

Dane County Contract Cover Sheet

Revised 06/2021

Res 425
Significant

BAF # 22044
Acct: DRS
Mgr: WUTHRICH
Budget Y/N: N

| | | | |
|---|--|----------------|------|
| Dept./Division | Human Services /Housing Access and Affordability | | |
| Vendor Name | Dane County Housing Authority | MUNIS # | 1827 |
| Brief Contract Title/Description | Agreements related to an affordable housing project at 2206 University Avenue in the City of Madison | | |
| Contract Term | 40 years | | |
| Contract Amount | \$ 1,450,000.00 | | |

| | |
|--|----------------------|
| Contract # Admin will assign | 14710 |
| Type of Contract | |
| <input type="checkbox"/> | Dane County Contract |
| <input type="checkbox"/> | Intergovernmental |
| <input type="checkbox"/> | County Lessee |
| <input type="checkbox"/> | County Lessor |
| <input type="checkbox"/> | Purchase of Property |
| <input type="checkbox"/> | Property Sale |
| <input checked="" type="checkbox"/> | Grant |
| <input type="checkbox"/> | Other |

| Department Contact Information | | Vendor Contact Information | |
|--------------------------------|--|----------------------------|---|
| Name | Spring Larson, Contract Coordination Assistant | Name | Karyn Knaack (DCHA) Mark Hammond (MSP) |
| Phone # | 608-242-6391 | Phone # | 608-224-3636 ext 023 (Karyn) 612-868 |
| Email | dcdhscontracts@countyofdane.com | Email | kknaak@dcha.net mhammond@msphousing.com |
| Purchasing Officer | | | |

| | | |
|-----------------------------|--|------------------|
| Purchasing Authority | <input type="checkbox"/> \$11,000 or under – Best Judgment (1 quote required) | |
| | <input type="checkbox"/> Between \$11,000 – \$37,000 (\$0 – \$25,000 Public Works) (3 quotes required) | |
| | <input type="checkbox"/> Over \$37,000 (\$25,000 Public Works) (Formal RFB/RFP required) | RFB/RFP # |
| | <input type="checkbox"/> Bid Waiver – \$37,000 or under (\$25,000 or under Public Works) | |
| | <input type="checkbox"/> Bid Waiver – Over \$37,000 (N/A to Public Works) | |
| | <input checked="" type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other | |

| MUNIS Req. | Req # | Org: | Obj: | Proj: |
|------------|-------|------|------|-------|
| | | Org: | Obj: | Proj: |
| | Year | Org: | Obj: | Proj: |

| Budget Amendment | |
|--------------------------|---|
| <input type="checkbox"/> | A Budget Amendment has been requested via a Funds Transfer or Resolution. Upon addendum approval and budget amendment completion, the department shall update the requisition in MUNIS accordingly. |

| | | | |
|--|---|--------------|-------------|
| Resolution Required if contract exceeds \$100,000 (\$40,000 PW) | <input type="checkbox"/> Contract does not exceed \$100,000 (\$40,000 Public Works) | Res # | 425 |
| | <input checked="" type="checkbox"/> Contract exceeds \$100,000 (\$40,000 Public Works) – resolution required. | | Year |
| | <input checked="" type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet. | | |

| CONTRACT MODIFICATIONS – Standard Terms and Conditions | | |
|--|---|---|
| <input type="checkbox"/> No modifications. | <input type="checkbox"/> Modifications and reviewed by: | <input checked="" type="checkbox"/> Non-standard Contract |

| APPROVAL |
|----------------------------------|
| Dept. Head / Authorized Designee |
| <i>Shawn Tessman</i> |

| APPROVAL – Contracts Exceeding \$100,000 | |
|--|---------------------|
| Director of Administration | Corporation Counsel |
| | |

| APPROVAL – Internal Contract Review – Routed Electronically – Approvals Will Be Attached | | | |
|--|------------------------|------------------|--|
| DOA: | Date In: 4/7/22 | Date Out: | <input type="checkbox"/> Controller, Purchasing, Corp Counsel, Risk Management |

Goldade, Michelle

From: Goldade, Michelle
Sent: Friday, April 8, 2022 1:31 PM
To: Hicklin, Charles; Rauti, Susan; Rogan, Megan; Lowndes, Daniel
Cc: Stavn, Stephanie; Oby, Joe
Subject: Contract #14710
Attachments: Attachments.html

| Tracking: | Recipient | Read | Response |
|-----------|------------------|------------------------|---------------------------|
| | Hicklin, Charles | Read: 4/8/2022 2:03 PM | Approve: 4/8/2022 2:04 PM |
| | Rauti, Susan | Read: 4/8/2022 1:31 PM | Approve: 4/8/2022 3:40 PM |
| | Rogan, Megan | Read: 4/8/2022 2:16 PM | Approve: 4/8/2022 2:16 PM |
| | Lowndes, Daniel | Read: 4/8/2022 1:36 PM | Approve: 4/8/2022 1:35 PM |
| | Stavn, Stephanie | Read: 4/8/2022 3:58 PM | |
| | Oby, Joe | | |

Citrix Attachments

Expires October 5, 2022

14710.pdf

21.8 MB

[Download Attachments](#)

Michelle Goldade uses Citrix Files to share documents securely.

Please review the contract and indicate using the vote button above if you approve or disapprove of this contract.

Contract #14710

Department: Human Services

Vendor: Dane County Housing Authority

Contract Description: Agreements for Affordable Housing Project at 2206 University Avenue (Res 425)

Contract Term: 5/1/22 – 5/1/42

Contract Amount: \$1,450,000.00

Michelle Goldade

Administrative Manager

Dane County Department of Administration

Room 425, City-County Building

210 Martin Luther King, Jr. Boulevard

Madison, WI 53703

PH: 608/266-4941

Fax: 608/266-4425

TDD: Call WI Relay 711

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2021 RES-425

**APPROVING AGREEMENTS FOR AN AFFORDABLE HOUSING PROJECT AT 2206
UNIVERSITY AVENUE IN THE CITY OF MADISON
DCDHS – HAA DIVISION**

As part of the 2021 awards for the Dane County Affordable Housing Development Fund, the county awarded funding of \$1,450,000 to MSP Real Estate, Inc., also known as the affiliate The Heights Apartments, LLC., for The Heights affordable multi-family housing project to be constructed at 2206 University Avenue, Madison.

The project will consist of 79 units; forty-two (42) 1-bedroom, twenty-one (21) 2-bedroom, and sixteen (16) 3-bedroom units. Sixty-two (62) units will be affordable: sixteen (16) to households at 30%, thirty-two (32) at 50%, and fourteen (14) at 60% of the County Median Income (CMI). Seventeen (17) units will be offered at market-rate rents. The project will target sixteen (16) units to be filled by households on the Dane County Homeless Services Consortium's community by-name list.

The county's support includes a grant from the county to the Dane County Housing Authority. The housing authority will then make a loan to the project developers. DCHA will receive an administrative fee of \$10,000. The administrative fee is included in the award amount and will be deducted from the amount loaned to the project developers. The terms of the loan include interest only payments of 2% for a 40 year term. The full principal of \$1,440,000 will be due to the housing authority at the end of the loan.

NOW, THEREFORE, BE IT RESOLVED that the County Executive, County Clerk and County Real Estate staff are authorized to execute the grant agreement and related documents to support the affordable housing project at 2206 University Avenue in the City of Madison, and that the Dane County Controller's Office is authorized to make payments related to the execution of the grant agreement.

AFFORDABLE HOUSING DEVELOPMENT FUND
GRANT AGREEMENT

This Agreement made and entered into this _____ day of _____, 2022 by and among the COUNTY of Dane, Wisconsin (“County”), a quasi-municipal corporation created pursuant to chapter 59 of the Wisconsin Statutes, the Dane County Housing Authority (“DCHA”), a quasi-municipal corporation created pursuant to section 59.53(22) of the Wisconsin Statutes, and The Heights Apartments, LLC (“RECIPIENT”), a Wisconsin limited liability company (collectively the “Parties.”)

WHEREAS, in Fiscal Year 2021, the Dane County Capital Budget includes funding for the Affordable Housing Development Fund (“AHDF”). Pursuant to Wisconsin law, the COUNTY may make grants to the DCHA, who can then make loans directly to developers of affordable housing projects.

WHEREAS, the COUNTY and the DCHA have previously signed a Memorandum of Understanding dated August 23, 2021 to partner with the COUNTY to disburse AHDF monies to AHDF grant recipients.

WHEREAS, through an application process, RECIPIENT has been awarded AHDF monies for the acquisition and development of a multifamily residential building located at 2206 University Avenue, that has a legal description as described in Exhibit A (the “Project”).

WHEREAS, the proceeds of the grant will be loaned by DCHA to the RECIPIENT pursuant to the terms of a Subaward Note (the “Subaward Note”).

WHEREAS, as a condition of the COUNTY’S AHDF Award to RECIPIENT, pursuant to the structure set forth in these Recitals, the COUNTY requires and RECIPIENT agrees to restrict the use of the Project as hereinafter described (“Restrictions”). Such Restrictions are contained in this Agreement, as well by the associated Land Use Restriction Agreement in favor of Dane County (“COUNTY LURA”) and are herein incorporated by reference.

NOW THEREFORE, in consideration of this agreement between the COUNTY, the DCHA, and RECIPIENT, the Parties agree as follows:

1. PURCHASE. The COUNTY agrees to grant to DCHA AHDF monies specifically for the DCHA to lend to RECIPIENT for the acquisition and development of the Project in the sum of \$1,450,000 (the “Grant”). Ten thousand dollars (\$10,000) of the Grant shall be retained by the DCHA to assist with the costs of administering the loan. Upon receipt of the Grant, DCHA agrees and warrants to immediately and without delay loan the Grant to RECIPIENT (the “Loan”), pursuant to that certain Subaward Note dated as of the date hereof by RECIPIENT in favor of DCHA. RECIPIENT agrees and warrants that it will within 36 months of the last signature on this Agreement, acquire and develop the Project using Loan proceeds, which DCHA funded via the Grant proceeds. COUNTY represents that the ADHF monies originate from taxable promissory notes, which are not exempt from federal income tax under Section 103 of the Internal Revenue Code.

2. USE OF PREMISES. In consideration of DCHA accepting the Subaward Note, RECIPIENT agrees and warrants that it shall use the Project as affordable rental housing, and in consideration thereof agrees and warrants to the recording of a Land Use Restriction Agreement in favor of Dane County ("COUNTY LURA"), guaranteeing a period of affordability as set forth therein. COUNTY acknowledges that the Project will be funded in part through low-income housing tax credits ("LIHTCs") award by the Wisconsin Housing and Economic Development Authority ("WHEDA") and in connection therewith RECIPIENT and WHEDA will enter into a Land Use Restriction Action –Low Income Housing Tax Credits (the "WHEDA LURA").

RECIPIENT agrees and warrants that 62 of the 79 units in the Project will be leased to tenants with a household income as defined by the U.S. Department of Housing and Urban Development ("HUD") at or below that certain Area Median Income ("AMI"), as calculated by HUD and more fully set forth in the WHEDA LURA. The units shall be rent restricted as further set forth in the COUNTY LURA.

The COUNTY LURA shall at all times be subject and subordinate to the WHEDA LURA, notwithstanding when the WHEDA LURA is recorded. The COUNTY LURA shall be recorded against the Project before any other documents creating an encumbrance thereon, except for the Mortgage and documents evidencing the permanent first mortgage or construction loan and the mortgage and documents evidencing certain loans from the City of Madison in the aggregate principal amount of \$2,300,000. RECIPIENT shall pay recording fees. The COUNTY LURA is attached as Exhibit B. COUNTY and/or DCHA shall enter into a subordination agreement in a form reasonably required by RECIPIENT's first lien construction and/or permanent lender if required by such lender.

3. PERIOD OF AFFORDABILITY. The Project must meet the affordability requirements for not less than forty (40) years beginning on the day the Project is completed (such 40-year term being the "Affordability Period"). The Project is considered completed when a final certification of occupancy is issued. RECIPIENT shall repay loan funds if Project does not meet the affordability requirements for the full Affordability Period.
4. UNIT DESCRIPTION. The Project unit set asides required to meet the affordability requirements are set forth in Exhibit C, and the affordability restrictions shall be specifically set forth in the COUNTY LURA.
5. TERM. The term of the warranties and covenants entered herein as a part of this Agreement shall terminate upon the full repayment of the outstanding principal balance and any accrued interest under the Subaward Note, but not before the fifteen (15) year anniversary of the certificate of occupancy. The Loan and interest payments shall be due and payable on the dates defined in the Subaward Note. The Subaward Note is incorporated by reference and attached as Exhibit D.
6. REPORTING REQUIREMENTS. RECIPIENT shall provide to the COUNTY and DCHA, upon written request by COUNTY or DCHA, an annual written report which shall,

at a minimum, include the following information: number of tenants, how many units are rented to tenants with household incomes at 80%, 70%, 60%, 50%, 40% and 30% of AMI, the number of eviction actions filed, the reason for eviction, the number of eviction notices, issued to the tenants in the twelve months preceding the eviction filing, the number of eviction judgments granted, writs executed, and/or other case resolution (e.g. vacated prior to execution of writ or allowed to stay with conditions), tenant demographics and any other information that may affect the status of the Project. This report shall be due to the COUNTY no later than February 15 and shall reflect the period from January 1 to December 31 of the previous calendar year.

7. FINANCIAL DOCUMENTS. Upon written request by DCHA or COUNTY, RECIPIENT shall provide financial statements to DCHA or COUNTY, in form reasonably acceptable to the DCHA or COUNTY, for the purpose of establishing cash flow in a given year. The adequacy of such documentation shall be determined in the reasonable discretion of the DCHA or COUNTY. The COUNTY and DCHA understand that some information contained in the RECIPIENT'S financial statements is confidential. DCHA and the COUNTY covenant to protect such information from disclosure. Notwithstanding the foregoing, to the extent physical hard copies are in DCHA and COUNTY possession, DCHA AND COUNTY may, to the extent necessary disclose such confidential information following a formal and valid Wisconsin Open Records' request, or a formal demand for such records by a court, regulatory body or other legal authority.
8. RECORDS. RECIPIENT shall provide, upon reasonable request by DCHA or COUNTY, reports and other documentation related to tenancy and leasing for units assisted under this Agreement. RECIPIENT shall take reasonable steps COUNTY or DCHA directs to assist COUNTY or DCHA in monitoring units assisted or available for assistance under this AGREEMENT.
9. RECIPIENT shall, upon written request by DCHA and/or COUNTY no more often than annually, certify to COUNTY that each building and all units in the Project are suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements.
10. LEASES. RECIPIENT shall enter into leases with tenants that are consistent with the purpose of this Agreement.
11. TENANCY ADDENDUM. RECIPIENT shall comply with the policies outlined in the Tenancy Addendum ("Addendum"). The Addendum is attached as Exhibit E. The Tenancy Addendum shall be attached to all of RECIPIENT'S leases for residential units. If there are conflicts between the Addendum provisions and the lease, the Addendum requirements shall take precedence. Any material violation of the Addendum by RECIPIENT, as determined by COUNTY in its reasonable discretion, shall result in a penalty of \$500 payable to COUNTY by RECIPIENT.
12. HOUSING FIRST. RECIPIENT will target 16 units (20% of total units) to individuals/families on the Community-wide Priority List for Housing. RECIPIENT, or

its designee, agrees to meet with COUNTY, RECIPIENT's supportive services partner(s) and RECIPIENT's property management partner(s) at least Ninety (90) days prior to anticipated start of accepting tenant applications to determine how referrals for available units will be identified. RECIPIENT, or its designee, shall initiate this meeting. RECIPIENT, or its designee, agrees to meet with COUNTY, RECIPIENT's supportive services partner(s) and RECIPIENT's property management partner(s) regularly thereafter, at the request of COUNTY, to determine how units will be identified for the Project prior to lease up and when subsequent vacancies occur.

13. TARGETED POPULATIONS. RECIPIENT will provide a preference for the below checked populations with respect to 16 units in the Project restricted to 30% of AMI.

| Yes | No | |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Chronically homeless, meaning those who are either: 1) an unaccompanied homeless individual with a disabling condition who has been continuously homeless for a year or more, or 2) an unaccompanied individual with a disabling who has had at least four episodes of homelessness the past three years. Disabling conditions include mental illness and alcohol and drug conditions |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Veterans experiencing homelessness |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Very low-income families and/or families experiencing homelessness. |
| <input type="checkbox"/> | <input type="checkbox"/> | Persons with arrest and conviction records |
| <input type="checkbox"/> | <input type="checkbox"/> | Individuals who are elderly |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Individuals with disabilities |

14. FAIR TENANT SELECTION CRITERIA. RECIPIENT will not deny applications based on the following checked boxes:

| | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Inability to meet a minimum income requirement if the applicant can demonstrate the ability to comply with the rent obligation based on a rental history of paying at an equivalent rent to income ratio for 24 months |
| <input checked="" type="checkbox"/> | Lack of housing history |
| <input type="checkbox"/> | Credit score |
| <input checked="" type="checkbox"/> | Information on credit report that is disputed, in repayment, or unrelated to a past housing or utility (gas, electric, and water only) obligations. |
| <input checked="" type="checkbox"/> | Inability to meet financial obligations other than housing and utilities necessary for housing (gas, electric, water). |
| <input checked="" type="checkbox"/> | Owing money to a prior landlord or negative rent payment history if the tenant's housing and utility costs were more than 50% of their monthly income. |
| <input checked="" type="checkbox"/> | Owing money to a prior landlord or negative rent or utility payment history if applicant does one of the following: (1) establishes a regular record of repayment of the obligation; 2) signs up for automatic payment of rent to the housing provider; or (3) obtains a representative payee. |
| <input checked="" type="checkbox"/> | Wisconsin Circuit Court Access records; |
| <input type="checkbox"/> | Criminal activity, except: (i) a criminal conviction within the last two years for violent criminal activity or drug related criminal activity resulting in a criminal conviction, and (ii) if the program or project is federally assisted, criminal activity for which federal law currently requires denial. (Violent criminal activity is defined in 24 C.F.R § 5.100 and |

| | |
|-------------------------------------|--|
| | means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage. "Drug related criminal activity is defined in Wis. Stat. s. 704.17(3m)(a)(2). "Drug-related criminal activity" means criminal activity that involves the manufacture or distribution of a controlled substance. "Drug-related criminal activity" does not include the manufacture, possession, or use of a controlled substance that is prescribed by a physician for the use of by a disabled person, as defined in s. 100.264(1)(a), and manufactured by, used, by or in the possession of the disabled person or in the possession of the disabled person's personal care worker or other caregiver.) |
| <input checked="" type="checkbox"/> | Membership in a class protected by Dane County fair housing ordinances and non-discrimination ordinances in the municipality where the project is located. |

The applicable FTSC (those checked above) shall be attached to all of RECIPIENT'S applications for residential units. Each incident of violation of the applicable FTSC, as determined by COUNTY, shall result in a penalty of Five hundred dollars (\$500) payable to COUNTY by RECIPIENT. RECIPIENT shall include written justification for denials of residential rental applications. Upon request by COUNTY, RECIPIENT shall provide COUNTY supporting documentation for decisions related to the applicable FTSC. Supporting documentation must be kept by RECIPIENT for two (2) years following the denial decision.

15. MODIFICATIONS. COUNTY AND RECIPIENT acknowledge that ¶¶ 11-15 were included in RECIPIENT'S response to the COUNTY application process referred to in the Recitals of this Agreement. RECIPIENT shall continue to comply with the terms and conditions outlined in ¶¶ 11-15 throughout the term of the Agreement, unless the County agrees to modify this agreement in writing.
16. GREEN TECHNOLOGIES. Intentionally Omitted.
17. SECURITY. The Subaward Note shall be secured by a Mortgage executed by RECIPIENT in favor of DCHA and shall be in a form reasonably satisfactory to COUNTY and shall provide, among other things (and subject to any applicable subordination agreement), that upon the occurrence of an Event of Default by RECIPIENT, under this AGREEMENT, or under the Subaward Note which extends beyond any applicable notice and cure periods, DCHA may, at its option, in addition to all other remedies available to it, take possession of the Project (in accordance with the foreclosure process required under Wisconsin law). DCHA however, shall be under no obligation to exercise this right and its action in this respect shall be wholly at its option.
18. COMPLIANCE WITH LAWS. RECIPIENT shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City of Madison, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Project. RECIPIENT may, if in good faith and on reasonable grounds, dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same.

RECIPIENT agrees that any such contest shall be prosecuted to a final conclusion as soon as possible and that it will hold the COUNTY harmless with respect to any actions taken by any lawful governmental authority with respect thereto.

19. TAXES. RECIPIENT covenants and agrees that it shall pay, before delinquency, all municipal, county and state or federal taxes assessed against the Project or any fixtures, furnishings, equipment, merchandise, improvements, alterations, stock-in-trade or other personal property of any kind owned, installed or upon the Project. RECIPIENT covenants and agrees that it shall pay, before delinquency, all special assessments or special charges assessed against the Project.

20. INSURANCE AND INDEMNIFICATION.

- a. RECIPIENT shall indemnify, hold harmless and defend DCHA, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which the DCHA, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of any act, omission or negligence of RECIPIENT or its tenants, officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors in or about, or in relation to the Project, or resulting from this Agreement, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from any act, omission or negligence of the DCHA, its agencies, boards, commissions, officers, employees or representatives. The obligations of the DCHA and RECIPIENT under this paragraph shall survive beyond the term of this Agreement for a period of five (5) years.
- b. RECIPIENT shall indemnify, hold harmless and defend the COUNTY, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which the COUNTY, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of any act, omission or negligence of RECIPIENT or its Subtenants, officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors in or about, or in relation to the Project, or resulting from this Agreement, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from any act, omission or negligence of the COUNTY, its agencies, boards, commissions, officers, employees or representatives. The obligations of the COUNTY and RECIPIENT under this paragraph shall survive beyond the term of this Agreement for a period of five (5) years.
- c. In order to protect itself, DCHA, and COUNTY, its officers, boards, commissions, agencies, employees and representatives under the indemnity provisions of this Agreement, RECIPIENT shall obtain and at all times during the term of this

Agreement keep in full force and effect comprehensive general liability policy issued by a company or companies authorized to do business in the State of Wisconsin and licensed by the Wisconsin Insurance Commissioner, with liability coverage provided for therein in the amounts of at least \$1,000,000.00 CSL (Combined Single Limits). Coverage afforded shall apply as primary. COUNTY and DCHA shall be given ten (10) days advance notice of cancellation or nonrenewal. Upon execution of this Agreement, RECIPIENT shall furnish COUNTY and DCHA with a certificate of insurance listing COUNTY and DCHA as an additional insured and, upon request, certified copies of the required insurance policies. If RECIPIENT'S insurance is underwritten on a Claims-Made basis, the Retroactive Date shall be prior to or coincide with the date of this Agreement. The Certificate of Insurance shall state that coverage is Claims-Made and indicate the Retroactive Date. RECIPIENT shall maintain coverage for the duration of this Agreement and for two years following the completion of this Agreement. RECIPIENT shall furnish COUNTY and DCHA, annually on the policy renewal date, a Certificate of Insurance as evidence of coverage. It is further agreed that RECIPIENT shall furnish the COUNTY and DCHA with a 30-day notice of aggregate erosion, in advance of the Retroactive Date, cancellation, or renewal. It is also agreed that on Claims-Made policies, either RECIPIENT or COUNTY may invoke the tail option on behalf of the other party and that the Extended Reporting Period premium shall be paid by RECIPIENT. In the event any action, suit or other proceeding is brought against COUNTY or DCHA upon any matter herein indemnified against, COUNTY shall give reasonable notice thereof to RECIPIENT and shall cooperate with RECIPIENT'S attorneys in the defense of the action, suit or other proceeding. RECIPIENT shall furnish evidence of adequate Worker's Compensation Insurance.

- d. The parties do hereby expressly agree that COUNTY, acting at its sole option and through its Risk Manager, may waive any and all requirements contained in this Agreement, such waiver to be in writing only. Such waiver may include or be limited to a reduction in the amount of coverage required above. The extent of waiver shall be determined solely by COUNTY's Risk Manager taking into account the nature of the work and other factors relevant to COUNTY's exposure, if any, under this Agreement.

21. EVENTS OF DEFAULT. The following events shall constitute "Events of Default". The determination that an Event of Default has occurred shall be solely within the discretion of DCHA and/or COUNTY.

- A. If RECIPIENT fails to begin construction on the Project within one (1) year of the last party's signature on this Agreement, Project shall be deemed terminated and RECIPIENT will return to DCHA all funds distributed to RECIPIENT pursuant to this Agreement.
- B. If RECIPIENT fails to provide a final certificate of occupancy on the Project within 36-months from the date of the last party's signature on this Agreement, unless such delay is the result of *force majeure* or the requirement that construction stop on site as

a direct result of the COVID-19 global health pandemic, RECIPIENT agrees that the Project shall be deemed terminated and RECIPIENT will return to DCHA all funds distributed pursuant to this Agreement.

- C. Failure of RECIPIENT to pay any principal of or interest on the Subaward Note when due and payable, and such default continues for a period of 15 days; or
- D. Failure of RECIPIENT to perform or observe any of the other terms of the WHEDA LURA (as determined by WHEDA in its sole discretion and as evidenced solely by a notice of default from WHEDA) or the commencement of enforcement action by WHEDA; or
- E. Any representation or warranty made by any of the RECIPIENT herein or any statement or representations made in any certificate, statement, or opinion delivered pursuant to this Agreement proves to be incorrect in any material respect as of the date when made; or
- F. Failure by the RECIPIENT to meet any obligations for the payment of borrowed money for this Project (other than its obligations hereunder or under the Note) or any such obligation that shall become or be declared, pursuant to its terms, due and payable prior to the express maturity thereof by reason of default or other violation by RECIPIENT of the terms thereof; or
- G. Failure of RECIPIENT to perform or observe any of the other covenants or agreements herein contained or in the Mortgage or the County LURA not covered by A. through F. above, and such default shall have continued for a period of 90 days after notice thereof to the RECIPIENT by COUNTY and/or DCHA unless a cure cannot reasonably be achieved within such ninety (90) days, in which case RECIPIENT shall have such reasonable time as required to cure the default provided such time does not exceed 180 days; or
- H. Any assignment for the benefit of the RECIPIENT'S creditors and such assignment is not dismissed or modified for 90 days; or
- I. The filing, by or against the RECIPIENT, of a petition under any chapter of the U.S. Bankruptcy Code, or for the appointment of a receiver for RECIPIENT and such petition remains not dismissed for 90 days; or
- J. Any act that indicates RECIPIENT'S consent to, approval of, or acquiescence in any such proceedings or in the appointment of any receiver or of any trustee for said RECIPIENT with respect to a substantial part of its property, either tangible or intangible; or
- K. Any final judgment for the payment of money that is not fully covered by liability insurance and is in excess of \$25,000.00 rendered against RECIPIENT and not discharged and/or bonded over within 45 days.
- L. Except as provided in the Subaward Note, a change in ownership or control of any of the RECIPIENT or of its assets without the prior written consent of the COUNTY and/or DCHA, provided however it shall not be an event of default for the RECIPIENT's investor member to transfer its investor member interest in the RECIPIENT without COUNTY or DCHA consent nor for the RECIPIENT's investor member to remove the RECIPIENT's managing member in accordance with the terms and conditions set forth in the RECIPIENT's operating agreement in effect from time to time.

22. REMEDIES IN THE EVENT OF DEFAULT. Upon the occurrence of an Event of Default and during the continuance thereof, DCHA and/or COUNTY may exercise any or all of the following remedies:

A. Except as otherwise provided above under Section 21, after ninety (90) days written notice to the RECIPIENT of any non-monetary default described above, or fifteen (15) days written notice to RECIPIENT of any monetary default described above, during which time the default may be cured, or, if the default is of a nature that it cannot be reasonably cured within such timeframe, then the cure period shall be extended to such reasonable time as required to cure the default (but in no event longer than 180 days), and after the expiration of any such cure period, DCHA and/or COUNTY may terminate the Agreement effective immediately and declare the entire outstanding balance of the Subaward Note together with interest and all other charges, immediately due and payable, whether or not the indebtedness evidenced by the Subaward Note shall be otherwise due and payable.

B. DCHA and/or COUNTY may enforce its rights by any appropriate proceedings, judicial or otherwise.

C. No delay on the part of either party in exercising any right, power, or privilege shall operate as a waiver.

D. Additionally, any Event of Default by RECIPIENT may be cured by the RECIPIENT'S investor member, however, the investor member is not obligated to cure an event of default. Such cure shall be accepted or rejected as if tendered by RECIPIENT.

E. COUNTY and/or DCHA may, at its discretion, recapture the AHDF Funds and demand repayment of any outstanding debt evidenced by the Subaward Note in accordance with the terms therein and not yet repaid to the DCHA by RECIPIENT. Repayment of loan funds is required if the Property does not meet the affordability requirements for the Affordability Period in accordance with the notice and cure provisions set forth in Section 21 and 22.

For the avoidance of doubt, an event of default by DCHA of its obligations hereunder shall not be deemed an Event of Default by Recipient.

23. PREPAYMENT PERMITTED, AFFORDABILITY PERIOD REMAINS IN PLACE. RECIPIENT shall have the right to prepay the Subaward Note at any time after fifteen (15) years after receipt of the certificate of occupancy, without penalty. Prepayment of the Subaward Note prior to the termination of the Affordability Period shall not relieve RECIPIENT from the terms of the COUNTY LURA. RECIPIENT agrees that it shall continue to be bound by the terms of the COUNTY LURA during the entire Affordability Period.

24. DURATION OF AGREEMENT AND AFFORDABILITY PERIOD.

If repayment of Loan Funds as required under this Agreement is not accomplished by the end of the Affordability Period, the provisions of this Agreement shall continue in full force and effect until all Loan Funds are repaid in full.

25. CUMULATIVE REMEDIES. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

26. COVENANTS AND CONDITIONS. Each provision of this Agreement performable by any Party shall be deemed both a covenant and a condition.

27. BINDING EFFECT; CHOICE OF LAW. This Agreement shall bind the Parties, their successors and assigns. This Agreement shall be governed by and be construed and interpreted in accordance with the laws of the State of Wisconsin. Venue for any legal proceedings shall be in the Dane County Circuit Court.

28. AUTHORITY. The Parties represent and warrant that each party is a duly authorized and existing municipal, quasi-municipal, or private corporation, that each party has and is qualified to transact business in Wisconsin, that the each party has full right, authority and power to enter into this Agreement and to perform its obligations thereunder, that each person signing this Agreement on behalf of the organization is authorized to do so and that this Agreement is binding upon the organization in accordance with its terms.

29. NON-DISCRIMINATION. During the term of this Agreement, RECIPIENT and DCHA agree not to discriminate on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s). RECIPIENT and DCHA agree to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth additional bases, and exceptions shall be permitted only to the extent allowable in state or federal law.

30. CIVIL RIGHTS COMPLIANCE.

- A. If DCHA or RECIPIENT has 20 or more employees and receives \$20,000 in annual contracts with COUNTY, DCHA/RECIPIENT shall submit to COUNTY a current Civil Rights Compliance Plan (CRC) for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and

Americans with Disabilities Act (ADA) of 1990. DCHA/RECIPIENT shall also file an Affirmative Action (AA) Plan with COUNTY in accordance with the requirements of chapter 19 of the Dane County Code of Ordinances. DCHA/RECIPIENT shall submit a copy of its discrimination complaint form with its CRC/AA Plan. The CRC/AA Plan must be submitted prior to the effective date of this Agreement and failure to do so by said date shall constitute grounds for immediate termination of this Agreement by COUNTY. If an approved plan has been received during the previous CALENDAR year, a plan update is acceptable. The plan may cover a two-year period. Providers who have less than twenty employees, but who receive more than \$20,000 from the COUNTY in annual contracts, may be required to submit a CRC Action Plan to correct any problems discovered as the result of a complaint investigation or other Civil Rights Compliance monitoring efforts set forth herein below. If DCHA/RECIPIENT submits a CRC/AA Plan to a Department of Workforce Development Division or to a Department of Health and Family Services Division that covers the services purchased by COUNTY, a verification of acceptance by the State of DCHA/RECIPIENT's Plan is sufficient.

- B. DCHA and RECIPIENT agree to comply with the COUNTY's civil rights compliance policies and procedures. DCHA and RECIPIENT agree to comply with civil rights monitoring reviews performed by the COUNTY, including the examination of records and relevant files maintained by the DCHA and RECIPIENT. DCHA and RECIPIENT agree to furnish all information and reports required by the COUNTY as they relate to affirmative action and non-discrimination. DCHA and RECIPIENT further agree to cooperate with COUNTY in developing, implementing, and monitoring corrective action plans that result from any reviews.
- C. DCHA and RECIPIENT shall post the Equal Opportunity Policy, the name of DCHA and RECIPIENT's designated Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, applicants for employment and employees. The complaint process will be according to COUNTY's policies and procedures and made available in languages and formats understandable to applicants, clients and employees. DCHA and RECIPIENT shall supply to COUNTY's Contract Compliance Officer upon request a summary document of all client complaints related to perceived discrimination in service delivery. These documents shall include names of the involved persons, nature of the complaints, and a description of any attempts made to achieve complaint resolution.
- D. DCHA and RECIPIENT shall provide copies of all announcements of new employment opportunities to COUNTY's Contract Compliance Officer when such announcements are issued.
- E. If DCHA or RECIPIENT is a government entity having its own compliance plan, that plan shall govern the entity's activities.

31. COMPLIANCE WITH FAIR LABOR STANDARDS.

- A. Reporting of Adverse Findings. During the term of this Agreement, DCHA and RECIPIENT shall report to the County Contract Compliance Officer, within ten (10) days, any allegations to, or findings by the National Labor Relations Board (NLRB) or Wisconsin Employment Relations Commission (WERC) that RECIPIENT has violated a statute or regulation regarding labor standards or relations. If an investigation by the Contract Compliance Officer results in a final determination that the matter adversely affects DCHA OR RECIPIENT'S responsibilities under this Agreement, and which recommends termination, suspension or cancellation of this agreement, COUNTY may take such action.
- B. Appeal Process. DCHA and RECIPIENT may appeal any adverse finding by the Contract Compliance Officer as set forth in Dane County Ordinances Sec. 25.08(20)(c) through (e).
- C. Notice Requirement. DCHA and RECIPIENT shall post the following statement in a prominent place visible to employees: "As a condition of receiving and maintaining a contract with Dane County, this employer shall comply with federal, state and all other applicable laws prohibiting retaliation for union organizing."
32. SEVERABILITY. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
33. NOTICES. Upon an Event of Default, the COUNTY or DCHA shall send a notice of such default in accordance with this Section and subject to the cure periods permitted hereunder. The COUNTY and DCHA shall accept any cure proffered by RECIPIENT's senior lender and/or investor member as a cure proffered by RECIPIENT; provided, however, that neither RECIPIENT's senior lender nor its investor member shall be obligated to proffer a cure. Notices, reports and communications shall be in writing and shall be deemed to have been properly given when personally delivered to the Party, or three (3) days after the same is sent by certified or registered U.S. mail, postage prepaid, or by overnight courier property addressed to the Party entitled to the receive such notice as set forth:

If to Recipient:

The Heights Apartments, LLC
c/o MSP Real Estate, Inc.
1295 Northland Drive, Suite 270
Mendota Heights, MN 55120

With a copy to:

Foley & Lardner LLP
150 E. Gilman Street, Suite 5000
Madison, WI 53703
Attn: Katherine Rist

With a copy to:
[INSERT INVESTOR CONTACT]

With a copy to:
[INSERT INVESTOR COUNSEL CONTACT]

If to County:

Dane County

Attn: Dane County Office of Workforce and Economic Development
City-County Building Rm. 421
210 Martin Luther King Jr., Blvd.
Madison, WI 53703

With a copy to:

Office of the Corporation Counsel
City-County Building Rm. 419
210 Martin Luther King Jr Blvd.
Madison, WI 53703

If to DCHA:

Dane County Housing Authority
Attn: Executive Director
6000 Gisholt Drive, Suite 203
Monona, WI 53713

With a copy to:

Office of the Corporation Counsel
City-County Building Rm. 419
210 Martin Luther King Jr Blvd.
Madison, WI 53703

Any Party may, at any time, give notice in writing to the other Parties of a change of address for purposes of this paragraph.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

RECIPIENT

THE HEIGHTS APARTMENTS, LLC

By: The Heights Apartments Managing Member
LLC

Its: Managing Member

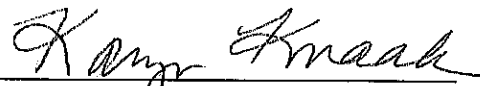
By: MSP Heights Apartments LLC

Its: Authorized Member

By: 
Milo Pinkerton, Manager

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

DANE COUNTY HOUSING AUTHORITY,
a quasi-municipal corporation created pursuant
to sec. 59.53(22) of the Wisconsin Statutes.

By: 
Karyn Knaak, Executive Director

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

COUNTY OF DANE,
a Wisconsin County and body corporate
pursuant to Chapter 59 of the Wisconsin
Statutes.

By: _____
Joe Parisi, Dane County Executive

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

COUNTY OF DANE,
a Wisconsin County and body corporate
pursuant to Chapter 59 of the Wisconsin
Statutes.

By: _____
Scott McDonnell, Dane County Clerk

Exhibit A

Legal Description

Real property in the City of Madison, County of Dane, State of Wisconsin, described as follows:

PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 21, TOWNSHIP 7 NORTH, RANGE 9 EAST, CITY OF MADISON, DANE COUNTY, WISCONSIN, MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SECTION 21 AND THE CENTERLINE OF UNIVERSITY AVENUE; THENCE SOUTH 83° 18' WEST, 125.84 FEET SAID CENTERLINE TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 83° 18' WEST 100.50 FEET ALONG SAID CENTERLINE; THENCE NORTH 267.58 FEET PARALLEL TO THE EAST LINE OF SAID QUARTER-QUARTER; THENCE NORTH 70° 16' 16" EAST, 106.04 FEET ALONG THE SOUTHERLY RIGHT-OF-WAY OF CAMPUS DRIVE; THENCE SOUTH 291.65 FEET PARALLEL TO THE EAST LINE OF SAID QUARTER-QUARTER TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

APN: 251/0709-222-0502-0

Exhibit B

Dane County Land Use Restriction Agreement

See attached

**LAND USE RESTRICTION
AGREEMENT**

Document Number

Document Name

THIS LAND USE RESTRICTION AGREEMENT (the “Agreement”) is made and entered into as of the ___ day of _____, 2022, by The Heights Apartments, LLC, a Wisconsin limited liability company and its successors and assigns (“Owner”) in favor and for the benefit of County of Dane, a Wisconsin quasi-municipal corporation, and its successors and assigns (“County”).

RECITALS:

WHEREAS, Owner owns the property legally described on Exhibit A which is attached hereto and incorporated by reference (the “Property”), and located at 2206 University Avenue, Madison, Wisconsin;

WHEREAS, Owner has built or will build a 79-unit affordable housing development on the Property;

WHEREAS, County will provide a grant to Dane County Housing Authority (“DCHA”), which DCHA shall loan to Owner (the “Loan”), all of which will happen subject to a Grant Agreement dated as of the date hereof by and among Owner, DCHA and County (the “Grant Agreement”); and

WHEREAS, as a condition precedent to County entering into the Grant Agreement, County requires that Owner restrict the use of the Property as hereinafter described (the “Restrictions”).

NOW, THEREFORE, in consideration of these promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby covenants and agrees on behalf of itself and its successors in title to the Property and/or interest in Owner, as follows:

AGREEMENT:

ARTICLE 1

REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE OWNER

The Owner represents, warrants, covenants and agrees as follows:

- 1.1 Application. The Restrictions set forth herein shall be applicable to the residential units within the Property (the “Apartments”).
- 1.2 Authority. Owner has the full legal right, power, and authority to execute and deliver this Agreement and to perform all the undertakings of Owner hereunder.
- 1.3 Information Correct. The information set forth in this Agreement, including the Recitals, is true and correct as of the date hereof. Owner will promptly notify County upon the occurrence of any

Recording Area

Drafted by and Return to:
Susan Rauti
Assistant Corporation Counsel
City County Building, Room 419
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

Parcel Identification Number (PIN)

act or omission that immediately, or with the passage of time, makes any statement(s) herein untrue or incorrect in any material way.

- 1.4 Conflicting Agreements. Owner has not and shall not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof. In any event, Owner represents, warrants, covenants, agrees, and acknowledges that the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- 1.5 Use of the Development. Owner shall not permit the use of any residential rental unit of the Development for any purpose other than as rental housing and shall not take any action which would in any way otherwise impair the use of the Development as described in this subsection.
- 1.6 Non-Discrimination. Owner shall comply with all federal, state, and local fair housing laws, rules and regulations as now or hereafter in effect and shall not discriminate upon any basis prohibited by law in the lease, use, or occupancy of the Development or in connection with the employment or application for employment of persons for the operation and management of the Development or refuse to lease a unit to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such holder. The Owner agrees to administer the Development to affirmatively further fair housing.
- 1.7 Occupancy Restrictions. Until the 40-year anniversary of the date the Property receives a permanent certificate of occupancy, Owner shall, at all times, ensure that the Project is occupied by qualifying tenants as set forth herein, to wit: fourteen (14) units will be rented to person(s) who earn 60% or less than AMI; and thirty-two (32) units will be rented to person(s) who earn 50% or less than AMI; and sixteen (16) units will be rented to person(s) who earn 30% or less than AMI. Each of the Apartments shall be rent restricted such that Owner charges tenants no more than Owner would be permitted to charge pursuant to the rent limitations as published by Wisconsin Housing and Economic Development Authority factoring in the number of bedrooms in the Apartment and it being located in Madison, Wisconsin. County acknowledges that compliance with the income and rent restrictions set forth in this Section 1.7 shall be calculated consistently with the income and rent restrictions set forth in that certain Land Use Restriction Agreement Low-Income Housing Tax Credit to be entered into between Owner and WHEDA (the "WHEDA LURA").
- 1.8 Evidence of Tenant Income. The Owner shall provide to the County the same evidence of tenant income that the Owner provides to WHEDA, to the fullest extent permitted by applicable law, and on the same terms and conditions that the Owner is required to provide the same to WHEDA, pursuant to the WHEDA LURA.
 - (a) The Owner shall obtain and maintain on file, as a condition to occupancy for each person who is intended to be a Qualifying Tenant, an Income Certification in a form acceptable to the County; which form may change from time to time ("Income Certification"). In addition, the Owner shall obtain from each such person whatever other information, documents, or certification are deemed necessary by the County to substantiate the Income Certification.
 - (b) The form of lease to be utilized by the Owner in renting any units in the Development to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person, subject to the eviction process, for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with

respect to the Income Certification or the failure by such tenant to execute an Income Certification.

- (c) Income Certifications shall be maintained and accessible to the County with respect to each Qualifying Tenant who resides in a Department unit, and the Owner shall, promptly upon request, file a copy thereof with the County.
- (d) The status of a tenant as a Qualifying Tenant shall be determined no less frequently than annually.

1.9 Deleted.

1.10 Monitoring by the County.

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the County to inspect any books and records of the Owner regarding the Development and with respect to the incomes of Qualifying Tenants which pertain to compliance with the provisions of this Agreement.
- (b) The Owner shall submit any other information, documents, or certifications requested by the County that the County may deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement and the Grant Agreement.

1.11 Reporting Requirements. Upon written request by County, Owner shall provide or make available to County an annual written report which shall, at a minimum, include the following information: number of tenants, how many units owned by Owner (whether or not part of the Premises) are rented to tenants with household incomes at 60%, 50% and 30% of the Area Median Income ("AMI") as determined by the U.S. Department of Housing and Urban Development, the number of eviction actions filed, the reason for eviction, the number of eviction notices issued to the tenants in the twelve months preceding the eviction filing, the number of eviction judgments granted, writs executed, and/or other case resolutions (e.g. vacated prior to execution of writ or allowed to stay with conditions) and demographic information in a form supplied by the County, and any other information reasonably requested by the County in writing that may affect the status of the Premises or would be necessary for determining tenants' compliance with the terms, covenants, and condition of this LURA. The eviction report described in this section shall be due to the County no later than February 15 and shall reflect the period from January 1 to December 31 of the previous calendar year.

1.12 Lien Priority. Owner shall not permit a lien or other encumbrance to exist with priority senior to this Agreement without the County's prior written consent (other than the WHEDA LURA and such other items recorded on title as of the date hereof that are expressly acceptable to the County, expressly including senior mortgage documents including, without limitation, the senior mortgage to be recorded by the construction and permanent lender [AND THE CITY MORTGAGE?]).

1.13 Organizational Documents. Owner has provided or will (within 30 days after the respective effective date) provide to the County its organizational documents (including without limitation articles of incorporation, articles of organization, certificate of partnership, bylaws, operating agreement, or partnership agreement) and any amendments thereto during the term of this Agreement to the extent such amendments affect the control of the Owner or distributions due to the Owner; provided, however, Owner will endeavor to provide all amendments to County, but it shall not be a violation of this LURA if Owner fails to provide notice or amendments to organizational documents to the extent the amendments are ministerial in nature.

1.14 Notice to County. Promptly upon discovering any existing violation of any of the covenants, restrictions, and representation set forth herein, Owner shall notify the County in writing of such violation. In the event that Owner becomes aware of any situation, event, or condition, which would result in noncompliance of the Development, Owner shall promptly give written notice thereof to the County and take any lawful action to cause the Development to comply with this Agreement.

ARTICLE 2
EVENTS OF DEFAULT: REMEDIES

- 2.1 Events of Default. If County becomes aware of a violation of any of the provisions hereof, it shall give immediate written notice thereof to Owner directing Owner to the remedy the violation within a reasonable specified period of time, which will be a minimum of 90 days. If any violation of this Agreement is not corrected to the satisfaction of the County within the period of time specified by the County in the notice described above, the County shall have the right, without further notice, to declare an event of default (“Event of Default”) under this Agreement. Owner’s investor member shall be given the opportunity to remedy any violation described herein on the same terms as the Owner, and any remedy tendered by the investor member shall be accepted or rejected by the County as if offered by the County.
- 2.2 Remedies. During the occurrence of an Event of Default, the County shall have the right to apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement or any other remedies at law or in equity or any such other action as shall be necessary or desirable so as to correct noncompliance with this Agreement. The Owner hereby acknowledges that the County and the other beneficiaries of this Agreement hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

ARTICLE 3
TERM OF AGREEMENT

- 3.1 Term of Agreement. The term of this Agreement and the restrictions imposed hereby shall commence upon the issuance of a certificate of occupancy of the Development. The term shall end on the thirty- year anniversary thereof.
- 3.2 Early Termination. Notwithstanding the provisions of Section 3.1 above, this Agreement and the restrictions imposed hereby shall terminate upon the date the Development is acquired by foreclosure (or instrument in lieu of foreclosure).

ARTICLE 4
MISCELLANEOUS

- 4.1 Recitals Incorporated by Reference. The Recitals set forth above are hereby incorporated by reference and made part of this Agreement.
- 4.2 Covenants Run With the Land; Successors Bound. This Agreement shall be recorded in the real property records of the county where the Development is located. This Agreement shall run with the land and bind the Owner and its successors and assigns and all subsequent Owners of the Development and all holders of any other interest therein.

- 4.3 Reliance by the County. The Owner hereby agrees that the Owner's representations and covenants set forth herein may be relied upon by the County. The County may conclusively rely upon statements, certificates, and other information provided by the Owner and the Qualifying Tenants, and upon audits of the books and records of the Owner or the Development.
- 4.4 Release. The Owner hereby releases the County from any claim, loss, demand, or judgment arising out of the exercise in good faith of the County of any rights or remedies granted to the County under this Agreement. Specifically, the Owner acknowledges and agrees that it is the Owner's sole responsibility to ensure that this Agreement constitutes an Extended Low Income Housing Commitment.
- 4.5 Amendment. This Agreement may be amended only in writing as mutually agreed by Owner and the County.
- 4.6 Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth in the preamble, or to such other place as a party may from time to time designate in writing. The County and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Notices to the Owner shall also be sent to the Owner's investor member for so long as the Owner has a low-income housing tax credit investor and senior lender, with such notices being sent to the following addresses:

[Investor and senior lender addresses to be added.]

- 4.7 Definitions and Interpretation. All the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof. The titles and headings of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall not be considered or given any effect in construing this instrument or any provision hereof or in ascertaining intent, if any questions of intent should arise.
- 4.8 Governing Law. This Agreement shall be governed by the laws of the state of Wisconsin and, where applicable, the laws of the United States of America.
- 4.9 Severability. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- 4.10 Multiple Counterparts. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the OWNER executed this Agreement as of the date first above written.

OWNER:

THE HEIGHTS APARTMENTS, LLC

By: The Heights Apartments Managing Member LLC
Its: Managing Member

By: MSP Heights Apartments LLC
Its: Authorized Member

By: Milo Pinkerton
Milo Pinkerton, Manager

STATE OF _____)
DANE _____) ss

Personally came before me this ___ day of _____, 202, the above named Milo Pinkerton, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public .State of Wisconsin
My Commission: _____

AUTHENTICATION

Signature(s) Milo Pinkerton

authenticated this 5 day of April, 2022

Katherine Rist
signature Katherine RIST
type or print name

TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, _____
authorized by ' 706.06, Wis. Stats.)

IN WITNESS WHEREOF, COUNTY executed this Agreement as of the date first above written.

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

By: _____
Name: Joseph T. Parisi
Title: Dane County Executive

STATE OF WISCONSIN)
) ss
_____ COUNTY)

Personally came before me this ____ day of _____, 20__, the above named
_____ and _____ of
County of Dane, to me known to be the person who executed the foregoing instrument and acknowledged the
same.

Notary Public .State of Wisconsin
My Commission: _____

**EXHIBIT A
TO LAND USE RESTRICTION AGREEMENT**

LEGAL DESCRIPTION

Real property in the City of Madison, County of Dane, State of Wisconsin, described as follows:
PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 21, TOWNSHIP 7 NORTH, RANGE 9
EAST, CITY OF MADISON, DANE COUNTY, WISCONSIN, MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SECTION 21 AND THE CENTERLINE OF
UNIVERSITY AVENUE; THENCE SOUTH 83° 18' WEST, 125.84 FEET SAID CENTERLINE TO THE POINT OF
BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 83° 18' WEST 100.50 FEET ALONG SAID CENTERLINE;
THENCE NORTH 267.58 FEET PARALLEL TO THE EAST LINE OF SAID QUARTER-QUARTER; THENCE NORTH
70° 16' 16" EAST, 106.04 FEET ALONG THE SOUTHERLY RIGHT-OF-WAY OF CAMPUS DRIVE; THENCE SOUTH
291.65 FEET PARALLEL TO THE EAST LINE OF SAID QUARTER-QUARTER TO THE POINT OF BEGINNING OF
THIS DESCRIPTION.

APN: 251/0709-222-0502-0

Exhibit C

Unit Mix

| | # of Bedrooms | | | | | |
|--|-------------------------|---------------------|-------------------|-------------------|-------------------|--------------------|
| % of County Median Income (CMI) | Total # of Units | # of Studios | # of 1 BRs | # of 2 BRs | # of 3 BRs | # of 4+ BRs |
| ≤30% | 16 | | 10 | 3 | 3 | |
| 40% | | | | | | |
| 50% | 32 | | 23 | 2 | 7 | |
| 60% | 14 | | 6 | 6 | 2 | |
| 80% | | | | | | |
| Market | 17 | | 3 | 10 | 4 | |
| Total Units | 79 | | 42 | 21 | 16 | |

Exhibit D

Subaward Note

See attached.

Promissory Note

Cash Flow with Interest

PROJECT NAME: The Heights Apartments

BORROWER NAME: The Heights Apartments, LLC

AMOUNT OF LOAN: \$1,440,000

PLACE: 2206 University Avenue, MADISON, WISCONSIN

DATE: _____, 2022

FOR VALUE RECEIVED, the Borrower promises to pay to the order of the DANE COUNTY HOUSING AUTHORITY ("DCHA"), at its offices located at 6000 Gisholt Drive, Suite 203, Monona, Wisconsin, 53713, the principal amount of \$1,440,000 plus 2% simple interest beginning on April 1st of the year following the year in which final disbursement of the loan proceeds is made, and continuing for a period of 40 years. Interest only payments are due on an annual basis on April 1st of each year, contingent upon sufficient cash flow. Sufficient cash flow shall be determined in accordance with the priorities set forth in Section [_____] of the Borrower's Amended and Restated Operating Agreement, dated _____, 2022. In the event there is insufficient cash flow to make an annual payment, whether in whole or in part, such unpaid amounts ("Deferred Payment") shall be added to the payment due on _____, 2063 (the "Maturity Date"). For any Deferred Payment of this loan, Borrower will be required to submit documentation to the DCHA, including, but not limited to, financial statements in form reasonably acceptable to the DCHA, establishing cash flow in a given year by April 1st. The adequacy of such documentation shall be determined in the reasonable discretion of the DCHA. Final payment of any principal, accrued interest, and Deferred Payments shall be payable in full on the Maturity Date unless sooner paid (the "Final Payment"). Failure to satisfy the Final Payment on the Maturity Date shall constitute a default hereunder. Prior to the Maturity Date if there is an event of sale, transfer, or change or discontinuance in the permitted use of the Property (except as permitted under the terms of this Note or the Mortgage, as defined below) located in 2206 University Avenue, City of Madison, Dane County, Wisconsin (the "Property") the legal description of which is attached as Exhibit A, this note will become due and payable immediately. The proceeds of this loan are intended to fund the construction of that certain affordable housing development consisting of 79 residential rental units on the Property (the "Project").

THIS NOTE is evidenced by an Affordable Housing Development Fund Grant Agreement dated as of the date hereof (the "Agreement") and is secured by a Real Estate Mortgage given by the Borrower to the DCHA dated of even date (the "Mortgage").

DELINQUENCY CHARGE. Except for an approved Deferred Payment, if a payment owed under the Note is not paid on or before the 15th day after its due date, the DCHA may collect a delinquency charge equal to 12% per annum on the unpaid balance until the amount due under the Note is paid in full.

PREPAYMENT. Borrower shall have the right to prepay this Note in whole or in part at any time after 15 years from the date the Project receives certificate of occupancy without penalty.

FOLLOWING all applicable notice and cure periods provided in the Agreement, the Mortgage, this Note, including the entire balance of principal and interest, together with late charges, shall become immediately due and payable to the DCHA without notice or demand upon the occurrence of any of the following:

- a) If the Borrower shall default in any of the covenants, agreements, provisions, terms or conditions of the Mortgage or Agreement which provisions are incorporated herein by reference, and the default is not cured within the time period provided in this Note, the Mortgage or Agreement, as applicable.
- b) Title to, or equitable ownership in, the Property is transferred to any party other than MSP Real Estate, Inc. or an affiliate thereof. The Managing member of the Borrower shall be acceptable successor owner of the Property, or an equitable interest therein, and a transfer thereto shall not require the consent of DCHA.
- c) If Borrower permits or allows any use of the Property other than as the Project as described in the Loan Contracts.

Notwithstanding anything to the contrary in this Note, the Agreement, or the Mortgage, _____, the investor member of the Borrower ("Investor Member") shall have the right, but not the obligation, to cure any defaults of the Borrower hereunder, and the DCHA agrees to accept such cures tendered by the Investor Member on behalf of the Borrower, and the Investor Member shall be afforded any cure periods as may be applicable to Borrower.

The Borrower and endorser of this Note agrees to waive demand, notice of non-payment and protest, and in the event suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection, through and including all appellate levels and post-judgment proceedings.

No delay or omission on the part of the holder hereof in exercising any right hereunder shall operate as a waiver of any such right or of any other right under this Note. A waiver on any one occasion shall not be construed as a bar to or a waiver of any such right on any future occasion. The Borrower for itself, its successors and assigns, does hereby expressly waive presentment for payment and notice of nonpayment. It is expressly understood and agreed that the Borrower shall not be released from the covenants herein contained by reason of any forbearance or extension of time granted or release of any subsequent owner or owners of the Property mortgaged as secured for this obligation.

The "Loan Contracts" are this Note, and the Mortgage which explicitly secures the Note, the Grant Agreement, and the County LURA each executed by the Borrower in connection with the loan evidenced by this Note ("Loan").

Except as otherwise provided herein, this Note shall be non-recourse to Borrower in that Borrower and its members shall have no corporate liability under the Loan Contracts for the repayment of the Loan or for the performance of any other obligation of Borrower thereunder, and the DCHA's only recourse for the satisfaction of the Loan and the performance of such obligations shall be the DCHA's exercise of its rights and remedies with respect to the Property.

Borrower shall be corporately liable to the DCHA, to the extent not satisfied from the exercise of the DCHA's right and remedies with respect to the Property described in the Mortgage, for repayment of the portion of the Loan equal to any loss or damage suffered by the DCHA as a result of:

1. the fraud or intentional material misrepresentation by Borrower in connection with the application for or creation of the Loan or any request by Borrower for any action or consent by the DCHA in connection with the Loan; or
2. subject to the rights of any holder of a superior lien on the Property, failure of Borrower to:
 - i. pay to the DCHA, upon demand after the occurrence of any event of default which is not timely cured, all payments DCHA is entitled under the Loan Contracts;
 - ii. apply all Property insurance proceeds and condemnation proceeds as required by the Loan Contracts; or
 - iii. apply Property rents, first to the payment of reasonable Property operating expenses (including property management fee and taxes) and amounts payable to, or at the direction of, and holder of superior lien on the Property, and then the amounts payable under the Loan Contracts in accordance with the priorities set forth in the Borrower's Amended and Restated Operating Agreement.

Notwithstanding the foregoing, Borrower will not be corporately liable to the extent that Borrower lacks the legal right to direct the disbursement of any funds because of a bankruptcy, receivership or similar judicial proceedings.

This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement is sought.

The Borrower may draw up to 90% of the Loan proceeds to be used for eligible construction costs of the Project. Borrower shall provide evidence of full project financing before funds will be released. DCHA shall withhold 10% of the Loan proceeds (\$145,000) until a certificate of occupancy for the Project has been issued by the City of Madison.

The right of the holder of this promissory note to payment of any of the indebtedness evidenced by this Note is and will at all times be subordinate to the right of the _____ its successors and assigns, under a Note dated _____, 2022 ("Senior Note") to payment in full of the indebtedness evidenced by the Senior Note. The foregoing subordination is pursuant to a Subordination Agreement dated as of _____, 2022 between _____, Borrower and DCHA.

THE BORROWER acknowledges receipt of an exact copy of this Note.

NOTICE TO BORROWER

- A. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.**
- B. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENTS YOU SIGN.**
- C. YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS NOTE WITHOUT PENALTY OR PREMIUM DUE.**

Signed and sealed as of the _____ day of _____, 2022 at Madison, Wisconsin.

THE HEIGHTS APARTMENTS, LLC

a Wisconsin Limited Liability Company

By: The Heights Apartments Managing Member
LLC

Its: Managing Member

By: MSP Heights Apartments LLC

Its: Authorized Member

By: 
Milo Pinkerton, Manager

EXHIBIT A

Real property in the City of Madison, County of Dane, State of Wisconsin, described as follows:
PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 21, TOWNSHIP 7 NORTH,
RANGE 9 EAST, CITY OF MADISON, DANE COUNTY, WISCONSIN, MORE FULLY DESCRIBED AS
FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SECTION 21 AND THE CENTERLINE
OF UNIVERSITY AVENUE; THENCE SOUTH $83^{\circ} 18'$ WEST, 125.84 FEET SAID CENTERLINE TO
THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH $83^{\circ} 18'$ WEST 100.50 FEET
ALONG SAID CENTERLINE; THENCE NORTH 267.58 FEET PARALLEL TO THE EAST LINE OF
SAID QUARTER-QUARTER; THENCE NORTH $70^{\circ} 16' 16''$ EAST, 106.04 FEET ALONG THE
SOUTHERLY RIGHT-OF-WAY OF CAMPUS DRIVE; THENCE SOUTH 291.65 FEET PARALLEL TO
THE EAST LINE OF SAID QUARTER-QUARTER TO THE POINT OF BEGINNING OF THIS
DESCRIPTION.

APN: 251/0709-222-0502-0

Exhibit E

Tenancy Addendum

See attached.

Tenancy Addendum

Respondents to this RFP that agree to include the following provisions within all tenant leases or as an addendum to all tenant leases will receive 10 points.

- a. **Security Deposits.** The amount of a security deposit shall not be more than one month's rent.
- b. **Late Fees and Other Fees.** Late fees must be set forth in the rental agreement. Late fees shall not exceed 5% of the tenant's portion of the monthly rent. Other penalty fees are prohibited. All other fees must be directly related to the cost for a specific amenity or service provided to the tenant and comply with all applicable laws.
- c. **Rights of Youth to Access Common Spaces.** Youth under the age of 18 are allow to use and enjoy common areas without supervision. This does not preclude reasonable rules in ensure the safety of children and youth.
- d. **Good Cause for Termination.** A tenancy may not be terminated during or at the end of the lease unless there is good cause. Good cause is defined in include the following: (i) a serious violation of the lease; (ii) repeated minor violations of the lease; or (iii) a refusal to re-certify program eligibility. Repeated means a pattern of minor violations, not isolated incidents. Termination notices and procedures shall comply with Chapter 704 of Wisconsin Statutes and federal law, when applicable. Written notice is required for non-renewal and shall include the specific grounds for non-renewal and the right of the tenant to request a meeting to discuss the non-renewal with the landlord or landlord's property management agent within fourteen (14) days of the notice. If requested, the landlord or property management agent will meet with the tenant to discuss the non-renewal, allow the tenant to respond to the alleged grounds for non-renewal, and pursue a mutually acceptable resolution.
- e. **Reasonable Guest Rules.** Tenants have the right to have guests. In the event the property management establishes rules related to guests, they must be reasonable. Unreasonable rules include, but are not limited to the following: (1) Prior authorization of guests by the property management, unless the guest is staying for an extended period of time (e.g. more than 2 weeks); (2) Prohibition on overnight guests; (3) Requiring that the resident be with the guest at all times on the property. (4) Requiring guests to show ID unless requested by the tenant. (5) Subjecting caregivers, whether caring for a child or children, or an adult with disabilities, to limitations on the number of days for guests.

Landlord may ban a person who is not a tenant from the rental premises if the person has committed violent criminal activity or drug related criminal activity at rental premises. No person shall be banned from the rental premises without the consent of the tenant unless the following have taken place:

- (1) A notice of the ban is issued to the tenant stating the:
 - (a) name of the person banned,

(b) grounds for the ban including, (i) the specific facts detailing the activity resulting in the ban; (ii) the source of the information relied upon in making the ban decision; and (iii) a copy of any criminal record reviewed when making the ban decision; and

(c) the right of the tenant to have a meeting to dispute the proposed ban, discuss alternatives to the ban, and address any unintended consequences of the proposed ban.

(2) If requested, a hearing on the ban has taken place to provide the tenant an opportunity to dispute the proposed ban, discuss alternatives of the ban, and address any unintended consequences of the proposed ban.

A tenant may not invite or allow a banned person as a guest on the premises, provided the Landlord has followed the proper procedure and given notice to Tenant as set forth herein.

A tenant who violates the guest policy may be given a written warning detailing the facts of the alleged violation. The written warning shall detail the violation, and warn the tenant that repeated violations may result in termination of tenancy. Tenants that repeatedly violate the guest policy, (e.g. three (3) or more violations within a twelve (12) month period) may be issued a notice of termination in accordance with state and federal law.

Nothing in this policy limits a person's right to pursue a civil order for protection against another individual.

- f. **Parking Policies.** Parking policies and practices must comply with applicable laws. Vehicles shall not be towed to a location that is more than 6 miles from the rental premises, unless there is not a towing company with a tow location available within 6 miles.