of the Southwest Quarter of said Section 36; thence on an assumed bearing of South 88 degrees, 11 minutes and 18 seconds East along the North line of said Southwest Quarter a distance of 1329.73 feet; thence North 18 degrees, 03 minutes and 00 seconds East a distance of 50.00 feet to the beginning of the centerline to be described; thence South 18 degrees, 03 minutes and 00 seconds West, a distance of 244.93 feet; thence South 10 degrees, 00 minutes and 29 seconds East a distance of 262.00 feet; thence South 39 degrees 34 minutes and 31 seconds West a distance of 165.00 feet; thence South 1 degree 01 minutes and 56 seconds East, a distance of 236.18 feet; thence South 17 degrees 04 minutes and 15 seconds East, a distance of 423.42 feet; thence South 71 degrees, 40 minutes and 13 seconds East a distance of 223.80 feet; thence South 0 degrees, 00 minutes and 17 seconds West a distance of 10.00 feet and said centerline there terminating (Now on part of above Lots). (Shown by recital on the Certificate of Title)

Partially vacated by Resolution No. 81-6541 adopted April 20, 1981, filed May 6, 1981, as Document No. 1423875.

4. Subject to a 30 foot sanitary sewer easement, in favor of the City of Minnetonka, as described in Parcel No. 25 in Final Certificate filed January 12, 1973, as CR Document No. 3995823 (Now as to part of Lot 1).(Shown by recital on the Certificate of Title)

Partially vacated by Resolution No. 81-6541 adopted April 20, 1981, filed May 6, 1981, as Document No. 1423875.

5. Subject to a reservation unto Clover Drive, Inc., and its successors and assigns, of an easement for secondary road purposes over, under and across that portion of Lot 2 lying Southerly of a line drawn parallel to and 3.00 feet Northerly of (as measured at right angles to) the following described line: Commencing at the Southeast corner of Lot 2; thence North 88 degrees 11 minutes 18 seconds West along the South line of Lot 2 a distance of 475.00 feet; and there terminating. (Shown by recital on the Certificate of Title)

6. Subject to a reservation unto Clover Drive, Inc., its successors and assigns, of an easement 2.00 feet in width for concrete edging purposes over, under and across that portion of said Lots 1 and 2 lying adjacent to the public right-of-way designated as Bren Road West and Bren Road on the recorded plat of Opus 2 Eighth Addition. (Shown by recital on the Certificate of Title)

7. Easements for utilities and drainage as shown on the recorded plat of Opus 2 Eighth Addition. As affected by Resolution No. 2018-083 approving the vacation of public right of way and utility easements at 11001 Bren Road East adopted July 23, 2018, filed August 2, 2018, as Document No. T05550564.

8. Easements for utilities and drainage as shown on the recorded plat of Townhouses of Shady Oak. As affected by Resolution No. 2018-083 approving the vacation of public right of way and utility easements at 11001 Bren Road East adopted July 23, 2018, filed August 2, 2018, as Document No. T05550564.

9. Easement for public right-of-way purposes, in favor of the City of Minnetonka, a municipal corporation, as created in Quit Claim Deed dated May 27, 1976, filed August 30, 1976, as Document No. 1188617. As affected by Resolution No. 2018-083 approving the vacation of public right of way and utility easements at 11001 Bren Road East adopted July 23, 2018, filed August 2, 2018, as Document No. T05550564.

10. Permanent easement reserved in Article IX of Declaration of Industrial Standards and Protective Covenants dated April 7, 1981, filed April 8, 1981, as Document No. 1420987.

Assigned as shown by Assignment dated September 6, 1983, filed April 3, 1984, as Document No. 1570465.

11. Easements for utilities and drainage as shown on the recorded plat of Dominion 2nd Addition.

12. Resolution No. 2018-081 approving final site and building plans for a multi-family residential development at 11001 Bren Road East, adopted July 23, 2018, filed August 2, 2018, as Document No. T05550562.

13. Resolution No. 2018-082 approving the preliminary and final plat of Dominion 2nd Addition, adopted July 23, 2018, filed August 2, 2018, as Document No. T05550565.

14. Ordinance No. 2018-10 rezoning the property at 11001 Bren Road East From 1-1, industrial, to PUD, planned unit development, adopted July 23, 2018, filed August 2, 2018, as Document No. T05550563.

15. Parcel 327 Easement Agreement between Digi International Inc. a corporation under the laws of the State of Delaware, and the Metropolitan Council, a public corporation and political subdivision under the laws of the State of Minnesota, dated September 17, 2018, filed September 18, 2018, as Document No. T05560873.

16. Terms and conditions of, and easements set forth in Reciprocal Easement Agreement between Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, dated October 2, 2018, filed October 4, 2018, as Document No. T05564924.

17. Contract for Private Development between Economic Development Authority in and for the City of Minnetonka, Minnesota, the City of Minnetonka, Minnesota and Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, dated October 2, 2018, filed October 4, 2018, as Document No. T05564925.

As affected by Subordination Agreement - Governmental Entity (Taxable Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564953, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of Minnetonka, Minnesota.

As affected by Subordination Agreement - Governmental Entity (Tax Exempt Loan) dated

October 2, 2018, filed October 4, 2018, as Document No. T05564952, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of Minnetonka, Minnesota.

18. Declaration of Restrictive Covenants between Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, and the Economic Development Authority in and for the City of Minnetonka, a public body corporation and politic under the laws of the State of Minnesota, dated October 2, 2018, filed October 4, 2018, as Document No. T05564926.

As affected by Subordination Agreement - Governmental Entity (Taxable Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564953, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of Minnetonka, Minnesota.

As affected by Subordination Agreement - Governmental Entity (Tax Exempt Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564952, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of Minnetonka, Minnesota.

19. Minimum Assessment Agreement and Assessor's Certification between the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, and the City Assessor for Minnetonka, Minnesota, dated October 2, 2018, filed October 4, 2018, as Document No. T05564927.

As affected by Subordination Agreement - Governmental Entity (Taxable Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564953, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of Minnetonka, Minnesota.

As affected by Subordination Agreement - Governmental Entity (Tax Exempt Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564952, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent, the Economic Development Authority in and for the City of Minnetonka, Minnesota, and the City of Minnetonka, Minnesota.

20. Underground Stormwater Facility Easement Agreement by Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership organized under the laws of Minnesota, to City of Minnetonka, a Minnesota municipal corporation, dated October 2, 2018, filed October 4, 2018, as Document No. T05564928.

21. Declaration of Restrictive Covenants and Easement related to Privately Owned Fire Hydrant by Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, dated October 2, 2018, filed October 4, 2018, as Document No. T05564929.

22. Declaration by Minnetonka Leased Housing Associates II, LLLP and Minnetonka Leased Housing Associates III, LLLP in favor of Nine Mile Creek Watershed District, dated October 2, 2018, filed October 4, 2018, as Document No. T05564935.

23. Regulatory Agreement dated October 2, 2018, filed October 4, 2018, as Document No. T05564947, between City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota, Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, U.S. Bank National Association, a national banking association, as fiscal agent and U.S. Bank National Association, a national banking association, as bond trustee.

24. Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated as of October 2, 2018, filed October 4, 2018, as Document No. T05564948, in the office of Registrar of Titles for Hennepin County, Minnesota, executed by Minnetonka Leased Housing Associates, II, LLLP, a Minnesota limited liability limited partnership, in favor of the City of Minnetonka, a municipal corporation organized and existing under the laws of the State of Minnesota, in the original principal amount of \$29,930,000.00.

Assigned to U.S. Bank National Association, a national banking association, in its capacity as fiscal agent, pursuant to that certain Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of October 2, 2018, filed October 4, 2018, as Document No. T05564949, in the office of the Registrar of Titles for Hennepin County, Minnesota, executed by the City of Minnetonka, a municipal corporation organized and existing under the laws of the State of Minnesota.

25. Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated as of October 2, 2018, filed October 4, 2018, as Document No. T05564950, in the office of Registrar of Titles for Hennepin County, Minnesota, executed by Minnetonka Leased Housing Associates, II, LLLP, a Minnesota limited liability limited partnership, in favor of the City of Minnetonka, a municipal corporation organized and existing under the laws of the State of Minnesota, in the original principal amount of \$21,006,418.00.

Assigned to U.S. Bank National Association, a national banking association, in its capacity as fiscal agent, pursuant to that certain Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of October 2, 2018, filed October 4, 2018, as Document No. T05564951, in the office of the Registrar of Titles for Hennepin County, Minnesota, executed by the City of Minnetonka, a municipal corporation organized and existing under the laws of the State of Minnesota.

26. Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents (Series C), in the original principal amount of \$3,570,000, dated as of October 1, 2018, executed by Minnetonka Leased Housing Associates, II, LLLP, a Minnesota limited liability limited partnership, in favor of the City of Minnetonka, a municipal corporation organized and existing under the laws of the State of Minnesota, recorded in the office of Registrar of Titles for Hennepin County, Minnesota, on October 4, 2018, as Document No. T05564954.

Assigned to U.S. Bank National Association, a national banking association, by Assignment of Mortgage dated October 2, 2018, filed October 4, 2018, as Document No. T05564955.

As affected by Subordination Agreement - Private Entity (Tax Exempt Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564956, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent and U.S. Bank National Association, a national banking association, in its capacity as Trustee for the City of Minnetonka, Minnesota, pursuant to that certain Subordinate Indenture of Trust dated October 1, 2018.

As affected by Subordination Agreement - Private Entity (Taxable Loan) dated October 2, 2018, filed October 4, 2018, as Document No. T05564957, among U.S. Bank National Association, a national banking association, in its capacity as Fiscal Agent and U.S. Bank National Association, a national banking association, in its capacity as Trustee for the City of Minnetonka, Minnesota, pursuant to that certain Subordinate Indenture of Trust dated October 1, 2018.

NOTE

\$945,000

Minnetonka, Minnesota
_____, 2019

FOR VALUE RECEIVED, the undersigned (herein called the “Borrower”), promises to pay to the order of the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Lender”) or its assigns, the sum of Nine Hundred Forty Five Thousand and No/100 Dollars (\$945,000.00) (the “Loan”). Said sum was made available to the Borrower pursuant to the terms of a Loan Agreement of even date herewith (the “Loan Agreement”) between the Lender and the Borrower to enable the Borrower to undertake the development of the Grant-Eligible Activities (as defined in the Loan Agreement) on Property (as defined in the Loan Agreement) located in the City of Minnetonka, Minnesota.

1. This Note shall not bear interest.
2. The principal and accrued interest on the Loan shall be due and payable in one lump sum on the earlier of: (a) December 31, 2049, or (b) upon the sale of any portion of the Property by the Borrower without the Lender’s prior consent, (c) upon the Borrower’s default under the Loan Agreement or Combination Mortgage and Security Agreement of even date herewith (the “Mortgage”) from the Borrower to the Lender (the “Maturity Date”), at which time all unpaid principal and interest is due and payable. This Note may also be required to be repaid in whole or in part in accordance with Article XIV of the Loan Agreement. The Note may be prepaid at any time without penalty.
3. If suit is instituted by Lender, or its successors or assigns, to recover on this Note, the Borrower agrees to pay all costs of such collection actually incurred, including reasonable attorney’s fees and court costs. If this Note be reduced to judgment, such judgment shall bear the lawful interest rate pertaining to judgments, but not to exceed 6% per annum.
4. The Borrower hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note.
5. This Note is given pursuant to the Loan Agreement and the Mortgage delivered by the Borrower. If either the Loan Agreement or the Mortgage is found to be invalid for whatever reason, such invalidity shall constitute an Event of Default hereunder. This Note is secured by the Mortgage and such Mortgage describes the rights of the Lender as to the acceleration of the indebtedness evidenced by this Note.

All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement, the Mortgage, or any other instrument securing this Note 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. It is agreed that time is of the essence of this Note. If an Event of Default occurs under the Loan Agreement, the Mortgage, or any other instrument securing this Note, then the Lender may at its right and option, without notice, declare immediately due and payable the

principal balance of this Note and interest accrued thereon, together with reasonable attorneys' fees and expenses incurred by the Lender in collecting or enforcing payment hereof, whether by lawsuit or otherwise, and all other sums due hereunder or any instrument securing this Note.

6. The remedies of the Lender as provided herein and in the Loan Agreement, the Mortgage, or any other instrument securing this Note shall be cumulative and concurrent and may be pursued singly, successively, or together, and, at the sole discretion of the Lender, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Lender 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 Lender 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. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

7. If any term of this Note, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

8. This Note shall be governed by and construed in accordance with the laws of the State of Minnesota.

9. Neither the Borrower nor any partner shall have any personal liability for the Borrower's obligations hereunder, it being recognized by the Lender the obligations of the Borrower hereunder are non-recourse obligations and that the remedies of the Lender are limited to the collateral security provided in connection with the Loan.

10. IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and 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.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of the day and year above first written.

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

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

By: _____
Ryan J. Lunderby
Its: Vice President

Freddie Mac Loan Number: 502836059
Property Name: Preserve at Shady Oak

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Direct Purchase of Tax-Exempt Loans)
(Revised 10-1-2018)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this ___ day of _____, 2019, by and between **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as Fiscal Agent under the Funding Loan Agreement (as defined herein) (in such capacity, “**Senior Lender**”), and 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 (“**Subordinate Lender**”).

RECITALS

- A. Minnetonka Leased Housing Associates II, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota (“**Borrower**”) is the owner of certain land located in Hennepin County, Minnesota, described in Exhibit A (“**Land**”). The Land is or will be improved with a multifamily rental housing project (“**Improvements**”).
- B. The City of Minnetonka, Minnesota, in its capacity as governmental lender (“**Governmental Lender**”), and the original holder of the Senior Note (as defined herein), has made a loan to Borrower in the original principal amount of \$29,930,000 (“**Senior Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of October 1, 2018 (“**Project Loan Agreement**”) among Governmental Lender, Senior Lender and Borrower in connection with the Mortgaged Property. The Senior Loan is secured by a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A) dated as of [____], 2018 (“**Senior Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the “**Mortgaged Property.**”
- C. Pursuant to a Loan Agreement dated [____], 2019 between Subordinate Lender and Borrower (“**Subordinate Loan Agreement**”), Subordinate Lender has made or is making a loan to Borrower in a principal amount not to exceed \$[____] (“**Subordinate Loan**”). The Subordinate Loan is or will be secured by a Combination Mortgage and Security Agreement dated [____], 2019 (“**Subordinate Mortgage**”) from the Borrower to the Subordinate Lender encumbering all or a portion of the Mortgaged Property.

- D. The Senior Mortgage was recorded in the Office of the Register of Titles of Hennepin County, Minnesota (“**Recording Office**”) on [____], 2018 as Document No. [____]. The Subordinate Mortgage will be recorded in the Recording Office following the closing of the Subordinate Loan.
- E. The Senior Note was assigned by the Governmental Lender to Senior Lender as security for the loan made by the Initial Funding Lender (as defined herein) to the Governmental Lender pursuant to the Funding Loan Agreement (the “**Funding Loan**”). The Senior Mortgage was assigned by the Governmental Lender to Senior Lender as security for the Funding Loan pursuant to an Assignment of Security Instrument dated as of [____], 2018 (the “Assignment”). The Assignment was recorded in the Recording Office on [____], 2018 as Document No. [____].
- F. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the “**Construction Phase Financing Agreement**”) dated as of October 1, 2018 between Borrower, Administrative Agent (as defined herein) on behalf of Initial Funding Lender, Federal Home Loan Mortgage Corporation and KeyBank National Association, a national banking association (“**Permanent Funding Lender**”), Administrative Agent and Initial Funding Lender shall subsequently assign and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior Note and the Senior Mortgage will be amended and restated, and thereafter assigned to the Fiscal Agent (“**Conversion**”).
- G. Upon Conversion, the Permanent Funding Lender shall have the right to amend and restate the Senior Note and the Senior Mortgage, and the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents (as defined herein), without notice to or the consent or joinder of the Subordinate Lender.
- H. The execution and delivery of this Agreement is a condition of Funding Lender’s (as defined herein) consenting to Subordinate Lender’s making of the Subordinate Loan and Borrower’s granting of the Subordinate Mortgage.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.

The terms “**Condemnation**,” “**Imposition Reserve Deposits**,” “**Impositions**,” “**Leases**,” “**Rents**” and “**Restoration**,” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Agreement.

“Administrative Agent” means U.S. Bank National Association, a national banking association, in its capacity as Administrative Agent for the Initial Funding Lender under the Construction Continuing Covenant Agreement, its successors and assigns.

“Bankruptcy Proceeding” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

“Borrower” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Senior Lender or Funding Lender if Senior Lender or Funding Lender acquires title to the Mortgaged Property.

“Casualty” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

“Construction Continuing Covenant Agreement” means the Construction Loan Agreement dated as of October 2, 2018 by and among Borrower, Administrative Agent and Initial Funding Lender, together with any amendment thereto.

“Continuing Covenant Agreement” means the Continuing Covenant Agreement to be executed by Borrower and Permanent Funding Lender at Conversion.

“Enforcement Action” means any of the following actions taken by or at the direction of Subordinate Lender: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

“Enforcement Action Notice” means a Notice given from Subordinate Lender to Senior Lender and Funding Lender, following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

“Funding Lender” shall mean, prior to Conversion, Administrative Agent on behalf of Initial Funding Lender and Permanent Funding Lender from and after Conversion, and any successor holder of the Governmental Note.

“Funding Loan Agreement” means the Funding Loan Agreement dated as of October 1, 2018 among Funding Lender, Governmental Lender and Senior Lender.

“Governmental Note” means, prior to Conversion, the (i) Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1 in the maximum principal amount of \$14,965,000 and (ii) the Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project) Series 2018A-2 in the maximum principal amount of \$14,965,000. From and after Conversion, “Governmental Note” means the Multifamily Note delivered by the Governmental Lender evidencing the Funding Loan.

“Initial Funding Lender” means, together, U.S. Bank National Association, a national banking association, in its capacity as a lender under the Construction Continuing Covenant Agreement, and BMO Harris Bank, N.A., a national banking association.

“Lien” means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

“Loss Proceeds” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

“Notice” means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

“Senior Indebtedness” means the “Indebtedness” of Borrower as evidenced by the Senior Loan Documents.

“Senior Lender” is defined above. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Lender.

“Senior Loan Agreement” collectively means, prior to Conversion, the Project Loan Agreement and the Construction Continuing Covenant Agreement. From and after Conversion, “Senior Loan Agreement” means the Project Loan Agreement and/or the Continuing Covenant Agreement.

“Senior Loan Documents” means prior to Conversion, the “Project Loan Documents” as defined in the Construction Phase Financing Agreement, together with the “Loan Documents” as defined in the Construction Continuing Covenant Agreement. From and after Conversion, “Senior Loan Documents” shall mean the “Financing Documents” as defined in the Continuing Covenant Agreement, as such documents may be amended.

“Senior Mortgage Default” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Loan Documents.

“Senior Note” means the Project Note as that term is defined in the Funding Loan Agreement.

“Subordinate Indebtedness” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

“Subordinate Lender” means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Documents” means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Sub-Recipient Funding Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

“Subordinate Mortgage Default” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement) Subordinate Lender to take an Enforcement Action.

“Subordinate Note” means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

“Surplus Cash” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (i) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves and Imposition Reserve Deposits.
- (ii) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

2. Subordinate Lender’s Representations and Warranties.

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
 - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
 - (ii) No Subordinate Mortgage Default has occurred and is continuing.

- (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$0.00.
- (iv) No scheduled payments under the Subordinate Note have been prepaid.
- (b) Without the prior written consent of Senior Lender, Subordinate Lender will not do any of the following:
 - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
 - (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
 - (iii) Accept any prepayment of the Subordinate Indebtedness.

3. Terms of Subordination.

- (a) Agreement to Subordinate. The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness. Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.
- (c) Payments Before Senior Loan Default; Soft Subordinate Debt. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 10 days in advance of its due date and provided further that Subordinate Lender will not accept any payment in an amount that exceeds 75% of then available Surplus Cash.
- (d) Payments After Senior Loan Default or Bankruptcy.

- (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of this Section 3(d) will apply.
- (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Senior Lender:
 - (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.
 - (B) Any proceeds from any Enforcement Action.
 - (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.
- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Senior Lender, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan.

4. Default Under Subordinate Loan Documents.

- (a) Notice of Subordinate Loan Default and Cure Rights.
 - (i) Subordinate Lender will deliver to Senior Lender and Funding Lender a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to Senior Lender or Funding Lender pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.

- (ii) For a period of 90 days following delivery to Senior Lender of an Enforcement Action Notice, Senior Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Senior Lender has commenced and is diligently pursuing such cure to completion, Senior Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Senior Lender takes either of the following actions:
 - (A) Discontinues its pursuit of any cure.
 - (B) Delivers to Subordinate Lender Senior Lender's written consent to the Enforcement Action described in the Enforcement Action Notice.
 - (iii) Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Senior Lender having cured any Subordinate Mortgage Default.
 - (iv) Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.
- (b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.
- (i) In the event of a Subordinate Mortgage Default prior to Conversion, Subordinate Lender will not commence any Enforcement Action without Senior Lender's prior written consent, which may be granted or withheld in Senior Lender's sole and absolute discretion.
 - (ii) From and after Conversion, in the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until 90 days after Subordinate Lender has delivered to Senior Lender and Funding Lender an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Loan Documents, subject to Senior Lender's right to cure a Subordinate Mortgage Default set forth in Section 4(a).
 - (iii) From and after Conversion, Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:

- (A) The expiration of such 90-day period or such longer period as provided in Section 4(a).
 - (B) The delivery by Senior Lender to Subordinate Lender of Senior Lender's written consent to such Enforcement Action by Subordinate Lender.
- (iv) Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender's Enforcement Action in Senior Lender's sole and absolute discretion. From and after Conversion, at the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Senior Lender's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.
- (v) Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.
- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies Senior Lender and Funding Lender in writing that any Subordinate Loan Default of which Senior Lender has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Senior Loan will be reinstated.

5. Default Under Senior Loan Documents.

- (a) Notice of Senior Loan Default and Cure Rights.
- (i) Senior Lender or Funding Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender or Funding Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender or Funding Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents.

- (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Senior Lender will be entitled to continue to pursue its remedies under the Senior Loan Documents.
 - (iii) Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required under the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property.
 - (iv) All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.
- (b) Release of Mortgaged Property.
- (i) Subordinate Lender consents to and authorizes any future release by Senior Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Senior Lender to do any of the following:
 - (A) To conduct a separate sale of any portion of the Mortgaged Property.
 - (B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.
 - (C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or

such portions or combination of portions of the Mortgaged Property as Senior Lender determines.

- (ii) Subordinate Lender consents to and authorizes, at the option of Senior Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender may do any of the following:
 - (A) Extend the time for or waive any payment or performance under the Senior Loan Documents.
 - (B) Modify or amend in any respect any provision of the Senior Loan Documents.
 - (C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

6. Conflicts. If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:

- (a) Extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default.
- (b) Give Borrower the right to receive notice of any Senior Loan Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.
- (c) Create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

7. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

- (a) Insurance.
 - (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Senior Lender and Funding Lender.
 - (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender or Funding Lender.

(iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

- (i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Senior Lender.
- (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Senior Lender in its sole discretion; provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, will prevail.
- (iii) If Senior Lender or Funding Lender holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.
- (iv) If Senior Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.

- (c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender or Funding Lender under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Senior Lender's consent then such amendment or assignment will be void ab initio and of no effect whatsoever.
- (d) Modification of Senior Loan Documents. Senior Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Lender to protect the security or lien priority of Senior Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
- (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Lender.
- (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter, and a right of approval or consent for the same or substantially the same matter is also granted to Senior Lender or Funding Lender pursuant to the Senior Loan Documents or otherwise, Senior Lender's or Funding Lender's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).
- (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender or Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Lender may collect escrow payments for such Impositions; provided

that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such Impositions.

- (h) **Certification.** Within 10 days after request by Senior Lender or Funding Lender, Subordinate Lender will furnish Senior Lender and Funding Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Senior Lender may request.

8. Refinancing. Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

9. Governmental Powers. Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

10. Notices.

- (a) Any Notice required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

Notices intended for Senior Lender will be addressed to:

U.S. Bank National Association, Fiscal Agent
Corporate Trust Services
60 Livingston Avenue, Third Floor
EP-MN-WS3C
Saint Paul, MN 55107-2292
Attn: Dan Sheff, Vice President

Notices intended for Subordinate Lender will be addressed to:

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard, Minnetonka, MN 55345
Attention: Alisha Gray

Notices intended for Funding Lender will be addressed to:

Prior to Conversion:

U.S. Bank National Association
BC-MN-HO3A
800 Nicollet Mall, 3rd Floor
Minneapolis, Minnesota 55402-7020
Attention: U.S. Bancorp Community Development Corporation,
Community Lending Division

From and after Conversion:

KeyBank National Association
8115 Preston Road, Suite 500
Dallas, Texas 75225
Attention: Randall W. Conley, Senior Vice President

- (b) Any party, by Notice given pursuant to this Section 10, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 10.

11. Miscellaneous Provisions.

- (a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. Except for Funding Lender, no other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note.
- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Lender or Funding Lender as a joint venturer or partner of Subordinate Lender.
- (c) Further Assurances. Upon Notice from Senior Lender or Funding Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Senior Lender or Funding Lender to further evidence or implement the provisions and intent of this Agreement.
- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law. This Agreement will be governed by the laws of the State in which the Land is located.
- (f) Severable Provisions. If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (g) Term. The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events:
 - (i) The payment of all the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Lender.
 - (ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement.
 - (iii) The acquisition by Senior Lender or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of

foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.

- (iv) With the prior written consent of Senior Lender, without limiting any other provisions on this Agreement, the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (h) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (m) Funding Lender's Rights to Control. Notwithstanding anything herein to the contrary, pursuant to the Senior Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Lender hereunder shall be solely at the written direction of the Funding Lender. The parties hereto acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SENIOR LENDER:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ of U.S. Bank National Association, a national banking association, on behalf of the association.

Notary Public

CONSENT OF BORROWER

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

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

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

By: _____
Name: Ryan Lunderby
Title: Authorized Representative

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Ryan Lunderby, the authorized representative of Minnetonka Leased Housing Associates II, LLC, a Minnesota limited liability company and the General Partner of Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, on behalf of the limited liability company and the partnership.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

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

PREPARED BY AND WHEN
RECORDED RETURN TO:

Stinson Leonard Street LLP
50 South 6th Street, Suite 2600
Minneapolis, MN 55402
Attention: David W. Kelley

[Space above reserved for recorder's use.]

Freddie Mac Loan Number: 502836059
Property Name: Preserve at Shady Oak

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Taxable Loan)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this ___ day of _____, 2019, by and between **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as Fiscal Agent under the Funding Loan Agreement (as defined herein) (in such capacity, “**Senior Lender**”), and 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 (“**Subordinate Lender**”).

RECITALS

- A. Minnetonka Leased Housing Associates II, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota (“**Borrower**”) is the owner of certain land located in Hennepin County, Minnesota, described in Exhibit A (“**Land**”). The Land is or will be improved with a multifamily rental housing project (“**Improvements**”).
- B. The City of Minnetonka, Minnesota, in its capacity as governmental lender (“**Governmental Lender**”), and the original holder of the Senior Note (as defined herein), has made a loan to Borrower in the original principal amount of \$21,006,418 (“**Senior Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of October 1, 2018 (“**Project Loan Agreement**”) among Governmental Lender, Senior

Lender and Borrower in connection with the Mortgaged Property. The Senior Loan is secured by a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B) dated as of October 2, 2018 (“**Senior Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the “**Mortgaged Property.**”

- C. Pursuant to a Loan Agreement dated [_____], 2019 between Subordinate Lender and Borrower (“**Subordinate Loan Agreement**”), Subordinate Lender has made or is making a loan to Borrower in a principal amount not to exceed \$[**1,055,000**] (“**Subordinate Loan**”). The Subordinate Loan is or will be secured by a Combination Mortgage and Security Agreement dated [_____], 2019 (“**Subordinate Mortgage**”) from the Borrower to the Subordinate Lender encumbering all or a portion of the Mortgaged Property.
- D. The Senior Mortgage was recorded in the Office of the Register of Titles of Hennepin County, Minnesota (“**Recording Office**”) on October 4, 2018 as Document No. _____. The Subordinate Mortgage will be recorded in the Recording Office following the closing of the Subordinate Loan.
- E. The Senior Note was assigned by the Governmental Lender to Senior Lender as security for the loan made by the Initial Funding Lender (as defined herein) to the Governmental Lender pursuant to the Funding Loan Agreement (the “**Funding Loan**”). The Senior Mortgage was assigned by the Governmental Lender to Senior Lender as security for the Funding Loan pursuant to an Assignment of Security Instrument dated as of October 2, 2018 (the “Assignment”). The Assignment was recorded in the Recording Office on October 4, 2018 as Document No. _____.
- F. Subject to the terms and conditions of that certain [**Commitment**] (the “**Freddie Mac Taxable Loan Commitment**”) dated as of September 28, 2018 between Borrower, Administrative Agent (as defined herein) on behalf of Initial Funding Lender, Federal Home Loan Mortgage Corporation and KeyBank National Association, a national banking association (“**Permanent Funding Lender**”), Administrative Agent and Initial Funding Lender shall subsequently assign and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior Note and the Senior Mortgage will be amended and restated, and thereafter assigned to the Fiscal Agent (“**Conversion**”).
- G. Upon Conversion, the Permanent Funding Lender shall have the right to amend and restate the Senior Note and the Senior Mortgage, and the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents (as defined herein), without notice to or the consent or joinder of the Subordinate Lender.
- H. The execution and delivery of this Agreement is a condition of Funding Lender’s (as defined herein) consenting to Subordinate Lender’s making of the Subordinate Loan and Borrower’s granting of the Subordinate Mortgage.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.

The terms “**Condemnation**,” “**Imposition Reserve Deposits**,” “**Impositions**,” “**Leases**,” “**Rents**” and “**Restoration**,” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Agreement.

“**Administrative Agent**” means U.S. Bank National Association, a national banking association, in its capacity as Administrative Agent for the Initial Funding Lender under the Construction Continuing Covenant Agreement, its successors and assigns.

“**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

“**Borrower**” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Senior Lender or Funding Lender if Senior Lender or Funding Lender acquires title to the Mortgaged Property.

“**Casualty**” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

“**Construction Continuing Covenant Agreement**” means the Construction Loan Agreement dated as of October 2, 2018 by and among Borrower, Administrative Agent and Initial Funding Lender, together with any amendment thereto.

“**Continuing Covenant Agreement**” means the Continuing Covenant Agreement to be executed by Borrower and Permanent Funding Lender at Conversion. **[Question: Ann/Josh, is this the proper term for the permanent taxable loan agreement?]**

“**Enforcement Action**” means any of the following actions taken by or at the direction of Subordinate Lender: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or

arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

"Enforcement Action Notice" means a Notice given from Subordinate Lender to Senior Lender and Funding Lender, following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

"Funding Lender" shall mean, prior to Conversion, Administrative Agent on behalf of Initial Funding Lender and Permanent Funding Lender from and after Conversion, and any successor holder of the Governmental Note.

"Funding Loan Agreement" means the Funding Loan Agreement dated as of September 1, 2018 among Funding Lender, Governmental Lender and Senior Lender.

"Governmental Note" means, prior to Conversion, the (i) Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 in the maximum principal amount of \$10,503,209 and (ii) the Multifamily Housing Revenue Note (Legends of Minnetonka Project) Series 2018B-2 in the maximum principal amount of \$10,503,209. From and after Conversion, "Governmental Note" means the Multifamily Note delivered by the Governmental Lender evidencing the Funding Loan.

"Initial Funding Lender" means, together, U.S. Bank National Association, a national banking association, in its capacity as a lender under the Construction Continuing Covenant Agreement, and BMO Harris Bank, N.A., a national banking association.

"Lien" means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

"Loss Proceeds" means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

"Notice" means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

"Senior Indebtedness" means the "Indebtedness" of Borrower as evidenced by the Senior Loan Documents.

"Senior Lender" is defined above. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Lender.

“Senior Loan Agreement” collectively means, prior to Conversion, the Project Loan Agreement and the Construction Continuing Covenant Agreement. From and after Conversion, “Senior Loan Agreement” means the Project Loan Agreement and/or the Continuing Covenant Agreement.

“Senior Loan Documents” means prior to Conversion, the “Project Loan Documents” as defined in the Construction Phase Financing Agreement, together with the “Loan Documents” as defined in the Construction Continuing Covenant Agreement. From and after Conversion, “Senior Loan Documents” shall mean the “Financing Documents” as defined in the Continuing Covenant Agreement, as such documents may be amended.

“Senior Mortgage Default” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Loan Documents.

“Senior Note” means the Taxable Project Note as that term is defined in the Funding Loan Agreement.

“Subordinate Indebtedness” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

“Subordinate Lender” means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Documents” means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Sub-Recipient Funding Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

“Subordinate Mortgage Default” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement) Subordinate Lender to take an Enforcement Action.

“Subordinate Note” means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

“Surplus Cash” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (i) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves and Imposition Reserve Deposits.
- (ii) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses,

legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

2. Subordinate Lender's Representations and Warranties.

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
 - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
 - (ii) No Subordinate Mortgage Default has occurred and is continuing.
 - (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$0.
 - (iv) No scheduled payments under the Subordinate Note have been prepaid.
- (b) Without the prior written consent of Senior Lender, Subordinate Lender will not do any of the following:
 - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
 - (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
 - (iii) Accept any prepayment of the Subordinate Indebtedness.

3. Terms of Subordination.

- (a) Agreement to Subordinate. The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness. Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.

- (c) Payments Before Senior Loan Default ; Soft Subordinate Debt. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 10 days in advance of its due date and provided further that Subordinate Lender will not accept any payment in an amount that exceeds 75% of then available Surplus Cash.
- (d) Payments After Senior Loan Default or Bankruptcy.
- (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of this Section 3(d) will apply.
- (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Senior Lender:
- (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.
- (B) Any proceeds from any Enforcement Action.
- (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.
- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Senior Lender, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan.

4. **Default Under Subordinate Loan Documents.**

(a) Notice of Subordinate Loan Default and Cure Rights.

- (i) Subordinate Lender will deliver to Senior Lender and Funding Lender a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to Senior Lender or Funding Lender pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.
- (ii) For a period of 90 days following delivery to Senior Lender of an Enforcement Action Notice, Senior Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Senior Lender has commenced and is diligently pursuing such cure to completion, Senior Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Senior Lender takes either of the following actions:
 - (A) Discontinues its pursuit of any cure.
 - (B) Delivers to Subordinate Lender Senior Lender's written consent to the Enforcement Action described in the Enforcement Action Notice.
- (iii) Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Senior Lender having cured any Subordinate Mortgage Default.
- (iv) Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.

(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.

- (i) In the event of a Subordinate Mortgage Default prior to Conversion, Subordinate Lender will not commence any Enforcement Action without Senior Lender's prior written consent, which may be granted or withheld in Senior Lender's sole and absolute discretion.
- (ii) From and after Conversion, in the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action

until 90 days after Subordinate Lender has delivered to Senior Lender and Funding Lender an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Loan Documents, subject to Senior Lender's right to cure a Subordinate Mortgage Default set forth in Section 4(a).

- (iii) From and after Conversion, Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:
 - (A) The expiration of such 90-day period or such longer period as provided in Section 4(a).
 - (B) The delivery by Senior Lender to Subordinate Lender of Senior Lender's written consent to such Enforcement Action by Subordinate Lender.
- (iv) Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender's Enforcement Action in Senior Lender's sole and absolute discretion. From and after Conversion, at the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Senior Lender's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.
- (v) Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.
- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies Senior Lender and Funding Lender in writing that any Subordinate Loan Default of which Senior Lender has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Senior Loan will be reinstated.

5. Default Under Senior Loan Documents.

(a) Notice of Senior Loan Default and Cure Rights.

- (i) Senior Lender or Funding Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender or Funding Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender or Funding Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents.
- (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Senior Lender will be entitled to continue to pursue its remedies under the Senior Loan Documents.
- (iii) Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required under the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property.
- (iv) All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

(b) Release of Mortgaged Property.

- (i) Subordinate Lender consents to and authorizes any future release by Senior Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Senior Lender to do any of the following:

- (A) To conduct a separate sale of any portion of the Mortgaged Property.
 - (B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.
 - (C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Lender determines.
- (ii) Subordinate Lender consents to and authorizes, at the option of Senior Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender may do any of the following:
- (A) Extend the time for or waive any payment or performance under the Senior Loan Documents.
 - (B) Modify or amend in any respect any provision of the Senior Loan Documents.
 - (C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

6. Conflicts. If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:

- (a) Extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default.
- (b) Give Borrower the right to receive notice of any Senior Loan Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.
- (c) Create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

7. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

(a) Insurance.

- (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Senior Lender and Funding Lender.
- (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender or Funding Lender.
- (iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

- (i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Senior Lender.
- (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Senior Lender in its sole discretion; provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, will prevail.

- (iii) If Senior Lender or Funding Lender holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.
 - (iv) If Senior Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.
- (c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender or Funding Lender under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Senior Lender's consent then such amendment or assignment will be void ab initio and of no effect whatsoever.
- (d) Modification of Senior Loan Documents. Senior Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Lender to protect the security or lien priority of Senior Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
- (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Lender.
- (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter, and a right of

approval or consent for the same or substantially the same matter is also granted to Senior Lender or Funding Lender pursuant to the Senior Loan Documents or otherwise, Senior Lender's or Funding Lender's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).

- (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender or Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Lender may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such Impositions.
- (h) Certification. Within 10 days after request by Senior Lender or Funding Lender, Subordinate Lender will furnish Senior Lender and Funding Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Senior Lender may request.

8. Refinancing. Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

9. Governmental Powers. Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

10. Notices.

- (a) Any Notice required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery

(any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

Notices intended for Senior Lender will be addressed to:

U.S. Bank National Association, Fiscal Agent
Corporate Trust Services
60 Livingston Avenue, Third Floor
EP-MN-WS3C
Saint Paul, MN 55107-2292
Attn: Dan Sheff, Vice President

Notices intended for Subordinate Lender will be addressed to:

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard, Minnetonka, MN 55345
Attention: Alisha Gray

Notices intended for Funding Lender will be addressed to:

Prior to Conversion:

U.S. Bank National Association
BC-MN-HO3A
800 Nicollet Mall, 3rd Floor
Minneapolis, Minnesota 55402-7020
Attention: U.S. Bancorp Community Development Corporation,
Community Lending Division

From and after Conversion:

KeyBank National Association
8115 Preston Road, Suite 500
Dallas, Texas 75225
Attention: Randall W. Conley, Senior Vice President

- (b) Any party, by Notice given pursuant to this Section 10, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 10.

11. Miscellaneous Provisions.

- (a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. Except for Funding Lender, no other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note.
- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Lender or Funding Lender as a joint venturer or partner of Subordinate Lender.
- (c) Further Assurances. Upon Notice from Senior Lender or Funding Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Senior Lender or Funding Lender to further evidence or implement the provisions and intent of this Agreement.
- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law. This Agreement will be governed by the laws of the State in which the Land is located.
- (f) Severable Provisions. If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (g) Term. The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events:
 - (i) The payment of all the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Lender as described in Section _____ of this Agreement.
 - (ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement.

- (iii) The acquisition by Senior Lender or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.
- (iv) With the prior written consent of Senior Lender, without limiting the provisions of Section _____, the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (h) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (m) Funding Lender's Rights to Control. Notwithstanding anything herein to the contrary, pursuant to the Senior Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Lender hereunder shall be solely at the written direction of the Funding Lender. The parties hereto acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

SUBORDINATE LENDER:

**CITY OF MINNETONKA,
MINNESOTA**

By: _____
Name:
Title: Mayor

By: _____
Name:
Title: City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2019, by _____, the _____ of
the City of Minnetonka, Minnesota, on behalf of the City.

Notary Public

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated _____, 2019, by and between U.S. Bank National Association, a national banking association and the City of Minnetonka, Minnesota and consents to the agreement of the parties set forth in this Agreement.

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

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

By: _____
Name: Ryan Lunderby
Title: Authorized Representative

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Ryan Lunderby, the authorized representative of Minnetonka Leased Housing Associates II, LLC, a Minnesota limited liability company and the General Partner of Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, on behalf of the limited liability company and the partnership.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

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

Property Name: Preserve at Shady Oak

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this ___ day of _____, 2019, by and between **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as trustee (the “**Trustee**”) and 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 (“**Subordinate Lender**”).

RECITALS

- A. Minnetonka Leased Housing Associates II, LLLP, a limited liability limited partnership organized under the laws of the State of Minnesota (“**Borrower**”) is the owner of certain land located in Hennepin County, Minnesota, described in Exhibit A (“**Land**”). The Land is or will be improved with a multifamily rental housing project (“**Improvements**”).
- B. The City of Minnetonka, Minnesota, in its capacity as governmental lender (“**Governmental Lender**”), issued its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C (“**Series 2018C Bonds**”) in the original principal amount of \$3,570,000 pursuant to a Subordinate Indenture of Trust, dated as of October 1, 2018 (the “**Indenture**”), between the Issuer and the Trustee. The proceeds of the Series 2018C Bonds were loaned to the Borrower upon the terms and conditions of a Subordinate Loan Agreement, dated as of October 1, 2018 (the “**Senior Loan Agreement**”) between the Governmental Lender and the Trustee (the “**Senior Loan**”). The Series 2018C Bonds are secured by a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of October 1, 2018 (“**Senior Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the “**Mortgaged Property**.”
- C. Pursuant to a Subordinate Loan Agreement, dated [____], 2019 between Subordinate Lender and Borrower (“**Subordinate Loan Agreement**”), Subordinate Lender has made or is making a loan to Borrower in a principal amount not to exceed \$[945,000] (“**Subordinate Loan**”). The Subordinate Loan is or will be secured by a Combination Mortgage and Security Agreement dated [____], 2019 (“**Subordinate Mortgage**”) from the Borrower to the Subordinate Lender encumbering all or a portion of the Mortgaged Property.
- D. The Senior Mortgage was recorded in the Office of the Register of Titles of Hennepin County, Minnesota (“**Recording Office**”) on October 4, 2018 as Document No. T05564954. The Subordinate Mortgage will be recorded in the Recording Office following the closing of the Subordinate Loan.
- E. The execution and delivery of this Agreement is a condition of the Trustee consenting to Subordinate Lender’s making of the Subordinate Loan and Borrower’s granting of the Subordinate Mortgage.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.

The terms “**Condemnation**,” “**Leases**,” “**Rents**” and “**Restoration**,” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Documents.

“**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

“**Borrower**” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Trustee if Trustee acquires title to the Mortgaged Property.

“**Casualty**” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

“**Enforcement Action**” means any of the following actions taken by or at the direction of Subordinate Lender: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

“**Enforcement Action Notice**” means a Notice given from Subordinate Lender to Trustee, following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

“**Guaranty**” means the Subordinate Guaranty Agreement, dated as of October 1, 2018, by Dominion Holdings II, LLC, a Minnesota limited liability company in favor of the Trustee.

“**Lien**” means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

“**Loss Proceeds**” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

“**Notice**” means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

“**Senior Indebtedness**” means the “Indebtedness” of Borrower as evidenced by the Senior Loan Documents.

“**Senior Loan Documents**” means the Indenture, the Senior Loan Agreement, the Guaranty, the Senior Mortgage and the Series 2018C Bonds and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Series 2018C Bonds, as such documents may be amended.

“**Senior Mortgage Default**” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Loan Documents.

“**Series 2018C Bonds**” means, the Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Preserve at Shady Oak Project), Series 2018C issued in the original aggregate principal amount of \$3,570,000 by the Governmental Lender.

“**Subordinate Indebtedness**” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

“**Subordinate Lender**” means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“**Subordinate Loan Documents**” means the Subordinate Loan Agreement, Subordinate Mortgage and the Subordinate Note and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

“**Subordinate Mortgage Default**” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement) Subordinate Lender to take an Enforcement Action.

“**Subordinate Note**” means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

“**Surplus Cash**” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (i) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves.
- (ii) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

“**Trustee**” means U.S. Bank National Association, a national banking association, and its successors and assigns.

2. Subordinate Lender's Representations and Warranties.

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
 - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
 - (ii) No Subordinate Mortgage Default has occurred and is continuing.
 - (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$0.
 - (iv) No scheduled payments under the Subordinate Note have been prepaid.
- (b) Without the prior written consent of Trustee, Subordinate Lender will not do any of the following:
 - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
 - (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
 - (iii) Accept any prepayment of the Subordinate Indebtedness.

3. Terms of Subordination.

- (a) Agreement to Subordinate. The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness. Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Trustee of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.
- (c) Payments Before Series 2018C Bonds Default; Soft Subordinate Debt. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 10 days in advance of its due date and provided further that Subordinate Lender will not accept any payment in an amount that exceeds 75% of then available Surplus Cash.
- (d) Payments After Series 2018C Bonds Default or Bankruptcy.

- (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of this Section 3(d) will apply.
- (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Trustee:
 - (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.
 - (B) Any proceeds from any Enforcement Action.
 - (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.
- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Trustee. Trustee will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Trustee determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Trustee, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Trustee has also voted affirmatively in favor of such plan.

4. Default Under Subordinate Loan Documents.

- (a) Notice of Subordinate Loan Default and Cure Rights.
 - (i) Subordinate Lender will deliver to Trustee a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to the Trustee pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.
 - (ii) For a period of 120 days following delivery to Trustee of an Enforcement Action Notice, Trustee will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Trustee has commenced and is diligently pursuing such cure to completion, Trustee will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Trustee takes either of the following actions:
 - (A) Discontinues its pursuit of any cure.

- (B) Delivers to Subordinate Lender Trustee's written consent to the Enforcement Action described in the Enforcement Action Notice.
 - (iii) Trustee will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Trustee having cured any Subordinate Mortgage Default.
 - (iv) Subordinate Lender acknowledges that all amounts advanced or expended by Trustee in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.
- (b) Subordinate Lender's Exercise of Remedies After Notice to Trustee.
- (i) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action without Trustee's prior written consent, which may be granted or withheld in Trustee's sole and absolute discretion.
 - (ii) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until 90 days after Subordinate Lender has delivered to Trustee an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Loan Documents, subject to Trustee's right to cure a Subordinate Mortgage Default set forth in Section 4(a).
 - (iii) Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:
 - (A) The expiration of such 120-day period or such longer period as provided in Section 4(a).
 - (B) The delivery by Trustee to Subordinate Lender of Trustee's written consent to such Enforcement Action by Subordinate Lender.
 - (iv) Subordinate Lender acknowledges that Trustee may grant or refuse consent to Subordinate Lender's Enforcement Action in Trustee's sole and absolute discretion. At the expiration of such 120-day period or such longer period as provided in Section 4(a) and, subject to Trustee's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.
 - (v) Trustee may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Lender. No action or failure to act on the part of Trustee in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Trustee of any provision of the Senior Loan Documents or this Agreement.

- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies the Trustee in writing that any Subordinate Loan Default of which Trustee has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Trustee has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Series 2018C Bonds Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Series 2018C Bonds will be reinstated.

5. Default Under Senior Loan Documents.

- (a) Notice of Series 2018C Bonds Default and Cure Rights.
- (i) Trustee will deliver to Subordinate Lender a copy of any Notice sent by Trustee to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Trustee to send Notice to Subordinate Lender will not prevent the exercise of Trustee's rights and remedies under the Senior Loan Documents.
 - (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Trustee will be entitled to continue to pursue its remedies under the Senior Loan Documents.
 - (iii) Subordinate Lender may, within 120 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 120-day period, Subordinate Lender keeps current all payments required under the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Trustee's secured position relative to the Mortgaged Property, as determined by Trustee in its sole discretion, then during such 120-day period Trustee may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property.
 - (iv) All amounts paid by Subordinate Lender to Trustee to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

(b) Release of Mortgaged Property.

(i) Subordinate Lender consents to and authorizes any future release by Trustee of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Trustee to do any of the following:

(A) To conduct a separate sale of any portion of the Mortgaged Property.

(B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.

(C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Trustee determines.

(ii) Subordinate Lender consents to and authorizes, at the option of Trustee, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Trustee may do any of the following:

(A) Extend the time for or waive any payment or performance under the Senior Loan Documents.

(B) Modify or amend in any respect any provision of the Senior Loan Documents.

(C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

6. Conflicts. If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:

(a) Extend Borrower's time to cure any Senior Mortgage Default or Subordinate Loan Default.

(b) Give Borrower the right to receive notice of any Senior Mortgage Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.

(c) Create any other right or benefit for Borrower as against Trustee or Subordinate Lender.

7. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Trustee under the Senior Loan Documents.

(a) Insurance.

- (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Trustee.
- (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Trustee.
- (iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

- (i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Trustee's rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Trustee.
- (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Trustee in its sole discretion; provided however, Trustee agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Trustee and Subordinate Lender over the application of Casualty proceeds, the decision of Trustee, in its sole discretion, will prevail.
- (iii) If Trustee holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Trustee to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Trustee.
- (iv) If Trustee elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by

Trustee will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.

- (c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Trustee, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon the Trustee under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Trustee's consent then such amendment or assignment will be void ab initio and of no effect whatsoever.
 - (d) Modification of Senior Loan Documents. Trustee may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Trustee may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Trustee to protect the security or lien priority of Trustee under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
 - (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Trustee has granted attornment and non-disturbance, on the same terms and conditions given by Trustee.
 - (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter, and a right of approval or consent for the same or substantially the same matter is also granted to Trustee pursuant to the Senior Loan Documents or otherwise, Trustee's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).
 - (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness.
 - (h) Certification. Within 10 days after request by Trustee, Subordinate Lender will furnish Trustee with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Trustee may request.
- 8. Refinancing.** Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing

and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Trustee will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

9. Governmental Powers. Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

10. Notices.

(a) Any Notice required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

Notices intended for Trustee will be addressed to:

U.S. Bank National Association
Corporate Trust Services
60 Livingston Avenue, Third Floor
EP-MN-WS3C
Saint Paul, MN 55107-2292
Attn: Dan Sheff, Vice President

Notices intended for Subordinate Lender will be addressed to:

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard, Minnetonka, MN 55345
Attention: Alisha Gray

(b) Any party, by Notice given pursuant to this Section 10, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 10.

11. Miscellaneous Provisions.

(a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. Except for the Trustee, no other party will be entitled to any benefits under

this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Trustee to any subsequent holder of the Senior Note.

- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Trustee as a joint venturer or partner of Subordinate Lender.
- (c) Further Assurances. Upon Notice from Trustee, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Trustee to further evidence or implement the provisions and intent of this Agreement.
- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law. This Agreement will be governed by the laws of the State in which the Land is located.
- (f) Severable Provisions. If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (g) Term. The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events:
 - (i) The payment of all the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Trustee.
 - (ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Trustee pursuant to this Agreement.
 - (iii) The acquisition by Trustee or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.
 - (iv) With the prior written consent of Trustee, without limiting any other provisions on this Agreement, the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (h) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

SUBORDINATE LENDER:

CITY OF MINNETONKA, MINNESOTA

By: _____
Name: _____
Title: Mayor

By: _____
Name: _____
Title: City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by _____ and _____, the Mayor and City
Manager, respectively, of the City of Minnetonka, Minnesota, on behalf of the City.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

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

DMNORTH #6774434 v3

Resolution No. 2019-_____

Resolution approving the execution and delivery of documents in connection with a Livable Communities Demonstration Account grant from the Metropolitan Council with respect to a senior housing project

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

Section 1. Background.

- 1.01. The City, the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority"), and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the "Borrower"), entered into a Contract for Private Development, dated September 14, 2018 (the "Development Agreement"), pursuant to which the Borrower agreed to acquire certain property and develop approximately 262 affordable apartment units intended to be occupied by at least one individual who, at the time of initial occupancy of such unit, is 55 years of age or older, to be located at 11001 Bren Road East in the City, with one hundred percent (100%) of the apartment units made affordable to such tenants at or below sixty percent (60%) of the area median income (the "Project").
- 1.02. On September 14, 2018, the City issued the following obligations and loaned the proceeds thereof to the Borrower to provide financing for the Project: (i) the Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 (the "Series 2018A-1 Note"), in the original aggregate principal amount of \$16,205,000; (ii) the Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 (the "Series 2018A-2 Note"), in the original aggregate principal amount of \$16,205,000; (iii) the Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 (the "Series 2018B-1 Note"), in the original aggregate principal amount of \$13,189,904; (iv) the Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 (the "Series 2018B-2 Note"), in the original aggregate principal amount of \$13,189,904; and (v) the Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the "Subordinate Bonds"), in the original aggregate principal amount of \$4,090,000.
- 1.03. In order to assist with the costs of the Project, the City, on behalf of the Borrower and Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, applied for and received a Livable Communities Demonstration Account (LCDA) grant in the total sum of \$2,000,000, \$1,055,000 of which will be allocated to the Project (the "LCDA Grant"), from the Metropolitan Council (the "Council") in connection with the Council's Transit Oriented Development (TOD) Program.
- 1.04. Proceeds of the LCDA Grant are authorized to be used for eligible costs of the Project (the "Grant-Eligible Activities"), as described, along with other terms and

conditions of the LCDA Grant, in the Metropolitan Livable Communities Act Grant Agreement (the “Grant Agreement”) proposed to be entered into between the City and the Council.

- 1.05. The City intends to loan the proceeds of the LCDA Grant to the Borrower to provide financing for the Grant-Eligible Activities pursuant to a Loan Agreement (the “Loan Agreement”) proposed to be entered into between the City and the Borrower.
- 1.06. To secure the repayment of the loan of the proceeds of the LCDA Grant, the Borrower will execute and deliver to the City a Promissory Note (the “Note”) in the original aggregate principal amount of \$1,055,000, and a Combination Mortgage and Security Agreement (the “Mortgage”), providing the City with a secured interest in the mortgaged property described therein, subject to the terms of the Subordination Agreement – Governmental Entity (Tax-Exempt Loan) (the “Series 2018A Notes Subordination Agreement”) proposed to be entered into between the City and U.S. Bank National Association, as fiscal agent for the Series 2018A-1 Note and the Series 2018A-2 Note, the Subordination Agreement – Governmental Entity (Taxable Loan) (the “Series 2018B Notes Subordination Agreement”) proposed to be entered into between the City and U.S. Bank National Association, as fiscal agent for the Series 2018B-1 Note and the Series 2018B-2 Note, and the Subordination Agreement (the “Subordinate Bonds Subordination Agreement”) proposed to be entered into between the City and U.S. Bank National Association, as trustee for the Subordinate Bonds.
- 1.07. There have been presented before this Council (i) a form of the Grant Agreement; (ii) a form of the Loan Agreement; (iii) a form of the Note; (iv) a form of the Mortgage; (v) a form of the Series 2018A Notes Subordination Agreement; (vi) a form of the Series 2018B Notes Subordination Agreement; (vii) a form of the Subordinate Bonds Subordination Agreement; and (viii) a form of Sub-Recipient Funding Agreement (the “Sub-Recipient Funding Agreement”) proposed to be entered into between the City and the Borrower relating to the loan of the proceeds of the LCDA Grant to the Borrower.

Section 2. Approvals.

- 2.01. The Council approves the Grant Agreement, the Loan Agreement, the Series 2018A Notes Subordination Agreement, the Series 2018B Notes Subordination Agreement, the Subordinate Bonds Subordination Agreement, and the Sub-Recipient Funding Agreement (collectively, the "Agreements") in substantially the forms on file in City Hall. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Agreements. All of the provisions of the Agreements, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Agreements shall be substantially in the forms on file with the Authority which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the 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 determination.
- 2.02. The Mayor and the City Manager are hereby authorized and directed to execute other agreements and certificates deemed necessary to carry out the intentions of the Agreements and this resolution.

Section 3. Effective Date.

- 3.01. This resolution shall be effective from and after the date hereof.

Adopted by the City Council of the City of Minnetonka, Minnesota this 1st day of April, 2019.

Brad Wiersum, Mayor

ATTEST:

Becky Koosman, Acting 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 1, 2019.

Becky Koosman, Acting City Clerk

Resolution No. 2019-_____

Resolution approving the execution and delivery of documents in connection with a Livable Communities Demonstration Account grant from the Metropolitan Council with respect to a workforce housing project

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

Section 1. Background.

- 1.01. The City, the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority"), and Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the "Borrower"), entered into a Contract for Private Development, dated October 2, 2018 (the "Development Agreement"), pursuant to which the Borrower agreed to acquire certain property and develop approximately 220 workforce housing apartment units, to be located at 10987 and 11015 Bren Road East in the City, with one hundred percent (100%) of the apartment units made affordable to individuals and their families at or below sixty percent (60%) of the area median income (the "Project").
- 1.02. On October 2, 2018, the City issued the following obligations and loaned the proceeds thereof to the Borrower to provide financing for the Project: (i) the Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-1 (the "Series 2018A-1 Note"), in the original aggregate principal amount of \$14,965,000; (ii) the Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018A-2 (the "Series 2018A-2 Note"), in the original aggregate principal amount of \$14,965,000; (iii) the Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-1 (the "Series 2018B-1 Note"), in the original aggregate principal amount of \$10,503,209; (iv) the Taxable Multifamily Housing Revenue Refunding Note (Preserve at Shady Oak Project), Series 2018B-2 (the "Series 2018B-2 Note"), in the original aggregate principal amount of \$10,503,209; and (v) the Tax Increment Revenue and Subordinate Multifamily Housing Revenue Refunding Bonds (Preserve at Shady Oak Project), Series 2018C (the "Subordinate Bonds"), in the original aggregate principal amount of \$3,570,000.
- 1.03. In order to assist with the costs of the Project, the City, on behalf of the Borrower and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, applied for and received a Livable Communities Demonstration Account (LCDA) grant in the total sum of \$2,000,000, \$945,000 of which will be allocated to the Project (the "LCDA Grant"), from the Metropolitan Council (the "Council") in connection with the Council's Transit Oriented Development (TOD) Program.
- 1.04. Proceeds of the LCDA Grant are authorized to be used for eligible costs of the Project (the "Grant-Eligible Activities"), as described, along with other terms and conditions of the LCDA Grant, in the Metropolitan Livable Communities Act Grant

Agreement (the “Grant Agreement”) proposed to be entered into between the City and the Council.

- 1.05. The City intends to loan the proceeds of the LCDA Grant to the Borrower to provide financing for the Grant-Eligible Activities pursuant to a Loan Agreement (the “Loan Agreement”) proposed to be entered into between the City and the Borrower.
- 1.06. To secure the repayment of the loan of the proceeds of the LCDA Grant, the Borrower will execute and deliver to the City a Promissory Note (the “Note”) in the original aggregate principal amount of \$945,000, and a Combination Mortgage and Security Agreement (the “Mortgage”), providing the City with a secured interest in the mortgaged property described therein, subject to the terms of the Subordination Agreement – Governmental Entity (Tax-Exempt Loan) (the “Series 2018A Notes Subordination Agreement”) proposed to be entered into between the City and U.S. Bank National Association, as fiscal agent for the Series 2018A-1 Note and the Series 2018A-2 Note, the Subordination Agreement – Governmental Entity (Taxable Loan) (the “Series 2018B Notes Subordination Agreement”) proposed to be entered into between the City and U.S. Bank National Association, as fiscal agent for the Series 2018B-1 Note and the Series 2018B-2 Note, and the Subordination Agreement (the “Subordinate Bonds Subordination Agreement”) proposed to be entered into between the City and U.S. Bank National Association, as trustee for the Subordinate Bonds.
- 1.07. There have been presented before this Council (i) a form of the Grant Agreement; (ii) a form of the Loan Agreement; (iii) a form of the Note; (iv) a form of the Mortgage; (v) a form of the Series 2018A Notes Subordination Agreement; (vi) a form of the Series 2018B Notes Subordination Agreement; (vii) a form of the Subordinate Bonds Subordination Agreement; and (viii) a form of Sub-Recipient Funding Agreement (the “Sub-Recipient Funding Agreement”) proposed to be entered into between the City and the Borrower relating to the loan of the proceeds of the LCDA Grant to the Borrower.

Section 2. Approvals.

- 2.01. The Council approves the Grant Agreement, the Loan Agreement, the Series 2018A Notes Subordination Agreement, the Series 2018B Notes Subordination Agreement, the Subordinate Bonds Subordination Agreement, and the Sub-Recipient Funding Agreement (collectively, the "Agreements") in substantially the forms on file in City Hall. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Agreements. All of the provisions of the Agreements, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Agreements shall be substantially in the forms on file with the Authority which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the 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 determination.
- 2.02. The Mayor and the City Manager are hereby authorized and directed to execute other agreements and certificates deemed necessary to carry out the intentions of the Agreements and this resolution.

Section 3. Effective Date.

- 3.01. This resolution shall be effective from and after the date hereof.

Adopted by the City Council of the City of Minnetonka, Minnesota this 1st day of April, 2019.

Brad Wiersum, Mayor

ATTEST:

Becky Koosman, Acting 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 1, 2019.

Becky Koosman, Acting City Clerk