

State of Wisconsin

SENATE CHAIR
Alberta Darling

317 East, State Capitol
P.O. Box 7882
Madison, WI 53707-7882
Phone: (608) 266-5830



ASSEMBLY CHAIR
John Nygren

309 East, State Capitol
P.O. Box 8593
Madison, WI 53708-8953
Phone: (608) 266-2343

Joint Committee on Finance

MEMORANDUM

To: Members
Joint Committee on Finance

From: Senator Alberta Darling
Representative John Nygren

Date: April 16, 2018

Re: 14-Day Passive Review Approval – DOA

Pursuant to s. 16.84(5)(a), Stats., attached is a 14-day passive review request from the Department of Administration, received on April 16, 2018.

Please review the material and notify **Senator Darling** or **Representative Nygren** no later than **Thursday, May 3, 2018**, if you have any concerns about the request or if you would like the Committee to meet formally to consider it.

Also, please contact us if you need further information.

Attachments

AD:JN:jm



STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

Scott Walker, Governor
Ellen Nowak, Secretary
John Klenke, Division Administrator

By E-Mail

April 16, 2018

Wisconsin State Legislature, Joint Committee on Finance
State Capitol Building, Office 305E
2 East Main Street
Madison, Wisconsin 53703

APR 16 2018
J. Finance

Attn: Joe Malkasian (joe.malkasian@legis.wisconsin.gov), Committee Clerk

RE: Notification Under Wis. Stat. Section 16.84(5)(a) of Intent to enter into a 5-Year Lease for the University of Wisconsin – Whitewater University Housing in Whitewater, WI

Dear Clerk Malkasian:

This letter, together with the accompanying copy of the above captioned lease (the "Proposed Lease") and a copy of the Department of Administration's ("DOA") Real Estate Property Analysis, serves as the official submission by the DOA of the Proposed Lease to the Wisconsin State Legislature Joint Committee on Finance ("JCF"), as required the above captioned statute.

Please note that, pursuant to the provisions of Wis. Stat. Section 16.84(5)(a), JCF has a period of 14 working days from the date this notice is received to notify the Secretary of the DOA that the JCF has scheduled a meeting to review the Proposed Lease. If JCF does not so notify the Secretary within such 14-day period, the DOA may enter into the Proposed Lease.

The DOA Secretary's Office has approved the required submittal to JCF.

SUMMARY OF LEASE PROVISIONS

Tenant	University of Wisconsin – Whitewater University Housing
Location	Cambridge Apartments, 375 N. Harmony Lane Whitewater, WI
Term	<u>Initial Term:</u> September 1, 2018 to August 31, 2023 (5 years) <u>Renewal Terms:</u> Three 5-year Renewal Terms
Early Lease Termination Provision	Lease can be terminated early by either party with not less than a 365-day notice, but not sooner than two years of the Initial Lease Term.
Rental Rate	\$12.65/sq. ft. (Includes all services, utilities and furnishings)

Rentable Square Feet 87,520 rentable sq. ft.
Annual Rent \$1,107,200.00
Escalator Initial Term and First Renewal Term – One percent (1.0%)
Second and Third Renewal Terms – Two percent (2.0%)
Funding Student Housing Rental Fees from Student Residents
Negotiated By: Scott L Berger (608) 267-2004
Lease Number #285-011
Building Commission The lease was approved by the SBC on December 13, 2017

Please direct any questions in connection with the Proposed Lease to Scott Berger at the Department of Administration, scott.berger@wisconsin.gov or (608) 2647-2004.

Sincerely,



Scott L. Berger
Section Chief, Lease Administration
Bureau of Real Estate Management
Division of Facilities Development & Management
Department of Administration

4. **INITIAL TERM RENTAL.** The Lessee shall pay the Lessor rent for the Premises during the first year of the initial 5-year Lease term at the following rate: The sum of One Million One Hundred Seven Thousand Two Hundred And 00/100 Dollars (\$1,107,200.00) per annum, in equal monthly installments of Ninety-Two Thousand Two Hundred Sixty-Six And 67/100 Dollars (\$92,266.67). The annual rental rate for the first and each subsequent year of the initial term shall be in accordance with the following schedule. Annual increases of 1.0% shall apply to Annual Rent.

Initial Lease Term Rental Rate Schedule

<u>Lease Year</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
1	September 1, 2018	August 31, 2019	\$ 1,107,200.00	\$ 92,266.67
2	September 1, 2019	August 31, 2020	\$ 1,118,272.00	\$ 93,189.33
3	September 1, 2020	August 31, 2021	\$ 1,129,454.72	\$ 94,121.23
4	September 1, 2021	August 31, 2022	\$ 1,140,749.27	\$ 95,062.44
5	September 1, 2022	August 31, 2023	\$ 1,152,156.76	\$ 96,013.06

The annual rent throughout the entire lease term, including optional extensions, shall be payable in advance in monthly installments as shown above on the first day of each month, except for the month of July during which the monthly installment is not due until the 15th day. Said rental payments shall be made to Lessor at the address for notices hereinafter set forth.

5. **RENEWAL RENTALS.** Provided that the Lessee is not then in default, this Lease may, at the option of the Lessee, be renewed for three successive 5-year periods from and after September 1, 2023, subject to the availability of funds for the payment of rentals, upon the same terms and conditions herein specified, provided written notice be given to Lessor at least 365 days before the Lease would otherwise expire. The annual rental rate for the first and then each subsequent year of the renewal terms, if exercised, shall be in accordance with the following schedule. Annual increases of 1.0% shall apply to each year of the First Renewal Term if exercised and annual increases of 2.0% shall apply beginning with the Second Renewal Term, if exercised.

First Renewal Term Rental Rate Schedule

<u>Lease Year</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
6	September 1, 2023	August 31, 2024	\$ 1,163,678.33	\$ 96,973.19
7	September 1, 2024	August 31, 2025	\$ 1,175,315.11	\$ 97,942.93
8	September 1, 2025	August 31, 2026	\$ 1,187,068.26	\$ 98,922.36
9	September 1, 2026	August 31, 2027	\$ 1,198,938.94	\$ 99,911.58
10	September 1, 2027	August 31, 2028	\$ 1,210,928.33	\$ 100,910.69

Second Renewal Term Rental Rate Schedule

<u>Lease Year</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
11	September 1, 2028	August 31, 2029	\$ 1,235,146.90	\$ 102,928.91
12	September 1, 2029	August 31, 2030	\$ 1,259,849.84	\$ 104,987.49
13	September 1, 2030	August 31, 2031	\$ 1,285,046.84	\$ 107,087.24
14	September 1, 2031	August 31, 2032	\$ 1,310,747.77	\$ 109,228.98
15	September 1, 2032	August 31, 2033	\$ 1,336,962.73	\$ 111,413.56

Third Renewal Term Rental Rate Schedule

<u>Lease Year</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
16	September 1, 2033	August 31, 2034	\$ 1,363,701.98	\$ 113,641.83
17	September 1, 2034	August 31, 2035	\$ 1,390,976.02	\$ 115,914.67
18	September 1, 2035	August 31, 2036	\$ 1,418,795.54	\$ 118,232.96
19	September 1, 2036	August 31, 2037	\$ 1,447,171.45	\$ 120,597.62
20	September 1, 2037	August 31, 2038	\$ 1,476,114.88	\$ 123,009.57

6. **ASSIGNMENTS, SUBLETTING.** Lessee shall not assign this Lease in any event, and shall not sublet the demised Premises, and will not permit the use of said Premises by anyone other than the Lessee, and the agents, contractors, grantors and grantees, and servants of the Lessee, without prior written approval of the Lessor, which shall not be unreasonably withheld.
7. **COVENANTS OF LESSOR.** Lessor hereby covenants and agrees with Lessee as follows:
- a) Lessor warrants that Lessee shall have quiet use and enjoyment of the Premises; that Lessor has complete interest, right in and title to the Premises to enable Lessor to enter this Lease; and that the Premises is not encumbered in any way to hinder or obstruct Lessee's proposed use thereof, including no encumbrance or obstruction due to existing easements, zoning ordinances or building restrictions. Lessor

shall obtain a certificate of occupancy or any other authorizations required by local ordinance to regulations prior to Lessee's occupancy.

- b) The Lessor shall duly carry out the various obligations and duties imposed upon it at the time and in the manner called for by this Lease.
- c) Lessor shall furnish during the term of this Lease the goods, services and other items listed on Schedule I attached hereto and incorporated by reference.
- d) Lessor shall be responsible for the costs of all improvements necessary to meet and maintain the standards and specifications set forth in Schedule I and Exhibits A and/or B. Lessor shall maintain, at Lessor's expense, the Premises so as, to comply with all federal, state and local codes applicable to the Premises.

Lessor agrees to complete, at Lessee's sole cost and expense, any reasonable improvements to the Premises which the Lessee requests to improve the health, safety and security of the Premises, which are in excess, of code requirements and not required by Schedule I.

- e) In connection, with the performance of work under this Lease, the Lessor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), sexual orientation, or national origin. This provision shall include, but not be limited to, the following; employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Lessor further agrees to take affirmative action to ensure equal employment opportunities. The Lessor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Lessee, setting forth the provisions of the non-discrimination clause.
- f) Lessor is required to provide a written Affirmative Action Plan acceptable under Wisconsin Statutes and Administrative Code if the rent is fifty thousand dollars (\$50,000) or more per year and the Lessor employs fifty (50) or more employees. The Lessor must have a plan on file or submit a plan for approval, within fifteen (15) working days after the execution of this Lease, to the Department of Administration, Division of Enterprise Operations, whose address and phone number are listed at the bottom of the enclosed Form DOA-3269. Instructions and technical assistance in preparing the plan are available from the Department of Administration, Division of Enterprise Operations and will be forwarded to the Lessor

upon presentation of State of Wisconsin Form DOA-3269 attached hereto. Failure to comply with the conditions of this Item may result in the Lease being declared "Null and Void," the Lessor being declared "ineligible," or the withholding of rental payment until such time, as the above cited plan is accepted.

- g) The Lessor as part of this Lease certifies that to the best of its knowledge both the Premises and the Building of which the Premises are a part do not contain any asbestos bearing material which is unsafe or which is not encapsulated. If during the Lessee's occupancy of the Premises such asbestos bearing material is found, and the Lessor has been notified by the Lessee that such asbestos bearing material exists, the Lessor shall within fourteen (14) days after receipt of such notice, be required to take such action as may be necessary to encapsulate or remove the asbestos bearing material. Upon determination that unsafe or un-encapsulated asbestos bearing material exists, the Lessee may at its option vacate the Premises until such time as the material has been encapsulated or removed to the satisfaction of the Lessee. If the Lessee vacates the Premises during the encapsulation or removal process, the Lessor shall reimburse the Lessee for all move related costs. No rent shall accrue to the Lessor during the period of time the Lessee is not in occupancy of the Premises. In the event the Lessor fails to encapsulate or remove the asbestos bearing material within the time specified, this Lease may be cancelled by the Lessee and the Lessor shall thereafter not have any claim against the Lessee on account, of the cancellation of this lease.
- h) The Lessor attests that space covered by this Lease is not owned by a state public official or state employee as defined in section 19.45, Wisconsin Statutes and Chapter ER-MRS 24 of the Wisconsin Administration Code, nor is the Lessor a business in which a state public official or state employee has any ownership, monetary or fiduciary interest.
- i) For the purposes of this Lease, "Hazardous Materials, Substances, or Air Pollutants" shall include, but not be limited to any, and all substances, materials, waste, or air pollutants determined currently or in the future as hazardous or capable of posing a risk of injury to health, safety, or property by any Federal, State, or local statute, law, ordinance, code, rule, regulation, order, or decree. The Lessor attests that the Premises are free of any hazardous materials, substances, or air pollutants as defined above, and the Lessor will now and forever after the termination of this Lease, hold Lessee harmless and indemnify the Lessee from and against any, and all claims, liability, damages or costs arising from or due to the

presence of hazardous materials, substances, or air pollutants as defined above, except liability resulting from Lessee's use and occupancy of the Premises.

If during the Lessee's occupancy of the Premises such hazardous materials, substances, or air pollutants are found, the Lessor shall as soon as possible after receipt of notice take such action as may be necessary to render the Premises safe.

Upon determination by the Lessee that unsafe hazardous materials, substances, or air pollutants as defined above affecting the Lessee's quiet enjoyment of the Premises exists, the Lessee may vacate the Premises until such time, as the hazardous materials, substances, or air pollutants have been repaired or remediated to the satisfaction of the Lessee. If the Lessee vacates the Premises during the repair or remediation process, the Lessor shall reimburse the Lessee for all related or relocation costs and rent shall abate during the period of time the Lessee is not in occupancy of the Premises. In the event the Lessor fails to repair or remediate the hazardous materials, substances, or air pollutants as soon as practicable as determined by the Lessee, the Lease may by written notice to the Lessor be cancelled by the Lessee and the Lessor shall thereafter not have any claim against the Lessee due to the cancellation of this Lease.

Lessor will immediately advise Lessee in writing of any actions or claims relating to any hazardous materials, substances, or air pollutants on the Premises. If the Lessor has conducted or conducts any testing for hazardous materials, substances, or air pollutants on the Premises before or during the term of the Lease, then the Lessor shall provide a copy of any test results to the Lessee. The Lessee, at its own expense, may also conduct such testing as it deems appropriate on the Premises.

- j) In the event of any water damage to the Premises and/or common areas, Lessor agrees to begin the process of addressing the damage within twelve (12) hours of discovery or notification, and shall cause any water damaged (saturated, water spotted and/or dirty) materials to be dry within forty-eight (48) hours of the time of discovery of such damage. If such materials are not completely dry by the end of the 48-hour period, the Lessee may require that the saturated materials (i.e. carpet, drywall, ceiling tiles, etc.) shall be removed from the premises and immediately replaced with new materials of identical quality or better quality.

- k) Lessor agrees to provide prior notification and provision of Safety Data Sheets (SDS) if applicable to the Tenant on-site staff when any construction, renovation, maintenance, repairs, remodeling or cleaning work will be done within the building of which the Premises are a part of by the Lessor, contractors or other representative of the Lessor. The project notification and SDS documents should be provided to the on-site staff no less than five (5) workdays before the anticipated start of the actual work.
- l) The default by Lessor of any covenant or agreement contained in any paragraph or provision of this Lease, shall constitute a material default of the Lease, and shall entitle the Lessee to terminate this lease, PROVIDED, that prior to such termination, the Lessee shall notify the Lessor in writing of the nature of the default and shall grant the Lessor a period of thirty (30) days from the date of service of such notice to remedy or cease such act of default, and upon such remedy or cessation by the Lessor within said thirty (30) days, the Lessee shall waive the right to terminate for such default. In the event the act of default is such that it cannot be remedied within said thirty (30) day period, the Lessee shall waive the right to terminate for such default if corrective actions are commenced within such period and diligently pursued to completion by the Lessor.
- m) Lessor shall be responsible for paying to taxing authority the real estate taxes and any assessments on the Premises.

8. **COVENANTS OF LESSEE.** Lessee hereby covenants and agrees with Lessor as follows:

- a) Lessee does hereby covenant, promise, and agree to pay the rent in the manner hereinbefore specified, and to duly comply with all other provisions of this Lease at the time and in the manner herein provided.
- b) At the expiration of this Lease or any renewal thereof, the Lessee will return the Premises to the Lessor in as good condition as they were at the time the Lessee went into possession, ordinary wear, damage by the elements and fire excepted. It is mutually agreed, in consideration of the rent to be paid and other conditions of this Lease, that the Lessee shall not be responsible for damage to the Premises by fire.
- c) The Lessee's Tenant will not make or permit anyone to make any alterations, improvements or additions in or to the Premises, without the prior written consent of the Department of Administration, as Lessee, and the Lessor.
- d) The default by Lessee: (a) If Lessee shall be late in the payment of any rent or any other sum of money payable by Lessee to Lessor and if Lessee shall fail to cure said late payment within (30) days after receipt of notice of said late payment from Lessor, or (b) if Lessee shall be late in the performance or

observance of any other agreement or condition in the Lease to be performed or observed and if Lessee shall fail to cure said late performance or observance within thirty (30) days after receipt of notice from Lessor of said late performance or observance (unless Lessee commences to cure said late performance or observance within (30) days after receipt of notice thereof and expedite the curing of the same to completion with due diligence), then, in any of said cases and without waiving any claims for breach of agreement, Lessor may send written notice to Lessee of the termination of the term of this Lease, and, on the fifth (5th) day next following the date of the sending of the notice, the term of this Lease shall terminate, Lessee hereby waiving all rights of redemption.

e) Lessee agrees that any Improvements to the Premises made by Lessor for the benefit of Lessee shall be the property of Lessor. Such improvements exclude any of Lessee's system furniture, conventional furniture and all other Lessee personal property.

9. **INSURANCE.** Lessor agrees to procure and maintain, during the term of this lease, property and casualty insurance for the building containing the Premises. Lessor also agrees to procure and maintain, during the term of this lease, commercial general liability insurance in the amount of not less than **\$1.0 million each occurrence and \$2.0 million general aggregate**. Under all conditions noted above, general aggregate limits are to apply on a per location basis. In addition, Lessor shall provide upon signing of the lease and thereafter annually, a certificate of insurance to Lessee evidencing such coverage by date of occupancy. When coverage requirements are \$2.0 million or greater, Lessee shall also be named as additional insured. The State of Wisconsin Self-Funded Liability and Property Programs protect the Lessee. Wisconsin Statutes provide funds to pay property and liability claims.

Notwithstanding the foregoing or any other provision of this Lease to the contrary, Lessor shall have no liability for any loss or damage to any personal property of Lessee's tenants on the Premises, except where such loss or damage is caused by Lessor's willful or negligent acts or omissions, and Lessor shall have no obligation to provide insurance coverage insuring any such personal property or other contents of the Premises.

10. **HOLD HARMLESS.** Lessor agrees to protect, indemnify and save the State of Wisconsin harmless from and against any and all claims, and against any and all loss, cost, damage or expense, including without limitation

reasonable attorneys' fees, arising out of any negligent acts of Lessor its invitees or agents, or any failure of Lessor in any respect to comply with and perform all the requirements and provisions of this Lease.

The Lessee shall provide liability protection for its officers, employees and agents while acting within the scope of their employment. The Lessee further agrees to indemnify and hold harmless the Lessor for any, and all liability, including claims, demands, losses, costs, or damages to persons or property arising out of, or in connection with, or connection with the Lease, where such liability is founded upon or grows out of acts or omissions of any of the Lessee's officers, employees or agents while acting within the scope of their employment, where protection is afforded by ss. 893.82 and 895.46(1), Wis. Stats.

11. MAINTENANCE. The Lessor shall maintain the Premises in good repair and tenantable condition, and as required by s. 704.07, Wis. Stats., throughout the term of the Lease, except in case of damage arising from a willful act or the negligence of the Lessee's agents or employees. For the purpose, of so maintaining the Premises, the Lessor reserves the right at reasonable times to enter and inspect the Premises and to make any necessary repairs thereto.

12. DAMAGE OR DESTRUCTION. In the event the Premises are partially damaged or destroyed by fire or other casualty or happening such that Lessee may continue to use a part of the Premises, Lessor shall promptly repair such damage and restore the Premises to its condition immediately prior to said damage or destruction. In such event, the rental and any other obligations of Lessee payable hereunder shall abate proportionally by the ratio that the damaged area bears to the total area of the Premises. Should Lessor fail to complete said restoration within 60 days of the partial damage or destruction, Lessee may terminate this Lease.

In the event the Premises are damaged or destroyed such that Lessee is unable to occupy the Premises (untenantable) without undue hardship and/or disruption of its business, Lessee may elect to terminate this Lease by providing Lessor written notice of such termination within 14 days after such damage or destruction, and, in that event, all rent and other obligations of the Lessee hereunder shall terminate as of the date of such damage or destruction. In the event the Premises are untenable and Lessee does not elect to terminate this Lease, Lessor shall proceed immediately to rebuild and restore the Premises to its condition immediately prior to said damage or destruction. In the case of Lessee's election not to terminate, all rent and other obligations of the Lessee hereunder shall abate from the date of untenability until the date Lessee retakes

possession of the Premises. In the event Lessor fails to complete the restoration within 120 days of the untenantability, Lessee may terminate this Agreement.

13. **NOTICES.** Notice in writing referred to herein shall not be construed to mean personal notice, but such notice shall be given in writing, by mail, by depositing the same in the post office or letter-box, in a postpaid envelope, addressed to the Lessor at Lessor's last known address, and such notice shall be deemed to be given at the time when the same shall be thus mailed. Such notices provided hereunder shall be addressed as follows:

If to Lessor: D.L.K. Enterprises, Inc.
144 N. Tart Street
Whitewater, WI 53190
Attn: Mike Kachel

Rent sent to: Same as above

If to Lessee: State Leasing Officer
Wisconsin Department of Administration
101 E. Wilson Street, 7th Floor
P.O. Box 7866
Madison, WI 53707-7866

14. **FUNDING.** The payment of rents under this Lease is subject to the availability of funds that may lawfully be used for such payment. As a result, the Lease does not constitute the contracting of public debt under Article VIII, Section 4 of the Wisconsin Constitution. The continuation of this Lease beyond the limits of the funds already available is contingent upon the future availability of funds to support the payment of rent for the programs housed in the facility covered by this Lease. In the event, such funding is not made available to the program or programs involved, the Lessee may at its option and upon sixty (60) days prior written notice to the Lessor, terminate this Lease. Use beyond the limits of the funds already available is contingent upon the future availability of funds.

15. **RIGHT TO LEASE ADJACENT SPACE.** Intentionally left blank.

16. **BROKERS.** Lessor and Lessee represent and warrant to each other that they have had no dealings with any broker or agent in connection with this Lease and Lessor agrees to pay and hold Lessee harmless from any claims made by anyone for any compensation, commissions and charges claimed with respect to this Lease or the negotiations thereof.

17. **HOLDING OVER.** If Lessee holds over after the term hereof, with or without the express written consent of Lessor, such tenancy shall be from month to month only, with no renewal hereof or an extension for any further term, and in such case basic monthly rent, excluding amortization, shall be payable at the rate during the last month of the term hereof. Such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein.

18. **SUBORDINATION.** This Lease shall be subordinate to any and all mortgages hereafter placed against the Premises by Lessor, provided that any such mortgage (or a separate written agreement, in recordable form, from the mortgagee in favor of and delivered to the Lessee) contains provisions to the effect that, so long as this Lease shall remain in force, in any action to foreclose the mortgage, Lessee will not be made a party defendant, that Lessee's possession of the Premises will not be disturbed and that Lessee's Leasehold estate will not be affected, impaired, or terminated by any such action or proceeding or by any judgement, order, sale or conveyance made or rendered therein or pursuant thereto, so long as (at the time of commencement of such action or foreclosure proceeding or during the pendency thereof) Lessee is not in default under the terms, covenants, and conditions of this Lease beyond any grace period provided in this Lease for curing same.

19. **FORCE MAJEURE.** In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, riots, insurrection, war, acts of God, inclement weather, or other reason beyond that party's reasonable control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

20. **EMINENT DOMAIN.** In the event the entire Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking, and Lessee shall then be released from any liability thereafter accruing under this Lease.

In the event a portion of the Premises shall be so appropriated or taken and the remainder of the property shall not be suitable for the use then being made of the property by the Lessee, or if the remainder of the property is not one undivided parcel of property, Lessee shall have the right to terminate this Lease as of the

date of the taking on giving to Lessor written notice of termination within thirty (30) days after Lessor has notified Lessee in writing that the property has been so appropriated or taken.

In the event of the termination of this Lease by reason, of the total or partial taking of the Premises by eminent domain, then in any such condemnation proceedings, Lessor and Lessee shall be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result of the condemning or taking.

21. CONSTRUCTION OF IMPROVEMENTS. On or before the Term Begin Date/Rent Commencement Date, unless such date is extended by mutual written consent, Lessor shall complete or cause to be completed certain building improvements, all as more specifically set forth in Exhibit B (Floor Plan) and Exhibit C (Scope of Work) attached hereto and incorporated by reference. In the event, that this Lessor's work is not completed by the Commencement Date, or an alternate date mutually agreed to by both parties to this Lease, then Lessee may contract directly for this work, and shall with 30-days' notice to the Lessor, deduct the cost of this work from the next, and any subsequent as needed, month's rent payment. Lessee, through its authorized agents only, may, at its option, revise said building improvements prior to commencement of construction and request changes during construction, provided, however, that such changes must first be approved by Lessor. The method and amount of payment by Lessee for any increase or decrease in costs, if applicable, resulting from said changes in construction shall be negotiated between parties and documented in writing at the time of said requested changes.

22. LESSEE COSTS. Intentionally left blank.

23. CAPTIONS. The item captions contained herein are for convenience only and do not define, limit, or construe the contents of such items, paragraphs, or sections.

24. AUTHORIZATION, BINDING EFFECT. This Lease, together with all amending instructions subsequent thereto (collectively, the Lease"), is not valid or effective for any purpose until approved by the Governor or his delegate, the Secretary of the Department of Administration, and no work is authorized until the Lease is fully executed.

25. **WAIVER.** The rights and remedies of either party under this Lease, as well as those provided or accorded by law, shall be cumulative, and none shall be exclusive of any other rights or remedies hereunder or allowed by law. A waiver by either party of any breach or breaches, default or defaults, of the other party hereunder shall not be deemed or construed to be a continuing waiver of such breach or default nor as a waiver of or permission, expressed or implied, for any subsequent breach or default.

26. **CHOICE OF LAW.** This Lease shall be governed by and construed and interpreted in accordance with the laws of the State of Wisconsin.

27. **EXECUTED LEASE.** This Lease when fully executed shall be binding upon the respective heirs, executors, administrators, successors, and assigns of the parties hereto.

28. **MISCELLANEOUS PROVISIONS.**

- a) **Early Lease Termination** – Both Lessor or Lessee shall have the option to terminate this Lease, effective as of the last day of any Lease Year during the term of this Lease, which option may be exercised by written notice to be given at least three hundred sixty-five (365) days prior to the effective date of such termination. However, in no case shall this lease be terminated prior to the last day of the second lease year. Neither party shall be responsible for the payment of an early lease termination fee.
- b) **Unit Composition and Furnishings** – Each unit to have a full kitchen with hot/cold water double-sink with disposal, updated, standard apartment sized refrigerator and stove, a full, private bathroom, living room and multiple bedrooms. Each bedroom door shall have a keyed lock. Unit furnishings: a) Lessor to provide two full size couches, four kitchen chairs and all window coverings, and b) Lessee to provide one mattress and bed, one dresser and one desk for each student and one dining room table per unit.
- c) **Assistant Complex Director** – if one unit is selected to house the Assistant Complex Director, a washer/dryer unit must be installed in this unit.
- d) **Parking** – One hundred seventy-five, onsite parking stalls are to be made available, including ADA compliant accessibility stalls. In addition, a bike patio with a capacity of forty (40) bicycles shall be made available.
- e) **Laundry Facilities** - Building shall contain three (3) laundry rooms which contain twelve (12) washers and twelve (12) dryers in total.

f) Safety and Accessibility Requirements

- i. The Premises must meet all current local fire codes related to smoke/heat/CO2 detectors. Local fire alarm pull stations and central panel all connected to strobe and audible alarms meeting ADA guidelines. If not already existing, within 6 months of occupancy, Lessor shall install hard-wired smoke/heat/CO2 detectors wired back to a central panel,
 - ii) Lessor shall provide adequate building security and exterior security lighting to allow for safe occupancy by staff, students and visitors 24/7/365.
 - iii) Residential doors shall have secured peepholes.
 - iii) Perimeter doors not designated as emergency exits shall have secured exterior entries with commercial grade locks for night time security.
 - iv) Perimeter doors used as emergency exits shall also comply with the state fire codes.
 - v) The design of the building and floor plan shall ensure safety of staff, students and visitors. There should not be any hallway "dead-ends" or blind corners in the tenant space or common area.
 - vi) All areas of the Premises, the applicable common areas, entrances, exits and parking lots serving the Premises shall meet all requirements of handicapped accessibility, health, and safety standards in compliance with and in accordance with Wisconsin Administrative Code, Chapters SPS 332, 351 through 365 and Americans with Disabilities Act guidelines (ADAAG). The ADAAG guidelines shall take precedence over state building codes Chapter 52.04, except when such state codes are be equal to or exceed specifications in ADAAG.
- i) Connectivity – Lessor shall, at Lessor's cost,
- i) Work with a local service provider to ensure proper entrance cable (fiber if needed) can be brought into the building. This may include building penetrations, access points, and cable pathways, to bring service into the designated main communications room in the building. Lessor shall be responsible for all communication conduit, paths, and raceway for cabling.
 - ii) Provide a minimum of one coaxial cable hook-up in the individual apartment common room for television connectivity.
 - iii) Provide cable television service to units; comparable to what is available on campus the cost of which should be included in lease rate.
 - iv) Provide a 20 Mb down / 1Mb up minimum internet connection per resident with system monitoring in

place to adjust bandwidth capacity if needed.

v) Allow Lessee to install Lessee-owned wireless routers and access points throughout building.

j) Other Building Requirements – The Premises shall include the following:

i) four (4) ADA compliant units on the first floor of the Building

ii) first floor study lounge

iii) staff office

iv) storage room for use by the housing staff

v) conversion of a 1st floor 3-bedroom unit into an additional study lounge, and

vi) Administrative Office for on-site staff management

29. ENTIRE AGREEMENT. This Lease constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names as of the date of the last signature below.

LESSOR:

D.L.K. Enterprises, Inc.

In presence of:

_____ By: _____
_____ Printed Name, Title _____ Printed Name, Title

Dated: _____

LESSEE:
State of Wisconsin

By: _____

CATE S. ZEUSKE
DEPUTY SECRETARY
DEPARTMENT OF ADMINISTRATION

Dated: _____

File No. 285-010

Schedule I

The Lessor, at Lessor's cost (unless otherwise noted), shall furnish to the Lessee during the term of this Lease, as part of the rental consideration, the following:

1. Provide a minimum of 1 foot candle security lighting for on premise parking areas.
2. Provide an environment control system that shall maintain a comfortable humidity level and temperature:

Summer

76 degrees (+/- 2 degrees)
50% Humidity Level (+/- 10%)

Winter

70 Degrees (+/- 2 degrees)
25% Humidity (+/- 5%)

3. Provide, maintain and service heating, air conditioning, plumbing and ventilating equipment as per manufacturers and/or installers recommendations.
4. Install and maintain fire extinguishers according to any governmental building code and underwriters (UL).
5. Provide each resident one key for each of the following: entrance doors to the Building, entrance door to assigned unit and bedroom door within the assigned unit. In addition, each Lessee will have access to loaner key to all of the aforementioned doors for after-hours use in the event of lost keys. Last, one master key to all of the aforementioned doors shall be provided.
6. Provide electrical service and other electrical equipment necessary for operation of the Property.
7. Provide safe drinking water with hot and cold running water for restrooms, kitchens and janitorial facilities. Such drinking water shall meet minimum State of Wisconsin Drinking Water Quality Standards.
8. Provide Water & Sewer and Heat and Air conditioning.
9. Furnish, install and replace during the term of this Lease and any extension thereof, light bulbs, fluorescent tubes, starters, ballasts and transformers.
10. All demised and common areas of the facility and exterior areas, including parking, utilized under this lease, including restrooms and any elevator(s) ***must meet all requirements of new construction*** for accessibility, health and safety standards in compliance with and in accordance with Wisconsin Administrative Code, Chapters SPS 332, 360 - 365, and the ANSI A117.1. ANSI Regulations will take precedence over Wisconsin Administrative Codes, except when such codes shall be equal to or exceed the ANSI Regulations. All elevators shall meet the Wisconsin Administrative Codes, SPS 318 and SPS 362 and ANSI A117.1.
11. Beginning January 1, 1995, proper disposal of materials shall comply with sections 16.15(3) and 287.07 Wis. Stats., which require recycling the following items: aluminum containers, corrugated paper or other container board, foam polystyrene packaging, glass containers, magazines, newspaper, office paper, plastic containers, steel containers, and waste tires. Lessor shall provide a central collection area and separate collection containers as require for the deposit of all such recyclable and non-recyclable waste generated at the leased premises. Lessor further agrees to comply with all applicable municipal recycling requirements adopted under section 287.13, Wis. Stats.
12. Provide snow and ice control and removal. Snow and ice will be removed from designated walking surfaces on Lessor controlled sidewalks on building grounds by 7:00 AM each working day and 9:00

AM on non-working days. These walk areas shall be maintained in a reasonably slip resistant condition and passable for people with disabilities (i.e. individuals who use walkers, canes, crutches, wheelchairs, etc.). Walking surfaces will be maintained snow and ice free during working hours. Particular attention shall be paid during on-going snowfalls, ice storms or when melting snow and ice re-freezes on walking surfaces. Lessee shall reimburse Lessor for its pro rata share of such services pursuant to Section 4(b)(iii) of this Lease.

In the event that the Lessor fails to remove the snow and ice from the leased facility in accordance with the terms of the paragraph above, the Lessee may cause the same to be done.

Lessee's removal of snow and ice shall not release Lessor of liability or obligation under the provisions of this lease or any law or regulation.

13. Lessor agrees to construct and/or remodel and equip the building in accordance with State and local building codes, in accordance with mutually agreed upon plans attached hereto.
14. Provide the Premises with a fire alarm and detection system that complies with all State building codes, International building code (IBC) and Local building codes. In the event the Premises are not required to have a fire alarm and detection system by any code, Lessor shall install and maintain a fire detection system consisting of automatic detection (heat and smoke detectors), audio/visual notification devices and pull stations in accordance with the National Fire Protection Association (NFPA) under NFPA 72 and National Electric Code NEC 760. The fire alarm and detection system shall be inspected, maintained and tested in accordance with NFPA 72, by licensed contractors and fully documented. Documentation shall be made available to Lessee, within ten (10) days of Lessee's written request.
15. In the event the Lessor does not furnish the aforementioned services and items in this Schedule or the demised Premises are un-tenantable for any other reason which is not due to the negligence of the Lessee, the Lessee may provide such services and items at its own expense and deduct these expenses from rental payments, provided Lessee notifies Lessor thirty (30) days in advance of any deduction, and provides an itemized statement listing the services and items not being furnished.

EXHIBIT A – SITE PLAN

EXHIBIT B – FLOOR PLAN

EXHIBIT C – SCOPE OF WORK

Lessor, at Lessor's cost, shall complete the following work prior to the Commencement Date of this lease:

- 1) Installation of a Unisex, ADA bathroom which is accessible to the lobby on the first floor.
- 2) Install exterior lights and/or light poles sufficient to meet not less than one candle foot
- 3) All interior walls must be freshly painted.
- 4) Carpet should be cleaned and replaced, if deemed necessary.



REAL ESTATE PROPERTY ANALYSIS - WI STATUTE 16.84 (5)

PROPOSED PROPERTY STREET ADDRESS & CITY
 375 N. HARMONY LANE, WHITEWATER, WI
 (Cambridge Apartments)

Proposed Property

Executive Summary for Proposed Property
 UW-Whitewater has a designated capacity for 4,102 students. There are 4,800 students eligible to live in this residence halls for the 2017-2018 school year. The last four years, the Office of Housing and Residence Life has operated at between 110 to 114 percent capacity. In order to meet demand, more than 90 students lived in converted study lounges and many resident assistant were required to have roommates. In addition, the Board of Regents mandated residency requirements for sophomores to remain on campus has been waived over the last several years. This year, more than 7,800 students were granted exemptions from this requirement. On May 17, 2017, a Request for Proposal (RFP) was issued requesting proposals that met these space requirements. All submissions were evaluated and the Proposed Property was selected from the proposals received.

Date Completed 1/26/2018
Completed By (use drop-down) Scott Berger

SECTION 1 -- GENERAL INFORMATION

(1) General Information

Agency (use drop-down) 285 UW System
Desired Municipality Whitewater
Current Lease Status (use drop-down) NEW LEASE
Proposed Lease Status (use drop-down) NEW LEASE
Initial or Renewal Lease Term (Years) 5
Type of Lease (use drop-down) RESIDENTIAL
Existing Lease # N/A
Space Request # 2716
New Lease # 285-011

Current Lease Expiration Date N/A
Current Lease Property Street Address or N/A N/A

Renetable Square Foot Required (Fill in applicable boxes)

Office	Garage	Storage	Residential	Hangar	Lab	Land	Tower	Warehouse	TOTAL RENTABLE SQ FEET
			87,520						87,520

Agency Requested Location - Current Lease Property Address or Space Request/Correspondence Memorandum Location
 375 N. Harmony Lane, Whitewater, WI
 (Cambridge Apartments)

Agency Justification for Requested Location
 The Proposed Location meets the requirements stated in the RFP. Only those properties located within 3/4 of mile of the UW-Whitewater Campus Visitor Center were considered for inclusion in the Residence Life program. An Request for Proposal (RFP) was issued in search of potential on-campus options. Two proposals were received and both met the requirements of the RFP. However, only one property was needed to accommodate UW-Whitewater's space requirements. The option selected best met the space requirements of UW-Whitewater.

Section 2 -- CONSOLIDATION ANALYSIS

(2) Consolidation Analysis

Are there any Executive Branch State agencies with fewer than 50 FTEs to consider for consolidation, wherever feasible and within search radius?

Check Box Yes No

Comments
 N/A - student housing

Section 3 -- COST BENEFIT ANALYSIS FOR LEASE VERSUS PURCHASE SPACE

(3) Cost Benefit Analysis for Lease vs Purchase Space

Conclusion

Check Box LEASE PURCHASE

40 Year Star for Agency Yes No

Multi-Tenant Bldg. Yes No

Square Footage Needed by Agency's less than 3,000 sq. ft. Yes No

Reason(s) for Conclusion (if applicable, see attached Lease versus Purchase Analysis)
 Student housing needs change year to year. It is difficult to project on-campus student housing just two years out let alone forty years. In addition, the Lessor denied the State's request for an Option to Purchase.

Agency: 285 DW System Desired Municipality: Whitewater

Section 4 – COMPARABLE LEASE ANALYSIS

Wider Radius? Yes No

Comments: **This is a request to lease student housing. Only properties located on-campus can be considered for inclusion in the Residence Life program. Properties located off-campus are considered to be non-comparable properties.**

Proposed Property Address (Center of 10-mile Radius): 375 N. Harmony Lane, Whitewater, WI (Cambridge Apartments)

	Comparable Property Addresses within Radius	Sufficient Sq Ft	Sufficient Lease Term	Meets Space Type	On-campus Location	Safety & Accessibility Requirements	Mandatory Property Criteria = Yes (Y) or No (N)		Comments
							Yes (Y)	No (N)	
A	575 N. Harmony Lane, Whitewater, WI (Cambridge Apartments)	Y	Y	Y	Y	Y			While this property met all of the RFP requirements, the total number of beds between the Proposed Property and this option would have exceeded DW-Whitewater space requirements.
B	284 N. Prince Street, Whitewater, WI (The Element Apartments)	Y	Y	Y	Y	Y			
C									
D									
E									
F									
G									
H									

	Non-Comparable Property Addresses within Radius	Sufficient Sq Ft	Sufficient Lease Term	Meets Space Type	On-campus Location	Safety & Accessibility Requirements	Mandatory Property Criteria = Yes (Y) or No (N)		Comments
							Yes (Y)	No (N)	
A	1461 W. Main Street, Whitewater, WI (Royal Capital)	Y	Y	Y	Y	N			Property lacks most of the Safety and Accessibility Requirements necessary.
B	135 North Tratt Street, Whitewater, WI (True Vine Development)	Y	Y	Y	Y	N			Property lacks most of the Safety and Accessibility Requirements necessary.
C	281 Fraternity Lane, Whitewater, WI (Fox Meadows Apartments)	Y	Y	Y	Y	N			Property lacks most of the Safety and Accessibility Requirements necessary.
D									
E									
F									

Agency: 285 UW System
 Desired Municipality: Whitewater

of State Employees at Property: 285

Section 4 - COMPARABLE LEASE ANALYSIS (continued)

Comparable Property Address	Rentable Sq Ft	List Base Rent PSF	Year 1 Estimated Lease Costs (Full-Service Gross)		Year 1 Estimated Annual Rent		Year 1 Estimated Total Cost of Leasing					Year 1 Estimated Lease Rate Per Square Foot
			PSF from All Other Comparable Plus 5%	PSF from All Other Comparable Plus 5%	PSF from All Other Comparable Plus 5%	PSF from All Other Comparable Plus 5%	Year 1 Estimated Annual Rent	Year 1 Estimated Annual Rent	Year 1 Estimated Annual Rent	Year 1 Estimated Annual Rent	Year 1 Estimated Annual Rent	
A 375 N. Harmony Lane, Whitewater, WI (Cambridge Apartments)	87,530	\$ 12.65	\$ 1,107,200.00	\$ 1,107,200.00	\$ 1,107,200.00	\$ 1,107,200.00	\$ 1,107,200.00	\$ 1,107,200.00	\$ 1,107,200.00	\$ 1,107,200.00	\$ 1,107,200.00	\$ 12.65
B 234 N. Prince Street, Whitewater, WI (The Element Apartments)	26,102	\$ 20.25	\$ 528,624.00	\$ 528,624.00	\$ 528,624.00	\$ 528,624.00	\$ 528,624.00	\$ 528,624.00	\$ 528,624.00	\$ 528,624.00	\$ 528,624.00	\$ 20.25
C												
D												
E												
F												
G												
H												

Initial or Renewal Lease Term (Years):

Comparable Property Address	Annual Escalator	Year 1 Estimated Total Cost of Leasing					ESTIMATED LEASE RATE PER SQUARE FOOT
		Year 1 TOTAL COST OF LEASING	Year 2 TOTAL COST OF LEASING	Year 3 TOTAL COST OF LEASING	Year 4 TOTAL COST OF LEASING	Year 5 TOTAL COST OF LEASING	
A 375 N. Harmony Lane, Whitewater, WI (Cambridge Apartments)	1.00%	\$ 1,107,200.00	\$ 1,118,272.00	\$ 1,129,454.72	\$ 1,140,749.27	\$ 1,152,156.76	\$ 12.91
B 234 N. Prince Street, Whitewater, WI (The Element Apartments)	2.00%	\$ 528,624.00	\$ 539,496.48	\$ 549,980.41	\$ 560,980.02	\$ 572,198.62	\$ 21.08
C							
D							
E							
F							
G							
H							

Lease Analysis Assumptions
 List Base Rent PSF is based on advertiser rental rate.
 Estimated Lease Costs - electricity, natural gas, janitorial, C.A.M. PSF costs are based actual known costs or based on Building Owners and Managers Association (BOMA) Standards
 Miscellaneous Leasing Costs are based on DDA Lease Administration's estimate per employee and per square foot.
 Definitions
 Comparable Properties = Properties that meet all mandatory location criteria
 Non-Comparable Properties = Properties that do not meet all mandatory location criteria
 Annual Rent = Year 1 Estimated Full-Service Gross rent (includes miscellaneous leasing costs)
 Lease Rate = Estimated Lease Rate PSF of all comparable properties (i.e., effective cost PSF over Initial/Renewal Term)
 Market Rate = Average Estimated Lease Rate PSF of all comparable properties

EVALUATION OF OPTIONS	Proposed Property Lease Rate PSF	Estimated Market Rate PSF Plus 5%
375 N. Harmony Lane, Whitewater, WI (Cambridge Apartments)	\$ 12.91	\$ 17.84

Agency
ZIS UW System

Desired Municipality
Whitefish

Section 5 -- JOINT COMMITTEE ON FINANCE (JCF) & LEGISLATURE CHIEF CLERKS NOTIFICATION (leases that exceed \$500,000 annual rent)
SUMMARY REPORT

Comments
The proposed lease contains an Annual Rent in excess of \$500,000. Pursuant to Section 16.84(5), DOA must provide both Houses and the Joint Committee on Finance (JCF) a copy of the proposed lease. In addition, DOA must provide JCF a Summary Report which outlines the terms of the lease and a report that demonstrates its compliance with the requirements of Section 16.84.

Check Box
Yes No

Does the Annual Rent Exceed \$500,000 in any year of the Initial Term or Renewal Term of the lease?

Proposed Lease Status (use drop-down)

NEW LEASE

PROPOSED PROPERTY ADDRESS
375 N. Harmony Lane, Whitefish, WI
(Cambridge Apartments)

Lease Terms	Terms of Proposed Lease	
	New Lease	Renewal
a. Usable Square Feet	87,520	
b. Load Factor, if applicable	100%	
c. Rentable Square Feet (a X b)	87,520	
d. Base Rent Per Square Foot	\$ 32.65	
e. Operating Expenses PSF		
f. Rent Per Square Foot (d + e)	\$ 32.65	
g. Annual Rent (c X f)	\$ 3,307,200.00	
h. Amortization Per Square Foot	PSF	PSF
i. Rent Per Square Foot (d + e)	\$ 32.65	
j. Cost Per Square Foot (h + i)	\$ 32.65	
k. Rentable Square Feet (c)	87,520	
l. Annual Cost (j X k)	\$ 3,307,200.00	
Annual Escalator	3%	
Initial Lease Term - # of Years	5	
Renewal Options - # & # of Years	Three 5-yr options	

Comparable Options Summary		
	Comparable Property Addresses	ESTIMATED LEASING COST PER SQUARE FOOT
A	375 N. Harmony Lane, Whitefish, WI (Cambridge Apartments)	Cost PSF from Section 4 \$ 32.91
B	234 N. Price Street, Whitefish, WI (The Element Apartments)	\$ 21.08
C	D	#DIV/0!
D	D	#DIV/0!
E	D	#DIV/0!
F	D	#DIV/0!
G	D	#DIV/0!
H	D	#DIV/0!