

## **GUARANTY**

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The undersigned unconditionally guarantees to the **City of La Crosse, Wisconsin**, a municipal corporation of the State of Wisconsin, whose address is City Hall, 400 La Crosse Street, La Crosse, Wisconsin 54601 (the “**City**”) payment when due whether by stated maturity, demand, acceleration or otherwise, of all existing and future indebtedness to the City of Roosevelt School Apartments, LLC. (the “**Borrower**”), howsoever this indebtedness has been or may be incurred or evidenced, whether absolute or contingent, direct or indirect, voluntary or involuntary, liquidated or unliquidated, joint and several, and whether or not known to the undersigned at the time of this Guaranty or at the time any future indebtedness is incurred (the “**Indebtedness**”).

The Indebtedness guaranteed by this Guaranty includes without limit: (a) all Indebtedness of the Borrower to the City, including Indebtedness evidenced by any promissory notes; (b) all obligations or liabilities of the Borrower to the City arising under any guaranty where the Borrower has guaranteed the payment of Indebtedness owing to the City from a third party; (c) all obligations or liabilities of the Borrower to the City arising out of any other agreement by the Borrower, including without limit any agreement to indemnify the City for environmental liability or to clean up hazardous waste; (d) all Indebtedness, obligations or liabilities for which the Borrower would otherwise be liable to the City were it not for the invalidity, irregularity or unenforceability of them because of any bankruptcy, insolvency or other law or order of any kind; (e) all amendments, modifications, renewals and/or extensions of any of the above, including without limit amendments, modifications, renewals and/or extensions that are evidenced by new or additional instruments, documents or agreements; and (f) all costs and expenses of collecting Indebtedness, including without limit reasonable attorney fees.

The undersigned waive notice of acceptance of this Guaranty and presentment, demand, protest, notice of protest, dishonor, notice of dishonor, notice of default, notice of intent to accelerate or demand payment of any Indebtedness, and diligence in collecting any Indebtedness. The undersigned agrees that the City may (a) modify the terms of any Indebtedness, (b) compromise, extend, increase, accelerate, or renew any or all Indebtedness, (c) forbear to enforce payment of any or all Indebtedness, or (d) permit the Borrower to incur additional Indebtedness, all without notice to the undersigned and without affecting the unconditional obligation of undersigned under this Guaranty. The undersigned further waives any and all other notices to which the undersigned might otherwise be entitled. The undersigned acknowledges and agrees that the liabilities created by this Guaranty are direct and are not conditioned upon the City’s pursuit of any remedy it may have against the Borrower, any other person, or any security or collateral. The obligations of the undersigned under this Guaranty will not be affected or impaired by the invalidity, irregularity or unenforceability of any or all of the Indebtedness because of any bankruptcy, insolvency or other law or order of any kind or for any other reason. Additionally, no defense or setoff available at any time to the Borrower will be a defense or setoff to the obligations of the undersigned under this Guaranty.

The undersigned delivers this Guaranty based solely on the undersigned’s independent investigation of the Borrower’s financial condition and the undersigned is not relying on any information furnished by the City. The undersigned assumes full responsibility for obtaining any further information concerning the Borrower’s financial condition, the status of the Indebtedness, or any other matter that the undersigned may deem necessary or appropriate from time to time. The undersigned waives any duty on the City’s part, and agrees that it is not relying upon nor expecting the City to disclose to the undersigned any fact now or later known by the City, whether relating to (a) the Borrower’s operations or its conditions, (b) the existence, liabilities or financial condition of any co-guarantor of the Indebtedness, (c) the occurrence of any default with respect to the Indebtedness, or otherwise, notwithstanding any effect these facts may have upon the undersigned’s risk under this Guaranty or the undersigned’s rights against the City. The undersigned knowingly accepts the full range of risk encompassed in this Guaranty, which risk includes without limit the possibility that the Borrower may incur Indebtedness to the City after the Borrower’s financial condition or its ability to pay its debts as they mature, has deteriorated.

The undersigned represents and warrants that: (a) the City has made no representation to the undersigned as to the Borrower's creditworthiness; and (b) the undersigned has established adequate means of obtaining from the Borrower on a continuing basis financial and other information pertaining to the Borrower's financial condition. The undersigned shall keep itself adequately informed of any facts, events or circumstances that might in any way affect the risks of the undersigned under this Guaranty.

The undersigned subordinates any claim of any nature that the undersigned now or later has against the Borrower to and in favor of all Indebtedness. The undersigned shall not accept payment or satisfaction of any claim that the undersigned now or later may have against the Borrower without the City's prior written consent. Should the undersigned receive any payment, distribution, security, or proceeds upon or with respect to any claim that the undersigned now or may later have against the Borrower, the undersigned shall immediately deliver the same to the City in the form received (except for endorsement or assignment by the undersigned where required by the City) for application on the Indebtedness, whether matured or unmatured. Until delivered by the undersigned, such payment, distribution, security, or proceeds will be held in trust by the undersigned as the property of the City. The undersigned further assigns to the City as collateral for the obligations of the undersigned under this Guaranty all claims of any nature that the undersigned now or later has against the Borrower with full right on the City's part, in its own name or in the name of the undersigned, to collect and enforce these claims.

The undersigned agree that no security now or later held by the City for the payment of any Indebtedness, whether from the Borrower, any guarantor, or otherwise, and whether in the nature of a security interest, pledge, lien, assignment, setoff, suretyship, guaranty, indemnity, insurance or otherwise, will affect in any manner the unconditional obligation of the undersigned under this Guaranty. The City, in its sole discretion, without notice to the undersigned, may release, exchange, enforce and otherwise deal with any security without affecting in any manner the unconditional obligation of the undersigned under this Guaranty. The undersigned acknowledge and agree that the City has no obligation to acquire or perfect any lien on or security interest in any asset, whether realty or personalty, to secure payment of the Indebtedness, and the undersigned is not relying upon any assets in which the City has or may have a lien or security interest for payment of the Indebtedness.

The undersigned acknowledges that the effectiveness of this Guaranty is not conditional on any or all of the Indebtedness being guaranteed by anyone else.

Until the Indebtedness is irrevocably paid in full, the undersigned waives any and all rights to be subrogated to the City's position or have the benefit of any lien, security interest or other guaranty now later held by the City for the Indebtedness or to enforce any remedy that the City now or later has against the Borrower or any other person. Until the Indebtedness is irrevocably paid in full, the undersigned shall have no right to reimbursement, indemnity, contribution or other right of recourse to or with respect to the Borrower or any other person. The undersigned shall indemnify and hold harmless the City from and against any and all claims, actions, damages, costs and expenses, including without limit reasonable attorney fees, incurred by the City in connection with the undersigned's exercise of any right of subrogation, contribution, indemnification or recourse with respect to this Guaranty. The City has no duty to enforce or protect any rights which the undersigned may have against the Borrower or any other person and the undersigned assumes full responsibility for enforcing and protecting these rights.

Notwithstanding any provision of the preceding paragraph or anything else in this Guaranty to the contrary, if any of the undersigned is or becomes an "insider" or "affiliate" (as defined in Section 101 of the United States Bankruptcy Code ( 11 U.S.C. §101 et seq.), as it may be amended (the "Bankruptcy Code")) with respect to the Borrower, then that undersigned irrevocably and absolutely waives any and all rights of subrogation, contribution, indemnification, recourse, reimbursement and any similar rights against the Borrower (or any other guarantor) with respect to this Guaranty, whether such rights arise under an express or implied contract or by operation of law. It is the intention of the parties that the undersigned shall not be (or be deemed to be) a "creditor" (as defined in Section 101 of the Bankruptcy Code) of the Borrower (or any other guarantor) by reason of the existence of this Guaranty in the event

that the Borrower becomes a debtor in any proceeding under the Bankruptcy Code. This waiver is given to induce the City to enter into certain written contracts with the Borrower included in the Indebtedness. The undersigned warrants and agrees that none of the City's rights, remedies or interests will be impaired directly or indirectly because of any of the undersigned's status as an "insider" of the Borrower, and the undersigned shall take any action and shall execute any document that the City may request in order to effectuate this warranty to the City.

If two or more guarantors guarantee any Indebtedness, the obligation of the undersigned will be several and also joint. The City may enforce this Guaranty against each of the undersigned severally, any two or more jointly, or some severally and/or some jointly. The City, in its sole discretion, may release any one or more of the guarantors for any consideration which the City deems adequate. The City may fail or choose not to prove a claim against the estate of any bankrupt, insolvent, incompetent, or deceased guarantor; and after failing or choosing not to prove a claim, and without notice to any other guarantor, the City may extend or renew any or all Indebtedness and may permit the Borrower to incur additional Indebtedness without affecting the unconditional obligation of the remaining guarantors. However, such action by the City will not be deemed to affect any right to contribution that may exist among the guarantors.

Any of the undersigned may terminate their obligation under this Guaranty as to future Indebtedness (except as provided below) by (a) delivering written notice of termination to the City and (b) receiving from the **City Clerk**, 400 La Crosse Street, La Crosse, Wisconsin, 54601, of the City written acknowledgement of delivery. The termination will not be effective until the 45<sup>th</sup> day following the City's written acknowledgement of delivery (the "**Termination Date**"). Any termination will not affect in any way the terminating guarantor's unconditional obligations as to (a) any Indebtedness existing at the Termination Date, which includes any modifications, extensions or renewals of such existing Indebtedness and (b) any Indebtedness created after the Termination Date if that Indebtedness was created pursuant to any commitment or agreement of the City that existed as of Termination Date. The terminating guarantor shall remain obligated for such existing and/or committed Indebtedness of Borrower until fully and irrevocably paid to the City.

Any guarantor termination will not affect the unconditional obligations of the remaining guarantors regardless of whether or not the remaining guarantors knew of the termination. The City has no duty to give notice of termination by any guarantors to any remaining guarantors. In the event that the Borrower sues, makes a claim, or files an action against the City because the City modifies or terminates the Indebtedness or refuses to extend additional credit to the Borrower following any guarantor termination, the undersigned (including the terminating guarantor) shall indemnify and hold harmless the City against all claims, damages, costs and expenses, including without limit reasonable attorney fees related to such suit, claim or action.

Notwithstanding any prior revocation, termination, surrender or discharge of this Guaranty (or of any lien, pledge or security interest securing this Guaranty) in whole or in part, the effectiveness of this Guaranty, and all liens, pledges and security interests securing this Guaranty, will automatically continue or be reinstated, as the case may be, in the event that (a) any payment received or credit given by the City in respect of the Indebtedness is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of funds or otherwise under any applicable state or federal law, including without limit, laws pertaining to bankruptcy or insolvency, in which case this Guaranty, and all liens, pledges and security interests securing this Guaranty will be enforceable against the undersigned as if the returned, disgorged or rescinded payment or credit had not been received or given by the City, and whether or not the City relied upon this payment or credit or changed its position as a consequence of it; or (b) any liability is imposed, or sought to be imposed against the City relating to the environmental condition of, or the presence of hazardous or toxic substances on, in or about, any property given as collateral to the City by the Borrower, whether this condition is known or unknown, now exists or later arises (excluding only conditions caused by the wrongful act or omission of the City after it acquires such property (foreclosure, in lieu of foreclosure or otherwise)), in which case this Guaranty, and all liens,

pledges and security interests securing this Guaranty will be enforceable against the undersigned to the extent of all liability, costs and expenses (including without limit reasonable attorney fees) incurred by the City as the direct or indirect result of any environmental condition or hazardous or toxic substances. In the event of continuation or reinstatement of this Guaranty and the liens, pledges and security interests securing it, the undersigned agrees upon demand by the City to execute and deliver to the City those documents that the City determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of the undersigned to do will not affect in any way the reinstatement or continuation. If the undersigned does not execute and deliver to the City upon demand such documents, the City and each City official or employee is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of the undersigned (with full power of substitution) to execute and deliver such documents in the name and on behalf of the undersigned. For purposes of this Guaranty, "environmental condition" includes without limitation, conditions existing with respect to the surface or ground water, drinking water supply, land surfaces or subsurfaces and the air; and "hazardous or toxic substances" will include any and all substances now or later determined by any federal, state or local authority to be hazardous or toxic, or otherwise regulated by any of these authorities.

The undersigned further agrees that, with respect to the limitation, if any, stated in the Additional Provisions below on the amount of principal guaranteed under the Guaranty, (a) the limitation will not limit the amount of the Borrower's Indebtedness to the City; (b) any payments by the undersigned will not reduce the maximum liability of the undersigned under this Guaranty; and (c) the liability of the undersigned to the City will at all times be deemed to be the aggregate liability of the undersigned under this Guaranty and any other guaranties previously or later given to the City by the undersigned and not expressly revoked, modified or invalidated in writing.

The undersigned waives any right to require the City to: (a) proceed against any person, including without limit the Borrower; (b) proceed against or exhaust any security or collateral provided by the Borrower or any other person; (c) give notice of the terms, time and place of any public or private sale of personal property security held from the Borrower or any other person or otherwise comply with the provisions of revised Article 9 of the Uniform Commercial Code as adopted by Wisconsin or other applicable jurisdiction; (d) pursue any other remedy in the City's power; or (e) make any presentments or demands for performance, or give any notices of nonperformance, protests, notices of protest, or notices of dishonor in connection with any other obligations or evidences of Indebtedness held by the City as security, or in connection with any other obligations or evidences of Indebtedness that constitute in whole or in part Indebtedness or in connection with the creation of new or additional Indebtedness.

The undersigned authorizes the City, either before or after termination of this Guaranty, without notice to or demand on the undersigned and without affecting the undersigned's liability under this Guaranty, from time to time to: (a) apply any security and direct the order or manner of sale of it, including without limit a non-judicial sale permitted by the terms of the controlling security agreement, mortgage or deed of trust, as the City in its discretion may determine; (b) release or substitute any one or more of the endorsers or any other guarantors of the Indebtedness; and (c) apply payments received by the City from the Borrower to any Indebtedness of the Borrower to the City, in such order as the City will determine in its sole discretion, whether or not this Indebtedness is covered by this Guaranty, and the undersigned waives any provision of law regarding application of payments which specifies otherwise. The City may without notice assign this Guaranty in whole or in part. Upon the City's request, the undersigned agrees to provide to the City copies of the undersigned's financial statements and filed federal income tax returns.

The undersigned waives any defense based upon or arising by reason of (a) any disability or other defense of the Borrower or any other person; (b) the cessation or limitation from any cause whatsoever, other than final and irrevocable payment in full, of the Indebtedness; (c) any lack of authority of any officer, director, member, partner, agent or other person acting or purporting to act on behalf of the Borrower which is a corporation, limited liability company, partnership or other type of entity, or any defect in the Borrower's formation; (d) the application by the Borrower of the proceeds of any Indebtedness for

purposes other than those purposes represented by the Borrower to the City or intended or understood by the City or the undersigned; (e) any act or omission by the City that directly or indirectly results in or aids the discharge of the Borrower or any Indebtedness by operation of law or otherwise; or (f) any modification of the Indebtedness in any form whatsoever, including without limit any modification made after effective termination, and including without limit, renewal, extension, acceleration, or other change in time for payment of the Indebtedness, or other change in the terms of the Indebtedness, including without limit increase or decrease of the interest rate. The undersigned waives any defense the undersigned may have based upon any election of remedies by the City which destroys the undersigned's subrogation rights or the undersigned's right to proceed against the Borrower for reimbursement, including without limit any loss of rights the undersigned may suffer by reason of any rights, powers or remedies of the Borrower in connection with any anti-deficiency, appraisal or valuation laws or any other laws limiting, qualifying or discharging any Indebtedness.

The undersigned acknowledges that the City has the right to sell, assign, transfer, negotiate, or grant participations in all or any part of the Indebtedness and any related obligations, including without limit this Guaranty. In connection with exercise of that right, the City may disclose any documents and information that the City now or later acquires relating to the undersigned and this Guaranty, whether furnished by the Borrower, the undersigned or otherwise. The undersigned further agrees that the City may disclose these document and information to the Borrower.

The total obligation under this Guaranty shall be **UNLIMITED** unless specifically limited in the Additional Provisions of this Guaranty and this obligation (whether unlimited or limited to the extent indicated in the Additional Provisions) will include, **IN ADDITION TO** any limited amount of principal guaranteed, any and all interest on all Indebtedness and any and all costs and expenses of any kind, including without limit reasonable attorney fees, incurred by the City at any times for any reason in enforcing any of the duties connected with this Guaranty, the Indebtedness or any other guaranty of the Indebtedness (including without limit reasonable attorney fees and other expenses incurred in any suit involving the conduct of the City, the Borrower or the undersigned). All of these costs and expenses will be payable immediately by the undersigned when incurred by the City, without demand, and until paid will bear interest at the highest per annum rate applicable to the Indebtedness, but not in excess of the maximum rate permitted by law. Any reference in this Guaranty to attorney fees will be deemed a reference to fees, charges, costs and expenses of both the City's attorneys and outside counsel and paralegals, whether or not a suit or action is instituted, and to court costs if a suit or action is instituted, and whether attorney fees or court costs are incurred at the trial court level, in a bankruptcy, arbitration, administrative or probate proceeding, or otherwise. Any reference in the Additional Provisions or elsewhere (a) to this Guaranty being secured by certain collateral will NOT be deemed to limit the total obligation of the undersigned under this Guaranty or (b) to this Guaranty being limited in any respect will NOT be deemed to limit the total obligation of the undersigned under any prior or later guaranty given by the undersigned to the City.

The undersigned unconditionally and irrevocably waives each and every defense and setoff of any nature that, under the principles of guaranty or otherwise, would operate to impair or diminish in any way the obligation of the undersigned under this Guaranty, and acknowledges that each such waiver is by this reference incorporated into each security agreement, collateral assignment, pledge and/or other document from the undersigned now or later securing this Guaranty and/or the Indebtedness., and acknowledges that the effectiveness of this Guaranty is subject to no conditions of any kind.

This Guaranty will remain effective with respect to successive transactions which will either continues the Indebtedness, increase or decrease it, or from time to time create new Indebtedness after all or any prior Indebtedness has been satisfied, until this Guaranty is terminated in the manner and to the extent provided above.

The undersigned warrants and agrees that each of the waivers set forth are made with the undersigned's full knowledge of their significance and consequences, and that under the circumstances, the waivers are

reasonable and not contrary to public policy or law. If any of these waivers are determined to be contrary to applicable public policy or law, these waivers will be effective only to the extent permitted by law.

This Guaranty constitutes the entire agreement of the undersigned and the City with respect to the subject matter of this Guaranty. No waiver, consent, modification or change of the terms of this Guaranty will bind any of the undersigned or the City unless in writing and signed by the waiving party or an authorized officer of the waiving party., and then this waiver, consent, modification or change will be effective only in the specific instance and to for the specific purpose given. This Guaranty will inure to the benefit of the City and its successors and assigns. This Guaranty will be binding on the undersigned and the undersigned's heirs, legal representatives, successors and assigns, including without limit any debtor in possession or trustee in bankruptcy for any of the undersigned. The undersigned has knowingly and voluntarily entered into this Guaranty in good faith for the purpose of inducing the City to extend credit or make other financial accommodations to the Borrower, and the undersigned acknowledges that the terms of this Guaranty are reasonable. If any provision of this Guaranty is unenforceable in whole or in part for any reason, the remaining provisions will continue to be effective.

**ADDITIONAL PROVISIONS: None**

**THIS GUARANTY WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WISCONSIN. THE UNDERSIGNED AND THE CITY EXPRESSLY AGREE TO (a) BE SUBJECT TO THE PERSONAL JURISDICTION OF THE STATE OF WISCONSIN, (b) ACCEPT VENUE IN ANY FEDERAL OR STATE COURT IN LA CROSSE COUNTY, WISCONSIN, AND (c) WAIVE ANY RIGHT TO TRIAL BY JURY**

The undersigned has signed this Guaranty on \_\_\_\_day of April, 2016.

GUARANTOR: ROOSEVELT SCHOOL APARTMENT, LLC.  
By: GORMAN & COMPANY, INC.

By: \_\_\_\_\_  
Gary J. Gorman

Its: President/CEO

GUARANTOR'S ADDRESS:

Gorman & Company, Inc.  
200 North Main Street  
Oregon WI 53575  
Phone:  
E-mail: