

**Assignment and Assumption
of
Water Main Easement**

**750 N. Milton Street, Saint Paul, MN
Wilder Square Tower Apartments**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Assignment**”) is made as of _____, 2019 (the “**Effective Date**”) and is entered into by and between WILDER SQUARE, LLC, a Minnesota limited liability company (“**Seller**”), and COMMONBOND COMMUNITIES, a Minnesota nonprofit corporation¹ (“**Purchaser**”).

WHEREAS, the Amherst H. Wilder Foundation, a Minnesota nonprofit corporation (“**Wilder Foundation**”), and the Board of Water Commissioners of the City of Saint Paul, a Minnesota municipal corporation (the “**Board**”) entered into that certain Agreement dated June 3, 1974 and recorded on July 23, 1974, in the office of the Ramsey County Recorder as Document No. 1888196 (the “**Agreement**”) which Agreement concerns the construction and ongoing maintenance and repair of a private water main on that certain real property located in the City of Saint Paul, Ramsey County, Minnesota and more particularly described on Exhibit A attached hereto and made a part hereof (the “**Property**”); and

WHEREAS, the Seller acquired the Property from the Wilder Foundation on or about November 12, 2015; and

WHEREAS, Seller is conveying the Property and all improvements thereon to Purchaser pursuant to a Limited Warranty Deed, and in connection therewith, Seller desires to assign to Purchaser all of Seller’s rights, duties and obligations of Seller under the Agreement, and Purchaser desires to assume and perform all of the obligations of Seller under the Agreement, subject to the conditions contained in the Agreement.

NOW, THEREFORE, in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. **Purchase Agreement.** Reference is hereby made to that certain Purchase and Sale Agreement between Seller and CommonBond Communities, dated as of November 8, 2018, for the Property.²

2. **Assignment.** Seller hereby assigns to Purchaser all of Seller’s rights, duties, obligations and benefits under the Agreement accruing from and after the date hereof and Purchaser hereby assumes such rights, duties, obligations and benefits and agrees to be bound by

¹ To be completed with name assignee of CommonBond Communities, if the Purchase and Sale Agreement is assigned by CommonBond prior to closing.

² If applicable, to be supplemented with sentence stating that CommonBond has assigned the Purchase and Sale Agreement to Seller.

the terms and conditions of the Agreement as originally binding upon Seller.. In furtherance of and not in limitation of the foregoing, Purchaser specifically agrees that it shall have an obligation from and after the date hereof to pay the cost of the maintenance and replacement of the private water main which is the subject of the Agreement, and agrees that it shall be responsible and liable for all losses and damages arising out of the operation, maintenance, use and repair of the main or service pipes, all as provided more fully in the Agreement. Seller and Purchaser specifically agree that all claims, costs, expenses or damages owing to the Board (as defined in the Agreement) pursuant to the Agreement arising out of the operation, maintenance, use and repair of the main or service pipes prior to the date hereof shall remain the obligation of the Seller and the Seller indemnifies, holds harmless and agrees to defend the Purchaser against any such claims, costs, expenses or damages. Seller's obligations under this Section 2 shall survive the execution and delivery of this Assignment and the conveyance of the Property by Seller to Purchaser.

3. **Notice of Assignment and Assumption.** Promptly upon the execution of this Assignment, Seller and Purchaser shall cooperate to provide written notice of this Assignment to the Board.

4. **Successors.** The provisions of this Assignment shall be binding upon, and shall inure to the benefit of, the successors and assigns of Seller and Purchaser, respectively. This Assignment shall be governed by and construed in accordance with the laws of the State of Minnesota, without regard to conflicts of law principles.

5. **Amendments.** This Assignment may be amended, modified or supplemented only by written agreement of the parties hereto.

6. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7. **Miscellaneous.** In the event of any litigation between the parties under any of the provisions of this instrument, the non-prevailing party to such litigation agrees to pay to the prevailing party all costs and expenses (including, without limitation, expert fees, costs of investigation, deposition costs, travel costs and reasonable attorney's fees) incurred by the prevailing party in such litigation. The determination of whether a party is a "prevailing party," and the reasonable amount of attorney's fees and other costs recoverable, will all be reserved to and decided by the judge presiding over such litigation. The parties agree that the amount of attorney's fees and other costs which may be awarded must bear a reasonable relationship to, and must be limited by, the judge to a reasonable amount in view of the amount recovered or the relief obtained by the prevailing party.

[Remainder of this page intentionally left blank. Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Assignment, effective as of the Effective Date.

SELLER:
WILDER SQUARE, LLC,
a Minnesota limited liability company

By: _____
Name: _____
Its: _____

State of _____, County of _____

This instrument was acknowledged before me on _____, 2019 by _____, as _____ of Wilder Square, LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

Stamp

PURCHASER:
COMMONBOND COMMUNITIES,
a Minnesota nonprofit corporation

By: _____
Name: _____
Its: _____

State of _____, County of _____

This instrument was acknowledged before me on _____, 2019 by _____, as _____ of CommonBond Communities, a Minnesota nonprofit corporation, on behalf of the corporation.

Notary Public

Stamp

Exhibit A

Legal Description

The real property situated in the City of Saint Paul, County of Ramsey, State of Minnesota, described as follows:

Parcel 1:

Those parts of the East Half of the Southeast Quarter of the Southwest Quarter of Section 26, Township 29, Range 23, Including parts of vacated Englewood Avenue, vacated Seminary Avenue, vacated Milton Street (as dedicated in the plat of Winters Addition to St. Paul) and vacated Pierce Butler Route, described as follows:

Beginning at the Northwest corner of the Southeast Quarter of the Southeast Quarter of the Southwest Quarter of Section 26, Township 29, Range 23; thence South 0 degrees 04 minutes 40 seconds East on the West line of said Southeast Quarter of the Southeast Quarter of the Southwest Quarter a distance of 292.95 feet; thence South 90 degrees 00 minutes East a distance of 132 feet; thence South 45 degrees 00 minutes East a distance of 185 feet; thence North 45 degrees 00 minutes East a distance of 170 feet; thence North 0 degrees 00 minutes East a distance of 118 feet; thence North 45 degrees 00 minutes East a distance of 88.64 feet; thence North 0 degrees 00 minutes East a distance of 52.94 feet to the South line of the North 70 feet of said Southeast Quarter of the Southeast Quarter of the Southwest Quarter; thence South 89 degrees 59 minutes 30 seconds West on said South line a distance of 73.5 feet; thence Northwesterly on a curve to the right, tangent to the last described course, of radius 650 feet, central angle 21 degrees 40 minutes, a distance of 245.80 feet; thence Northwesterly on a line tangent to the last described course a distance of 79.70 feet; thence Northwesterly on a curve to the right, tangent to the last described course, of radius 650 feet, central angle 5 degrees 40 minutes 30 seconds, a distance of 64.38 feet to the intersection of said curve with a Northerly extension of the West line of said Southeast Quarter of the Southeast Quarter of the Southwest Quarter, thence South 0 degrees 04 minutes 40 seconds East on said Northerly extension to the point of beginning.

Parcel 2:

Non-exclusive easement for ingress and egress as contained in Reciprocal Access Easement Agreement dated February 25, 2004, recorded September 14, 2005, as Document No. 3888207 in the office of the County Recorder, Ramsey County, Minnesota.

Abstract Property

Real Property

Address	PID	Water Dept. Account No.
750 N. Milton Street St. Paul, Minnesota	26-29-23-34-0017	0468244