

## LOAN AGREEMENT

THIS LOAN AGREEMENT (this “Agreement”) is dated effective \_\_\_\_\_, 2022 (the “Effective Date”), and is entered into by and between Kaukauna RAD, LLC, a Wisconsin limited liability company (the “Borrower”) and the City of Kaukauna, 144 W 2<sup>nd</sup> Street, Kaukauna, Wisconsin 54130.

The City of Kaukauna has agreed to make the loan described in this Agreement to the Borrower upon the terms and conditions of this Agreement.

In consideration of the mutual agreements and covenants set forth in this Agreement, the parties, intending to be legally bound, agree as follows:

1. DEFINITIONS. In addition to the other terms defined within this Agreement, whenever capitalized terms are used, such terms shall be defined as shown on Exhibit A attached hereto and incorporated herein.
2. LOAN. On and subject to the terms and conditions of this Agreement, the City of Kaukauna agrees to make the following loan to the Borrower (“Loan”):
  - a. Loan. The Loan is and shall be evidenced by a promissory note in the form of Exhibit B attached hereto and made a part hereof (the “Note”) in the original principal amount of One Hundred Thousand and NO/100 Dollars (\$100,000.00) and shall bear interest calculated and payable as described below.
  - b. Use of Loan proceeds. The Borrower shall use the proceeds of the Loan for the purpose of paying (or reimbursement to others for payment of) the cost of items contained with the Scope of Work (as defined herein) for the Project actually incurred by the Borrower. The proceeds of the Loan shall not be used for any expenses except those incurred in connection with the Scope of Work.. The “Scope of Work” shall be as described on Exhibit C attached hereto and incorporated herein.
  - c. Maturity Date. The Loan shall be due and payable on the date that is twenty (20) days prior to the fortieth (40<sup>th</sup>) anniversary of the date of the City’s Bond Note (the “Maturity Date”), which date shall be definitively determined upon the City of Kaukauna’s purchase of the City’s Bond Note.
  - d. Fixed interest rate. The interest rate on the Loan is fixed at the City’s Bond Note rate plus one percent (1.0%) determined at the time of purchase of the City’s Bond Note.
  - e. Payment schedule.

Commented [A1]: When will this be determined?

Commented [A2]: When will this be determined?

- i. Interest only. The Borrower shall make interest only payments on the outstanding principal balance of the Note to the City of Kaukauna annually, commencing on the first anniversary of date of the Note.
  - ii. Final payment. On or before the Maturity Date, the Borrower shall make a balloon payment to the City of Kaukauna of the entire balance of the outstanding principal amount with all accrued interest thereon.
- f. Prepayment. Except as otherwise expressly provided for in this Agreement or the Note, the Loan may be prepaid in whole or in part at any time without penalty after the call date set forth in the City's Bond Note. If Borrower shall prepay the Note in full or in part prior to the call date set forth in the City's Bond Note, Borrower shall pay a prepayment penalty equal to the remaining unpaid bond interest prior to the call date of the City's Bond Note. Any partial prepayment of the Loan shall be applied as the City of Kaukauna directs.
- g. Delinquency charge. If any payment (other than the final payment) is not made on or before the tenth (10th) day after its due date, the City of Kaukauna may collect, and the Borrower agrees to pay upon demand, a delinquency charge in an amount equal to one percent (1%) per month of the unpaid amount until payment thereof in full, but under no circumstances shall any delinquency charge be less than Ten and No/100 Dollars (\$10.00). Any failure to pay to the City of Kaukauna upon demand any delinquency charge or charges shall constitute an Event of Default in payment by the Borrower under this Agreement.
3. COLLATERAL SECURITY. The Borrower's obligation and indebtedness to the City of Kaukauna shall be secured by:
- a. Mortgage. A second mortgage on Borrower's leasehold interest in the property located at 125 W. 10<sup>th</sup> Street, Kaukauna, Wisconsin 54130 and more fully described on Exhibit D (the "Land") together with Borrower's interest in all buildings, structures and improvements now located or later to be constructed on the Land (the "Improvements") in the form of Exhibit E attached hereto and incorporated herein (the "Mortgage"). The Land and the Improvements shall be collectively referred to herein as the "Real Property".
  - b. Collateral assignment of rents and leases in Real Property. A collateral assignment of rents and leases with respect to the Real Property in the form of Exhibit F attached hereto and incorporated herein.
  - c. Additional documentation. The Borrower shall sign, execute, deliver, or shall cause to be signed, executed or delivered, all documents reasonably necessary to provide the City of Kaukauna with the collateral security provided hereunder.

Commented [A3]: What is call date?

Commented [A4]: How is this determined?

4. REPRESENTATIONS AND WARRANTIES OF BORROWER. To induce the City of Kaukauna to enter into this Agreement and to extend the Loan, the Borrower represents and warrants to the City of Kaukauna as follows:

- a. Existence. The Borrower is a limited liability company duly organized and in good standing under the laws of the State of Wisconsin, and is duly authorized under all applicable laws to carry on its business as presently conducted. The Borrower has the authority to enter into this Agreement and to borrow hereunder. The Borrower does not have any subsidiaries.
- b. Authority. The Borrower has the right and power and is duly authorized to execute and deliver each Loan Document and to perform and observe the provisions of the Loan Documents and the Borrower is duly authorized to borrow monies hereunder. The execution, delivery and performance by the Borrower of each Loan Document to which it is a party, and the borrowings by the Borrower hereunder, do not and will not (a) require any consent or approval of any governmental authority (other than the City of Kaukauna) or agency, (b) conflict with, violate, result in any breach of any of the provisions of, or constitute a default under, (i) any law, rule, regulation, order, writ, judgement, injunction, decree, determination or award that is applicable to or binding on the Borrower, (ii) the articles of organization, operating agreement or other organizational documents of the Borrower, or (iii) any material agreement, indenture, instrument or other document, or any judgement, order or decree, that is binding upon the Borrower or its properties, or (c) require, or result in, the creation or imposition of any lien, claim or encumbrance on any asset of the Borrower (other than the liens in favor of the City of Kaukauna). This Agreement and all Loan Documents will become legal and valid and enforceable obligations of the Borrower upon their execution and delivery to the City of Kaukauna.
- c. Title. Except those liens set forth on Exhibit G attached hereto and incorporated herein and the liens granted by the Borrower in favor of the City of Kaukauna in connection with the Loan (the "Permitted Liens"), the Borrower has good and marketable title to its assets including, without limitation, a leasehold interest in the Land and a fee interest in the Improvements, free and clear of any liens, claims, security interests or other encumbrances.
- d. Validity and enforceability. This Agreement and each other Loan Document to which the Borrower is a party is the legal, valid and binding obligation of the Borrower, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principals of equity.
- e. Compliance with laws and contracts.
  - i. The Borrower is in compliance with respect to all applicable statutes, laws, rules, regulations, ordinances and codes and all judgments, orders

and decrees of any court or governmental authority and all contracts or agreements to which it may be bound relating to its business, assets and properties. The Borrower has obtained all permits, licenses, and other rights and approvals necessary to conduct its business as presently conducted.

- ii. Except for *de minimis* defaults that would not reasonably be expected to result in any Material Adverse Effect, the Borrower is not, subject to applicable notice or cure periods therein, in violation of or in default under any material agreement to which it is a party or by which any material portion of its assets is subject or bound.
  - f. Litigation. No litigation (including derivative actions), arbitration proceeding or governmental investigation or proceeding is pending or, to the knowledge of the Borrower, threatened against the Borrower that might reasonably be expected to have a Material Adverse Effect.
  - g. Taxes. The Borrower has paid, and will pay when due, all federal, state and local income, sales, real and personal property taxes, and will promptly prepare and file all tax returns.
  - h. Environmental matters. The Borrower represents that, except as previously disclosed to the City Kaukauna in writing, to the best of its knowledge and belief and after due inquiry: there does not exist any condition affecting (i) the business or property of the Borrower or (ii) any property given by the Borrower to secure the Loan which requires environmental cleanup or remediation; and that no Hazardous Substances, underground storage tanks, or other environmental contaminants are located on, in, under or above any property owned or controlled by the Borrower.
  - i. Solvency. The Borrower is solvent, which means that, as of any date of determination, (a) the value of the assets of the Borrower (both at fair value and present fair saleable value) is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of the Borrower, (b) the Borrower is able to pay all liabilities of the Borrower as such liabilities mature and (c) the Borrower does not have unreasonably small capital. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.
5. AFFIRMATIVE COVENANTS OF BORROWER. Until the expiration or termination of the Loan and thereafter until all Obligations hereunder and under the other Loan Documents are paid in full, the Borrower agrees that, unless at any time the City of Kaukauna shall otherwise expressly consent in writing, it will perform and abide by the following requirements:

- a. Financial statements. The Borrower shall furnish the City of Kaukauna with the following information with respect to the Borrower's business, assets, insurance and financial condition:
- i. Annual financial statements within ninety (90) days after the end of the fiscal year of the Borrower in a form reasonably satisfactory to the City of Kaukauna;
- b. Books and records. The Borrower shall keep proper books of record and accounts and, upon demand, give any representative of the City of Kaukauna access during normal business hours to, and permit such person to examine, any and all books, records and documents in its possession relating to the financial and business affairs of the Borrower and to inspect any of its properties or assets including, without limitation, the Land and Improvements.
- c. Certificate of no default. Together with the delivery of each annual financial statement, the Borrower shall also furnish to the City of Kaukauna a certificate of the managing member of Borrower stating that such signer(s) has or have no knowledge of any Event of Default which has occurred under this Agreement or of any matter which would, with the passage of time or the giving of notice, constitute an Event of Default hereunder, or if such signer(s) shall have obtained knowledge of any such default or potential default, such signer(s) shall disclose in such statement the default or potential default and the nature thereof. Each such certificate shall be dated as of the last day of the year for which it is submitted.
- d. Insurance. The Borrower shall keep all of its insurable property, real and personal, including but not limited to any collateral provided to the City of Kaukauna pursuant to this Agreement, insured at all times against loss or damage by fire or other normally insured hazards through responsible insurance carriers, selected by the Borrower and reasonably acceptable to the City of Kaukauna, in such amounts as are commercially reasonable and acceptable to the City of Kaukauna. Copies of all such insurance policies or certificates thereof shall be delivered to the City of Kaukauna upon request. The City of Kaukauna shall be named as an additional insured on any policies that insure any collateral given to the City of Kaukauna to secure the Borrower's obligations hereunder.
- e. Maintenance. The Borrower shall keep its properties, including the Land and Improvements, whether owned or leased, in good condition, repair and working order at all times.
- f. Taxes. The Borrower shall duly pay and discharge all lawful taxes, assessments and governmental charges upon the Borrower or against the Borrower's properties on or prior to the date due and payable, unless and to the extent only that the same shall be contested in good faith, provided appropriate reserves,

acceptable to the City of Kaukauna, for the payment of said taxes are established in accordance with generally accepted accounting practices.

- g. Lien waivers. Upon the completion of the Project, the Borrower shall provide the City of Kaukauna with all final lien waivers for all contractors and materials suppliers, if any.
  - h. Notice of default; litigation. Promptly upon becoming aware of the occurrence of (i) an Event of Default, (ii) any litigation or other proceeding that may have an Material Adverse Effect, (iii) any cancellation or material change in any insurance maintained by the Borrower; or (iv) any other event that might be reasonably expected to have a Material Adverse Effect, notify the City of Kaukauna thereof in writing.
  - i. Other information. Promptly from time to time, the Borrower shall provide such other information concerning the Borrower as the City of Kaukauna may reasonably request, which information shall be submitted in form and detail reasonably satisfactory to the City of Kaukauna.
  - j. Further assurances. The Borrower shall take such actions as are necessary (including the execution and delivery of such security agreements, mortgages, deeds of trust, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, certificates, assurances and other instruments as the City of Kaukauna may reasonably request from time to time) or that the City of Kaukauna may reasonably request from time to time in order (i) to ensure that all the Obligations of the Borrower are secured by the assets of the Borrower pursuant to the Loan Documents or as otherwise agreed to in writing by the City of Kaukauna; (ii) to perfect and maintain the validity, perfection, and priority of the lien intended to be created by the applicable Mortgage or assignment of rents and leases; and (iii) to better assure, convey, grant, assign, transfer, preserve, protect, and confirm to the City of Kaukauna the rights granted by the Borrower or now or hereafter intended to be granted to the City of Kaukauna under any Loan Document or under any other document executed in connection therewith.
6. NEGATIVE COVENANTS. Until the expiration or termination of the Loan and thereafter until all Obligations hereunder and under the other Loan Documents are paid in full, the Borrower agrees that, unless at any time the City of Kaukauna shall otherwise expressly consent in writing:
- a. Additional indebtedness. The Borrower shall not create, incur, assume or have any outstanding indebtedness except for (i) the indebtedness under this Agreement or expressly permitted under the Loan Documents, (ii) indebtedness disclosed in writing (including disclosed in any financial statements provided) to the City of Kaukauna, or (iii) accounts payable incurred in the ordinary course of

business of the Borrower, provided the same shall be paid when due in accordance with customary trade terms.

- b. Liens. Except for the Permitted Liens and the extended use agreement to be entered into between Borrower and the Wisconsin Housing and Economic Development Authority with respect to the low-income housing tax credits allocated the Project (“Extended Use Agreement”) pursuant to Section 42 of the Internal Revenue Code of 1986 (as amended, the “Code”), the Borrower shall not, without prior written consent of the City of Kaukauna, create, suffer or permit to be created any mortgage, pledge, security interest, assignment, encumbrance or other lien upon any real property, equipment, fixtures, accounts, contract rights, chattel paper, instruments, documents, general intangibles and inventory now owned or hereafter acquired by the Borrower. Notwithstanding anything in the Loan Documents to the contrary, if the City of Kaukauna takes title to the Real Property through foreclosure or deed in lieu of foreclosure, the Real Property shall remain subject to the provisions of Section 42(h)(6)(E)(ii) of the Code or any similar successor provision of the Code.
  - c. Inconsistent agreements. The Borrower shall not permit or enter into any agreement containing any provision that would be violated or breached if the Borrower was to take any action permitted or required by this Agreement.
  - d. Maintenance of collateral. The Borrower shall not permit any waste or failure to maintain in good condition and repair any real or personal property given by the Borrower to secure the Loan to the Borrower.
7. DEFAULT. The City of Kaukauna may, at its option, upon the occurrence of any of the following events of default, without prior notice to the Borrower except as expressly set forth herein, immediately declare the outstanding balance of the Loan to the Borrower, together with all interest accrued thereon, and all other expenses or other obligations of the Borrower under this Agreement or the Loan Documents, to become immediately due and payable. The following are each an “Event of Default”:
- a. Breach of Representation. Any representation or warranty made by the Borrower in this Agreement, in any other Loan Document, in any certificate of the Borrower furnished to the City of Kaukauna hereunder, or in any other document (in any form or format) furnished by or on behalf of the Borrower, shall prove to have been untrue, inaccurate, misleading or incomplete in any material respect as of the time when made and is not cured to the satisfaction of City of Kaukauna within thirty (30) days after Lender provides notice to Borrower.
  - b. Non-payment. The Borrower shall fail to pay any interest or principal on the Loan to the Borrower when due hereunder, or fail to pay when due any principal or interest on any of its other indebtedness, if any, to the City of Kaukauna, whether

at maturity or by acceleration or otherwise, and such failure is not cured within ten (10) days after City of Kaukauna provides notice to Borrower.

- c. Default on other debt. The Borrower shall fail to pay all or any part of the principal of or interest on any other indebtedness of or assumed by the Borrower or other borrowed money, in each case in a principal amount of \$100,000 or greater, as and when due and payable, subject to any applicable grace or cure periods, whether at maturity, by acceleration, or otherwise, or shall be in default under any provision of any instrument or other agreement related to such indebtedness and such default shall not be cured within the period or periods of grace, if any, specified in the evidences of such indebtedness.
- d. Default on other material obligations. The Borrower shall default, subject to any applicable grace or cure periods, in the payment when due, or in the performance or observance of, any material obligation of, or condition agreed to by, the Borrower with respect to any material purchase or lease of goods or services where such default, singly or in the aggregate with all other such defaults, might reasonably be expected to have a Material Adverse Effect.
- e. Failure to observe covenant. The Borrower shall default in the performance or observance of any covenant or agreement contained in this Agreement or any other Loan Document or in any other agreement between the Borrower and the City of Kaukauna and such default is not cured within thirty (30) days after delivery of written notice by City of Kaukauna to the Borrower thereof (or if such default is not capable of being cured within such thirty (30) day period, such longer period of time necessary to effectuate such cure (not to exceed one hundred twenty (120) days after delivery of City of Kaukauna's written notice) provided Borrower commences to cure such default within such thirty (30) day period and thereafter diligently pursues such cure to completion).
- f. Insolvency; bankruptcy: The Borrower becomes insolvent or generally fails to pay, or admits in writing its inability or refusal to pay, debts as they become due; or the Borrower applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for the Borrower or any property thereof, or makes a general assignment for the benefit of creditors; or, in the absence of such application, consent or acquiescence, a trustee, receiver, or other custodian is appointed for the Borrower or for a substantial part of the property of any thereof and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is commenced in respect of the Borrower, and if such case or proceeding is not commenced by the Borrower, it is consented to or acquiesced in by the Borrower, or remains for sixty (60) days undismissed; or the Borrower takes any action to authorize, or in furtherance of, any of the foregoing.
- g. Intentionally Deleted.





24 S. Brooke Street  
Fond Du Lac, Wisconsin 54935  
Attn: Dan Kroetz

With Copy to:

Kaukauna Housing Authority

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

And:

WNC Holding, LLC  
c/o WNC & Associates, Inc.  
17782 Sky Park Circle  
Irvine, California 92614-6404  
Attn: Melanie Wenk

If to City of Kaukauna: City of Kaukauna  
144 W 2<sup>nd</sup> Street  
Kaukauna, Wisconsin 54130  
Attn: \_\_\_\_\_

Notices sent by mail shall be deemed to have been given three business days after the date when sent by registered or certified mail, postage prepaid; and notices sent by prepaid hand delivery or prepaid overnight courier service shall be deemed to have been given when received.

- d. Computations. Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made, for the purpose of this Agreement, such determination or calculation shall, to the extent applicable and except as otherwise specified in this Agreement, be made in accordance with generally accepted accounting principles, consistently applied.
- e. Governing law. This Agreement and each Loan Document shall be a contract made under and governed by the internal laws of the state of Wisconsin applicable to contracts made and to be performed entirely within such state without regard to conflict of law principles.
- f. Severability. Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or

invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

- g. Nature of remedies. All Obligations of the Borrower and rights of the City of Kaukauna expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law.
- h. Entire agreement. This Agreement, together with the other Loan Documents, embodies the entire and final agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such persons, verbal or written, relating to the subject matter hereof.
- i. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed an original, but all such counterparts shall together constitute but one (1) and the same contract. Delivery of a counterpart hereof, or a signature page hereto, by facsimile or in a .pdf or similar file shall be effective as delivery of a manually executed original counterpart thereof.
- j. Successors and assigns. This Agreement shall be binding upon the Borrower and the City of Kaukauna and their respective successors and assigns, and shall insure to the benefit of the Borrower and the City of Kaukauna and the successors and assigns of the City of Kaukauna. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Borrower may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of the City of Kaukauna.
- k. Headings and captions. Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.
- l. Forum selection and consent to jurisdiction. Any litigation based hereon, or arising out of, under, or in connection with this Agreement or any other Loan Document, shall be brought and maintained exclusively in the courts of the state of Wisconsin or in the United States District Court for the Eastern District of Wisconsin located in Brown County, Wisconsin or the circuit courts of the State of Wisconsin located in Outagamie County, Wisconsin; provided, that nothing in this Agreement shall be deemed or operate to preclude the City of Kaukauna from bringing suit or taking other legal action in any other jurisdiction. Each Borrower hereby expressly and irrevocably submits to the jurisdiction of the courts of the state of Wisconsin and of the United States District Court for the Eastern District of Wisconsin for the purpose of any such litigation as set forth above. The Borrower further irrevocably consents to the service of process in any manner permitted by applicable law, within or without the state of Wisconsin. The Borrower hereby expressly and irrevocably waives, to the fullest extent permitted

by law, any objection that it may now or hereafter have to the laying of venue of any such litigation brought in any such court referred to above and any claim that any such litigation has been brought in an inconvenient forum.

- m. Waiver of jury trial. The Borrower and the City of Kaukauna hereby waives any right to a trial by jury in any action or proceeding to enforce or defend any rights under this Agreement, any Note, any other Loan Document, and any amendment, instrument, document, or agreement delivered or that may in the future be delivered in connection herewith or therewith or arising from any lending relationship existing in connection with any of the foregoing, and agrees that any such action or proceeding shall be tried before a court and not before a jury.

[Signature pages follow]

IN WITNESS WHEREOF, the parties, each by its duly authorized representative(s), have executed this Loan Agreement as of the Effective Date.

BORROWER:

KAUKAUNA RAD, LLC

BY KAUKAUNA RAD MM, LLC,  
Managing Member

BY COMMONWEALTH HOLDINGS II, LLC.  
Managing Member

BY \_\_\_\_\_  
Kristi Morgan, Manager

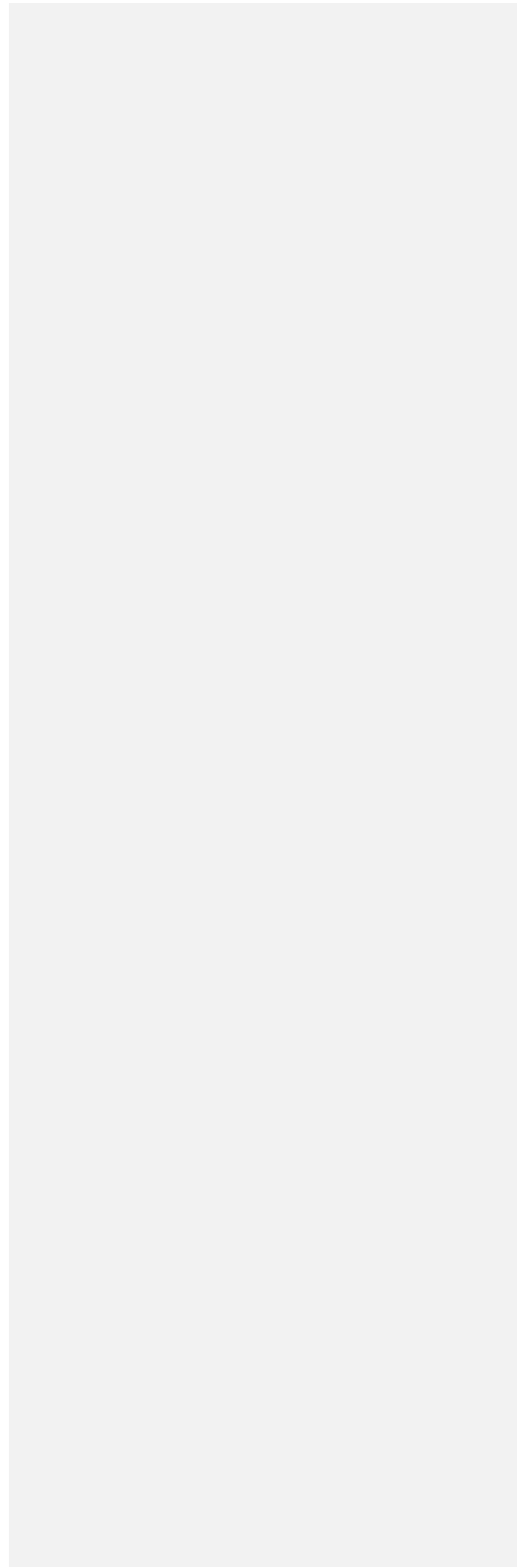
CITY OF KAUKAUNA

By: \_\_\_\_\_  
Name: Anthony J. Penterman  
Title: Mayor

By: \_\_\_\_\_  
Name: Sally A. Kenney  
Title: City Clerk

List of Exhibits

- Exhibit A – Definitions
- Exhibit B – Form of Promissory Note
- Exhibit C – Scope of Work
- Exhibit D – Description of Land
- Exhibit E – Form of Mortgage
- Exhibit F – Form of Collateral Assignment of Leases and Rents
- Exhibit G – Permitted Liens



## **EXHIBIT A TO LOAN AGREEMENT**

### **Definitions**

“Affiliate” means as to any Person, any other Person that, directly or indirectly through one (1) or more intermediaries, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote ten percent (10%) or more of the equity interests or shares of stock having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Change in Control” means the occurrence of any of the following whether in a single transaction or a series of transactions: (a) the sale, conveyance, assignment, gift, bequest or other transfer of ten (10%) or more of the outstanding equity interests of Borrower; (b) the sale, conveyance, assignment, gift, bequest or other transfer of substantially all of the assets of Borrower; (c) the transfer, assignment or other disposition of voting control of Borrower; or (d) a merger or consolidation of Borrower whether or not Borrower is the surviving entity.

“City’s Bond Note” means \_\_\_\_\_

Commented [A1]: Insert Definition

“Effective Date” means \_\_\_\_\_, 2022.

“Environmental Laws” shall mean any and all federal, state and local laws or statutes that relate to or impose liability or standards of conduct concerning public or occupational health and safety or the environment, as now or hereafter in effect and as have been or hereafter may be amended, modified or reauthorized, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (42 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Safe Drinking Water Act of 1974 (42 U.S.C. §300(f) et seq.), and the Occupational Safety and Health Act of 1970 (29 U.S.C. §651 et seq.), and all rules, regulations, codes, ordinances and guidance documents now or hereafter promulgated or published thereunder, and the provisions of any licenses, permits, orders and decrees now or hereafter issued pursuant to any of the foregoing.

“Event of Default” means an event of default set forth in Section 7 of this Agreement.

“Hazardous Substances” means (a) any substance, material, or waste that is included within the definitions of “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” “toxic materials,” “toxic waste,” or words of similar import in any Environmental Law; (b) those substances listed as hazardous substances by the United States Department of

Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, Freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical. The term "Hazardous Substances" in the Loan Documents shall specifically exclude ordinary quantities of supplies, cleaning materials, pest control, and petroleum products stored or used in a safe and lawful manner and in compliance with Environmental Laws.

"Land" means the real property described on Exhibit D to this Agreement.

"Loan" means any loan made hereunder to Borrower.

"Loan Documents" means this Agreement, the Note, Mortgage, any security agreement, any collateral assignment of rents and leases, any commercial guaranty, and all such other documents delivered to the City of Kaukauna in connection with the Loan.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, properties, liabilities (actual or contingent), operations, condition (financial or otherwise) of Borrower or any guarantor (b) the validity or enforceability of any Loan Document, (c) the perfection or priority of any lien purported to be created by any Loan Document, (d) the rights or remedies of the City of Kaukauna under any Loan Document, or (e) the ability of a Borrower or any guarantor to perform any of their material obligations under any Loan Document to which it is a party.

"Maturity Date" has the meaning set forth in Section 2(c) of the Loan Agreement.

"Mortgage" or "Mortgages" means each of the mortgages made by Borrower in favor of and for the benefit of the City of Kaukauna, substantially in the form of Exhibit E as the same may be amended, supplemented or otherwise modified from time to time to the extent permitted under the Loan Documents.

"Note" means the Promissory Note dated as of the Effective Date in the original principal amount of \$100,000.00 from the Borrower to the City of Kaukauna.

"Obligations" means all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, covenants, and indemnities of Borrower or any guarantor arising under any Loan Document or otherwise with respect to any Loan to Borrower from the City of Kaukauna, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

"Permitted Liens" means the liens set forth on Exhibit G attached to this Agreement.

"Person" means any individual, corporation, limited liability company, trust, joint venture, association, company, limited or general partnership, unincorporated organization, governmental authority, or other entity.

“Project” means the development, construction and rehabilitation of \_\_\_ units of multifamily housing and related improvements located on the Land.

“Scope of Work” means the scope of work for the Project attached to the Loan Agreement as Exhibit C.



PROMISSORY NOTE

**Borrower:**

Kaukauna RAD, LLC  
24 S. Brooke Street  
Fond Du Lac, Wisconsin 54935  
Attn: \_\_\_\_\_

**Lender:**

City of Kaukauna  
144 W 2<sup>nd</sup> Street  
Kaukauna, WI 54130  
Attn: \_\_\_\_\_

1. Loan.

Loan Amount: \$100,000.00  
Date of Loan:  
First Payment Date:  
Maturity Date:  
Fixed Interest Rate:

2. Promise to pay. For value received and in consideration of and subject to the promises, covenants, terms and conditions in this Promissory Note (this “Note”) and in the Loan Agreement dated \_\_\_\_\_ (the “Loan Agreement”), Kaukauna RAD, LLC, a Wisconsin limited liability company (“Borrower”), promises to pay to the order of the City of Kaukauna (“Lender”), in lawful money of the United States of America and in immediately available funds, the principal amount of One Hundred Thousand and NO/100 Dollars (\$100,000.00), together with interest on the unpaid principal balance as provided herein.
3. Interest computation. Interest is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable is computed using this method.
4. Interest rate. The principal sum of this Note shall bear interest at a fixed rate of [REDACTED] per year, which rate is determined at the City’s Bond Note (as defined in the Loan Agreement) rate plus one percent (1.0%) determined at the time of purchase of the City’s Bond Note. Unpaid principal and interest shall bear interest after maturity (whether by acceleration or lapse of time) and until paid at the rate of interest specified above plus three (3) percentage points.
5. Prepayment. This Note may be prepaid in whole or in part at any time without penalty after the call date set forth in the City of Kaukauna’s Bond Note. If Borrower shall prepay the Note in full or in part prior to the call date set forth in the City’s Bond Note, Borrower shall pay a prepayment penalty equal to the remaining unpaid bond interest prior to the call date of the City’s Bond Note. Any partial prepayment of the Loan shall be applied as the City of Kaukauna directs.

**Commented [FP1]:** Need to understand timing of call date and prepayment premium calculation.

6. Default. An Event of Default under this Note shall be as provided in the Loan Agreement.
7. Secured obligation. This Note is secured as provided in the Loan Agreement.
8. Delinquency charge. If any payment (other than the final payment) is not made on or before the tenth (10th) day after its due date, Lender may collect, and Borrower agrees to pay upon demand, a delinquency charge in an amount equal to one percent (1%) per month of the unpaid amount until payment thereof in full, but under no circumstances shall any delinquency charge be less than Ten and No/100 Dollars (\$10.00). Any failure to pay to Lender upon demand any delinquency charge or charges shall constitute and Event of Default in payment by Borrower under the Loan Agreement.
9. Rights of Lender. Without affecting the liability of Borrower or any endorser, surety or guarantor of this Note, Lender may, without notice, accept partial payments. Without affecting the liability of any endorser, surety or guarantor of this Note, Lender may, from time to time, and without notice, renew or extend the time for payment of this Note.
10. Obligations of Borrower. Borrower and all endorsers, sureties and guarantors of this Note agree to pay all reasonable costs of collection before and after judgment, and including, but not limited to, reasonable attorneys' fees, and waive presentment, protest, demand and notice of dishonor.
11. Costs of collection. Borrower shall reimburse Lender for all reasonable costs, including actual reasonable attorneys' fees, that Lender incurs in connection with any Event of Default, notwithstanding Borrower's cure of any such default. In addition, Borrower shall reimburse Lender for all reasonable costs, fees and expenses, including actual reasonable attorneys' fees, that Lender incurs at any time, even if there is no Event of Default, in connection with any litigation or other action in which Lender becomes involved as a party, witness or otherwise, as a result of the loan hereunder being made to Borrower except to the extent such litigation or action arises from Lender's negligence, willful misconduct or breach of the Loan Documents.
12. Interpretation. This Note is intended by Borrower and Lender as a final and complete expression of this Note and as a complete and exclusive statement of the terms of this Note, and there are not any conditions to the enforceability of this Note. This Note may not be supplemented or modified except in a writing signed by Borrower and Lender. This Note benefits Lender and Lender's successors and assigns, and binds Borrower and Borrower's successors and assigns. Borrower shall not assign or otherwise transfer this Note, voluntarily or involuntarily, by operation of law or otherwise, without the prior written consent of Lender. The validity, construction and enforcement of this Note shall be governed by the internal laws of Wisconsin (exclusive of Wisconsin's conflicts of laws rules) except to the extent that such laws are preempted, if at all, by federal law. Venue for any proceeding to enforce payment or collection of this Note may be in the circuit court for Outagamie County, Wisconsin in Appleton, Wisconsin, or in the federal district court for the eastern district of Wisconsin in Green Bay, Wisconsin, and Borrower consents to

the jurisdiction of such courts. Invalidity or unenforceability of any provision of this Note shall not affect the validity or enforceability of any other provision of this Note.

13. Defined terms. Any capitalized term which is not defined in this Note and which is defined in the Loan Agreement shall have the meaning set forth in the Loan Agreement.
14. Waiver of presentment, etc. Borrower waives presentment, demand for payment, notice of nonpayment, protest, notice of protect and notice of dishonor.
15. Nonrecourse. Notwithstanding anything to the contrary herein, the loan evidenced by this Note is a non-recourse obligation of Borrower and of any of Borrower's members. Neither Borrower nor the members or Borrower shall have any personal liability for repayment of the Loan.

[Signature page follows]

IN WITNESS WHEREOF, Borrower, by its duly authorized representative(s), has executed and delivered this Note as of the date first set forth above.

BORROWER:

KAUKAUNA RAD, LLC

BY KAUKAUNA RAD MM, LLC,  
Managing Member

BY COMMONWEALTH HOLDINGS II, LLC,  
Managing Member

BY \_\_\_\_\_  
Kristi Morgan, Manager

**EXHIBIT D – LEGAL DESCRIPTION**

PARCEL A:

ALL OF LOTS TWO (2), THREE (3), FOUR (4), FIVE (5), SIX (6), SEVEN (7), EIGHT (8), NINE (9), TEN (10), ELEVEN (11), AND TWELVE (12), BLOCK FOUR (4), OF BARNARD JACOBS ADDITION, LYING SOUTH OF THE PRESENT WEST ELEVENTH STREET AS DEDICATED IN RESOLUTION NO. 1828 ADOPTED FEBRUARY 17, 1970, ALL BEING IN THE CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN; INCLUDING THE NORTH 1/2 OF THAT PORTION OF VACATED 12TH STREET LYING SOUTH OF SAID LOTS 8 THROUGH 12; THE EAST 1/2 OF THAT PORTION OF VACATED HENDRICKS AVENUE LYING WEST OF SAID LOT 8 AND SOUTH OF WEST 11TH STREET; THE SOUTH 1/2 OF THAT PORTION OF THE VACATED ALLEY LYING NORTH OF THAT PORTION OF THE VACATED ALLEY LYING SOUTH OF WEST 11TH STREET AND SOUTH OF SAID LOTS 2 THROUGH 7.

TAX PARCEL NO. 323026000

PARCEL B:

PART OF GOVERNMENT LOTS SEVEN (7) AND EIGHT (8), SECTION TWENTY-TWO (22), TOWNSHIP TWENTY-ONE (21) NORTH, RANGE EIGHTEEN (18) EAST AND PART OF LOTS SEVEN (7) AND EIGHT (8), BLOCK THREE (3) AND LOT SEVEN (7), BLOCK FOUR (4), ALL ACCORDING TO THE RECORDED PLAT OF BARNARD JACOB'S ADDITION TO SOUTH KAUKAUNA AND THAT PART OF VACATED STREET AND ALLEY LYING ADJACENT THERETO, ALL IN THE CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE REPLAT OF BLOCK 6, BLACKWELL BROS. ADDITION TO THE CITY OF KAUKAUNA, WISCONSIN, SAID POINT BEING ON THE EAST LINE OF GOVERNMENT LOT 8; THENCE SOUTH 89° 51' WEST ALONG THE SOUTH LINE OF SAID REPLAT OF BLOCK 6, 275.18 FEET; THENCE NORTH 00° 17' WEST ALONG THE WEST LINE OF LOT 3 OF THE REPLAT OF BLOCK 6, 2.92 FEET; THENCE SOUTH 61° 38' WEST ALONG THE SOUTHERLY LINE OF LOT 2 OF THE REPLAT OF BLOCK 6, 18.63 FEET; THENCE SOUTH 18° 20' EAST, 471.47 FEET; THENCE ALONG THE ARC OF A 31° 30' CURVE (ARC DEFINITION) TO THE LEFT, 105.56 FEET, THE LONG CHORD OF WHICH BEARS NORTH 56° 02' EAST, 104.42 FEET; THENCE NORTH 39° 50' EAST, 97.14 FEET TO A POINT ON THE EAST LINE OF GOVERNMENT LOT 8, BEING THE WEST LINE OF LOT 7; THENCE CONTINUING NORTH 39° 50' EAST, 120.42 FEET TO THE POINT OF CURVE; THENCE ALONG THE ARC OF A 23° 26' CURVE (ARC DEFINITION) TO THE RIGHT 45.28 FEET, THE LONG CHORD OF WHICH BEARS NORTH 45° 19' EAST, 45.25 FEET; THENCE NORTH 00° 19' EAST ALONG THE EAST LINE OF LOT 8, BLOCK THREE (3), BERNARD JACOBS ADDITION TO THE CITY OF KAUKAUNA AND ITS NORTHERLY EXTENSION, 196.42 FEET; THENCE SOUTH 89° 51' WEST, 6.00 FEET; THENCE NORTH 00° 09' WEST, ALONG A LINE PARALLEL TO AND 6 FEET WEST OF THE EAST LINE OF LOT 7, BLOCK 3 OF SAID BERNARD JACOBS ADDITION, 130.00 FEET; THENCE SOUTH 89° 51' WEST, 109.92 FEET, TO THE NORTHEAST CORNER OF

THE REPLAT OF THE SAID BLOCK 6; THENCE SOUTH 00° 09' EAST ALONG THE EAST LINE OF SAID REPLAT OF BLOCK 6, BEING THE EAST LINE OF GOVERNMENT LOT 8 AND THE WEST LINE OF GOVERNMENT LOT 7, 130.00 FEET TO THE PLACE OF BEGINNING.

AND

PART OF LOT NINE (9), BLOCK THREE (3), AND PART OF VACATED 11TH STREET, ALL IN BARNARD JACOB'S ADDITION TO SOUTH KAUKAUNA, CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE WEST LINE OF MAIN AVENUE WITH THE CENTERLINE OF THE VACATED ALLEY IN SAID BLOCK 3; THENCE NORTH 89° 43' 56" WEST, 267.00 FEET ALONG SAID CENTERLINE TO A POINT; THENCE SOUTH 00° 09' 47" WEST, 147.46 FEET TO THE NORTH LINE OF RELOCATED 11TH STREET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 244.53 FOOT RADIUS CURVE OF SAID NORTH LINE HAVING A CHORD WHICH BEARS SOUTH 62° 49' 35" WEST AND IS 97.94 FEET IN LENGTH TO THE SOUTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 9, BEING THE POINT OF BEGINNING; THENCE NORTH 00° 09' 47" EAST, 124.59 FEET ALONG SAID EXTENSION OF SAID WEST LINE AND THE NORTHERLY EXTENSION OF SAID WEST LINE OF LOT 9 TO A POINT; THENCE SOUTH 89° 43' 56" EAST, 18.00 FEET TO A POINT; THENCE SOUTH 00° 09' 47" WEST PARALLEL TO THE WEST LINE OF SAID LOT 9 TO A POINT ON THE NORTH LINE OF RELOCATED 11TH STREET; THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE OF SAID NORTH LINE TO THE POINT OF BEGINNING.

TAX PARCEL NO. 323072600, 323025700, 323026001 and 323025600

PARCEL C:

ALL OF LOT 3, IN BLOCK 6, BLACKWELL BROS. ADDITION, VILLAGE OF LEDYARD, NOW A PART OF THE CITY OF KAUKAUNA, WISCONSIN, ACCORDING TO THE REPLAT OF SAID BLOCK 6.

AND

LOT FOUR (4), BLOCK SIX (6), BLACKWELL BROTHER'S ADDITION, THIRD WARD, CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN, ACCORDING TO THE REPLAT OF SAID BLOCK SIX (6).

TAX PARCEL NO. 323008300 and 323008400

## LEASEHOLD MORTGAGE

**Kaukauna RAD, LLC, a Wisconsin limited liability company** ("Mortgagor" or "Borrower", whether one or more) mortgages, conveys and warrants to **the City of Kaukauna**, ("Lender"), in consideration of the sum of **One Hundred Thousand Dollars (\$100,000.00)** loaned or to be loaned to **Mortgagor (the "Loan")**, evidenced by Borrower's note dated \_\_\_\_\_ (**the "Note"**), all of Borrower's leasehold interest pursuant to that certain Ground Lease dated as of \_\_\_\_\_, 2022 (the "Ground Lease") with respect to the real estate described below (the "Land"), together with Borrower's interest in all privileges, hereditaments, easements and appurtenances, all rents, leases, issues and profits, all awards and payments made as a result of the exercise of the right of eminent domain, and Borrower's interest in all existing and future improvements and fixtures (all called the "Property").

**1. Description of Land.** This is not homestead property.

**See Exhibit A attached hereto**

**2. Title.** Mortgagor warrants title to the Property, excepting only restrictions and easements of record, municipal and zoning ordinances, current taxes and assessments not yet due and none and those liens and encumbrances set forth in Exhibit B attached hereto (the "Permitted Encumbrances"). This Mortgage is subject and subordinate to that certain Construction Leasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated on or about the date hereof by Mortgagor to the Associated Bank, National Association, securing indebtedness in the amount of \$[\_\_\_\_\_] (the "Prior Mortgage"). By accepting this Mortgage, Lender agrees that this Mortgage is subordinate to the Prior Mortgage and agrees that in the event Mortgagor refinances the loans secured by the Prior Mortgage, this Mortgage will be subordinate to any mortgage or other security interest granted to the lender in any such refinancing, and Lender agrees to execute and deliver any and all subordination agreements reasonably requested by such lender in connection therewith. The foregoing terms shall be binding upon any party to whom Lender may assign its rights under this Mortgage

**Tax Parcel No.: See Exhibit A**

**3. Mortgage As Security.** This Mortgage secures prompt payment to Lender of (a) the sum stated in the first paragraph of this Mortgage, plus interest and charges, according to the terms of the Note of Borrower to Lender, and any extensions, renewals or modifications of such Note, and (b) all other obligations of Borrower to Lender under all other documents relating to, securing or governing the Loan as renewed, amended, modified, restated and extended from time to time (the "Loan Documents") , (ii) all other additional sums which are in the future loaned by Lender to any Mortgagor, to any Mortgagor and another or to another guaranteed or endorsed by any Mortgagor, and (c) all interest and charges pursuant to the foregoing (all called the "Obligations"). This Mortgage also secures the performance of all covenants, conditions and agreements contained in this Mortgage, and to the extent not prohibited by law costs and expenses of collection or enforcement. Unless otherwise required by law, Lender will satisfy this Mortgage upon request by Mortgagor if (a) the Note is paid according to its terms, (b) any commitment to make future advances under the Note has terminated, (c) Lender has terminated any line of credit under which advances are to be secured by this Mortgage, and (d) all other payments required under this Mortgage, the Loan Documents and the Note and all other terms, conditions, covenants, and agreements contained in this Mortgage, the Loan Documents and the Note have been paid and performed.

**4. Taxes.** To the extent not paid to Lender, Mortgagor shall pay before they become delinquent all taxes, assessments and other charges which may be levied or assessed against the Property, or against Lender upon this Mortgage or the Note or other debt secured by this Mortgage, or upon Lender's interest in the Property, and deliver to Lender receipts showing timely payment.

**5. Insurance.** Mortgagor shall keep the improvements on the Land insured against direct loss or damage occasioned by fire, extended coverage perils and such other hazards as Lender may require, through insurers approved by Lender, in amounts, without co-insurance, not less than the unpaid balance of the Note or the full replacement value, whichever is less and shall pay the premiums when due. The policies shall contain the standard mortgage clause in favor of Lender and, unless Lender otherwise agrees in writing, the copies of all policies covering the Property shall be deposited with Lender. Mortgagor shall promptly give notice of loss to insurance companies and Lender. Subject to the rights of senior lenders, all proceeds from such insurance shall be applied, at Lender's option, to the

installments of the Note in the inverse order of their maturities (without penalty for prepayment) or to the restoration of the improvements on the Land; provided, however, Lender shall make such proceeds available to Borrower for restoration of the improvements if Borrower is not in default hereunder beyond any applicable cure period and the proceeds of insurance, together with any other funds from Borrower, are sufficient to restore the Property its condition immediately prior to such casualty. In the event of foreclosure of this Mortgage or other transfer of title to the Property, in extinguishment of the indebtedness secured hereby and subject to the rights of senior lenders, all right, title and interest of Mortgagor in and to any insurance then in force shall pass to the purchaser or grantee.

**6. Mortgagor's Covenants.** Mortgagor covenants:

- (a) **Condition and Repair.** To keep the Property in good and tenantable condition and repair, and to restore or replace damaged or destroyed improvements and fixtures;
- (b) **Liens.** To keep the Property free from liens and encumbrances superior to the lien of this Mortgage and not disclosed elsewhere on this Mortgage;
- (c) **Other Mortgages.** To perform all of Mortgagor's obligations and duties under any other mortgage or security agreement on the Property and any obligation to pay secured by such a mortgage or security agreement;
- (d) **Waste.** Not to commit waste or permit waste to be committed upon the Property;
- (e) **Conveyance.** Not to sell, assign, lease (other than in the ordinary course of business), mortgage, convey or otherwise transfer any legal or equitable interest in all or part of the Property, or permit the same to occur without the prior written consent of Lender and, without notice to Mortgagor, Lender may deal with any transferee as to his interest in the same manner as with Mortgagor, without in any way discharging the liability of Mortgagor under this Mortgage or Note;
- (f) **Alteration or Removal.** Not to remove, demolish or materially alter any part of the Property, without Lender's prior written consent, except Mortgagor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility;
- (g) **Condemnation.** To pay to Lender, subject to the rights of senior lenders, all compensation received for the taking of the Property, or any part, by condemnation proceedings (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the Property, or any part. The compensation shall be applied in such manner as Lender determines to rebuilding of the Property or to installments of the Note in inverse order of their maturities (without penalty for prepayment); provided, however, Lender shall make such compensation available to Borrower for restoration of Property if Borrower is not in default hereunder beyond any applicable cure period.
- (h) **Ordinances; Inspection.** To comply with all laws, ordinances and regulations affecting the Property. Lender and its authorized representatives may enter the Property at reasonable times to inspect it and, at Lender's option, repair or restore it; and
- (i) **Subrogation.** That the Lender is hereby subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the proceeds of the Note.

**7. Environmental Laws.** Except as previously disclosed to Lender in writing, Mortgagor represents and warrants to Lender (a) that during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require cleanup, removal or some other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"), (b) that Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property, (c) that, without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components (PCBs) or underground storage tanks, (d) that there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claim relating to any Hazardous Substance, (e) that Mortgagor is not subject to any court or administrative proceeding, judgment, decrees, order or citation relating to any Hazardous Substance, and (f) that Mortgagor in the past has been, at the present is, and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Lender, its directors, officers, employees and agents from all loss, cost (including



reasonable attorneys' fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of, or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Lender in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property. Notwithstanding the foregoing, Borrower shall not have any obligation to indemnify or hold harmless Lender with respect to any loss, cost (including reasonable attorneys' fees and legal expenses), liability or damage to the extent arising from (i) the presence of any Hazardous Substance on the Property, which is first released or placed on the Property (x) solely and directly by the actions of Lender, or its agents or its representatives while Lender is in possession or control of the Property, or (ii) subsequent to any voluntary or involuntary conveyance of title to the Property from Borrower to Lender or to an unrelated third party with the consent of Lender or pursuant to a foreclosure action or deed-in-lieu thereof, or (ii) to the extent arising solely as a result of the recklessness or willful misconduct of Lender or its agents or its representatives.

**8. Authority of Lender to Perform for Mortgagor.** If Mortgagor fails to perform any of Mortgagor's duties set forth in this Mortgage, Lender may, after giving Mortgagor any notice and opportunity to perform which is required by law or the Loan Documents, perform the duties or cause them to be performed, including without limitation signing Mortgagor's name or paying any amount so required, and the cost shall be due on demand and secured by this Mortgage, bearing interest at the highest rate stated in any Note, but not in excess of the maximum rate permitted by law, from the date of expenditure by Lender to the date of payment by Mortgagor.

**9. Ability to Pay.** Mortgagor shall not take any action or permit any event to occur which materially impairs Mortgagor's ability to pay the Note when due.

**10. Default; Acceleration; Remedies.** If, (a) there is a default under any Note secured by this Mortgage which continues beyond any applicable notice and cure period therein or in the Loan Documents, or (b) Mortgagor fails timely to observe or perform any of Mortgagor's covenants or duties contained in this Mortgage which is not cured within thirty (30) days of Lender providing Mortgagor written notice of such default, or such longer time (not to exceed 120 days) as may be reasonably necessary to cure such default if it cannot be reasonably cured within such period, but Mortgagor has commenced and is diligently pursuing a cure, then, at the option of Lender each Note will become immediately payable. If Lender exercises its option to accelerate, the unpaid principal and interest owed on the Note, together with all sums paid by Lender as authorized or required under this Mortgage or any Note, shall be collectible in a suit at law or by foreclosure of this Mortgage by action, or both, or by the exercise of any other remedy available at law or equity.

**11. Waiver.** Lender may waive any default without waiving any other subsequent or prior default by Mortgagor.

**12. Power of Sale.** In the event of foreclosure, Lender may sell the Property at public sale and execute and deliver to the purchasers deeds of conveyance pursuant to statute.

**13. Assignment of Rents and Leases.** Subject to the prior rights of any senior lenders, Mortgagor assigns and transfers to Lender, as additional security for the Note, all rents which become or remain due or are paid under any agreement or lease for the use or occupancy of any part or all of the Property. Upon the occurrence of an event of default under this Mortgage or the Note and the expiration of any applicable notice and cure periods, Lender shall be entitled to the rents and may, after giving Mortgagor any notice and opportunity to perform which is required by law or the Loan Documents, notify any or all tenants to pay directly to Lender all such rents. All such payments shall be applied in such manner as Lender determines to payments required under this Mortgage and the Note. This assignment shall be enforceable and Lender shall be entitled to take any action to enforce the assignment (including notice to the tenants to pay directly to Lender or the commencement of a foreclosure action) without seeking or obtaining the appointment of a receiver or possession of the Property.

**14. Receiver.** Upon the commencement or during the pendency of an action to foreclose this Mortgage, or enforce any other remedies of Lender under it, without regard to the adequacy or inadequacy of the Property as security for the Note, Mortgagor agrees that the court may appoint a receiver of the Property without bond, and may empower the receiver to take possession of the Property and collect the rents, issues and profits of the Property and exercise such other powers as the court may grant until the confirmation of sale, and may order the rents, issues and profits, when so collected, to be held and applied as the court may direct.

**15. Foreclosure Without Deficiency Judgment.** If the Property is a one to four family residence that is owner-occupied at the commencement of a foreclosure, a farm, a church or owned by a tax exempt charitable organization, Mortgagor agrees to the provisions of §846.101, Wis. Stats., and as the same may be amended or renumbered from time to time, permitting Lender, upon waiving the right to judgment for deficiency, to hold the foreclosure sale of real estate of 20 acres or less six months after a foreclosure judgment

is entered. If the Property is other than a one to four family residence that is owner-occupied at the commencement of a foreclosure, a farm, a church or owned by a tax exempt charitable organization, Mortgagor agrees to the provisions of §846.103, Wis. Stats., and as the same may be amended or renumbered from time to time, permitting Lender, upon waiving the right to judgment for deficiency, to hold the foreclosure sale of real estate three months after a foreclosure judgment is entered.

**16. Expenses.** To the extent not prohibited by law, Mortgagor shall pay all reasonable costs and expenses before and after judgment, including without limitation, attorney's fees and expenses of obtaining title evidence, incurred by Lender in protecting or enforcing its rights under this Mortgage.

**17. Equity Investor Provisions.** Notwithstanding anything to the contrary contained herein, Lender shall provide [WNC Holding, LLC, a California limited liability company, its successors and assigns] (the "Equity Investor") copies of any default notices under this Mortgage so long as the Equity Investor continues to have an ownership interest in Mortgagor. Such notice shall be given to the Equity Investor at the address set forth below or such other address designated by Equity Investor from time to time:

WNC Holding, LLC  
c/o WNC & Associates, Inc.  
17782 Sky Park Circle  
Irvine, California 92614-6404  
Attn: Melanie Wenk

Lender agrees that any cure of any default made or tendered by Equity Investor shall be deemed to be cured by Mortgagor and shall be accepted or rejected on the same basis as if made or tendered by Mortgagor. Equity Investor shall have the same time period to cure a default under this Mortgage as is granted to Mortgagor.

Notwithstanding anything to the contrary contained in the Loan Documents and except as set forth below, the following shall be permitted without consent and shall not constitute an event of default or result in any fee: (i) the transfer of any membership interest in the Borrower in accordance with the terms of Borrower's Amended and Restated Operating Agreement dated as \_\_\_\_\_, as such operating agreement may be amended from time to time (the "Operating Agreement"), (ii) the removal and replacement of the managing member of the Borrower in accordance with the Operating Agreement, and/or (iii) an amendment of the Operating Agreement memorializing the transfers or removal described above.

Notwithstanding anything to the contrary contained in this Mortgage, Lender agrees that the lien created under this Mortgage shall be subordinate to any extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended, recorded against the Property, provided that any such extended use agreement, must, by its terms, terminated upon foreclosure under the Mortgage or upon a transfer of the Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E)(ii) of the Internal Revenue Code.

Neither the execution or delivery of any purchase option or right of first refusal described in the Operating Agreement of the Mortgagor, nor the exercise of the rights described therein, shall constitute a default under this Mortgage of the Note, or accelerate the maturity of the Obligations thereunder.

**17. Severability.** Invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provision.

**18. Successors and Assigns.** The obligations of all Mortgagors are joint and several. This Mortgage benefits Lender, its successors and assigns, and binds Mortgagor(s) and their respective heirs, personal representatives, successors and assigns.

**19. Entire Agreement.** This Mortgage is intended by the Mortgagor and Lender as a final expression of this Mortgage and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Mortgage. No parol evidence of any nature shall be used to supplement or modify any terms.

**20. RAD Requirements.** Borrower and Lender hereby acknowledge and agree that the Improvements and the Project (as defined in the Loan Agreement) are subject to the requirements of the RAD program as more fully provided herein:

- (a) **HUD Regulatory Documents.** Lender acknowledges that \_\_\_\_\_ units (the "RAD Units") to be rehabilitated at the Project will be assisted by funding provided through the [Housing Authority of the City of Kaukauna] (the "Authority") under the Rental Assistance Demonstration ("RAD") Program, authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (the "CFCA Act") and HUD Notice PIH-

2012-32(H) Rev-3 (January 12, 2017), as may be further amended (the "RAD Notice"). As such, the RAD Units and the Lender's security interest in the RAD Units, are subordinate and subject to: (a) that certain Rental Assistance Demonstration Use Agreement executed by Borrower, the Authority and the U.S. Department of Housing and Urban Development ("HUD") (the "RAD Use Agreement"), (b) the PBV Housing Assistance Payments Contract (HUD Forms 52530A and 52621) (the "HAP Contract") executed by Borrower and Authority with respect to the RAD Units and (c) that certain RAD Conversion Commitment (HUD Form 52624) executed by HUD, Borrower and the Authority with respect to the RAD Units (the "RAD Conversion Commitment", and collectively with the CFCA Act, RAD Notice, RAD Use Agreement, and HAP Contract, the "RAD Requirements"). If there is a conflict between a provision of this Mortgage or the Loan Documents that affects the RAD Units and a requirement in any RAD Requirement, then the RAD Requirement shall govern, except as such RAD Requirement may have been expressly waived in writing by HUD or the Authority, as appropriate.

- (b) **Subordination to RAD Use Agreement.** The lien on the Property pursuant to this Mortgage is subordinate and subject to the RAD Use Agreement.
- (c) **Notice to HUD.** Any notices of Borrower's default provided pursuant to the Loan Documents shall also, as a courtesy, be provided to HUD as follows:

United States Department of Housing and Urban Development  
451 Seventh Street, S.W.  
Washington, DC 20410  
Attn: Office of the General Counsel.

[Signature Page Follows]

The undersigned acknowledges receipt of an exact copy of this Mortgage.

Signed and sealed on Date.

KAUKAUNA RAD, LLC

BY KAUKAUNA RAD MM, LLC,  
Managing Member

BY COMMONWEALTH HOLDINGS II, LLC,  
Managing Member

BY \_\_\_\_\_  
Kristi Morgan, Manager

**ACKNOWLEDGMENTS**

STATE OF WISCONSIN )  
 ) ss.  
\_\_\_\_\_ COUNTY )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2022, by Kristi Morgan, the manager of Commonwealth Holdings II, LLC, the managing member of KAUKAUNA RAD MM, LLC, the managing member of KAUKAUNA RAD, LLC.

(Notary Seal)

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission (is permanent)  
expires \_\_\_\_\_

This instrument was drafted by  
Attorney Sarah J. Knutson  
McCarty Law LLP  
2401 East Enterprise Avenue  
Appleton WI 54913-7887

EXHIBIT A

PARCEL A:

ALL OF LOTS TWO (2), THREE (3), FOUR (4), FIVE (5), SIX (6), SEVEN (7), EIGHT (8), NINE (9), TEN (10), ELEVEN (11), AND TWELVE (12), BLOCK FOUR (4), OF BARNARD JACOBS ADDITION, LYING SOUTH OF THE PRESENT WEST ELEVENTH STREET AS DEDICATED IN RESOLUTION NO. 1828 ADOPTED FEBRUARY 17, 1970, ALL BEING IN THE CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN; INCLUDING THE NORTH 1/2 OF THAT PORTION OF VACATED 12<sup>TH</sup> STREET LYING SOUTH OF SAID LOTS 8 THROUGH 12; THE EAST 1/2 OF THAT PORTION OF VACATED HENDRICKS AVENUE LYING WEST OF SAID LOT 8 AND SOUTH OF WEST 11TH STREET; THE SOUTH 1/2 OF THAT PORTION OF THE VACATED ALLEY LYING NORTH OF THAT PORTION OF THE VACATED ALLEY LYING SOUTH OF WEST 11TH STREET AND SOUTH OF SAID LOTS 2 THROUGH 7.

Tax Parcel No. 323026000

PARCEL B:

PART OF GOVERNMENT LOTS SEVEN (7) AND EIGHT (8), SECTION TWENTY-TWO (22), TOWNSHIP TWENTY-ONE (21) NORTH, RANGE EIGHTEEN (18) EAST AND PART OF LOTS SEVEN (7) AND EIGHT (8), BLOCK THREE (3) AND LOT SEVEN (7), BLOCK FOUR (4), ALL ACCORDING TO THE RECORDED PLAT OF BARNARD JACOB'S ADDITION TO SOUTH KAUKAUNA AND THAT PART OF VACATED STREET AND ALLEY LYING ADJACENT THERETO, ALL IN THE CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE REPLAT OF BLOCK 6, BLACKWELL BROS. ADDITION TO THE CITY OF KAUKAUNA, WISCONSIN, SAID POINT BEING ON THE EAST LINE OF GOVERNMENT LOT 8; THENCE SOUTH 89° 51' WEST ALONG THE SOUTH LINE OF SAID REPLAT OF BLOCK 6, 275.18 FEET; THENCE NORTH 00° 17' WEST ALONG THE WEST LINE OF LOT 3 OF THE REPLAT OF BLOCK 6, 2.92 FEET; THENCE SOUTH 61° 38' WEST ALONG THE SOUTHERLY LINE OF LOT 2 OF THE REPLAT OF BLOCK 6, 18.63 FEET; THENCE SOUTH 18° 20' EAST, 471.47 FEET; THENCE ALONG THE ARC OF A 31° 30' CURVE (ARC DEFINITION) TO THE LEFT, 105.56 FEET, THE LONG CHORD OF WHICH BEARS NORTH 56° 02' EAST, 104.42 FEET; THENCE NORTH 39° 50' EAST, 97.14 FEET TO A POINT ON THE EAST LINE OF GOVERNMENT LOT 8, BEING THE WEST LINE OF LOT 7; THENCE CONTINUING NORTH 39° 50' EAST, 120.42 FEET TO THE POINT OF CURVE; THENCE ALONG THE ARC OF A 23° 26' CURVE (ARC DEFINITION) TO THE RIGHT 45.28 FEET, THE LONG CHORD OF WHICH BEARS NORTH 45° 19' EAST, 45.25 FEET; THENCE NORTH 00° 19' EAST ALONG THE EAST LINE OF LOT 8, BLOCK THREE (3), BERNARD JACOBS ADDITION TO THE CITY OF KAUKAUNA AND ITS NORTHERLY EXTENSION, 196.42 FEET; THENCE SOUTH 89° 51' WEST, 6.00 FEET; THENCE NORTH 00° 09' WEST, ALONG A LINE PARALLEL TO AND 6 FEET WEST OF THE EAST LINE OF LOT 7, BLOCK 3 OF SAID BERNARD JACOBS ADDITION, 130.00 FEET; THENCE SOUTH 89° 51' WEST, 109.92 FEET, TO THE NORTHEAST CORNER OF THE REPLAT OF THE SAID BLOCK 6; THENCE SOUTH 00° 09' EAST ALONG THE EAST LINE OF SAID REPLAT OF BLOCK 6, BEING THE EAST LINE OF GOVERNMENT LOT 8 AND THE WEST LINE OF GOVERNMENT LOT 7, 130.00 FEET TO THE PLACE OF BEGINNING.

AND

PART OF LOT NINE (9), BLOCK THREE (3), AND PART OF VACATED 11TH STREET, ALL IN BARNARD JACOB'S ADDITION TO SOUTH KAUKAUNA, CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN, DESCRIBED AS FOLLOWS:  
COMMENCING AT THE INTERSECTION OF THE WEST LINE OF MAIN AVENUE WITH THE CENTERLINE OF THE VACATED ALLEY IN SAID BLOCK 3; THENCE NORTH 89° 43' 56" WEST, 267.00 FEET ALONG SAID CENTERLINE TO A POINT; THENCE SOUTH 00° 09' 47" WEST, 147.46 FEET TO THE NORTH LINE OF RELOCATED 11TH STREET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 244.53 FOOT RADIUS CURVE OF SAID NORTH LINE HAVING A CHORD WHICH BEARS SOUTH 62° 49' 35" WEST AND IS 97.94 FEET IN LENGTH TO THE SOUTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 9, BEING THE POINT OF BEGINNING; THENCE NORTH 00° 09' 47" EAST, 124.59 FEET ALONG SAID EXTENSION OF SAID WEST LINE AND THE NORTHERLY EXTENSION OF SAID WEST LINE OF LOT 9 TO A POINT; THENCE SOUTH 89° 43' 56" EAST, 18.00 FEET TO A POINT; THENCE SOUTH 00° 09' 47" WEST PARALLEL TO THE WEST LINE OF SAID LOT 9 TO A POINT ON THE NORTH LINE OF RELOCATED 11TH STREET; THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE OF SAID NORTH LINE TO THE POINT OF BEGINNING.

Tax Parcel No. 323025600 and 323072600 and 323025700 and 323026001

PARCEL C:

ALL OF LOT 3, IN BLOCK 6, BLACKWELL BROS. ADDITION, VILLAGE OF LEDYARD, NOW A PART OF THE CITY OF KAUKAUNA, WISCONSIN, ACCORDING TO THE REPLAT OF SAID BLOCK 6.

AND

LOT FOUR (4), BLOCK SIX (6), BLACKWELL BROTHER'S ADDITION, THIRD WARD, CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN, ACCORDING TO THE REPLAT OF SAID BLOCK SIX (6).

TAX PARCEL NO. 323008300 and 323008400

EXHIBIT B

PERMITTED ENCUMBRANCES

**[Note: To be confirmed and updated prior to Closing]**

1. Rental Assistance Demonstration Use Agreement dated as of \_\_\_\_\_ among the United States Department of Housing and Urban Development, Kaukauna RAD, LLC, and Housing Authority of the City of Kaukauna.
2. Construction Leasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of \_\_\_\_\_ from Kaukauna RAD, LLC to Associated Bank National Association to secure indebtedness in the amount of \_\_\_\_\_.
3. Agreement to Subordinate to RAD Use Agreement between Kaukauna RAD, LLC and Associated Bank, National Association dated as of \_\_\_\_\_.

**ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS (as amended or restated from time to time or at any time, the "Assignment") is made as of the \_\_\_ day of \_\_\_\_\_ 2022, by Kaukauna RAD, LLC, as assignor ("Borrower"), to the City of Kaukauna ("Lender").

**RECITALS**

A. Borrower and Lender are parties to that certain Loan Agreement dated \_\_\_\_\_, 2022 (as may be amended or restated from time to time or at any time, the "Loan Agreement"), whereby Lender has agreed to provide to Borrower a certain credit facility as more particularly described in the Loan Agreement.

**Return to:**

B. For purposes of this Assignment, and unless otherwise specifically provided in this Assignment, any capitalized term which is used in this Assignment and which is defined in the Loan Agreement shall have the meaning set forth in the Loan Agreement.

**Tax Parcel Nos.: See Exhibit A**

C. Borrower's obligations under the Loan Agreement are secured by, among other collateral, a leasehold mortgage granted by Borrower to Lender under the Loan Agreement (the "Mortgage") with respect to Borrower's leasehold interest pursuant to that certain Ground Lease dated as of \_\_\_\_\_, 2022 (the "Ground Lease") in the real estate more particularly described on Exhibit A attached hereto and incorporated herein (the "Land") and Borrower's interest in the Improvements (as hereinafter defined).

D. As additional security for the obligations of Borrower under the Loan Agreement, Borrower desires to execute and deliver this Assignment to Lender.

Accordingly, in consideration of the foregoing Recitals (which are a material part of this Assignment), and for other good and valuable consideration given and received, Borrower, intending to be legally bound, hereby covenants and agrees with and for the benefit of Lender and Lender's assignees, successors and assigns as follows:

**ARTICLE 1. Assignment**

1.1. Property Assigned. Borrower hereby irrevocably, absolutely, and unconditionally assigns and grants to Lender the right, title, and interest of Borrower in and to all of the following property, rights, interests, and estates, whether now owned, or hereafter acquired (the "Assigned Property"):

1.1(a). Leases and Other Agreements. All existing and future leases and all other agreements, excluding the Ground Lease, whether or not in writing, affecting the use, enjoyment, or occupancy of the Land, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements, and improvements now or hereafter located thereon (the "Improvements" and together with the Land, the "Property") now or hereafter made, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §§101 et seq., as



the same may be amended from time to time (the "Bankruptcy Code"), together with any extension, renewal or replacement of the same (collectively the "Leases"); this Assignment of all such present and future Leases and present and future agreements being effective without further or supplemental assignment.

1.1(b). Rents. All rents, additional rents, revenues, income, issues, and profits (including all oil and gas or other mineral royalties and bonuses), deposits, accounts, and other benefits arising from the Leases or otherwise from the use, enjoyment, and occupancy of the Property, and any cash or security deposited in connection therewith, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Rents").

1.1(c). Bankruptcy Claims. All claims and rights to the payment of damages and other claims arising from any rejection by a lessee of any Lease under the Bankruptcy Code (the "Bankruptcy Claims").

1.1(d). Lease Guaranties. All claims and rights under any and all lease guaranties, letters of credit, and any other credit support (individually, a "Lease Guaranty," and collectively, the "Lease Guaranties") given to Borrower by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor," and collectively, the "Lease Guarantors").

1.1(e). Proceeds. All proceeds from any sale or other disposition of the Leases, the Rents, the Lease Guaranties, and the Bankruptcy Claims.

1.1(f). Other Rights of Borrower. All rights, powers, privileges, options, and other benefits of Borrower as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect, and apply all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the obligations of Borrower to Lender), and to do all other things that Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

1.1(g). Entry and Possession. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent, or by court-appointed receiver, to collect the Rents and enforce the Leases.

1.1(h). Power of Attorney. Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

1.1(i). Other Rights and Agreements. Any and all other rights of Borrower in and to the items set forth in subsections 1.1(a) through 1.1(h) above, and all amendments, modifications, replacements, renewals, extensions, supplements, restatements, and substitutions thereof.

## **ARTICLE 2. Consideration**

2.1. Consideration. This Assignment is made in consideration of the credit facility provided by Lender to Borrower under the Loan Agreement.

### **ARTICLE 3. Terms of Assignment**

3.1. Present Assignment. It is intended by Borrower that this Assignment constitute a present, irrevocable, absolute, and unconditional assignment of the Assigned Property, and, notwithstanding any provision hereof to the contrary, not merely an assignment for additional security only.

3.2. License Back. Subject to the terms of this Assignment and the Mortgage, Lender grants to Borrower a revocable license to collect and receive the Rents and other sums payable with respect to the Assigned Property unless and until an Event of Default (as defined in the Loan Agreement or Mortgage) shall occur. Borrower shall hold the Rents and all sums received pursuant to any Assigned Property, or a portion thereof sufficient to discharge all current sums due on the obligations of Borrower to Lender, in trust for the benefit of Lender for use in the payment of such sums.

3.3. Notice to Lessees. Borrower hereby agrees to authorize and direct the lessees named in the Leases or any other or future lessees or occupants of the Property and all Lease Guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any Lease Guaranties upon receipt from Lender of written notice to the effect that Lender is then the holder of the Mortgage(s) and that an Event of Default exists, and to continue so to do until otherwise notified by Lender.

3.4. Termination of Assignment. Upon payment in full of the obligations of Borrower to Lender and the delivery and recording of a satisfaction or discharge of the Mortgage duly executed by Lender, this Assignment shall become null and void and shall be of no further force and effect.

3.5. Incorporation by Reference. All representations, warranties, covenants, conditions, and agreements contained in the Loan Agreement and/or the Mortgage as same may be modified, renewed, substituted, or extended are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

### **ARTICLE 4. Remedies**

#### **4.1. Remedies of Lender**

4.1(a). Upon or at any time after the occurrence of an Event of Default, the license granted to Borrower in Section 3.2 of this Assignment shall automatically be revoked, and Lender shall, subject to the rights of senior lenders and the terms of the Ground Lease, immediately be entitled to possession of all Rents and sums payable pursuant to any of the Assigned Property, whether or not Lender enters upon or takes control of the Property. In addition, upon or at any time after the occurrence of an Event of Default, without waiving such Event of Default, to the extent permitted by law and subject to the rights of senior lenders and the terms of the Ground Lease, without notice and without regard to the adequacy of the security for the obligations of Borrower to Lender, with or without bringing any action or proceeding, either in person or by agent, nominee, attorney, or a receiver appointed by a court, Lender, at its option, may dispossess Borrower and its agents and servants from the Property, and exclude Borrower and its agents or servants wholly therefrom and take possession of the Property and all books, records, and accounts relating thereto without liability for trespass, damages, or otherwise. Thereafter, Lender may, subject to the rights of senior lenders and the terms of the Ground Lease, have, hold, manage, lease, and operate the Property on such terms and for such period of time as

Lender may deem proper and either with or without taking possession of the Property, in its own name, demand, sue for, or otherwise collect and receive all Rents and other sums payable pursuant to any of the Assigned Property, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs, or replacements thereto or thereof as may seem proper to Lender. Lender may apply the Rents and sums received pursuant to any of the Assigned Property to the payment of the following in such order and proportion as Lender in its sole discretion may determine: (i) all expenses of managing and securing the Property, including, without limitation, the salaries, fees, and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable; (ii) all expenses of operating and maintaining the Property, including, without limitation, all utility charges, taxes, and other charges, and any other liens, charges, and expenses which Lender may deem necessary or desirable; (iii) the cost of all alterations, renovations, repairs, or replacements; (iv) all expenses incident to taking and retaining possession of the Property; and (v) the obligations of Borrower to Lender, together with all costs and reasonable attorney fees.

4.1(b). In addition, upon the occurrence of an Event of Default, Lender, at its option may, subject to the rights of senior lenders and the terms of the Ground Lease (i) complete any construction on the Property in such manner and form as Lender deems advisable; (ii) exercise all rights and powers of Borrower, including, without limitation, the right to enter into, negotiate, execute, cancel, enforce, or modify Leases, obtain and evict tenants, and demand, sue for, collect, and receive all Rents from the Property and all sums payable under the Assigned Property; (iii) either require Borrower to pay monthly in advance to Lender, or to any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Borrower, or require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

4.2. Other Remedies. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Agreement and related documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the obligations of Borrower to Lender and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower hereby absolutely, unconditionally, and irrevocably waives any and all rights to assert any setoff, counterclaim, or cross claim of any nature whatsoever with respect to the obligations of Borrower under this Assignment, or otherwise with respect to the other obligations of Borrower to Lender secured hereby in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, or any of the related loan documents.

4.3. Other Security. Lender may take or release other security for the payment of the obligations of Borrower to Lender, may release any party primarily or secondarily liable therefor, and may apply any other security held by it to the reduction or satisfaction of said obligations without prejudice to any of its rights under this Assignment.

4.4. Non-waiver. The exercise by Lender of the option granted it in Section 4.1 of this Assignment and the collection of the Rents and other sums payable pursuant to the Assigned Property and the application thereof as herein provided shall not be considered a waiver of any default by Borrower under the Leases, this Assignment, or the related loan documents. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this

Assignment. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Mortgage or the related loan documents; (b) the release regardless of consideration, of the whole or any part of the Property; or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Mortgage, or the related loan documents. Lender may resort for the payment of the obligations of Borrower to Lender to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take any action to enforce or recover said obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct, and cumulative, and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one (1) provision herein to the exclusion of any other provision.

#### 4.5. Bankruptcy.

4.5(a). Upon or at any time after the occurrence of an Event of Default, Lender shall have the right, subject to the rights of senior lenders, to proceed in its own name or in the name of Borrower in respect of any claim, suit, action, or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices, and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

4.5(b). If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than twenty (20) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such twenty (20) day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower, subject to the rights of senior lenders, shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

### **ARTICLE 5. Further Assurances/No Liability**

5.1. Further Assurances. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge, and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers, and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering, or recording this Assignment and, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower to the extent Lender may lawfully do so, one (1) or more financing statements, chattel

mortgages, or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Leases.

5.2. No Liability of Lender. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default unless such loss is caused by the willful misconduct and bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty, or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment and Borrower shall, and hereby agrees, to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss, or damage that may or might be incurred under the Assigned Property or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in the Leases or any Lease Guaranties unless such loss or claim is caused by the willful misconduct and bad faith of Lender. Should Lender incur any such liability, the amount thereof, including costs, expenses, and reasonable attorney fees, shall be secured by this Assignment and by the Mortgage and the related loan documents, and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower so to do Lender may, at its option, declare all sums secured by this Assignment and by the Mortgage and the related loan documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management, or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, including without limitation the presence of any hazardous substances, or for any negligence in the management, upkeep, repair, or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger.

5.3. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

## **ARTICLE 6. Definitions**

6.1. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the phrases "attorney fees" and "counsel fees" shall include any and all attorney, paralegal, and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pretrial, trial, and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases, and the Rents, and enforcing its rights hereunder; the word "Borrower" shall mean each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein; the word "Lender" shall mean Lender and any subsequent holder of the Loan. The word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity; and the word "Property" shall include any portion of the Property and any interest therein.

6.2. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

## **ARTICLE 7. Applicable Law**

7.1. Choice of Law. This Assignment shall be governed, construed, applied, and enforced in accordance with the laws of the state in which the Property is located (exclusive of such state's conflicts of laws rules).

7.2. Provisions Subject to Applicable Law. All rights, powers, and remedies provided in this Assignment may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable, or not entitled to be recorded, registered, or filed under the provisions of any applicable laws.

## **ARTICLE 8. Miscellaneous Provisions**

8.1. Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Mortgage, the terms of the Mortgage shall prevail.

8.2. No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged, or terminated orally, or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge, or termination is sought.

8.3. Authority. Borrower represents and warrants that it has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order, or other agreement affecting Borrower or the Property.

8.4. Duplicate Originals; Counterparts. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

8.5. Notices. All notices required or permitted hereunder shall be given as provided in the Loan Agreement.

8.6. Waiver of Trial By Jury. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT, OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS ASSIGNMENT, THE MORTGAGE, OR THE LOAN

AGREEMENT OR OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS, OR AGENTS IN CONNECTION THEREWITH.

8.7. Liability. If Borrower consists of more than one (1) person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

8.8. Headings, etc. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

8.9. Reasonable Discretion of Lender. Wherever pursuant to this Assignment (a) Lender exercises any right given to it to approve or disapprove; (b) any arrangement or term is to be satisfactory to Lender; or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the reasonable discretion of Lender, except as may be otherwise expressly and specifically provided herein.

8.10. Costs and Expenses of Borrower. Wherever pursuant to this Assignment it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees and disbursements of Lender, whether with respect to retained firms, the reimbursement of the expenses for in-house staff or otherwise.

8.11 Third party benefit. This Assignment, together with the covenants and warranties therein contained, shall inure to the benefit of Lender and any subsequent holder of the Mortgage and shall be binding upon Borrower, its heirs, executors, administrators, successors and assigns and any subsequent owner of the Property.

8.12. Partial Subordination to Extended Use Agreement. Notwithstanding anything to the contrary contained in this Assignment, Lender agrees that the lien created under this Assignment shall be subordinate to any extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended, recorded against the Property, provided that any such extended use agreement, must, by its terms, terminated upon foreclosure under the Mortgage or upon a transfer of the Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E)(ii) of the Internal Revenue Code

8.13 RAD Requirements. Borrower and Lender hereby acknowledge and agree that the Improvements and the Project (as defined in the Loan Agreement) are subject to the requirements of the RAD program as more fully provided herein:

- (a) HUD Regulatory Documents. Lender acknowledges that [redacted] units (the “RAD Units”) to be rehabilitated at the Property will be assisted by funding provided through the [Housing Authority of the City of Kaukauna] (the “Authority”) under the Rental Assistance Demonstration (“RAD”) Program, authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (the “CFCA Act”) and HUD Notice PIH-2012-32(H) Rev-3 (January 12, 2017), as may be further amended (the “RAD Notice”). As such, the RAD Units and the Lender’s security interest in the RAD Units, are subordinate and subject to: (a) that certain Rental Assistance

Demonstration Use Agreement executed by Borrower, the Authority and the U.S. Department of Housing and Urban Development (“HUD”) (the “RAD Use Agreement”), (b) the PBV Housing Assistance Payments Contract (HUD Forms 52530A and 52621) (the “HAP Contract”) executed by Borrower and Authority with respect to the RAD Units and (c) that certain RAD Conversion Commitment (HUD Form 52624) executed by HUD, Borrower and the Authority with respect to the RAD Units (the “RAD Conversion Commitment”, and collectively with the CFCA Act, RAD Notice, RAD Use Agreement, and HAP Contract, the “RAD Requirements”). If there is a conflict between a provision of this Assignment or the Loan Documents that affects the RAD Units and a requirement in any RAD Requirement, then the RAD Requirement shall govern, except as such RAD Requirement may have been expressly waived in writing by HUD or the Authority, as appropriate.

- (b) Subordination to RAD Use Agreement. The lien on the Assigned Property pursuant to this Assignment is subordinate and subject to the RAD Use Agreement.
- (c) Notice to HUD. Any notices of Borrower’s default provided pursuant to the Loan Documents shall also, as a courtesy, be provided to HUD as follows:

United States Department of Housing and Urban Development  
451 Seventh Street, S.W.  
Washington, DC 20410  
Attn: Office of the General Counsel.

IN WITNESS WHEREOF, Borrower, by its duly authorized representative(s), has executed and delivered this instrument as of the day, month and year first above written.

[Signature Page Follows]



[Signature Page to Assignment of Leases and Rents]

KAUKAUNA RAD, LLC

BY KAUKAUNA RAD MM, LLC,  
Managing Member

BY COMMONWEALTH HOLDINGS II, LLC,  
Managing Member

BY \_\_\_\_\_  
Kristi Morgan, Manager

STATE OF WISCONSIN     )  
  ) ss.  
\_\_\_\_\_ COUNTY     )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2022, by Kristi Morgan the manager of Commonwealth Holdings II, LLC, the managing member of Kaukauna RAD MM, LLC, the managing member of Kaukauna RAD, LLC.

(Notary Seal)

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission (is permanent)  
expires \_\_\_\_\_

This instrument was drafted by:  
Sarah J. Knutson, Attorney  
McCarty Law LLP  
2401 East Enterprise Avenue  
Appleton WI 54913-7887  
920-882-4070

EXHIBIT A

Legal Description of Property

EXHIBIT A

PARCEL A:

ALL OF LOTS TWO (2), THREE (3), FOUR (4), FIVE (5), SIX (6), SEVEN (7), EIGHT (8), NINE (9), TEN (10), ELEVEN (11), AND TWELVE (12), BLOCK FOUR (4), OF BARNARD JACOBS ADDITION, LYING SOUTH OF THE PRESENT WEST ELEVENTH STREET AS DEDICATED IN RESOLUTION NO. 1828 ADOPTED FEBRUARY 17, 1970, ALL BEING IN THE CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN; INCLUDING THE NORTH 1/2 OF THAT PORTION OF VACATED 12TH STREET LYING SOUTH OF SAID LOTS 8 THROUGH 12; THE EAST 1/2 OF THAT PORTION OF VACATED HENDRICKS AVENUE LYING WEST OF SAID LOT 8 AND SOUTH OF WEST 11TH STREET; THE SOUTH 1/2 OF THAT PORTION OF THE VACATED ALLEY LYING NORTH OF THAT PORTION OF THE VACATED ALLEY LYING SOUTH OF WEST 11TH STREET AND SOUTH OF SAID LOTS 2 THROUGH 7.

Tax Parcel No. 323026000

PARCEL B:

PART OF GOVERNMENT LOTS SEVEN (7) AND EIGHT (8), SECTION TWENTY-TWO (22), TOWNSHIP TWENTY-ONE (21) NORTH, RANGE EIGHTEEN (18) EAST AND PART OF LOTS SEVEN (7) AND EIGHT (8), BLOCK THREE (3) AND LOT SEVEN (7), BLOCK FOUR (4), ALL ACCORDING TO THE RECORDED PLAT OF BARNARD JACOB'S ADDITION TO SOUTH KAUKAUNA AND THAT PART OF VACATED STREET AND ALLEY LYING ADJACENT THERETO, ALL IN THE CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE REPLAT OF BLOCK 6, BLACKWELL BROS. ADDITION TO THE CITY OF KAUKAUNA, WISCONSIN, SAID POINT BEING ON THE EAST LINE OF GOVERNMENT LOT 8; THENCE SOUTH 89° 51' WEST ALONG THE SOUTH LINE OF SAID REPLAT OF BLOCK 6, 275.18 FEET; THENCE NORTH 00° 17' WEST ALONG THE WEST LINE OF LOT 3 OF THE REPLAT OF BLOCK 6, 2.92 FEET; THENCE SOUTH 61° 38' WEST ALONG THE SOUTHERLY LINE OF LOT 2 OF THE REPLAT OF BLOCK 6, 18.63 FEET; THENCE SOUTH 18° 20' EAST, 471.47 FEET; THENCE ALONG THE ARC OF A 31° 30' CURVE (ARC DEFINITION) TO THE LEFT, 105.56 FEET, THE LONG CHORD OF WHICH BEARS NORTH 56° 02' EAST, 104.42 FEET; THENCE NORTH 39° 50' EAST, 97.14 FEET TO A POINT ON THE EAST LINE OF GOVERNMENT LOT 8, BEING THE WEST LINE OF LOT 7; THENCE CONTINUING NORTH 39° 50' EAST, 120.42 FEET TO THE POINT OF CURVE; THENCE ALONG THE ARC OF A 23° 26' CURVE (ARC DEFINITION) TO THE RIGHT 45.28 FEET, THE LONG CHORD OF WHICH BEARS NORTH 45° 19' EAST, 45.25 FEET; THENCE NORTH 00° 19' EAST ALONG THE EAST LINE OF LOT 8, BLOCK THREE (3), BERNARD JACOBS ADDITION TO THE CITY OF KAUKAUNA AND ITS NORTHERLY EXTENSION, 196.42 FEET; THENCE SOUTH 89° 51' WEST, 6.00 FEET; THENCE NORTH 00° 09' WEST, ALONG A LINE PARALLEL TO AND 6 FEET WEST OF THE EAST LINE OF LOT 7, BLOCK 3 OF SAID BERNARD JACOBS ADDITION, 130.00 FEET; THENCE SOUTH 89° 51' WEST, 109.92 FEET, TO THE NORTHEAST CORNER OF THE REPLAT OF THE SAID BLOCK 6; THENCE SOUTH 00° 09' EAST ALONG THE EAST LINE OF SAID REPLAT OF BLOCK 6, BEING THE EAST LINE OF GOVERNMENT LOT 8 AND THE WEST LINE OF GOVERNMENT LOT 7, 130.00 FEET TO THE PLACE OF BEGINNING.

AND

PART OF LOT NINE (9), BLOCK THREE (3), AND PART OF VACATED 11TH STREET, ALL IN BARNARD JACOB'S ADDITION TO SOUTH KAUKAUNA, CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF MAIN AVENUE WITH THE CENTERLINE OF THE VACATED ALLEY IN SAID BLOCK 3; THENCE NORTH 89° 43' 56" WEST, 267.00 FEET ALONG SAID CENTERLINE TO A POINT; THENCE SOUTH 00° 09' 47" WEST, 147.46 FEET TO THE NORTH LINE OF RELOCATED 11TH STREET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 244.53 FOOT RADIUS CURVE OF SAID NORTH LINE HAVING A CHORD WHICH BEARS SOUTH 62° 49' 35" WEST AND IS 97.94 FEET IN LENGTH TO THE SOUTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 9, BEING THE POINT OF BEGINNING; THENCE NORTH 00° 09' 47" EAST, 124.59 FEET ALONG SAID EXTENSION OF SAID WEST LINE AND THE NORTHERLY EXTENSION OF SAID WEST LINE OF LOT 9 TO A POINT; THENCE SOUTH 89° 43' 56" EAST, 18.00 FEET TO A POINT; THENCE SOUTH 00° 09' 47" WEST PARALLEL TO THE WEST LINE OF SAID LOT 9 TO A POINT ON THE NORTH LINE OF RELOCATED 11TH STREET; THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE OF SAID NORTH LINE TO THE POINT OF BEGINNING.

Tax Parcel No. 323025600 and 323072600 and 323025700 and 323026001

PARCEL C:

ALL OF LOT 3, IN BLOCK 6, BLACKWELL BROS. ADDITION, VILLAGE OF LEDYARD, NOW A PART OF THE CITY OF KAUKAUNA, WISCONSIN, ACCORDING TO THE REPLAT OF SAID BLOCK 6.

AND

LOT FOUR (4), BLOCK SIX (6), BLACKWELL BROTHER'S ADDITION, THIRD WARD, CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN, ACCORDING TO THE REPLAT OF SAID BLOCK SIX (6).

TAX PARCEL NO. 323008300 and 323008400