

Dane County Contract Cover Sheet

Dept./Division	Human Services /Housing Access and Affordability
Vendor Name	Dane County Housing Authority
Vendor MUNIS #	1827
Brief Contract Title/Description	Agreements related to an affordable housing project at Outlot 15 of the Nine Springs Neighborhood in the City of Fitchburg.
Contract Term	30 years
Total Contract Amount	\$1,250,000.00

Contract # Admin will assign	14276
Addendum	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Type of Contract	
<input type="checkbox"/>	Dane County Contract
<input checked="" type="checkbox"/>	Grant
<input type="checkbox"/>	County Lessee
<input type="checkbox"/>	County Lessor
<input type="checkbox"/>	Intergovernmental
<input type="checkbox"/>	Purchase of Property
<input type="checkbox"/>	Property Sale
<input type="checkbox"/>	Other

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 checked="" type="checkbox"/> Over \$37,000 (\$25,000 Public Works) (Formal RFB/RFP required)	RFB/RFP # 120052
	<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 type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other		

MUNIS Req.	Org Code		Obj Code		Amount	\$
Req #	N/A	Org Code		Obj Code	Amount	\$
Year		Org Code		Obj Code	Amount	\$

Resolution /Addendum Form	A resolution is required if the contract exceeds \$100,000 (\$40,000 Public Works). A copy of the Resolution must be attached to the contract cover sheet.	
	<input type="checkbox"/> Contract does not exceed \$100,000 (\$40,000 Public Works) – a resolution is not required.	
	<input checked="" type="checkbox"/> Resolution required and a copy is attached.	Res # 371
	<input type="checkbox"/> Addendum Form required.	Year 2020

Contract Review/Approvals				
Initials	Dept.	Date In	Date Out	Comments
MG	Received by DOA	2/11/21		
	Controller			approvals from all departments via email attached herein
	Purchasing			
	Corporation Counsel			
	Risk Management			
	County Executive			

Dane County Dept. Contact Info		Vendor Contact Info	
Name	Spring Larson, Contract Coord. Assistant	Name	Karyn Knaak
Phone #	(608) 242-6391	Phone #	608-224-3636 ext 023
Email	larsen.spring@countyofdane.com	Email	kknaak@dcha.net
Address	1202 Northport Drive, RM Gr42A, Madison WI 53704	Address	6000 Gisholt Drive, Suite 203, Monona WI 53713

Human Services Only	a. Dane County Res. #	N/A	Approvals	Initials	Date
	b. Budget/Personnel Required	NA	g. Accountant	KB	2/11/21
	c. Program Manager Name	Wuthrich	h. Supervisor	CW	2/11/2021
	d. Current Contract Amount	\$1,250,000	i. Corporation Counsel	NA	
	e. Adjustment Amount	\$	j. To Provider		
	f. Revised Contract Amount	\$	k. From Provider		

Certification: The attached contract is a:	
<input type="checkbox"/>	Dane County Contract <u>without</u> any modifications.
<input type="checkbox"/>	Dane County Contract <u>with</u> modifications. The modifications have been reviewed by:
<input checked="" type="checkbox"/>	Non-standard contract.

Contract Cover Sheet Signature

Dept. Head / Authorized Designee	Signature	Date
	<i>Shawn Tessmann</i>	2/11/2021
	Printed Name	
	Shawn Tessmann, Director of Human Services	

Contracts Exceeding \$100,000

Major Contracts Review – DCO Sect. 25.11(3)

Director of Administration	Signature	Date
	<i>Greg Brockmeyer</i>	2/12/21
	Comments	
Corporation Counsel	Signature	Date
	<i>Susan Rauti</i>	2/12/21
	Comments	

Goldade, Michelle

From: Goldade, Michelle
Sent: Friday, February 12, 2021 10:47 AM
To: Hicklin, Charles; Clow, Carolyn; Rauti, Susan; Lowndes, Daniel
Cc: Stavn, Stephanie; Oby, Joe
Subject: Contract #14276
Attachments: 14276.pdf

Tracking:	Recipient	Read	Response
	Hicklin, Charles	Read: 2/12/2021 1:34 PM	
	Clow, Carolyn		Approve: 2/12/2021 12:58 PM
	Rauti, Susan	Read: 2/12/2021 11:15 AM	Approve: 2/12/2021 11:15 AM
	Lowndes, Daniel	Read: 2/12/2021 12:58 PM	Approve: 2/12/2021 12:59 PM
	Stavn, Stephanie	Read: 2/12/2021 10:55 AM	
	Oby, Joe		

Contract #14276

Department: Human Services/HAA

Vendor: Dane County Housing Authority

Contract Description: Affordable Housing Development Fund Grant Agreement – Outlot 15 of Nine Springs

Neighborhood, Fitchburg (Res 371)

Contract Term: 1/1/21 – 12/31/51

Contract Amount: \$1,250,000

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

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

Please Note: I currently have a modified work schedule...I am in the office Mondays and Wednesdays and working remotely Tuesdays, Thursdays and Fridays in accordance with COVID 19 response guidelines.

Goldade, Michelle

From: Hicklin, Charles
Sent: Friday, February 12, 2021 1:34 PM
To: Goldade, Michelle
Subject: Approve: Contract #14276

1
2
3 **2020 RES-371**

4 **APPROVING AGREEMENTS FOR AN AFFORDABLE HOUSING PROJECT AT OUTLOT 15**
5 **OF THE NINE SPRINGS NEIGHBORHOOD IN CITY OF FITCHBURG**
6 **DCDHS – HAA DIVISION**

7 As part of the 2020 awards for the Dane County Affordable Housing Development fund, the
8 county awarded funding of \$1,250,000 to Northpointe Development Corporation, also known as
9 its affiliate The Limerick - Fitchburg, LLC., for The Limerick affordable housing project to be
10 constructed on Outlot 15 of the Nine Springs Neighborhood in the City of Fitchburg.

11
12 The project will consist of 127 units. One hundred units will be targeted to seniors, and twenty-
13 seven units will be targeted to families. All units will be affordable. Seven units will be income
14 restricted to those earning less than 30% area median income (AMI), 69 units will be restricted
15 to those earning less than 50% AMI, 12 units will be restricted to those earning less than 70%
16 AMI, and the remaining 39 units will be restricted to those earning less than 80% AMI. Seven units
17 will be targeted to veterans who are homeless and households from the community by-name
18 list.

19
20 The county's support includes a grant from the county to the Dane County Housing
21 Authority. The housing authority will then make a loan to the project developers. The terms of
22 the loan include interest only payments of 2% for a 30 year term. The full principal of \$1,250,000
23 will be due to the housing authority at the end of the loan.

24
25 NOW, THEREFORE, BE IT RESOLVED that the County Executive, County Clerk and County
26 Real Estate staff are authorized to execute the grant agreement and related documents to
27 support the affordable housing project at Outlot 15 of the Nine Springs Neighborhood, and that
28 the Dane County Controller's Office is authorized to make payments related to the execution of
29 the grant agreement.

AFFORDABLE HOUSING DEVELOPMENT FUND
GRANT AGREEMENT

This Agreement is made and entered into this ___ day of _____, 2021 by and among the County of Dane, Wisconsin, a quasi-municipal corporation created pursuant to Chapter 59 of the Wisconsin Statutes (“COUNTY”), the Dane County Housing Authority, a quasi-municipal corporation created pursuant to Section 59.53(22) of the Wisconsin Statutes (“DCHA”), and The Limerick-Fitchburg, LLC, a Wisconsin limited liability company (“RECIPIENT”) (collectively, the “Parties”).

WHEREAS, in Fiscal Year 2020, 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 June 8, 2015 to partner with the COUNTY to disburse AHDF monies to AHDF grant recipients.

WHEREAS, through a request for proposal process, RECIPIENT has been awarded AHDF monies for the acquisition and development of a multifamily residential building located at 5128-5132 Lacy Road, Fitchburg WI 53711 (“Property”) which has a legal description as described in Exhibit A.

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 Property as hereinafter described (“Restrictions”). Such Restrictions are contained in this Agreement, as well by the associated Land Use Restriction Agreements (“LURAs”) 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 Property in the sum of One Million Two Hundred and Fifty Thousand and no/100 Dollars (\$1,250,000.00) (the “Grant”). 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 Property using Loan proceeds, which DCHA funded via the Grant proceeds.

2. USE OF PREMISES. In consideration of DCHA accepting the Subaward Note, RECIPIENT agrees and warrants that it shall use the Property as affordable rental housing, and in consideration thereof agrees and warrants to the recording of a Land Use Restriction Agreement in favor of Wisconsin Housing and Economic Development Authority (“WHEDA LURA”) and Dane County (“COUNTY LURA”), guaranteeing a period of affordability as set forth therein. RECIPIENT agrees and warrants that all units 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, more fully set forth in the WHEDA LURA. The units shall be rent restricted as further set forth in the WHEDA and COUNTY LURAs.

The WHEDA and COUNTY LURAs shall be recorded against the Property before any other documents creating an encumbrance thereon, except for the Mortgage and documents evidencing the first mortgage or construction loan. RECIPIENT shall pay recording fees. The WHEDA and COUNTY LURAs are attached as Exhibits B and C; provided, however, the COUNTY shall enter into a subordination agreement in a form reasonably acceptable to the COUNTY and RECIPIENT's permanent lender.

3. PERIOD OF AFFORDABILITY. The Project must meet the affordability requirements for not less than thirty (30) years beginning on the day after project completion (“Affordability Period”). The Project is considered completed when all necessary title transfer requirements are met and a certification of occupancy is issued. RECIPIENT shall repay loan funds if Project does not meet the affordability requirements for the specified period of affordability.
4. UNIT DESCRIPTION. The units in the Project to meet the affordability requirements are described in Exhibit D, 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 be enforceable for a period of thirty years, commencing on the day after Project completion and terminating on the thirtieth year anniversary thereof. 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 E.
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% 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) and any other information that may affect the status of the Premises. 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. Notwithstanding the generality of the

foregoing, the COUNTY agrees and acknowledges that the Project is an “income averaging” project, which does not have specific set aside requirements for 60%, 50%, and/or 30% AMI units for compliance with the WHEDA LURA.

7. FINANCIAL DOCUMENTS. Upon written request by DCHA or COUNTY, RECIPIENT shall provide financial statements, in form reasonably acceptable to the DCHA or COUNTY, 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, DCHA AND COUNTY may disclose such confidential information following a formal and valid Wisconsin Open Records’ request, or a formal demand by a court, regulatory or other legal authority.
8. RECORDS. RECIPIENT shall provide, upon reasonable request by DCHA or COUNTY, reports and other documentation related to tenancy, leasing and rental records 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. SUITABILITY FOR OCCUPANCY. RECIPIENT shall, upon written request by DCHA and/or the 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 Tenancy Addendum (“Addendum”). The Addendum is attached as Exhibit F. 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.
12. HOUSING FIRST. RECIPIENT will target 7 units (5.5% of total units) to individuals/families on the Community-wide Priority List for Housing. RECIPIENT, or its designee, agrees to meet regularly with COUNTY, RECIPIENT’s supportive services partner(s) and RECIPIENT’s property management partner(s) to determine how referrals

for available units will be identified for the project prior to lease up and when subsequent vacancies occur.

13. [RESERVED.]

14. RESPONSE TO REQUEST FOR PROPOSAL. COUNTY and RECIPIENT acknowledge the pages attached hereto as Exhibit F were included in RECIPIENT's response to the COUNTY request for proposals referred to in the Recitals of this Agreement. RECIPIENT shall continue to comply with the terms and conditions outlined in Exhibit F throughout the term of the Agreement, unless the County agrees to modify this agreement in writing. COUNTY's consent to modify the terms and conditions on Exhibit F shall not be required to the extent a change in law mandates a modification of the terms and conditions set forth in Exhibit F. Upon any such change, the Owner shall provide written notice of the changes to DCHA and the County. To the extent RECIPIENT wishes to modify Exhibit F, RECIPIENT shall request COUNTY's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. For example, in the event RECIPIENT changes management companies, RECIPIENT's Tenancy Addendum may be slightly modified as to form, which the COUNTY shall timely consider and, if acceptable, approve.

15. SECURITY. The Mortgage shall be in a form reasonably satisfactory to COUNTY and shall provide, among other things and subject to any applicable subordination agreement, that in the event of default by RECIPIENT, in any agreement, covenant or condition contained in this Agreement, or in the Note, DCHA may, at its option, in addition to all other remedies available to it, take possession of the property given as security. DCHA however, shall be under no obligation to exercise this right and its action in this respect shall be wholly at its option. The Mortgage and repayment of the Note will be subject and subordinate to the terms of a Subordination Agreement by and among Borrower, the DCHA and Wisconsin Housing and Economic Development Authority, in relation to that certain first mortgage construction and permanent loan(s) in the aggregate approximate amount of \$24,000,000.00.

16. 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 Fitchburg, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Premises. 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.

17. TAXES. RECIPIENT covenants and agrees that it shall pay, before delinquency, all municipal, county and state or federal taxes assessed against the Property or any fixtures, furnishings, equipment, merchandise, improvements, alterations, stock-in-trade or other

personal property of any kind owned, installed or upon the Property. RECIPIENT covenants and agrees that it shall pay, before delinquency, all special assessments or special charges assessed against the Property.

18. 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 Property, 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.
- 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 Property, 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.
- 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.

19. EVENTS OF DEFAULT. The principal indebtedness evidenced by the Note or the unpaid balance thereof outstanding at the time of the event of default described below, shall be due and payable at the election of the COUNTY and/or DCHA if any one or more of the following events (herein called "Events of Default") occur for any reason whatsoever. 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; or
- b. If RECIPIENT fails to provide a temporary or 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; or
- c. Failure 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 to perform or observe any of the other terms of this Agreement, 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, the COUNTY LURA, the Subaward Note; 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 not covered by A. through F. above, and such default shall have continued for a period of 30 days after notice thereof to the RECIPIENT by COUNTY and/or DCHA; 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 30 days; or
- l. 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, nor a transfer by RECIPIENT to a related party or a trust at the direction of Cal Shultz, Andrew Dumke and Sean O'Brien for estate planning purposes.

20. REMEDIES IN THE EVENT OF DEFAULT. Upon the occurrence of an event of default, DCHA and/or COUNTY may exercise any or all of the following remedies:

- a. 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. In the event of a default which does not require the payment of money to cure, and with the exception of the default described in 19.A. above, RECIPIENT shall be deemed to have cured a default if or before the expiration of sixty (60) days after written notice of default from DCHA and/or COUNTY, steps as are reasonably necessary to cure the default have been taken within a period of time that, under all of the facts and circumstances then existing, is reasonable, as determined by DCHA and/or COUNTY in its sole discretion, and the RECIPIENT is diligently prosecuting such steps to completion such that the default will be cured within a reasonable time period. The determination that the steps to cure the default are both reasonable and timely shall be solely within the discretion of COUNTY and/or DCHA. Additionally, any event of default by the Borrower 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 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 specified period of affordability.

21. TERMINATION, SUSPENSION, AND/OR MODIFICATION. RECIPIENT acknowledges that COUNTY and/or DCHA may suspend or terminate this Agreement if the RECIPIENT materially fails to comply with any term of the Agreement. Failure of RECIPIENT to fulfill any of its obligations under this Agreement in a timely manner or violation by RECIPIENT of any covenants or stipulations contained in this Agreement shall, after written notice and an opportunity to cure constitute grounds for DCHA and/or COUNTY to terminate this Agreement upon thirty (30) days prior written notice to RECIPIENT.

The following shall constitute grounds for immediate termination after written notice and, where permitted by law, a reasonable opportunity to cure:

- a. Violation by RECIPIENT of any state, federal, or local law or failure to comply with any applicable state and federal service standards as expressed by applicable statutes, rules, and regulations.
- b. Failure of RECIPIENT to carry applicable licenses or certifications as required by law.
- c. Failure of RECIPIENT to comply with reporting requirements contained herein.
- d. Inability of RECIPIENT to perform the work required by this Agreement.

22. PREPAYMENT PERMITTED, AFFORDABILITY PERIOD REMAINS IN PLACE. RECIPIENT shall have the right to prepay the Subaward Note at any time without penalty. Prepayment of the Subaward Note prior to the termination of the Affordability Period shall not relieve RECIPIENT from the terms of this Agreement. RECIPIENT agrees that it shall continue to be bound by the terms of this Agreement during the entire Affordability Period.

23. DURATION OF AGREEMENT AND AFFORDABILITY PERIOD. The provisions of this Agreement shall remain in full force and effect for the Affordability Period. The period of housing unit affordability shall not be modified or waived, prior to the expiration of the Affordability Period, upon any prepayment, repayment or forgiveness of the Loan Funds provided under this Agreement.

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.

24. 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.

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

26. BINDING EFFECT; CHOICE OF LAW. This Agreement shall bind the Parties, their heirs, personal representatives, 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.

27. 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.

28. **NON-DISCRIMINATION.** During the term of this Agreement, RECIPIENT agrees 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 agrees 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.
29. **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.
30. **NOTICES.** Upon an Event of Default, the COUNTY shall send a notice of such default in accordance with this Section. 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 Limerick-Fitchburg, LLC
230 Ohio Street, Suite 200
Oshkosh, WI 54902
Attn: Cal Shultz

With a copy to:

Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 700
Madison, WI 53703
Attn: Joseph D. Shumow

With a copy to:

Cinnaire Fund for Housing Limited Partnership 36
1118 South Washington Avenue
Lansing, MI 48910
Attn: Brett S. Oumedian

With a copy to:

Kutak Rock LLP
1650 Farnam Street, The Omaha Building
Omaha, Nebraska 68102-2103
Attn: Gregg Yeutter

With a copy to:

Wisconsin Housing and Economic Development Authority
201 West Washington, Suite 700
Madison, Wisconsin 53703
Attn: Legal Department

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

If to DCHA:

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

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

31. PHOTO-VOLTAIC SYSTEM. A portion of the proceeds of the grant from the COUNTY to DCHA, and the Loan from DCHA to RECIPIENT, is to incentivize the inclusion of a photo-voltaic solar array on the Property. RECIPIENT has contracted, or will contract, with a third party solar specialist to determine the exact specifications of the photo-voltaic system. In the event the RECIPIENT fails to include a photo-voltaic system in the construction of the development on the Property, and such failure remains uncured for one year after written notice to RECIPIENT from DCHA or the COUNTY of

such failure, RECIPIENT shall be obligated to make a prepayment (without any prepayment penalty) to DCHA in the amount of \$50,000.

[Signature Page Follows]

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

RECIPIENT

THE LIMERICK-FITCHBURG, LLC
a Wisconsin limited liability company

By: The Limerick-Fitchburg-MM, LLC,
its Managing Member

By: Northpointe Development II
Corporation, its Manager

By: Sean OB
Name: Sean O'Brien
Title: Principal

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 pursuant to
section 59.23(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

Exhibit A

Legal Description

Outlot 15, NINE SPRINGS, as recorded in Volume 60-003A of Plats, on Pages 8-16, as Document Number 4871633, Dane County Registry, located in the SW~SE~ of Section 11, Township 06 North, Range 09 East, City of Fitchburg, Dane County, Wisconsin.

Containing 124,083 square feet or 2.849 acres more or less.

PIN:

Exhibit B

WHEDA Land Use Restriction Agreement

See attached.

Exhibit C

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 _____, 2021, by The Limerick-Fitchburg, LLC, a Wisconsin limited liability company and its successors and assigns (“Owner”) in favor and for the benefit of the 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 in Fitchburg, Wisconsin;

Recording Area

Drafted by and Return to:

Attorney Joseph D. Shumow
Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 700
Madison, Wisconsin 53703

Parcel Identification Number (PIN)

WHEREAS, Owner has built or will build a 127-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 premises 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, are true and correct as of the date hereof and Owner will promptly notify the County upon the occurrence of any 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 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 30-year anniversary of the date hereof, Owner shall, at all times, ensure that the Project is occupied by qualifying tenants as set forth herein, to wit: thirty-nine (39) units will be rented to person(s) who earn 80% or less than the area median gross income adjusted for family size (the “AMI”) as determined by United States Department of Housing and Urban Development (“HUD”) from time to time with respect to Dane County; twelve (12) units will be rented to person(s) who earn 70% or less than AMI as determined by HUD from time to time with respect to Dane County; sixty-nine (69) units will be rented to person(s) who earn 50% or less than AMI as determined by HUD from time to time with respect to Dane County; and seven (7) units will be rented to person(s) who earn 30% or less than AMI as determined by HUD from time to time with respect to Dane County. 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 (“WHEDA”) factoring in the number of bedrooms in the Apartment and it being located in Fitchburg, Wisconsin.
- 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.
 - (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 Reduction or Disposition of the Development. The Owner shall not demolish any part of the Residential Unit nor substantially subtract from any real or personal property of the Residential Unit, nor dispose to any person any portion of any building in the Residential Unit unless all of such building is disposed of to such person.
- 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 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 80%, 70%, 60%, 50%, 40% and 30% of the Area Median Income ("AMI" as determine 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 resolution (e.g. vacated prior to execution of writ or allowed to stay with conditions) 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 1 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 permanent lender).
- 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.
- 1.15 Tenancy Addendum. Owner shall comply with the specific provisions relating to security deposits, late fees, termination of tenancy, parking & guest policies outlined in the Tenancy Addendum ("Addendum"). Certain provisions of the Addendum are attached as Exhibit B. The provisions relating to security deposits, late fees, termination of tenancy, parking and guest policies outlined in the Tenancy Addendum shall be attached to all of Owner's leases for residential units. Upon

any such update, the Owner shall provide written notice of the changes to DCHA and the County. If there are conflicts between the Addendum provisions and the lease, the Addendum requirements shall take precedence.

- 1.16 Housing First. Owner will target 7 units (5.5% of total units) to individuals/families on the Community-wide Priority List for Housing. Owner, or its designee, agrees to meet regularly with the County, Owner's supportive services partner(s) and Owner's property management partner(s) to determine how referrals for available units will be identified for the project prior to lease up and when subsequent vacancies occur.
- 1.17 Reserved.
- 1.18 Modifications. The County and Owner acknowledge the pages attached hereto as Exhibits B and C were included in Owner's response to the County request for proposals referred to in the Recitals of the Grant Agreement. Owner shall continue to comply with the terms and conditions outlined in Exhibits B and C throughout the term of the Agreement, unless the County agrees to modify this agreement in writing. County's consent to modify the terms and conditions on Exhibit B and C shall not be required to the extent a change in law mandates a modification of the terms and conditions set forth in Exhibit B and C. To the extent Owner wishes to modify Exhibit B or Exhibit C, Owner shall request County's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. For example, in the event Owner changes management companies, Owner's Tenancy Addendum may be slightly modified as to form, which the County shall timely consider and, if acceptable, approve.

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 60 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 initial occupancy of the Development. The term shall end as referenced in Section 1.7.
- 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 up on 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:

Cinnaire Fund for Housing Limited Partnership 36
1118 South Washington Avenue
Lansing, MI 48910
Attn: Brett S. Oumedian

With a copy to:

Kutak Rock LLP
1650 Farnam Street, The Omaha Building
Omaha, Nebraska 68102-2103
Attn: Gregg Yeutter

With a copy to:

Wisconsin Housing and Economic Development Authority
201 West Washington, Suite 700
Madison, Wisconsin 53703
Attn: Legal Department

- 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 LIMERICK-FITCHBURG, LLC
a Wisconsin limited liability company

By: The Limerick-Fitchburg-MM, LLC, its Managing Member

By: Northpointe Development II Corporation, its Manager

By: _____
Name: Cal Shultz
Title: President

STATE OF WISCONSIN)
) ss
DANE COUNTY)

Personally came before me this ____ day of _____, 20__, the above named Cal Shultz, President of Northpointe Development II Corporation, the Manager of The Limerick-Fitchburg-MM, LLC, the Managing Member of The Limerick-Fitchburg, LLC to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public .State of Wisconsin
My Commission: _____

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: _____

Title: _____

Attested by: _____

Name: _____

Title: _____

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

EXHIBIT B
TO LAND USE RESTRICTION AGREEMENT
TENANCY ADDENDUM

See attached.

Exhibit D

Unit Mix

CMI	BRs	# of Units
30	1	3
30	2	3
30	3	1
50	1	28
50	2	28
50	3	13
70	1	5
70	2	5
70	3	2
80	1	14
80	2	14
80	3	11

Exhibit E

Subaward Note

See attached.

Promissory Note

Cash Flow with Interest

PROJECT NAME: The Limerick

BORROWER NAME: The Limerick-Fitchburg, LLC

AMOUNT OF LOAN: \$1,250,000

PLACE: **MADISON, WISCONSIN**

DATE:

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 \$1,250,000.00 plus 2.00% 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 30 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 [First] Amended and Restated Operating Agreement/Operating Agreement, dated , 20. 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 April 1, 2050 (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 Fitchburg, 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 mixed use development consisting of 127 residential rental units on the Property (the “Project”).

THIS NOTE 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.

FOLLOWING all applicable notice and cure periods provided in 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, which provisions are incorporated herein by reference, and the default is not cured within the time period provided in the Mortgage.
- b) Title to, or equitable ownership in, the Property is transferred to any party other than The Limerick-Fitchburg, LLC, or an affiliate of either entity acceptable with prior written consent of the DCHA.
- c) If Borrower permits or allows any use of the Property other than as the Project.

Notwithstanding anything to the contrary in this Note or the Mortgage, Cinnaire Fund for Housing Limited Partnership 36, 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 attorneys’ 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, the WHEDA LURA 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 until a certificate of occupancy for the Project has been issued by the City of Fitchburg.

The right of the holder of this promissory note to payment of any of the indebtedness evidenced by this promissory note is and will at all times be subordinate to the right of the Wisconsin Housing and Economic Development Authority, its successors and assigns, under a Multifamily Note dated _____, 2021 ("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 _____, 2021 between [_____] for the benefit of [_____] and the holder of this promissory note on the date of the Subordination Agreement.

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.**

[Signature Page Follows]

Signed and sealed as of the _____ day of _____, 2021 at Madison, Wisconsin.

THE LIMERICK-FITCBURG, LLC
a Wisconsin corporation

By: The Limerick-Fitchburg-MM, LLC, its Managing Member

By: Northpointe Development II Corporation, its Manager

By: _____
Name: Cal Shultz
Title: President

EXHIBIT A

ADDRESS:

LEGAL DESCRIPTION

PARCEL #:

Exhibit F

Tenancy Addendum

See attached.