

TAX ABATEMENT AGREEMENT

BY AND BETWEEN

CITY OF WINONA, MINNESOTA

AND

WATER'S EDGE APARTMENTS LLC

This document drafted by:

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TAX ABATEMENT AGREEMENT

THIS AGREEMENT, made as of the 16th day of April, 2021 ("Effective Date"), by and between City of Winona, Minnesota (the "City"), a municipal corporation existing under the laws of the State of Minnesota, and Water's Edge Apartments LLC, a Wisconsin limited liability company (the "Developer").

WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Sections 469.1812 through 469.1815, as amended, the City has established a Tax Abatement Program; and

WHEREAS, the City believes that the development and construction of a certain Project (as defined herein), and fulfillment of this Agreement are vital and are in the best interests of the City, will result in preservation and enhancement of the tax base and are in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the requirements of the Business Subsidy Law, Minnesota Statutes, Section 116J.993 through 116J.995, do not apply to this Agreement pursuant to an exemption for housing; and

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

Section 1.1 Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Tax Abatement Agreement, as the same may be from time to time modified, amended or supplemented;

City means the City of Winona, Minnesota;

County means Winona County, Minnesota;

Developer means Water's Edge Apartments LLC, a Wisconsin limited liability company, its successors and assigns;

Development Property means the real property described in Exhibit A attached to this Agreement;

Event of Default means any of the events described in Section 4.1;

Project means the construction by the Developer of an approximately 41 unit multi-family housing project by the Developer to be located on the Tax Abatement Property;

State means the State of Minnesota;

Tax Abatement Act means Minnesota Statutes, Sections 469.1812 through 469.1815, as amended;

Tax Abatement Program means the actions by the City pursuant to Minnesota Statutes, Section 469.1812 through 469.1815, as amended, and undertaken in support of the Project;

Tax Abatement Property means the real property described on Exhibit A attached hereto;

Tax Abatements means the City's share of real estate taxes derived from the Tax Abatement Property, abated in accordance with the Tax Abatement Program and this Agreement in an aggregate amount of \$135,674;

Term means the period in which this Agreement shall remain in effect, commencing on the Effective Date and continuing until the earlier of (i) the date the Developer receives the Reimbursement Amount (as defined herein), or (ii) February 1, 2039, unless earlier terminated or rescinded in accordance with the terms contained herein;

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, including strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City or the County) which directly result in delays.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the City. The City makes the following representations and warranties:

(1) The City is a home rule charter city and political subdivision of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The Tax Abatement Program was created, adopted and approved in accordance with the terms of the Tax Abatement Act.

(3) To finance the costs of the Project to be undertaken by the Developer, the City shall, subject to the further provisions of this Agreement, apply the Tax Abatements to reimburse the Developer for a portion of the costs of the Project as further provided in this Agreement.

(4) The City has made the findings required by the Tax Abatement Act for the Tax Abatement Program.

Section 2.2 Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1) The Developer has the power to enter into this Agreement and to perform its obligations hereunder and is not in violation of its article of organization, member control agreement or any local, state or federal laws.

(2) The Developer is a Wisconsin limited liability company, duly organized, existing and in good standing under the laws of the State and has the power to enter into this Agreement and to perform its obligations hereunder and carry out the covenants contained herein.

(3) The Developer will cause the Project to be constructed in accordance with the terms of this Agreement and all City, County, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations), including the Americans With Disabilities Act.

(4) The Developer will obtain or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

(5) The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(6) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(7) The Developer will cooperate fully with the City with respect to any litigation commenced with respect to the Project.

(8) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Project.

(9) The construction of the Project shall commence no later than December 31, 2021 and barring Unavoidable Delays, will be substantially completed by June 30, 2023.

ARTICLE III

UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1 Construction of Project; Reimbursement of Construction Costs.

(1) The Developer agrees that it will substantially complete the construction of the Project by June 30, 2023, subject to Unavoidable Delays, in accordance with the terms of this Agreement and in compliance with all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations). The Developer will obtain or cause to be obtained, in a timely manner (subject to factors outside the control of Developer), all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed. The Developer will, at all times prior to the termination of this Agreement, operate and maintain, preserve and keep the Project or cause the Project to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

(2) Upon submission to the City of invoices related to the costs of the construction of the Project in an amount not less than \$135,674, the City shall reimburse the Developer for such cost pursuant to the Abatement Program as provided in Section 3.7 (the "Project Reimbursement Amount").

Section 3.2 Limitations on Undertaking of the City. Notwithstanding the provisions of Section 3.1, the City shall have no obligation to the Developer, under this Agreement, to reimburse the Developer for a portion of the construction of the Project, if the City, at the time or times such payment is to be made, is entitled under Section 4.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not been cured. Notwithstanding any other provisions of the Agreement, the City shall have no obligation to the Developer under this Agreement to reimburse the Developer for the construction of the Project in an amount greater than \$135,674.

Section 3.3 Damage and Destruction. In the event of damage or destruction of the Project that (i) Developer chooses not to repair or rebuild, or (ii) Developer does not commence and diligently pursue such repair or rebuilding within one hundred eighty (180) days after such event of damage or destruction, the City may, with written notice to Developer, terminate this Agreement and discontinue such Tax Abatement Program for the Project as of the date of such event of damage or destruction and the final Reimbursement Amount payment shall be prorated to the date of such damage/destruction. In the event of such termination of this Agreement, in no circumstance shall Developer be required to return or reimburse the City for any Reimbursement Amount payments made hereunder prior to such termination.

Section 3.4 Change in Use of Project. The City's obligations pursuant to this Agreement shall be subject to the continued operation of the Project by the Developer, or any successors or assigns of Developer approved by the City as set forth in Section 3.5 below, during the Term.

Section 3.5 Transfer the Project and Assignment of Agreement. The Developer represents and agrees that prior to the expiration or earlier termination of this Agreement, the Developer shall not assign this Agreement in conjunction with a transfer of the Project or any part thereof or any interest therein, without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The City shall be entitled to require as conditions to any such approval that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(2) Any proposed transferee, by instrument in writing reasonably satisfactory to the City shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject.

Developer may not assign its rights under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the City's consent shall not be required in connection with an assignment of Developer's rights and obligations under this Agreement to an "Affiliate" in which the Affiliate assumes all obligations of the Developer hereunder that accrue from and after the effective date of the assignment in an instrument that may be enforced at law by the other party and in which notice of the occurrence and effect of such assignment is delivered to the other party together with a copy of such agreement of assumption. As used herein, the term "Affiliate" means an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Developer. City acknowledges that Developer intends to collaterally assign this Agreement, and its payments rights hereunder, to a mortgage lender in connection with the financing for the Project, subject to the City's consent, which shall not be unreasonably, withheld, conditioned or delayed.

Section 3.6 Real Property Taxes. The Developer shall, so long as this Agreement remains in effect, pay all real property taxes with respect to all parts of the Tax Abatement Property owned by it which are payable pursuant to any statutory or contractual duty that shall accrue until title to the property is vested in another person. The Developer agrees that for tax assessments so long as this Agreement remains in effect:

(a) It will not challenge the market value of the Tax Abatement Property and the Project with any governmental entities.

(b) It will not seek administrative review or judicial review of the applicability of any tax statute relating to the ad valorem property taxation of real property contained on the Tax Abatement Property determined by any tax official to be applicable to the Project or the Developer or raise the inapplicability of any such tax statute as a defense in any proceedings with respect to the Tax Abatement Property, including delinquent tax proceedings; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(c) It will not seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of real property contained on the Tax Abatement Property determined by any tax official to be applicable to the Project or the Developer or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings with respect to the Tax Abatement Property; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(d) It will not seek any tax deferral or abatement, either presently or prospectively authorized under Minnesota Statutes, Section 469.181, or any other State or federal law, of the ad valorem property taxation of the Tax Abatement Property so long as this Agreement remains in effect.

Section 3.7 Duration of Abatement Program. The Tax Abatement Program shall exist for a period of up to fifteen (15) years beginning with real estate taxes payable in 2024 through 2038. On or before February 1 and August 1 of each year commencing August 1, 2024 until the earlier of the date that the Developer shall have received the Reimbursement Amount or February 1, 2039, the City shall pay the Developer the amount of the Tax Abatements received by the City in the previous six month period. The City may terminate the Tax Abatement Program and this Agreement at an earlier date if an Event of Default occurs and the City rescinds or cancels this Agreement as more fully set forth in Article IV herein.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.1 Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure by the Developer to timely pay any ad valorem real property taxes, special assessments, utility charges or other governmental impositions with respect to the Project.

(2) Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

(3) Failure by the Developer to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement within thirty (30) days of written notice by the City.

(4) If the Developer shall:

(a) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(b) make an assignment for the benefit of its creditors; or

(c) admit in writing its inability to pay its debts generally as they become due;

or

(d) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Project, or

part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within sixty (60) days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

(5) The holder of any mortgage on the Tax Abatement Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

Section 4.2 Remedies on Default. Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice to the Developer citing with specificity the item or items of default and notifying the Developer that it has thirty (30) days within which to cure said Event of Default (or commence and diligently pursue such Event of Default if Developer is unable to cure within such thirty (30) day period and Developer is diligently pursuing and can demonstrate progress toward curing the default). If the Developer is unable to cure or commence a cure for the Event of Default within said thirty (30) days as required above:

(a) The City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.

(b) The City may cancel and rescind this Agreement.

(c) The City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 4.3 No Remedy Exclusive. No remedy herein 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 default 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.

Section 4.4 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.5 Agreement to Pay Attorney's Fees and Expenses. In the event litigation is commenced for purposes of enforcing the terms and conditions of this Agreement, the prevailing party in relation to said litigation shall be reimbursed by the non-prevailing party for all of the prevailing party's reasonable attorneys' fees and costs associated with said litigation.

Section 4.6 Release and Indemnification Covenants.

(1) Except for any misrepresentation or any willful or wanton misconduct or negligence of the City of the governing body members, officers, agents, servants, consultants, and employees thereof (the "Indemnified Parties"), and except for any breach by the Indemnified Parties of their representative's obligations under this Agreement, the Indemnified Parties shall not be liable for and the Developer shall indemnify and hold harmless the Indemnified Parties 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 Project.

(2) Except for any willful misrepresentation, any willful or wanton misconduct, recklessness, or negligence of the Indemnified Parties, the Developer agrees to protect and defend the City and its governing body members, officers, agents, servants and employees, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from a breach of the obligations of the Developer under this Agreement, or the transactions contemplated hereby or the acquisition, construction, ownership, maintenance and operation of the Project.

(3) Except for any misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, and except for any breach by any of the Indemnified Parties of their representation and obligations under this Agreement, the Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Project.

(4) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

ARTICLE V

ADDITIONAL PROVISIONS

Section 5.1 Restrictions on Use. The Developer agrees for itself, its successors and assigns and every successor in interest to the Development Property, or any part thereof, that during the term of this Agreement the Developer and such successors and assigns shall operate, or cause to be operated, the Project as a multifamily rental housing facility, and shall devote the Development Property to, and in accordance with, the uses specified in this Agreement.

Section 5.2 Conflicts of Interest. No member of the governing body or other official of the City shall participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successor or on any obligations under the terms of this Agreement.

Section 5.3 Titles of Articles and Sections. Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 5.4 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (1) in the case of the Developer is addressed to or delivered personally to:

Water's Edge Apartments LLC
7447 University Avenue Suite 210
Middleton, WI 53562
Attention: Kristi Morgan

With a copy to:

Foley & Lardner LLP
150 E. Gilman Street
Madison, WI 53703
Attn: Katherine R. Rist

- (2) in the case of the City is addressed to or delivered personally to the City at:

City of Winona, Minnesota
Attention: City Clerk
Winona City Hall
207 Lafayette St
Winona, MN 55987

with a copy addressed to or delivered personally to:

Mary L. Ippel
Taft Stettinius & Hollister LLP
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section 5.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 5.6 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 5.7 Term. This Agreement shall remain in effect commencing on the Effective Date until the earlier of (i) the date the Developer receives the Reimbursement Amount, or (ii) February 1, 2039, unless earlier terminated or rescinded in accordance with its terms.

Section 5.8 Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and on its behalf, and the Developer has caused this Agreement to be duly executed in its name and on its behalf, on or as of the date first above written.

WATER'S EDGE APARTMENTS LLC, a
Wisconsin limited liability company

By: Water's Edge Apartments MM, LLC
Its: Managing Member
By: Commonwealth Holdings II, LLC
Its: Sole Member

By: _____
_____, Manager

This is a signature page to the Tax Abatement Agreement by and between City of Winona, Minnesota and Water's Edge Apartments LLC.

CITY OF WINONA, MINNESOTA

By _____
Its Mayor

By _____
Its City Clerk

This is a signature page to the Tax Abatement Agreement by and between City of Winona, Minnesota and Water's Edge Apartments LLC.

EXHIBIT A

DESCRIPTION OF TAX ABATEMENT PROPERTY

The real property situated in the City of Winona, County of Winona, State of Minnesota, currently described as follows:

Property Identification Numbers: 32.320.4250 and 32.315.0010

Parcel 32.320.4250

All that portion of the East Sixteen and one-half (16 ½) feet of Lot One (1), Lake-Side Out-Lots to Winona, in the Southeast quarter of the Southeast quarter (SE ¼ of SE ¼) of Section Twenty-six (26), Township One Hundred Seven (107) North, of Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota, lying Southerly of the Southerly line of Block "B" of E.C. Hamilton's Third Addition to Winona if extended Westerly, and lying Northerly of the Outlet to Lake Winona;

ALSO, that part of the Southwest Quarter of the Southwest Quarter (SW ¼ of SW ¼) of Section Twenty-five (25), Township One Hundred Seven (107) North, of Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota, more particularly described as follows: Beginning at a point on the north line of the Outlet to Lake Winona Six Hundred Thirty-three and one-half (633 ½) feet westerly of the east line of the NE ¼ of SW ¼ of SW ¼ of said Section 25, as measured along the northerly line of said Ditch; thence North 91 degrees West a distance of Thirty-three and one-half (33 ½) feet to the West line of said Section; thence north a distance of Two Hundred Fifteen (215) feet; thence North 78 degrees 30' East to a point directly North of the place of beginning; thence South and parallel to the West line of said Section 25 to the place of beginning.

Parcel 32.315.0010

A parcel of land fronting two hundred forty-eight and eighty-three one-hundredths (248.83) feet on the Easterly line of Mankato Avenue, being a part of Out Lot 1 of Lake-Side Out-Lots to Winona, in the Southeast quarter (SE ¼) of the Southeast quarter (SE ¼) of Section Twenty-six (26), Township One Hundred Seven (107) North, of Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota, more particularly described as follows, to-wit: Commencing at the point of intersection of the easterly line of Mankato Avenue with the southerly line of Belleview Street in the City of Winona, Minnesota; thence running Southerly along the easterly line of said Mankato Avenue a distance of two hundred forty-eight and eighty-three one-hundredths (248.83) feet; thence easterly interior angle 86°49' a distance of three hundred sixty-six and four tenths (366.4) feet to the east line of said Section Twenty-six (26); thence North along said east line of said Section Twenty-six (26) a distance of one hundred eighty-three and six one-hundredths (183.06) feet to the intersection with the extension of the southerly line of Belleview

Street; thence westerly along said southerly line of Belleview Street and the easterly extension thereof a distance of three hundred sixty-nine and nine tenths (369.9) feet more or less, to the point of beginning; excepting from said described parcel of land the easterly sixteen and five tenths (16.5) feet thereof.