

PREPARED BY AND WHEN
RECORDED RETURN TO:

Kutak Rock LLP
1600 Farnam Street
Omaha, Nebraska 68102
Attention: Ann J. McGill

Freddie Mac Loan Number: _____
Property Name: _____

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(~~TAX-EXEMPT~~][TAXABLE] LOAN)

(NO SUBORDINATE DEBT)

(Modified)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this ____ day of September, 2018, by and between (i) U.S. BANK NATIONAL ASSOCIATION, a national banking association (“**Senior [~~Tax-Exempt~~][Taxable] Mortgagee**”), as Fiscal Agent and assignee of the CITY OF MINNETONKA, MINNESOTA (“**Governmental Lender**”), a municipal corporation organized and existing under the laws of the State of Minnesota (the “**State**”), (ii) the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA (the “**EDA**”) and (~~II~~][III]) the CITY OF MINNETONKA, MINNESOTA (the “**City**” and together with the EDA, collectively, “**Governmental Entity**”), a public body corporate and politic organized and existing under the laws of the State.

RECITALS

A. Minnetonka Leased Housing Associates [~~II~~][III], LLLP, a limited liability limited partnership organized under the laws of the State (“**Borrower**”) is the owner of certain

**Subordination Agreement – Governmental Entity
(Freddie Mac Direct Purchase of [~~Tax-Exempt~~][Taxable] Loans Program)**

land located in Hennepin County, Minnesota, described in Exhibit A (“**Land**”). The Land is or will be improved with a multifamily rental housing project (the “**Improvements**”).

- B. Pursuant to Minnesota Statutes Chapter 462C (the “**Act**”) and the Project Loan Agreement dated as of the date hereof (the “**Senior Loan Agreement**”) by and among Governmental Lender, Senior [Tax-Exempt][Taxable] Mortgagee and Borrower, Governmental Lender is agreeing to make a [Tax-Exempt][Taxable] mortgage loan to Borrower in the maximum aggregate principal amount of \$[_____] (the “**Senior [Tax-Exempt][Taxable] Loan**”) to provide for the financing of a multifamily rental housing development known as “Legends of Minnetonka” to be located on the Land (the “**Project**”).
- C. Governmental Lender is making the Senior [Tax-Exempt][Taxable] Loan to Borrower with the proceeds received from the separate loan made to Governmental Lender pursuant to the Funding Loan Agreement dated as of the date hereof (the “**Funding Loan Agreement**”) by and among U.S. Bank National Association, a national banking association, in its capacity as administrative agent (“**Administrative Agent**”) for the Initial Funding Lender (as defined in the Funding Loan Agreement), Governmental Lender and Senior [Tax-Exempt][Taxable] Mortgagee in the maximum aggregate principal amount of \$[_____] (the “[**Tax-Exempt][Taxable] Funding Loan**”). The [Tax-Exempt][Taxable] Funding Loan is evidenced by (i) Governmental Lender’s Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 in the maximum principal amount of \$[_____] (the “**Series A-1 Governmental Note**”) and (ii) Governmental Lender’s Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 in the maximum principal amount of \$[_____] (the “**Series A-2 Governmental Note**”) and together with the Series A-1 Governmental Note, together with any amendments, supplements or modifications, collectively, the “[**Tax-Exempt][Taxable] Governmental Notes**”), each dated September [___], 2018 and delivered by Governmental Lender to Administrative Agent, which will then deliver them to the Initial Funding Lender. The Initial Funding Lender and any subsequent holder of the [Tax-Exempt][Taxable] Governmental Notes are referred to herein as the “**Funding Lender**”.
- D. The Senior [Tax-Exempt][Taxable] Loan is or will be secured by, among other things, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date hereof (together with any amendment thereto or restatement thereof, the “**Senior [Tax-Exempt][Taxable] Mortgage**”), encumbering the Land, the Improvements and the related personal and other property described and defined in the Senior [Tax-Exempt][Taxable] Mortgage as the “**Mortgaged Property**”. The Senior [Tax-Exempt][Taxable] Mortgage is or will be assigned by Governmental Lender to Senior [Tax-Exempt][Taxable] Mortgagee pursuant to an Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of even date herewith (the “**Senior [Tax-Exempt][Taxable] Mortgage Assignment**”) as security for the [Tax-Exempt][Taxable] Funding Loan.

- E. Pursuant to a Contract for Private Development, dated August [___], 2018, by and between Governmental Entity and Borrower, a Minimum Assessment Agreement, dated as of the date hereof, by and between the EDA and Borrower and a Declaration of Restrictive Covenants made by Borrower for the Governmental Entity (as the same may be amended or modified, collectively, the “**Subordinate Agreements**”), Governmental Entity has agreed, among other things, to establish a tax increment financing district for the Land and establish a minimum market value for the Improvements to be constructed upon the Land. Pursuant to the Subordinate Agreements, Borrower has agreed to perform certain obligations, including, but not limited to, acquiring the Land, constructing the Improvements and operating the Improvements pursuant to certain occupancy and rental restrictions.
- F. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the “**Construction Phase Financing Agreement**”) dated as of the date hereof between Borrower, Administrative Agent, Federal Home Loan Mortgage Corporation and KeyBank National Association, a national banking association (“**Permanent Funding Lender**”), Administrative Agent and Initial Funding Lender shall subsequently assign and deliver the documents comprising the [Tax-Exempt][Taxable] Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior [Tax-Exempt][Taxable] Note (as defined herein) and the Senior [Tax-Exempt][Taxable] Mortgage will be amended and restated, and thereafter assigned to the Fiscal Agent (“**Conversion**”). As used herein, “**Senior [Tax-Exempt][Taxable] Note**” means, prior to Conversion, the “Series A Project Note” as defined in the Construction Continuing Covenant Agreement. From and after Conversion, “Senior [Tax-Exempt][Taxable] Note” means the Project Note as defined in the Continuing Covenant Agreement.
- G. Pursuant to the Senior [Tax-Exempt][Taxable] Mortgage and Section 6.03 of the Funding Loan Agreement, Administrative Agent (prior to Conversion) and the Funding Lender (after Conversion) has the right to direct all actions of the Senior [Tax-Exempt][Taxable] Mortgagee with respect to the Senior [Tax-Exempt][Taxable] Mortgage, the Mortgaged Property and the Project Loan Agreement and, upon Conversion, shall have the right to amend and restate the Senior [Tax-Exempt][Taxable] Note and the Senior [Tax-Exempt][Taxable] Mortgage, as well as the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the “Financing Documents” as defined in the Funding Loan Agreement (all such documents, collectively, as the same may be amended, “**Senior Loan Documents**”), without notice to or the consent or joinder of the Governmental Entity.
- H. The execution and delivery of this Agreement is a condition of the [Tax-Exempt][Taxable] Funding Loan.

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

1. **Subordination.** The Governmental Entity hereby covenants and agrees that the Subordinate Agreements are and will at all times continue to be, subordinate, subject and

inferior to the rights of Senior [Tax-Exempt][Taxable] Mortgagee under the Senior Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Subordinate Agreements are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Senior [Tax-Exempt][Taxable] Mortgagee pursuant to the Senior Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Agreements. Except as specifically agreed to herein, this Subordination Agreement shall not limit the ability of the EDA or the City to exercise its rights or remedies under the Contract for Private Development.

2. **Financing, Encumbrance and Transfer Approval.** Governmental Entity hereby approves the financing evidenced by the Senior [Tax-Exempt][Taxable] Mortgage. Governmental Entity further agrees that any transfer of the Property in connection with foreclosure or deed in lieu thereof will not require Governmental Entity's consent.
3. **Lender Notice of Default.** In consideration of Governmental Entity's agreements contained in this Agreement, Senior [Tax-Exempt][Taxable] Mortgagee agrees that in the event of any default by Borrower under the Senior Loan Documents, Governmental Entity will be entitled to receive a copy of any notice of default given by Senior [Tax-Exempt][Taxable] Mortgagee to Borrower under the Senior Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entity pursuant to this Section 3 will affect the validity of any notice given by Senior [Tax-Exempt][Taxable] Mortgagee to the Borrower.
4. **Governmental Entity Notice of Default.** Governmental Entity must give Senior [Tax-Exempt][Taxable] Mortgagee a concurrent copy of each material notice (including without limitation each notice of default) given by Governmental Entity under or with respect to the Subordinate Agreements, and agrees that Senior [Tax-Exempt][Taxable] Mortgagee, at Senior [Tax-Exempt][Taxable] Mortgagee's sole election, will have the right (but not the obligation) to cure any default by Borrower under the Subordinate Agreements on its and/or Borrower's behalf. Governmental Entity hereby represents and warrants that, to the best of its knowledge, there is no current default under the Subordinate Agreements.
5. **Governmental Entity's Rights.** Except as set forth in Sections 1 and 6 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Subordinate Agreements; provided that, (A) the Subordinate Agreements may not be modified, amended, changed or altered without the prior written consent of Senior [Tax-Exempt][Taxable] Mortgagee so long as the Senior [Tax-Exempt][Taxable] Loan is

secured by the Mortgaged Property and (B) for so long as the Senior [Tax-Exempt][Taxable] Loan is secured by the Mortgaged Property, notwithstanding the terms of the Subordinate Agreements to the contrary, neither Borrower nor Governmental Entity will, without Senior [Tax-Exempt][Taxable] Mortgagee's prior written consent, exercise or seek any right or remedy under the Subordinate Agreements or available at law or in equity which will or could result in (i) a transfer of possession of the Mortgaged Property or the control, operations or management thereof, (ii) collection or possession of rents or revenues from or with respect to the Mortgaged Property by any party other than Borrower or Senior [Tax-Exempt][Taxable] Mortgagee; ((II)[III]) appointment of a receiver for the Mortgaged Property; (iv) application of insurance or condemnation proceeds other than as approved by Senior [Tax-Exempt][Taxable] Mortgagee pursuant to the Senior Loan Documents; (v) removal or replacement of the existing property manager of the Mortgaged Property; or (vi) a material adverse effect on Senior's Mortgagee's security for the Senior [Tax-Exempt][Taxable] Loan.

6. **Foreclosure by Senior [Tax-Exempt][Taxable] Mortgagee.** In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Mortgaged Property by Senior [Tax-Exempt][Taxable] Mortgagee, no consent will be required from Governmental Entity and Senior [Tax-Exempt][Taxable] Mortgagee will have no indemnification obligations to Governmental Entity for any period during which Senior [Tax-Exempt][Taxable] Mortgagee does not own or is not in possession of the Mortgaged Property.
7. **Refinancing.** Governmental Entity agrees that its agreement to subordinate hereunder will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the indebtedness evidenced by the Senior Loan Documents (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior [Tax-Exempt][Taxable] Mortgagee will mean, respectively, the refinance loan documents and the holder of such refinanced debt.
8. **Miscellaneous Provisions.**
 - (a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.
 - (b) If there is any conflict or inconsistency between the terms of the Subordinate Agreements and the terms of this Agreement, then the terms of this Agreement will control.
 - (c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement.

No other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise.

- (d) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (e) Each notice, request, demand, consent, approval or other communication (collectively, “Notices,” and singly, a “Notice”) which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or ([II][III]) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

If to EDA: Economic Development Authority in and for the
City of Minnetonka, Minnesota
14600 Minnetonka Blvd.
Minnetonka, Minnesota 55345-1502
Attention: Executive Director

If to City: City of Minnetonka, Minnesota
14600 Minnetonka Blvd.
Minnetonka, Minnesota 55345-1502
Attention: City Manager

If to Senior [Tax-Exempt][Taxable] Mortgagee:

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

If to Borrower: Minnetonka Leased Housing Associates [II][III],
LLLP
c/o Dominion Development & Acquisition, LLC
2905 Northwest Boulevard, Suite 150
Plymouth, Minnesota 55441-7400
Attn: Ryan Lunderby, VP and Project Partner
Email: rlunderby@dominiuminc.com
Telephone: 763-354-5634

With copies to: Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Attn: John M. Stern
Email: jstern@winthrop.com
Telephone: 612-604-6588

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

- (f) Each of the parties will, whenever and as often as they are requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.
- (g) This Agreement will be governed by the laws of the State in which the Property is located.
- (h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights

available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

- (k) This Agreement shall inure to the benefit of any subsequent holder of the “Obligations” or “Indebtedness” (as applicable) as defined in the Senior [Tax-Exempt][Taxable] Mortgage.
- (l) 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.
- (m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (n) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Governmental Entity of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.
- (o) All capitalized terms used but not defined herein shall have the meanings assigned to them in the Funding Loan Agreement.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE SUBORDINATE AGREEMENTS BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE SENIOR [TAX-EXEMPT][TAXABLE] MORTGAGE.

[Signature and acknowledgment pages follow]

EXHIBIT A

LEGAL DESCRIPTION

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