

PAYMENT FOR MUNICIPAL SERVICES AGREEMENT

This Payment for Municipal Services Agreement is entered into as of the 24th day of Oct, 2016 (the "Agreement"), by and between the **City of La Crosse**, a Wisconsin municipal corporation (the "City"), and **Roosevelt School Apartments, LLC** (the "Owner"), a Wisconsin limited liability company.

RECITALS

A. Owner currently owns real property (the "Property") in the City and pays property taxes to the City on the Property, more particularly described as:

See attached **Exhibit A**


B. Owner seeks a loan from the City and its Redevelopment Authority in order to redevelop the former Roosevelt School Building to accommodate 33 apartment units.

C. Owner has represented to the City and its Redevelopment Authority and agreed to, *inter alia*, (1) the Owner shall enter into an agreement concerning the payment for municipal services to the City; and (2) the Owner shall perform in accordance with the terms of said agreement.

NOW, THEREFORE, in consideration of the recitals and the mutual promises, obligations and benefits provided under this Agreement, the receipt and adequacy of which are hereby acknowledged, Owner and the City agree as follows:

1. **Representations and Warranties of Owner.** The recitals stated above are incorporated into this Agreement by reference as representations and warranties of Owner to the City. In addition, Owner represents and warrants to the City that Owner: (1) is a limited liability company organized and existing under the laws of the State of Wisconsin; (2) is in good standing with the Wisconsin Department of Financial Institutions; (3) has taken all action necessary to enter into this Agreement; (4) has duly authorized the individual signers of this Agreement to do so; and (5) will be the sole owner of the Property, in fee simple.

2. **Municipal Services.** Based on Owner's use of the Property provided herein, the City shall provide public health, safety, fire and police protection, streets and street maintenance, snow removal, and other governmental services ("Municipal Services") with respect to the Property that are

											
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1685354 LACROSSE COUNTY REGISTER OF DEEDS CHERYL A. MCBRIDE											
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RETURN TO: City Attorney, City of La Crosse 400 La Crosse Street La Crosse, Wisconsin 54601											
P.I.N. 17-10157-120											

funded by property taxes. Moreover, the City shall provide three hundred thousand dollars (\$300,000.00) to the Redevelopment Authority, who, in turn, shall loan the funds to Owner in order to redevelop the Property all of which is memorialized in a promissory note and other documents.

3. **Tax Status of Property.** Except as provided by law, the Property shall be subject to property taxation and shall not be exempt from property taxation, in full or in part. Owner shall timely provide, at no cost to the City, all information and access to books, records, documents, and other evidence reasonably requested by the City's assessor to determine whether the Property is exempt from property taxes and shall permit the City's assessor to have reasonable access to the Property for that purpose.

4. **Payment for Municipal Services.** In the event that some or all of the Property or Owner's personal property is or becomes exempt from general property taxes under Chapter 70, Wis. Stat., as amended or superseded, or by any other statute, provision or reason, then Owner shall make an annual payment to the City in lieu of taxes ("Payment for Municipal Services") for the services, improvements or facilities furnished to the Property by the City and other taxing jurisdictions. The amount of the Payment for Municipal Services shall be computed and determined by the City's assessor by multiplying the fair market value (using tax assessment definitions, rules and procedures) of the tax exempt portion of such property by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. Owner or the then current owner of the tax exempt property, its successors or assigns shall pay the Payment for Municipal Services within sixty (60) days of receipt. Owner shall have the right to appeal the determination of the City's assessor to the City Council. Any appeal shall specifically state the reasons, in writing, why the amount due as provided by the City's assessor is in error.

5. **Guarantee.** As an additional inducement and in consideration for the City entering into this Agreement and providing loan funds for the benefit of Owner, Owner guarantees faithful performance and compliance with all the terms, covenants, conditions and obligations to be kept and performed by Owner contained in this Agreement, including, without limitation, the obligation that Property shall have a minimum value increment of one million dollars (\$1,000,000.00) beginning in tax year 2018 and for a period of five (5) years. Owner agrees that this minimum value increment on the Property shall remain a lien on the Property and shall run with the land for a period of five (5) years.

6. **Deficiency Payment.** In the event the minimum value increment of the Property is less than one million dollars (\$1,000,000.00) as of January 1, 2018, or for any tax year thereafter for a period of five (5) years, then the Owner or the then current owner, or its successor or assigns agrees to pay the deficiency amount ("Deficiency Payment for Municipal Services") to the City within sixty (60) days of receipt. Said Deficiency Payment for Municipal Services shall be calculated by first determining the difference between the guaranteed assessed value of the Property as provided in Section 5 of this Agreement, less the actual assessed value of the Property for the tax year at issue, and multiplying

said difference by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. This requirement shall be a lien running with the land for a period of five (5) years.

As an example illustration, a Deficiency Payment for Municipal Services would be owed to the City under the following scenario. Under this illustration, it is assumed that the guaranteed assessed value of the Property would be one million dollars (\$1,000,000.00) calculated from the base value of the Property at zero dollars (\$0.00) along with the promised value increment at one million dollars (\$1,000,000.00). Assuming the City Assessor determined the actual assessed value for the Property to be nine hundred seventy thousand dollars (\$970,000.00) for tax year 2018, and the total tax rate on tax bills was 0.029, then the Deficiency Payment for Municipal Services would be owed to the City in the amount of eight hundred and seventy dollars (\$870.00) for tax year 2018. This amount was determined by multiplying the thirty thousand dollar (\$30,000.00) assessment deficiency by the total tax rate for the particular tax year at issue.

7. Terms of Payment. Each payment shall be deemed made when actually received by the City. Any payment made by check shall not be deemed made until the check has cleared all banks. Any amount due that is not paid on time shall bear interest and penalty in the same manner and at the same rate as provided by law for unpaid property taxes. The Payment for Municipal Services or Deficiency Payment for Municipal Services shall constitute payment for all Municipal Services provided with respect to the Property during the tax year at issue, except Municipal Services requested by Owner that would not ordinarily be provided by the City. The City and Owner acknowledge and agree that the Payment for Municipal Services and Deficiency Payment for Municipal Services under this Agreement would constitute a reasonable and appropriate means of carrying out the intent of the parties and would fairly and reasonably compensate the City for the Municipal Services provided during the tax years at issue, except Municipal Services requested by Owner that would not ordinarily be provided by the City.

8. Special Assessments and/or Special Charges. Any Payment for Municipal Services or Deficiency Payment for Municipal Services that is not made when due shall entitle the City to levy a special assessment and/or special charge against the Property for the amount due, plus interest and penalty. Owner hereby consents to the levy of any such special assessment and/or special charge, and, pursuant to Wis. Stat. § 66.0703(7)(b) and/or Wis. Stat. § 66.0627, waives any right to notice of or any hearing on any such special assessment and/or special charge.

9. Indemnification. Owner shall indemnify the City for all amounts of attorneys' fees and expenses and expert fees and expenses incurred in enforcing this Agreement.

10. Remedies. The City shall have all remedies provided by this Agreement, and provided at law or in equity, necessary to cure any default or remedy any damages under this Agreement. Remedies shall include, but are not limited to, special assessments under section 8 of this Agreement, indemnification under section 9 of this Agreement, and all remedies available at law or in equity.

11. **Successors and Assigns.** This Agreement is binding on the successors and assigns of the parties, including, but not limited to, any subsequent owner of the Property, any part of the Property, or any real property interest in the Property or any part of the Property. Owner shall provide not less than forty-five (45) days advance written notice of any intended transfer of ownership, assignment, lease, or sublease. If at any time the Property has more than one (1) owner, the owners shall be jointly and severally liable for any Payment for Municipal Services or Deficiency Payment for Municipal Services due under this Agreement for any tax year. For purposes of invoicing only, the City may, in its sole discretion, allocate the amount of the Payment for Municipal Services or Deficiency Payment for Municipal Services due among the owners in proportion to the current assessed value of their respective property interests as of January 1 of the tax year at issue, as determined by the City's assessor. If the City makes such an allocation for purposes of invoicing only, then if any part of the Payment for Municipal Services or Deficiency Payment for Municipal Services is not timely paid, the City may, in its sole discretion, at any time or from time to time, send additional invoices to all the owners for all or part of the amount due until the amount due is fully paid.

12. **Notices.** Any notice required to be given under this Agreement shall be deemed given when deposited in the United States mail, postage prepaid, to the party at the address stated below or when actually received by the party, whichever is first. The addresses are:

To City:	City Clerk City of La Crosse 400 La Crosse Street La Crosse, WI 54601
With a copy to:	City Attorney City of La Crosse 400 La Crosse Street La Crosse, WI 54601
To Owner:	Attn: Roosevelt School Apartments, LLC Gorman & Company, Inc. 200 North Main Street Oregon, WI 53575
To Investor:	RBC Tax Credit Equity, LLC 600 Superior Avenue Suite 2300 Cleveland, Ohio 44114 Attention: President and General Counsel

With a copy to:

Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110
Attention: Roger W. Holmes

Either party may change its address for notices by giving a notice as provided in this section.

13. **Investor Cure Provision:** Notwithstanding anything herein to the contrary, RBC Tax Credit Equity, LLC shall have the right, but not the obligation, to cure a default hereunder within the applicable cure period.

14. **Term of Agreement.** The term of this Agreement shall continue for not less than twenty (20) years or the life of TID #13, whichever is longer unless otherwise terminated by mutual written agreement.

15. **Entire Agreement; Amendments.** This Agreement encompasses the entire agreement of the parties. Any amendment to this Agreement shall be made in writing, signed by both parties.

16. **Severability.** If any part of this Agreement is determined to be invalid or unenforceable, the rest of the Agreement shall remain in effect.

17. **Waiver.** No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

18. **Governing Law.** This Agreement has been negotiated and signed in the State of Wisconsin and shall be governed, interpreted, and enforced in accordance with the laws of the United States and the State of Wisconsin.

19. **Interpretation of Agreement.** The parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement, neither party shall be deemed the drafter of this Agreement for purposes of its interpretation. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in the Circuit Court for La Crosse County, Wisconsin. Each party waives its right to challenge venue in La Crosse County.

20. **Dispute Resolution.** If there is any dispute between the parties arising out of, related to, or connected with this Agreement:

- a. The parties shall attempt in good faith to resolve the dispute.
- b. If the parties cannot resolve the dispute after reasonable efforts, the dispute shall be submitted to mediation, at the request of either party. The mediator shall be agreed on by the parties or, if they are unable to agree, selected by the Circuit Court of La Crosse County, on application of either party. If the dispute, in whole or part, concerns the assessed value of the Property or the amount due of any Payment for Municipal Services or Deficiency Payment for Municipal Services, the mediator shall be an assessor or appraiser licensed by the State of Wisconsin with at least ten (10) years experience in the valuation of commercial property, unless the parties agree otherwise in writing. If the dispute is wholly on some other issue or issues, the mediator shall be an attorney in La Crosse County, Wisconsin with at least ten (10) years experience.
- c. If the parties cannot resolve the dispute by mediation, after reasonable efforts, either party may demand arbitration conducted in accordance with chapter 788, Wisconsin Statutes, or any successor statute, by a single arbitrator, chosen by mutual agreement of the parties or, if they do not agree, by the Circuit Court for La Crosse County, on application of either party. The party demanding arbitration shall bear all the costs of arbitration. If the dispute, in whole or part, concerns the assessed value of the Property or the amount of any Payment for Municipal Services or Deficiency Payment for Municipal Services due under this Agreement, the arbitrator shall be an assessor or appraiser licensed by the State of Wisconsin with at least ten (10) years experience in the valuation of commercial property, unless the parties agree otherwise in writing. Any demand for arbitration shall be made within sixty (60) days after an invoice for Payment for Municipal Services or Deficiency Payment for Municipal Services for the tax year in dispute is sent by the City to Owner. If a demand for arbitration is not made within that time, the parties shall be deemed to have waived arbitration with respect to the assessed value of the Property and the amount of any Payment for Municipal Services or Deficiency Payment for Municipal Services due under this Agreement. If the dispute is wholly on some other issue or issues, the arbitrator shall be an attorney in La Crosse County, Wisconsin with at least ten (10) years experience. Chapter 788, Wisconsin Statutes, or any successor statute, shall govern the arbitration proceeding, except that Owner and the City each waive any right to trial by jury if a dispute concerning the arbitration proceeding is resolved by a court. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver of jury trial by the other party.

21. **Representations.** Each party acknowledges and agrees that no representation or promise not expressly contained in this Agreement has been made by the other party or any of its employees, attorneys, agents, or representatives. Each party acknowledges that it is not entering into this Agreement on the basis of any such representation or promise, express or implied.

22. **Reading of Agreement.** Each person signing this Agreement on behalf of any Party acknowledges that the person has read this Agreement, that the person understands the terms and conditions of the agreement, that the person (if other than an attorney for the party) has been advised by legal counsel concerning this Agreement, and that the person freely and voluntarily signs this Agreement.

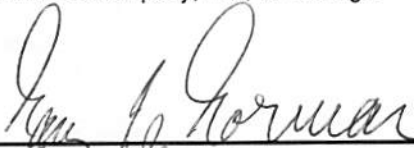
23. **Authorization to Sign Agreement.** Each person signing this Agreement on behalf of any Party represents and warrants that the person holds the position indicated beneath the person's signature and that the person has the requisite corporate or other authority to sign this Agreement on behalf of the Party. Each Party represents that entry into this Agreement is not in contravention of any agreement or undertaking to which the Party is bound.

24. **Recording.** The City may record this Agreement with the Register of Deeds for La Crosse County and may record this document again, from time to time, in the City's sole discretion.


IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date first set forth above.

ROOSEVELT SCHOOL APARTMENTS, LLC
By: Roosevelt School Apartments MM, LLC, its
managing member
By: GEC Roosevelt, LLC, its manager
By: Gorman & Company, Inc., its manager


CITY OF LA CROSSE, WISCONSIN

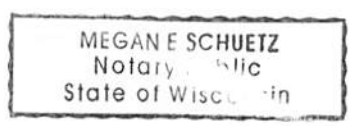

Name: Gary Gorman
Title: President


Timothy Kabat, Mayor

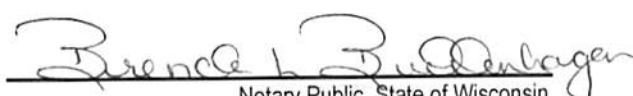

Attest: Tehi Lehrke, City Clerk

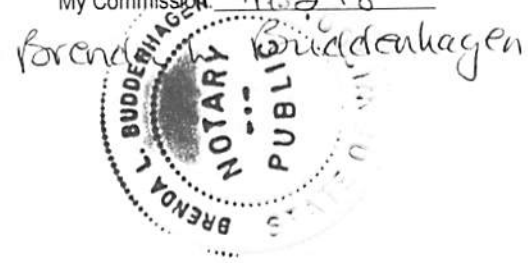
Subscribed and sworn before me
this 23 day of September, 2016.


Notary Public, State of Wisconsin
My Commission: expires 8-14-17



Subscribed and sworn before me
this 24 day of Oct, 2016.


Notary Public, State of Wisconsin
My Commission: 11-2-18



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Exhibit A attached: Legal Description

This instrument drafted by:
City Attorney
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

Exhibit A

LEGAL DESCRIPTION

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, in Block 3 of Losey's Addition to La Crosse, together with the vacated alley in said Block 3.

Also that part of the Northwest 1/4 of the Northeast 1/4 of Section 20, Township 16 North of Range 7 West, City of La Crosse, described as follows: Commencing at a point which is 413 feet East and 33 feet South of the Northwest corner of said Northwest 1/4 of the Northeast 1/4, said point being on the South right-of-way line of Palace Street and the East right-of-way line of Wood Street; thence South along said East right-of-way line 240.13 feet to a point on the North line of Lot 14 in Block 3 of said Losey's Addition; thence East along said North line 191.4 feet to the Southwest corner of Lot 6 in Block 3 of said Losey's Addition; thence North 240.13 feet to the South right-of-way line of Palace Street; thence West along said South right-of-way line 191.4 feet to the point of beginning.

Tax Key No.: 17-10157-12