
SUBORDINATE GUARANTY AGREEMENT

by

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

in favor of

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

Dated as of September 1, 2018

Relating to:

**\$4,090,000
City of Minnetonka, Minnesota
Tax Increment Revenue and
Subordinate Multifamily Housing Revenue Bonds
(Legends of Minnetonka Project)
Series 2018C**

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

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SUBORDINATE GUARANTY AGREEMENT

THIS SUBORDINATE GUARANTY AGREEMENT, dated as of September 1, 2018 (the “Guaranty”), is by DOMINIUM HOLDINGS II, LLC, a Minnesota limited liability company (the “Guarantor”), in favor of U.S. BANK NATIONAL ASSOCIATION, a national banking association, as trustee (together with its successors and assigns, the “Trustee”) under the Indenture (hereinafter defined).

RECITALS

WHEREAS, the City of Minnetonka, Minnesota (the “Issuer”) and the Trustee are entering into a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), in connection with the issuance by the Issuer of its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “Subordinate Bonds”), in the original aggregate principal amount of \$4,090,000; and

WHEREAS, the proceeds of the Subordinate Bonds are to be loaned by the Issuer to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), under a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower; and

WHEREAS, the proceeds of the Subordinate Bonds are to be applied to (i) finance a portion of the costs of the acquisition, construction, and equipping of a 262-unit senior housing rental development located at 11001 Bren Road East, Minnetonka, Minnesota to be known as Legends of Minnetonka (the “Project”); (ii) finance capitalized interest on the Subordinate Bonds during the construction of the Project; and (iii) pay costs of issuance of the Subordinate Bonds; and

WHEREAS, as security for the Subordinate Bonds, the Borrower will execute and deliver to the Issuer a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (the “Subordinate Mortgage”), providing the Issuer with a subordinate mortgage lien on the property described therein, which the Issuer shall assign to the Trustee; and

WHEREAS, the Trustee is authorized by the Indenture to receive any and all other property conveyed, mortgaged, assigned or transferred, or in which a security interest is granted, by (among others) the Borrower, and to hold and apply for the security and payment of the Subordinate Bonds, pursuant to the provisions of the Indenture; and

WHEREAS, the Guarantor desires that the Issuer issue the Subordinate Bonds and apply the proceeds thereof as described above and further proposes to execute this Guaranty to permit or enhance the marketability and security of the Subordinate Bonds and thereby achieve the most favorable terms thereof; and

NOW, THEREFORE, the Guarantor hereby, subject to the terms hereof, covenants and agrees with the Trustee, for the benefit of the Trustee, the Issuer and all who at any time become registered owners (the “Holders”) of the Subordinate Bonds, as follows:

ARTICLE I

REPRESENTATIONS AND COVENANTS OF GUARANTOR

Section 1.1 Representations and Covenants of Guarantor.

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

(b) The assumption by the Guarantor of the obligations hereunder will result in a direct financial benefit to Borrower and the Guarantor and to the financial and operational success of the Project.

(c) As to itself, at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of the liability of the Guarantor to the Trustee, or the immediate taking effect of this Guaranty.

(d) As to itself, this Guaranty is a valid, legal and binding obligation of the Guarantor subject only to the application of bankruptcy laws and general principles of equity.

(e) The Guarantor is a limited liability company duly formed, existing and in good standing under the laws of the State of Minnesota and the execution and delivery by the Guarantor of this Guaranty does not, and the performance of the agreements contained herein will not, contravene or constitute a default under any agreement, indenture, commitment, provision of its organizational and governing documents, or other requirement of law to which the Guarantor is a party or by which the Guarantor is or may be bound; the Guarantor shall preserve and maintain its duly organized existence.

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

ARTICLE II

COVENANTS AND AGREEMENTS

Section 2.1 Obligation. Subject to the limitations set forth in Section 2.2 hereof, the Guarantor hereby absolutely and unconditionally guarantees to the Trustee for the benefit of all persons who may become the owners from time to time of the Subordinate Bonds (i) the full and prompt payment of all principal of and premium, if any, on the Subordinate Bonds when and as the same shall become due, whether at the stated maturity thereof, by acceleration, call for redemption or otherwise; (ii) the full and prompt payment of all interest on the Subordinate Bonds when and as the same shall become due; and (iii) the performance of all other obligations of Borrower under the Loan Agreement, including but not limited to the obligation to provide for the full and prompt payment of all other amounts owing by Borrower under the Loan Agreement, including but not limited to Basic Payments payable under Section 4.1 thereof, the payment of any rebate payments owing in respect of the Subordinate Bonds to the United States under Section 148(f) of the Internal Revenue Code of 1986, as amended, and any advances or expenses of the Trustee under the Indenture and all additional charges owing under Section 4.4 of the Loan Agreement.

Section 2.2 Term.

(a) *General*. The obligations of the Guarantor under this Guaranty shall arise absolutely and unconditionally upon the execution and delivery of the Loan Agreement by the Borrower and shall, subject to the provisions of subsection (b) below, remain in full force and effect until all obligations of the Borrower under the Loan Agreement have been satisfied in full and payment has been made of all principal of, premium, if any, and interest on the Subordinate Bonds, when due.

(b) *Termination of Guaranty*. Notwithstanding the foregoing, this Guaranty shall terminate and the Guarantor's obligations hereunder shall be extinguished upon (i) defeasance of the Subordinate Bonds in accordance with Article 7 of the Indenture; or (ii) the payment in full of the principal of and interest on the Subordinate Bonds.

Section 2.3 Obligations Unconditional. The Guarantor's obligations under this Guaranty shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following:

(a) the compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the Borrower under the Loan Agreement or of the Issuer under the Indenture;

(b) the failure to give notice to the Borrower or the Guarantor of the occurrence of any default or event of default under the terms and provisions of this Guaranty, the Loan Agreement, the Indenture, or the Subordinate Mortgage;

(c) the waiver of the payment, performance or observance by the Borrower or the Guarantor of any of the obligations, covenants or agreements of any of them contained in the Indenture, the Loan Agreement, the Subordinate Mortgage, or this Guaranty;

(d) the extension of the time for payment of principal of, premium, if any, or interest on any Subordinate Bond or of the time for performance of any other obligations, covenants or agreements under or arising out of the Indenture, the Loan Agreement, the Subordinate Mortgage, or this Guaranty or the extension or the renewal of any thereof;

(e) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Indenture, the Loan Agreement, or the Subordinate Mortgage;

(f) the taking or omission of any of the actions referred to in the Indenture, the Loan Agreement, or the Subordinate Mortgage or any actions under this Guaranty;

(g) any failure, omission, delay or lack on the part of the Issuer or Trustee to enforce, assert or exercise any rights, power or remedy conferred on the Issuer or Trustee in this Guaranty, the Indenture, the Loan Agreement, or the Subordinate Mortgage;

(h) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors or readjustment of or other similar proceedings affecting the Guarantor or the Borrower, or any of the assets of any of them, or any allegation or contest of the validity of this Guaranty in any such proceeding;

(i) to the extent permitted by law, the release or discharge of the Borrower or of the Issuer from the performance or observance of any obligations, covenants or agreements contained in the resolution adopted by the City Council of the Issuer on August 27, 2018 with respect to the Subordinate Bonds (the "Bond Resolution"), the Indenture, the Loan Agreement, the Subordinate Mortgage, or the Subordinate Bonds by operation of law;

(j) the default or failure of the Guarantor to perform any of its obligations set forth in this Guaranty;

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

(l) the invalidity or unenforceability of the Indenture, the Loan Agreement, the Subordinate Mortgage, or the Bond Resolution.

Notwithstanding the provisions of this Section 2.3, the Guarantor shall not be obligated to make any payment under Section 2.1 hereof if the obligation of the Borrower to make such payment has been effectively waived, modified or amended by action of the Trustee or Bondholders under the applicable provisions of the Indenture.

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

Section 2.5 Borrower Default. In the event of a default in the payment of principal of any Subordinate Bond when and as the same shall become due, whether at the stated maturity thereof, by acceleration, call for redemption or otherwise, or of a default in the payment of any interest on any Subordinate Bond when and as the same shall become due, or in the event of a failure of the Borrower to make any other payment due and owing under the Loan Agreement or Indenture, the Trustee, in its sole discretion, shall have the right to proceed first and directly against the Guarantor under this Guaranty without proceeding against the Borrower under the Indenture, the Loan Agreement, or the Subordinate Mortgage or exhausting any other remedies which it may have and without resorting to any other security held by the Trustee.

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

(b) The Guarantor agrees to pay all the costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Trustee in enforcing or attempting to enforce this Guaranty following any default on the part of either Borrower or the Guarantor, whether the same shall be enforced by suit or otherwise.

Section 2.6 Waiver of Acceptance. The Guarantor hereby expressly waives notice from the Trustee or any of the Holders from time to time of the Subordinate Bonds of their acceptance of and reliance on this Guaranty.

Section 2.7 Guarantor Events of Default. Each of the following shall constitute an event of default (an "Event of Default") under this Guaranty, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any governmental or non-governmental body:

(a) Failure to make any payment due under this Guaranty within ten (10) days of written demand therefor (a "Payment Default").

(b) Any representation or warranty made by the Guarantor under this Guaranty or any other agreement, report, certificate, financial statement or other instrument referred to herein and furnished to the Trustee or the Underwriter in connection herewith shall prove incorrect or misleading in any material respect when made or when deemed to have been made.

(c) Default in the performance or observance of any agreement or covenant contained in this Guaranty (other than a covenant, agreement, or default that is otherwise specifically addressed in this Guaranty) and the continuance of such default for a period of thirty (30) days following written notice from the Trustee.

(d) The filing by the Guarantor of a petition for the appointment of a trustee with respect to itself or any of its property.

(e) The making by the Guarantor of an assignment for the benefit of creditors.

(f) The insolvency of the Guarantor or the commencement by the Guarantor of a case in bankruptcy or for compromise, adjustment or other relief under the laws of the United States or of any state relating to the relief of debtors.

(g) The failure of the Guarantor to obtain the dismissal, within ninety (90) days after service upon the Guarantor of any case commenced against the Guarantor (i) for the appointment of a trustee for Guarantor or any of its property; or (ii) in bankruptcy or for declaration of insolvency or for compromise, adjustment or other relief under the laws of the United States or of any state relating to the relief of debtors.

(h) The failure of the Guarantor to generally pay its material debts as such debts become due.

(i) The making, or the attempted making, by the Guarantor of a fraudulent conveyance within the meaning of the Uniform Fraudulent Conveyances Act.

Section 2.9 Consequences of Event of Default. If a Payment Default or other Event of Default relating to payment shall have occurred and be continuing, either the Borrower or the Trustee may proceed hereunder against the Guarantor, and the Borrower and the Trustee shall have, in their discretion, the right to proceed first and directly against the Guarantor under this Guaranty without exhausting any other remedies it may have or without resorting to any security held by the Borrower. In the event an Event of Default other than a Payment Default shall have occurred and be continuing, the Trustee may require the Guarantor to provide security for the obligations guaranteed, which security shall be sufficient, in the Trustee's sole reasonable discretion, to protect the obligations guaranteed hereunder. The provisions of this Section 2.8 are intended to supplement any remedies available to the Trustee under Article III hereof or any other provision of the Loan Agreement, the Security Agreement, or the Subordinate Mortgage.

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ARTICLE III

MISCELLANEOUS

Section 3.1 Remedies. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any provision contained in this Guaranty should be breached by the Guarantor and thereafter duly waived by Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 3.2 Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, bankruptcy reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the rights of creditors of the Guarantor, the Trustee shall be entitled and empowered by intervention in such proceeding or otherwise,

(i) Subject to the limitation set forth in Section 2.1(b) hereof, to file and prove a claim for the whole amount of principal, premium, if any, and interest owing and unpaid (whether at stated maturity or by acceleration, call for redemption or otherwise) in respect of the Subordinate Bonds and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Bondholders allowed in such judicial proceeding, and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Bondholders, to pay to the Trustee any amount due to it for the reasonable expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 2.5 hereof.

Section 3.3 Trustee May Enforce Claims without Possession of Subordinate Bonds. All rights of action and claims under this Guaranty may be prosecuted and enforced by the Trustee without the possession of any of the Subordinate Bonds or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of any express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Subordinate Bonds in respect of which such judgment has been recovered.

Section 3.4 Waiver, Amendment. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the Trustee. The Trustee shall not consent to any amendment or modification of this Guaranty without the approval or consent of the Holders of not less than a majority in aggregate

principal amount of the Subordinate Bonds. Nothing contained herein shall permit or be construed as permitting, without the approval or consent of the Holders of all the Subordinate Bonds, any amendment, change or modification of this Guaranty which would (a) reduce the amount payable by the Guarantor hereunder, (b) change the time for payment of the amounts payable by the Guarantor hereunder, or (c) change the unconditional nature of this Guaranty herein contained.

Section 3.5 Addresses. The current mailing addresses of the Guarantor are set forth below:

DOMINIUM HOLDINGS II, LLC
2905 Northwest Blvd., Suite 150
Plymouth, MN 55441
Attention: Mark S. Moorhouse

With copies to: WINTHROP & WEINSTINE P.A.
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402-4629
Attention: John M. Stern, Esq.

CITIBANK, N.A.
390 Greenwich Street, Second Floor
New York, NY 10013
Attention: Mark Sherman, Director

and

CITIBANK, N.A.
388 Greenwich Street, Eighth Floor
New York, NY 10013
Attention: Tom Carroll

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

Section 3.6 Counterparts. This Guaranty may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 3.7 Separability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

Section 3.8 Defined Terms. Any capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture.

Section 3.9 Electronic Signatures. The parties agree that the electronic signature of a party to this Guaranty shall be as valid as an original signature of such party and shall be effective to bind such party to this Guaranty. For purposes hereof, (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

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

DOMINIUM HOLDINGS II, LLC, a Minnesota
limited liability company

By: _____
Name: Mark S. Moorhouse
Its: Senior Vice President