

Res 615

# **CONTRACT COVERSHEET**

**NOTE: Shaded areas are for County Executive review.**

<b>DEPARTMENT</b> <b>Administration</b>	<b>CONTRACT/ADDENDUM #:</b> <div style="font-size: 1.5em; font-family: cursive;">12323</div>																		
1. This contract, grant or addendum: <input checked="" type="checkbox"/> AWARDS <input type="checkbox"/> ACCEPTS	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; border-bottom: 1px solid black;">Contract</td> <td style="width:50%; border-bottom: 1px solid black;">Addendum</td> </tr> <tr> <td colspan="2" style="font-size: 0.8em;">↓    If Addendum, please include original contract number    ↓</td> </tr> <tr> <td><input type="checkbox"/> POS</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Co Lesse</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Co Lessor</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Intergovernmental</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Purchase of Property</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Property Sale</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Other:</td> <td><input type="checkbox"/></td> </tr> </table>	Contract	Addendum	↓    If Addendum, please include original contract number    ↓		<input type="checkbox"/> POS	<input type="checkbox"/>	<input type="checkbox"/> Co Lesse	<input type="checkbox"/>	<input type="checkbox"/> Co Lessor	<input type="checkbox"/>	<input type="checkbox"/> Intergovernmental	<input type="checkbox"/>	<input type="checkbox"/> Purchase of Property		<input type="checkbox"/> Property Sale		<input type="checkbox"/> Other:	<input type="checkbox"/>
Contract		Addendum																	
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<input type="checkbox"/> Purchase of Property																			
<input type="checkbox"/> Property Sale																			
<input type="checkbox"/> Other:	<input type="checkbox"/>																		
2. This contract is discretionary <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO																			
3. Term of Contract or Addendum: From: <u>5/1/15</u> To: <u>3/31/2113</u>																			
4. Amount of Contract or Addendum <b>N/A</b>																			
5. Purpose: To lease back land and a condominium unit in support of affordable housing development at 715 Rethke Ave, Madison																			
6. Vendor or Funding Source: <b>Rethke Washington LLC</b>																			
7. MUNIS Vendor Code: <b>TBD</b>																			
8. Bid/RFP Number: <b>N/A</b>																			
9. If grant: Funds Positions? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO      Will require on-going or matching funds? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO																			
10. Are funds included in the budget? <input type="checkbox"/> YES <input type="checkbox"/> NO																			
11. Account No. & Amount, Org. & Obj. _____ Amount \$ _____ Account No. & Amount, Org. & Obj. _____ Amount \$ _____ Account No. & Amount, Org. & Obj. _____ Amount \$ _____																			
12. Is a resolution needed: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO      If "YES," please attach a copy of the Resolution. If Resolution has already been approved by the County Board, Resolution No. & date of adoption <u>2014-res-615</u>																			
13. Does Domestic Partner equal benefits requirement apply? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO																			
14. Director's Approval																			

## **CONTRACT REVIEW/APPROVALS**

Initials	Ftnt	Date In	Date Out
Received	_____	<u>4-1-15</u>	
Controller	_____		<u>4/1/15</u>
Corporation Counsel	_____	<u>4/2/15</u>	<u>4/2/15</u>
Risk Management	_____	<u>4/2/15</u>	<u>4/2/15</u>
ADA Coordinator	_____		
Purchasing Agent	_____		<u>4/1/15</u>
_____ County Executive	_____		

## **VENDOR**

Vendor Name & Address
Contact Person
Phone No.
E-mail Address

## **Footnotes:**

1. \_\_\_\_\_

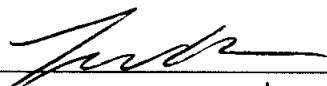
2. \_\_\_\_\_

<b>Return To:</b> Name/Title: <u>Chuck Hicklin</u> Dept.: <u>Admin/Controller</u> Phone: _____      Mail Address: _____ E-mail: _____
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**CERTIFICATION**

The attached contract: *(Check as many as apply)*

- ☐ conforms to Dane County's standard Purchase of Services Agreement form in all respects
- ☐ conforms to Dane County's standard Purchase of Services Agreement form with modifications and is accompanied by a revision copy<sup>1</sup>
- ☒ is a non-standard contract which has been reviewed or developed by corporation counsel which has not been changed since that review/development
- ☐ is a non-standard contract previously reviewed or developed by corporation counsel which has been changed since that review/development; it is accompanied by a revision copy<sup>1</sup>
- ☐ is a non-standard contract not previously reviewed by corporation counsel; it is accompanied by a revision copy
- ☐ contains non-standard/indemnification language which has been reviewed or developed by risk management and which has not been changed since that review/development
- ☐ contains non-standard insurance/indemnification language which has been changed since review/development or which has not been previously seen by risk management; it is accompanied by a revision copy
- ☐ contains non-standard affirmative action/equal opportunity language which has been reviewed or developed by contract compliance and which has not been changed since that review/development
- ☐ contains non-standard affirmative action/equal opportunity language which has been changed since the earlier review/development by contract compliance or which has not been previously seen by contract compliance; it is accompanied by a revision copy<sup>1</sup>

Date: 4/2/15 Signed: 

Telephone Number: 266-4519 Print Name: Travis Myren

**MAJOR CONTRACTS REVIEW (DCO Sect. 25.20)** This review applies only to contracts which both exceed \$100,000 in disbursements or receipts and which require county board review and approval.

**EXECUTIVE SUMMARY** *(Attach additional pages, if needed).*

1. **Department Head** ☐ Contract is in the best interest of the County.  
Describe any deviations from the standard contracting process and any changes to the standard Purchase of Services Form Agreement.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

2. **Director of Administration** ☐ Contract is in the best interest of the County.  
Comments:

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

3. **Corporation Counsel** ☐ Contract is in the best interest of the County.  
Comments:

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

<sup>1</sup>A revision copy is a copy of the contract which shows the changes from the standard contract or previously revised/developed contract by means of overstrikes (indicating deletions from the standard language) and underlining (showing additions to the standard language).

## LEASE

In consideration of the mutual promises and covenants contained in this Lease, dated as of \_\_\_\_\_, 2016, County of Dane, Wisconsin (the "Landlord") and Rethke Washington, LLC, a Wisconsin limited liability company (the "Tenant") agree as follows:

1. PREMISES. Landlord agrees to lease to Tenant, and Tenant agrees to lease from Landlord, Unit Two (the "Premises") of Rethke Avenue Condominium (the "Condominium"). Tenant acknowledges that the Condominium is governed by that certain Declaration of Condominium of Rethke Avenue Condominium, dated as of \_\_\_\_\_ (the "Condominium Declaration").

2. CONDITION OF PREMISES. Tenant acknowledges and agrees that Tenant is leasing the Premises "AS IS", and Landlord makes no warranties, express or implied, as to fitness, merchantability, use or condition of the Premises. Tenant leases the Premises without representation or warranty of Landlord, express or implied, in fact or by law, and without recourse, with respect to: (a) the condition of the Premises and (b) the ability to use the Premises for any particular purpose.

3. COMMON ELEMENTS. Tenant shall be entitled to the reasonable nonexclusive use of the common elements of the Condominium appurtenant to the Premises. Tenant's use of such common elements shall be subject to the terms of the Condominium Declaration.

4. TERM. The Lease term shall commence upon the date hereof and shall terminate on March 31, 2113.

5. RENT. Tenant has paid to Landlord on the date hereof the sum of Twenty Dollars (\$20) as rent for the Premises for the entire Lease term.

6. UTILITIES AND SERVICES. Tenant shall pay when due all charges for all utilities used in the Premises.

7. USE. The Premises may be used and occupied for any lawful use. The Premises may not be used as an accessory use to the residential component of

the Condominium. The Premises shall be a separate use. Tenant will not use the Premises in any manner that may increase the insurance risk or prevent the obtaining of insurance. It is the intent of Tenant to sublease the Premises to a third party, which Landlord hereby acknowledges.

8. **MAINTENANCE AND REPAIR.** Tenant shall, at its expense, keep and maintain in good order, condition and repair the Premises.

9. **COVENANTS.**

(a) **Compliance with Laws.** Tenant agrees to comply with all laws, orders, ordinances and regulations and with any direction made pursuant to law of any public officer, relating to Tenant's use of the Premises.

(b) **Surrender.** Tenant agrees upon the termination of this Lease for any reason to remove Tenant's personal property and trade fixtures and those of any other persons claiming under Tenant, and to quit and deliver up the Premises to Landlord peaceably and quietly in as good order and condition as the same are at the commencement of this Lease or thereafter may be improved by Tenant, reasonable use and wear, fire and other casualty loss excepted.

(c) **Personal Property Taxes.** Tenant agrees to pay, before delinquency, any and all taxes levied or assessed and which become payable during the Lease term upon Tenant's equipment, furniture, fixtures and other personal property located in the Premises.

(d) **Real Estate Taxes and Assessments.** Tenant agrees to pay, before delinquency, any and all real estate taxes and special assessments levied or assessed and which become payable during the Lease term upon the Premises.

(e) **Signage.** Tenant may place any signs on the exterior of the Premises provided they comply with applicable municipal ordinances.

(f) **Expenses of Operating the Premises.** Tenant shall, at its expense, obtain any and all services related to the operation of the Premises that it desires, including without limitation the provision of janitorial services, furniture, and supplies necessary for operation of the Premises in compliance with Section 7 hereof.

(g) Financing. Landlord shall not finance the Premises or otherwise encumber its interest in the Premises without Tenant's prior written consent.

10. **INSURANCE**. During the Lease term, Tenant shall keep in full force and effect, at its expense: (a) a policy of commercial general liability insurance covering the Premises, with a combined single limit of not less than \$1,000,000; and (b) insurance against fire, vandalism, malicious mischief and such other perils as are from time to time included in a "special form" property insurance policy, insuring Tenant's merchandise, trade fixtures, furnishings, equipment and all other items of personal property of Tenant located on or within the Premises, in an amount not less than their full replacement value. Tenant's commercial general liability insurance policy shall name Landlord and Tenant as insureds. A copy of the paid-up policies evidencing such insurance or certificates of insurers shall be delivered to Landlord prior to the commencement date of this Lease and upon renewals not less than 30 days prior to the expiration of such coverage. The property insurance for the Premises shall be maintained in accordance with the requirements of the Condominium Declaration.

11. **DAMAGE OR DESTRUCTION**. In case of damage to the Premises by fire, vandalism, malicious mischief or any other casualty, the Premises may be repaired or rebuilt in accordance with the requirements of the Condominium Declaration.

12. **INDEMNIFICATION**. Tenant shall defend and indemnify Landlord and save it harmless from and against any and all liability, damages, costs and expenses, including reasonable attorneys' fees, arising from any negligence or willful misconduct of Tenant or its officers, members, contractors, licensees, agents, servants, employees, guests, invitees, visitors or subtenants in or about the Premises.

13. **IMPROVEMENTS AND ALTERATIONS**. Tenant may make, at any time and from time to time, any alterations or improvements ("Improvements") to the Premises it desires including, without limitation, alterations to Improvements previously made by Tenant. All Improvements shall be made at Tenant's sole cost and expense. Tenant shall obtain all necessary permits, and Landlord shall cooperate as needed by Tenant to obtain said permits; further, Tenant shall provide Landlord with copies thereof. Tenant shall promptly repair any damage and perform any necessary cleanup resulting from any Improvements.

All Improvements (except trade fixtures, furniture and equipment belonging to Tenant) in existence upon termination of this Lease shall be Landlord's property and shall remain upon the Premises, all without compensation to Tenant. Tenant agrees not to create, incur, impose or permit any lien against the Premises by reason of any Improvement and Tenant agrees to hold Landlord harmless from and against any such lien claim. At its expense, Tenant shall cause to be discharged, within thirty days of the filing thereof, any construction lien claim filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to, or on behalf of Tenant.

14. EMINENT DOMAIN. In the event the entire Premises is lawfully condemned or taken in any manner for any public or quasi-public use or purpose, or sold or conveyed in lieu of condemnation, this Lease shall terminate as of the date of such taking or conveyance. In the event only a portion of the Premises is taken or conveyed, the Premises shall be repaired or rebuilt in accordance with the requirements of the Condominium Declaration. Landlord shall be entitled to all awards payable to Landlord for its fee interest in the Premises resulting from a taking, and Tenant shall be entitled to all awards payable to Tenant for its leasehold interest in the Premises resulting from a taking including, without limitation, moving expenses, the cost of any Improvements made by Tenant to the Premises and losses incurred by Tenant as a result of the taking.

15. ASSIGNMENT AND SUBLETTING. Tenant may assign this Lease and/or sublet all or any portion of the Premises, without Landlord's consent, upon such terms as Tenant desires. Landlord acknowledges that Tenant may charge its subtenants higher rents than the rent that Tenant is paying under this Lease. Landlord shall have no right to any profits made by Tenant as a result of Tenant subletting all or any portion of the Premises.

16. DEFAULT.

(a) Defaults. If Tenant (i) fails to pay any installment of rent or other charges hereunder when due and such default is not cured within five days after receipt of written notice thereof from Landlord, or (ii) fails to perform any other covenant, term, agreement or condition of this Lease and such default is not cured within 30 days after receipt of written notice thereof from Landlord (unless the default is of a nature that it cannot be cured within 30 days, in which event Tenant must commence the cure within the 30-day period and diligently prosecute same to completion) then Landlord, in addition to all other rights and remedies

available to Landlord at law or in equity or by other provisions hereof, may immediately re-enter the Premises and remove all persons and property and, at Landlord's option, terminate this Lease or terminate Tenant's right to possession of the Premises without terminating the Lease. Tenant further agrees that in case of any such termination Tenant will indemnify Landlord against all damages which Landlord may incur by reason of such termination including, without limitation, reasonable attorneys' fees.

If Tenant shall default in the observance or performance of any term or covenant of this Lease, or if Tenant shall fail to pay any sum of money, other than rent required to be paid by Tenant hereunder, Landlord may, without waiving or releasing Tenant, remedy such default at the expense of Tenant after notice and expiration of any applicable cure period. If Landlord makes any expenditures or incurs any obligations for the payment of money in connection with Tenant's default including, but not limited to, reasonable attorneys' fees, Tenant shall pay to Landlord as additional rent such sums paid or obligations incurred, with costs and interest at the rate of 12% per year.

(b) Unpaid Sums. Any amounts owing from Tenant to Landlord under this Lease shall bear interest at the annual rate of 12% calculated from the date due until the date of payment.

17. **ESTOPPEL CERTIFICATE.** Within ten (10) days after written request from Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate in form and content reasonably acceptable to Landlord. Within ten (10) days after written request from Tenant, Landlord shall execute, acknowledge and deliver to Tenant an estoppel certificate in form and content reasonably acceptable to Tenant.

18. **SUBORDINATION.** This Lease, and the term and estate hereby granted, and all of the rights of Tenant hereunder, are subject and subordinate to a ground lease (the "Ground Lease") between County of Dane, Wisconsin, as ground lessor, and Rethke Washington, LLC, as ground lessee, dated as of \_\_\_\_\_, 2015.

19. **QUIET ENJOYMENT.** Landlord covenants that if Tenant shall pay the rent and observe and perform all the terms, covenants and conditions of this Lease on its part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises subject to the terms and conditions of this Lease.

20. CONDOMINIUM OBLIGATIONS AND RIGHTS ASSIGNED TO TENANT. All rights (other than approval related to the sale of the Premises) and obligations of the Landlord pursuant to the Condominium Declaration are hereby assigned by Landlord and assumed by Tenant, including without limitation the right to vote and the obligation to pay assessments levied by the Condominium.

21. MISCELLANEOUS PROVISIONS.

(a) Successors and Assigns. This Lease shall inure to and be binding upon Landlord and Tenant and their respective successors and assigns.

(b) Non-waiver. Waiver by Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition of this Lease.

(c) Entire Agreement. This Lease contains all covenants and agreements between Landlord and Tenant relating to the Premises. No prior agreements or understandings pertaining thereto shall be valid or of any force or effect. This Lease shall not be altered, modified or amended except in writing signed by Landlord and Tenant.

(d) Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

(e) Notices. All notices which Landlord or Tenant may be required, or may desire, to serve on the other may be served by personal service or by mailing by registered or certified mail, postage prepaid, at such address as the parties may from time to time designate to the other in writing. In addition, any notice sent by Landlord or by Tenant pursuant to this Lease shall also be sent to:

U.S. Bancorp Community Development Corporation  
1307 Washington Ave, Suite 300  
St. Louis, MO 63103

Attention: Director of LIHTC Asset Management

The time of rendition of such notice shall be deemed to be the time when the notice is delivered to or rejected by the recipient.



In Witness Whereof, the parties hereto have executed this Lease as of the date first set forth above.

LANDLORD:

COUNTY OF DANE, WISCONSIN

BY \_\_\_\_\_  
Its \_\_\_\_\_

TENANT:

RETHKE WASHINGTON, LLC

BY Michael Holby  
Its \_\_\_\_\_

## GROUND LEASE

In consideration of the mutual promises and covenants contained in this Ground Lease ("**Lease**"), Landlord and Tenant agree as follows:

### 1. FUNDAMENTAL LEASE PROVISIONS AND DEFINITIONS.

DATE OF LEASE: April 1, 2015

**"LANDLORD"**: Dane County, Wisconsin  
a Wisconsin county and body corporate pursuant to Chapter 59 of  
the Wisconsin Statutes

**"LANDLORD'S  
ADDRESS"**: City-County Building, Room 425  
210 Martin Luther King, Jr. Blvd.  
Madison, Wisconsin 53703

**"TENANT"**: Rethke Washington, LLC,  
a Wisconsin limited liability company

**"TENANT'S  
ADDRESS"**: c/o Heartland Housing, Inc.  
208 South LaSalle Street, Suite 1300  
Chicago, Illinois 60604

**"PREMISES"**: The land described on Exhibit A attached hereto.

**"LEASE TERM"**: 98 years

**"COMMENCEMENT DATE"**: April 1, 2015

**"TERMINATION DATE"**: March 31, 2113

2. PREMISES. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, for the term and upon the conditions set forth in this Lease.

3.      CONDITON AND PERMITTED USE.

(a)      Tenant acknowledges and agrees that Tenant is leasing the Premises "as is", and Landlord makes no warranties, express or implied, as to fitness, merchantability, use or condition of the premises. Tenant leases the Premises without representation or warranty by Landlord, express or implied, in fact or by law, and without recourse, with respect to: (a) the condition of the premises, and (b) the ability to use the Premises for any particular purpose.

(b)      Tenant shall have the right to construct a 60-unit apartment complex, commercial space, and related improvements (collectively, the "**Improvements**") on the Premises and to use the Premises and Improvements as an affordable housing project. Tenant shall commence construction within sixty (60) days of the Commencement Date and shall diligently undertake and complete construction of the Improvements. Tenant shall pay for all costs of constructing the Improvements. At all times during the term of this Lease, (A) Tenant shall be deemed the sole owner of the Improvements, (B) Tenant alone shall be entitled to all of the tax attributes of ownership including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and (C) Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Improvements.

4.      TERM. The Lease Term shall commence on the Commencement Date and expire at midnight on the Termination Date, unless sooner terminated as hereinafter provided.

5.      RENT. Tenant has paid to Landlord on the date hereof the sum of \$98 as rent for the Premises for the entire Lease Term.

6.      NET LEASE. Landlord shall not be called upon to make any expenditure in connection with the Premises and all costs, expenses and obligations of every kind relating to the Premises which may arise or come due during the term of this Lease shall be paid by Tenant.

7.      IMPOSITIONS. Tenant agrees to pay during the Lease Term all real estate taxes and special assessments assessed with respect to the Premises and Improvements and all personal property taxes assessed with respect to Tenant's personal property. In the event any real estate taxes or special assessments are payable on an installment basis, Tenant may elect to pay the same on such basis, in

which event Tenant shall only be responsible for paying those installments due and owing during the Lease Term.

7A. COMPLIANCE WITH LAW; LIENS.

(a) Tenant, at its sole cost and expense, shall comply with and cause the Premises and the Improvements to comply with all federal, state, local and other governmental statutes, laws, rules, orders, regulations, ordinances or recommendations affecting the Premises, the Improvements or any part thereof, or the use thereof, including those which require any structural changes in the Improvements whether or not any such statutes, laws, rules, orders, regulations, ordinances or recommendations which may hereafter be enacted involve a change of policy on the part of the governmental body enacting the same, and the Americans with Disabilities Act of 1992, as amended.

(b) Tenant hereby covenants that Tenant and its agents, employees and contractors will not generate, store, use, treat or dispose of any "Hazardous Substances" (as hereinafter defined) in, on or at the Premises or any part of the Improvements, except for Hazardous Substances as are commonly legally used or stored (and in such amounts as are commonly legally used or stored) as a consequence of using the Premises for its permitted use, but only so long as the quantities thereof do not pose a threat to public health or to the environment or would necessitate a "response action", as that term is defined in CERCLA (as hereinafter defined), and so long as Tenant strictly complies or causes compliance with all laws, statutes, rules, orders, regulations, ordinances and decrees concerning the use or storage of such Hazardous Substances. Tenant further covenants that neither the Premises nor any part of the Improvements shall ever be used by Tenant or its agents, contractors or employees as a dump site or storage site (whether permanent or temporary) for any Hazardous Substances during the Term. Tenant shall cleanup and remediate any escape, seepage, leak, spill, discharge, emission or release of Hazardous Materials in, on or under the Premises occurring during the Term to the extent required by any federal, state or local governmental authority and as reasonably required by Landlord and in the time required by such governmental authority or within a reasonable time if no such time is prescribed.

For purposes of this Lease, "**Hazardous Substances**" shall mean and include those elements or compounds which are contained in the lists of hazardous substances or wastes now or hereafter adopted by the United States Environmental Protection Agency (the "**EPA**") or the lists of toxic pollutants designated now or hereafter by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious or radioactive by Comprehensive Environmental Response, Compensation and Liability

Act or any Superfund or Superlien law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

This Section 7B(b) shall survive cancellation, termination or expiration of this Lease.

(c) Subject to the provisions of Sections 18 and 19 hereof, Tenant shall not create or permit to be created or to remain, and shall promptly discharge, at its sole cost and expense, any lien, encumbrance or charge upon the Premises, or any part thereof or upon Tenant's leasehold estate hereunder, that arises from the use or occupancy of the Premises by Tenant or by reason of any labor, service or material furnished or claimed to have been furnished to or for the benefit of Tenant or by reason of any construction, repairs or demolition by or at the direction of Tenant of all or any part of the Improvements.

Notice is hereby given that Landlord shall not be liable for the cost and expense of any labor, services or materials furnished or to be furnished with respect to the Premises at or by the direction of Tenant or anyone holding the Premises or any part thereof by, through or under Tenant and that no laborer's, mechanic's or materialman's or other lien for any such labor, service or materials shall attach to or affect the interest of Landlord in and to the Premises. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any improvements or repairs to or of the Premises or any part thereof, nor as giving Tenant any right, power or authority on behalf of Landlord to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the Premises or any part thereof.

(d) If Tenant fails to discharge any lien or to comply with any law as required herein and such failure continues for thirty (30) days after written notice from Landlord to Tenant, Landlord with or without declaring a default hereunder and without relieving Tenant of any liability hereunder may, but shall not be obligated to, discharge or pay such lien (either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings) or cause compliance with such law, and any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith shall be paid by Tenant to Landlord within thirty (30) days after written demand by Landlord.

8. MAINTENANCE, REPAIR AND REPLACEMENT. Tenant shall, at its expense, keep and maintain in good order, condition and repair the Premises and all Improvements constructed thereon.

9. INSURANCE.

(a) Tenant agrees to carry, at its expense, property insurance insuring the Improvements and any personal property of Tenant from loss arising from fire or other casualty in an amount equal to their full replacement value. During construction of the Improvements, the property insurance shall be in the form of builder's risk insurance.

(b) Tenant agrees to carry, at its expense, a policy of commercial general liability insurance in which the limits of liability shall be not less than Three Million Dollars (\$3,000,000) combined single limit per occurrence. Landlord shall be named as an additional insured with respect to the commercial general liability insurance.

(c) All insurance required to be carried by Tenant shall be with an insurance company authorized to do business in the State of Wisconsin. Tenant shall deliver to Landlord certificates of insurance evidencing the insurance required to be carried by Tenant under this Lease prior to commencement of the Lease Term and upon renewals not less than 30 days prior to the expiration of such coverage.

10. INDEMNIFICATION. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liability, damages, costs, or expenses, including reasonable attorneys fees, arising from any act, omission or negligence of Tenant or its contractors or agents in or about the Premises, or arising from any breach or default under this Lease by Tenant. Landlord shall indemnify, defend and hold Tenant and its members harmless from and against any and all liability, damages, costs, or expenses, including reasonable attorneys fees, arising from any act, omission or negligence of Landlord or its contractors or agents in or about the Premises, or arising from any breach or default under this Lease by Landlord.

11. UTILITIES. Tenant shall pay or cause to be paid all charges for gas, electricity, water, sewerage, heat or other fuel or power or any other utility or service used, rendered or supplied upon or in connection with the Premises.

12. CASUALTY. In the event of destruction or damage to the Improvements by fire or other casualty, Tenant shall diligently proceed to make all repairs necessary to restore the Improvements to substantially the same condition in

which they existed immediately prior to such destruction or damage, subject to delays beyond the control of Tenant. However, should the proceeds of insurance not be sufficient to rebuild the Improvements, Tenant shall have the option, exercisable by written notice to Landlord within sixty (60) days after the date of such casualty, to terminate this Lease upon which, Landlord shall have the option to (a) demand that Tenant demolish the destroyed or damaged portion of the Improvements at Tenant's expense or (b) demand that Tenant assign to Landlord its right to any insurance proceeds so that Landlord may demolish or repair the destroyed or damaged portion of the Improvements.

13. EMINENT DOMAIN. In the event the entire Premises are lawfully condemned or taken in any manner for any public or quasi-public use or purpose, or sold or conveyed in lieu of condemnation, this Lease shall terminate as of the date of such taking or conveyance. In the event only a portion of the Premises is taken or conveyed, this Lease shall remain in full force and effect unless Tenant terminates this Lease. Tenant may terminate this Lease upon written notice thereof within 120 days of such taking or conveyance. Tenant shall be entitled to recover from the proceeds of any award all costs, damages, expenses, liabilities and losses in any way arising out of or resulting from any taking including, without limitation, moving expenses and the cost of any Improvements made by Tenant; provided, however, that Landlord, and not Tenant, shall be entitled to recover the value of any land and its right of first refusal to purchase the Improvements (as opposed to the Improvements) taken.

14. ASSIGNMENT AND SUBLETTING. Tenant shall not assign or transfer this Lease without first obtaining Landlord's written consent. Tenant shall have the right to sublease apartment units in the Improvements without the consent of Landlord. Tenant shall not be required to obtain Landlord's consent in connection with the transfer, assignment or other conveyance of any membership interest in Tenant.

15. DEFAULT BY TENANT AND RIGHTS OF LANDLORD.

(a) If Tenant either (i) fails to pay any charges due hereunder when due and fails to cure said non-payment within ten (10) days after Tenant receives written notice of such non-payment from Landlord or (ii) fails to perform any other covenant, term, agreement or condition of this Lease within thirty (30) days after notice from Landlord (or, if performance cannot be completed within thirty (30) days, fails to commence to perform said covenant, term, agreement or condition within thirty (30) days after receipt of said notice from Landlord and to diligently prosecute same to completion), then, in any of such cases, Landlord, in addition to all other rights and remedies available to Landlord by law or by other provisions hereof, may,

without process, immediately re-enter the Premises and remove all persons and property and, at Landlord's option, terminate this Lease as to all future rights of Tenant.

(b) If any action is brought to recover rent or other amount under this Lease because of any event of default under this Lease, to enforce or interpret any of the provisions of this Lease or for recovery of possession of the Premises, the party prevailing in such action shall be entitled to recover from the other party reasonable attorneys' fees incurred, including those incurred in connection with any appeal, the amount of which shall be fixed by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses incurred by Landlord, including, without limitation, reasonable attorneys' fees, that Landlord incurs in any case or proceeding involving Tenant under or related to any bankruptcy or insolvency law. Landlord shall be responsible for all expenses incurred by Tenant, including, without limitation, reasonable attorneys' fees, that Tenant incurs in any case or proceeding involving Landlord under or related to any bankruptcy or insolvency law. In addition, if Landlord engages counsel to enforce the terms of this Lease, including for the purpose of preparing a delinquency notice, Tenant shall be required to reimburse Landlord for all attorneys' fees incurred before the subject default is cured.

(c) Landlord agrees that it will take no action to effect a termination of this Lease by reason of any default without first giving to Tenant's investor member, if the investor member has provided Landlord with written notice of its intention to, within a reasonable time, not to exceed sixty (60) days (or if the investor member is diligently pursuing the same, not to exceed 120 days), to replace any managing member of Tenant and/or to admit an additional managing member and cause the new managing member to cure any Event of Default; provided, however, that as conditions of such forbearance, Landlord must receive notice of the substitution of any managing member of Tenant within twenty (20) days following the expiration of the cure period given through Landlord's notice to the investor member, and Tenant, following such substitution of any managing member shall thereupon proceed with due diligence to cure such default.

16. QUIET ENJOYMENT. Landlord covenants that if Tenant observes and performs all the terms, covenants and conditions of this Lease on its part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises subject to the terms and conditions of this Lease.

17. SURRENDER OF PREMISES. Upon the termination of this Lease for any reason, (a) Tenant shall remove Tenant's goods, effects and fixtures and those of any other persons claiming under Tenant, and quit and deliver up the Premises to



Landlord peaceably and quietly and (b) title to the Improvements shall automatically transfer to Landlord.

18. FINANCING. Landlord acknowledges that in connection with Tenant's construction of the Improvements on the Premises, Tenant will be obtaining financing from various lenders. From time to time during the Lease Term, Tenant may be required or desire to refinance any existing loans in connection with the Premises. Landlord further acknowledges that the lenders may require Tenant to execute and deliver various documents that will need to be recorded against Tenant's interest in this Lease including, without limitation, land use restriction agreements, mortgages and deeds of trust (collectively, the "**Encumbrances**"), but in no even shall such Encumbrances encumber Landlord's fee or other interest in the Premises. Prior to recording any Encumbrances, Tenant shall obtain Landlord's written approval of the Encumbrances, which approval shall not be unreasonably withheld or delayed.

19. MISCELLANEOUS PROVISIONS.

(a) The titles to sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

(b) This Lease shall be governed by the laws of the State of Wisconsin.

(c) All of the covenants, agreements, terms and conditions contained in this Lease shall inure to and be binding upon Landlord and Tenant and their respective successors and assigns.

(d) The covenants and agreements of this Lease shall not be altered, modified or amended except in writing signed by Landlord and Tenant.

(e) Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect. If the intent of any sections of this Lease so indicate, the obligations of Landlord and Tenant pursuant to such sections of this Lease shall survive the termination of this Lease.

(f) All notices which Landlord or Tenant may be required, or may desire, to serve on the other may be served by facsimile, personal service or by mailing by registered or certified mail, postage prepaid, at the addresses or facsimile number set forth below or at such other address, or facsimile number, as the parties may from time to time designate to the other in writing. Landlord shall provide copies of all notices it sends to Tenant hereunder to Tenant's investor member at the address, or facsimile number, set forth in Section 1 or below, as applicable, or at such other address, or facsimile number, as the investor member may from time to time designate to Landlord in writing.

To Landlord:  
As listed in Section 1

To Tenant:  
As listed in Section 1

With a copy to:  
Reinhart Boerner Van Deuren s.c.  
1000 North Water Street, Suite 1600  
Milwaukee, Wisconsin 53202  
Attention: William R. Cummings  
Facsimile number: 414-298-8097

To Tenant's investor member:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile number: \_\_\_\_\_

The time of rendition of any notice hereunder shall be deemed to be the time when the notice is either sent via confirmed facsimile, personally delivered or deposited in the mail as herein provided.

(g) Time periods or deadlines for Landlord's or Tenant's performance under any provisions of this Lease (except for the payment of money) shall be extended for periods of time during which the nonperforming party's performance is prevented due to circumstances beyond the party's control, including, without limitation, labor disputes, embargoes, governmental restrictions or regulations, inclement weather and other acts of God, war or other strife.

(h) Landlord and Tenant shall execute a memorandum of this Lease (the "**Memorandum**"), in the form substantially set forth in Exhibit B. Tenant shall cause the Memorandum promptly to be recorded in the real property records. Tenant shall pay all costs of recording the Memorandum.

(i) By signing below, the authorized officer of Landlord hereby certifies that this Lease has been approved and authorized by Landlord.

## **EXHIBIT A**

### **Legal Description of Premises**

IN WITNESS WHEREOF, the parties hereto have executed or caused this Lease to be executed as of the day and year first above written.

LANDLORD:

DANE COUNTY, WISCONSIN  
a Wisconsin county and body corporate pursuant  
to Chapter 59 of the Wisconsin Statutes

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

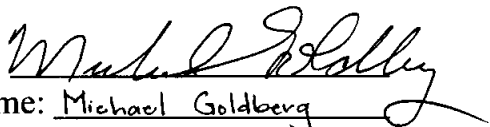
Attested by: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

RETHKE WASHINGTON, LLC,  
a Wisconsin limited liability company

By: Rethke Washington MM, LLC, Managing  
Member

By: Heartland Housing, Inc., Manager

By:   
Name: Michael Goldberg  
Title: Executive Director

## EXHIBIT B

### Form of Memorandum of Ground Lease

*See attached.*

	Memorandum of Ground Lease	
Document Number	Document Title	

Recording Area

Drafted by and Return to:

Reinhart Boerner Van Deuren s.c.  
Joseph D. Shumow  
22 East Mifflin Street, Suite 600  
Madison, Wisconsin 53703

Parcel Identification Number (PIN)

## MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease (the "**Memorandum**") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between Dane County, Wisconsin, a Wisconsin county and body corporate pursuant to Chapter 59 of the Wisconsin Statutes, as landlord ("**Landlord**"), and Rethke Washington, LLC, a Wisconsin limited liability company, as tenant ("**Tenant**").

Pursuant to a Ground Lease dated \_\_\_\_\_, 2015, as amended and incorporated herein by this reference (the "**Lease**"), Landlord leased to Tenant, commencing on \_\_\_\_\_, 2015 ("**Commencement Date**") and ending on the 98th anniversary of the Commencement Date that certain leased premises legally described on Annex A attached hereto and made a part hereof (the "**Premises**").

This Memorandum is solely intended to provide notice to third parties of the Lease and of Tenant's interest in the Premises. In the event of any inconsistency between the terms of the Lease and this Memorandum, the terms of the Lease shall control.

This Memorandum may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Signature Pages Follow.]*



IN WITNESS WHEREOF, this Memorandum has been executed as of the day and year first above written.

LANDLORD:

DANE COUNTY, WISCONSIN  
a Wisconsin county and body corporate  
pursuant to Chapter 59 of the Wisconsin  
Statutes

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

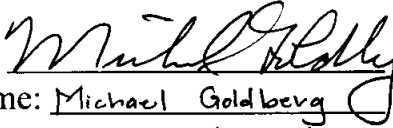
Attested by: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

RETHKE WASHINGTON, LLC,  
a Wisconsin limited liability company

By: Rethke Washington MM, LLC,  
Managing Member

By: Heartland Housing, Inc., Manager

By:   
Name: Michael Goldberg  
Title: Executive Director

[Notary Blocks Follow.]

STATE OF WISCONSIN                    )  
  ) ss.  
COUNTY OF DANE                    )

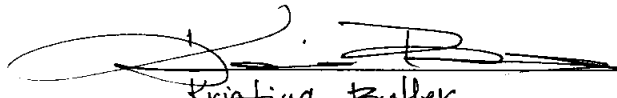
Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2015, the above-named \_\_\_\_\_, known to be to the \_\_\_\_\_ of Dane County, Wisconsin, a Wisconsin county and body corporate pursuant to Chapter 59 of the Wisconsin Statutes, who executed the foregoing instrument on behalf of said county.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

STATE OF Illinois                    )  
  ) ss.  
COUNTY OF Cook                    )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2015, the above-named Michael Goldberg to me known to be the Executive Assistant of the Heartland Housing, Inc., the manager of Rethke Washington MM, LLC, the managing member of Rethke Washington, LLC, who executed the foregoing instrument on behalf of said company.



  
Kristina Butler  
Notary Public, State of Wisconsin  
My Commission: September 12, 2016