

Document Number

**AGREEMENT TO UNDERTAKE  
DEVELOPMENT IN  
CITY OF STOUGHTON  
TAX INCREMENT DISTRICT  
NO. 5**

**(Movin' Out Development LLC)**

THIS AGREEMENT TO UNDERTAKE DEVELOPMENT entered into as of November \_\_\_\_\_, 2010 (the "Agreement"), by and among the City of Stoughton, Wisconsin, a Wisconsin municipal corporation (the "City"), the Redevelopment Authority of the City of Stoughton (the "RDA"), Movin' Out Development LLC, a Wisconsin limited liability corporation (the "Developer"), and Movin' Out Stoughton LLC, a Wisconsin limited liability corporation (the "Project Owner)."

**RECITALS**

WHEREAS, the City has created Tax Incremental Financing District No. 5 (the "District"); and

WHEREAS, the RDA and the City desire to facilitate the redevelopment of property within the District; and

WHEREAS, the RDA and Developer (by assignment from Movin' Out, Inc.) have entered into that certain Commercial Offer to Purchase, dated April 1, 2010, and the addendum thereto, also dated April 1, 2010 (collectively, the "Offer") (a copy of which is attached hereto as Attachment A) regarding the purchase by Developer from the RDA of certain real property located at 623 Eighth Street, Stoughton, Wisconsin, as more specifically described in the document attached hereto as Attachment A (the "Property"); and

WHEREAS, by execution of this Agreement, Developer hereby gives notice that it requests the RDA to exercise the Option and purchase the Property pursuant to the Offer.

WHEREAS, pursuant to the Offer, the City, the RDA and Developer have agreed to enter into a development agreement and an environmental remediation agreement (the "Remediation Agreement") regarding the terms of the redevelopment of the Property consistent with the Project Plan for Creation of Tax Incremental District No. 5 (the "Project Plan"); and

WHEREAS, the City established the District to, among other things, make certain grants and incur certain project costs (the "Project Costs") as described in, and subject to the reservations contained in, this Agreement; and

Drafted by and after recording return to:

Matthew P. Dregne  
Stafford Rosenbaum LLP  
P.O. Box 1784  
Madison, WI 53701-1784

Parcel Identification Number(s)

WHEREAS, the parties intend for the Project Owner to purchase the Property from the RDA (after an assignment of the Offer from Developer to the Project Owner) and for the Project Owner to construct a 33 unit independent living facility (the "Project"), subject to the requirements and reservations contained in this Agreement; and

WHEREAS, as an inducement to Developer to develop the Property and otherwise facilitate the redevelopment project, and in order to make the Project financially feasible and to implement the Project Plan, the City finds it appropriate to provide tax increment development incentive payments for the Project as described in, and subject to the reservations contained in, this Agreement; and

WHEREAS, the City finds and determines that unless the City provides the development incentive payments described in this Agreement, Developer and Project Owner will not construct the Project, and the City will not accomplish the objectives of the Project Plan; and

WHEREAS, the RDA and City find that the Project and the fulfillment, generally, of the terms and conditions of this Agreement are in the vital and best interest of the City and its residents, by redeveloping a contaminated and underutilized property in the City; and

WHEREAS, the City's and RDA's purposes in entering into this Agreement are, among others, to provide for the installation of certain public improvements, to require the Developer to pay the direct and indirect costs of the public improvements, to provide for the dedication of property for public purposes, and to provide for the payment by Developer of certain fees and costs; and

WHEREAS, the RDA on November 4, 2010, and Common Council on November 9, 2010, approved this Agreement and authorized the RDA and City, through their duly authorized officials and agents, to execute this Agreement; and

WHEREAS, Developer and Project Owner approved and authorized the execution of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and the mutual promises, obligations and benefits provided hereunder, the receipt and adequacy of which are hereby acknowledged, Developer, the RDA and the City agree as follows:

A. **DEFINITIONS.** As used in this Agreement, the following terms, when having an initial capital letter, shall mean:

1. Actual Tax Increment. The Tax Increment actually received by the City from taxes levied on the Property.

2. City Contribution. The sum of the following amounts that the City and/or RDA have paid or will pay to facilitate the project: (a) \$140,000 to be applied by the RDA toward the purchase of the Property from the current owner; (b) the cost of applying for a BeBR grant (currently estimated to be \$5,000); (c) the cost of environmental site assessments prepared for

the Property (currently estimated to be \$25,000); and (d) the cost of preparing bid specifications for environmental remediation work on the Property (currently estimated to be \$10,000) (collectively the “City Contribution”).

3. Property. The Property known as 623 Eighth Street and described in Attachment A.

4. Project. A 33 Unit independent living facility constructed in accordance with the General Development Plan and Specific Implementation Plan for the Property approved by the City on September 28, 2010.

5. Tax Increment. Tax Increment shall mean the amount of tax increment generated by the District, as defined in Wis. Stat. § 66.1105(2)(i), that is attributable only to the Property.

6. Project Costs. Costs that are eligible to be paid with Tax Increment and specifically identified within the Project Plan for the District.

7. Public Improvements.

- (a) Joint stormwater basin described in Attachment B.
- (b) Eighth Street expansion and storm sewer addition described in Attachment C.
- (c) Public water main on site and in Eighth Street described in Attachment D.
- (d) River bank restoration described in Attachment E.

## **B. DEVELOPER OBLIGATIONS.**

1. Timely Proceed With Development. Developer and Project Owner shall use good faith efforts to complete or cause the completion of the Project and the Public Improvements by December 31, 2011.

2. Construction of Public Improvements.

(a) *Improvements.* Developer shall design and construct the Public Improvements, and shall dedicate said Public Improvements to the City. The Public Improvements shall be designed, constructed and installed by the Developer at the Developer's sole expense, in accordance with plans and specifications approved by the City. Two copies of the approved, signed and stamped plans and specifications shall be provided to the City Engineer, and one copy shall be provided to each contractor. Only stamped and signed copies of the plans and specifications shall be used on the job site. Where standards and/or specifications have not been established by the City, all work shall be made in accordance with established engineering practices as designated and approved by the City Engineer. The City shall, to the extent it already owns or has access easements over offsite lands, permit reasonable access for

Developer's construction of offsite improvements required under this Agreement. The City shall not, however, be required to exercise, for the benefit of Developer, its power of eminent domain or exercise any other municipal authority to obtain access over any property which it does not currently own or over which it does not have access rights. Nor shall the City be required to expend any time or money to stake, for Developer's benefit, the location of any dedicated lands or easements over which it will furnish Developer access for construction of offsite improvements.

(b) *Prevailing Wage Rates.* Pursuant to Wis. Stat. § 66.0903, the City will apply to the Wisconsin Department of Workforce Development to determine the prevailing wage rate for each trade or occupation required to construct the Public Improvements. Once the Department issues its determination of the prevailing wage rates ("Determination"), it shall be considered to be incorporated into and made a part of this Agreement, and attached as Attachment F. The Developer agrees to comply fully with Wis. Stat. § 66.0903, as well as the following: (1) The Determination shall be physically incorporated into and made a part of any contract or subcontract that the Developer or its contractor enters into to perform work necessary to construct the Public Improvements contemplated in this Agreement. (2) All Covered Employees (as defined in Wis. Stat. § 66.0903(4)) who perform the work necessary to construct the Public Improvements shall be paid prevailing wage rates according to the Determination, and may not be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay. (3) The Developer and each contractor, subcontractor, or contractor's or subcontractor's agent performing work necessary to construct the Public Improvements shall keep full and accurate records clearly indicating the name and trade or occupation of every Covered Employee performing the work, and an accurate record of the number of hours worked by each of those persons and the actual wages paid for the hours worked. (4) The Developer shall notify each contractor and subcontractor that it must file certified payroll records with the State of Wisconsin Department of Workforce Development (DWD) on a monthly basis in a format that meets DWD reporting requirements. Certified payroll reports must be filed with DWD by the end of the first week following the month in which the work was conducted. The Developer is hereby notified, and shall notify all contractors and subcontractors, that if DWD finds a contractor violating the prevailing wage law, DWD will assess liquidated damages of 100 percent of the wages owed to employees. (5) The City may demand and examine, and the Developer and every contractor, subcontractor or contractor's or subcontractor's agent shall keep, and make available for inspection upon request by the City, copies of payrolls and other records and information relating to the wages paid to Covered Employees performing the work necessary to construct the Public Improvements. (6) The Developer shall require that, upon completion of any project involved in construction of the Public Improvements and before receiving final payment for his or her work on the project, each agent, contractor, or subcontractor shall furnish the Developer with an affidavit stating that the agent, contractor or subcontractor has complied fully with the requirements of Wis. Stat. § 66.0903. The Developer shall not authorize final payment until the affidavit is filed in proper form and order. (7) Upon completion of the construction of Public Improvements, and prior to the City's acceptance of the Public Improvements the Developer shall file with the City an affidavit stating that the Developer has complied fully with the requirements of Wis. Stat. § 66.0903 and that the Developer has received an affidavit under the above subsection (5) from

each of the Developer's agents, contractors and subcontractors. The City shall not accept the Public Improvements until the affidavit from the Developer is filed in proper form and order.

(c) *City Approval of Starting Dates.* No land disturbances or work on the Public Improvements shall begin without the City Engineer's approval of a starting date and schedule which shall be submitted by the Developer to the City Engineer a minimum of seven calendar days before work is scheduled to begin.

(d) *Change to Work Order.* Neither the City nor the RDA shall be responsible for any costs or changes relating to this project except those specifically enumerated and agreed upon in this or subsequent written, signed agreements among the Developer and the City and the RDA.

(e) *Contractors Engaged by Developer.* The Developer agrees to engage contractors for the Public Improvements included in this Agreement who are acceptable to the City, who shall perform such work to the standards of the City, and who shall comply with every requirement of the City ordinances and standards in performing such work. The Developer shall furnish the City Engineer with the names of all contractors and their subcontractors, with the classification of work they will perform, not less than seven calendar days prior to any work beginning. The approval of such contractors shall not be unreasonably withheld or delayed by the City.

(f) *Indemnification and Insurance.* The Developer shall indemnify and hold the City and the RDA and their employees, and the City Engineer, harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development site and elsewhere pursuant to this Agreement, except where such injury or damage results from the negligence of the City or the RDA or their contractors or employees. The Developer further agrees to aid and defend the City and the RDA and their officials and employees and the City Engineer in the event that the City or the RDA is named as a defendant in an action concerning the City's or the RDA's performance of work pursuant to this Agreement except where such suit is brought by the Developer, or on the basis of the City's or the RDA's negligence. The Developer is not an agent or employee of the RDA or the City. The Developer shall require all contractors engaged in the construction of the Public Improvements to comply with the City contract requirements pertaining to damage claims, indemnification of the City, and providing insurance coverage that is approved by the City. The Developer shall also require that the policies of insurance required hereunder name the City and the RDA as additional insureds and that said general contractor and subcontractors maintain a current certificate of insurance on file with the City.

(g) *Time of Completion.* The Public Improvements shall be completed at or before the time the Project is completed, and shall be completed and accepted by the City pursuant to this Agreement prior to the issuance of an occupancy permit for any part of the Project. No damages may be recovered by Developer or any person against the City or the RDA for delay in completion of the Public Improvements.

(h) *Acceptance.* After the Public Improvements required by this Agreement have been completed, and within 21 days after receiving written notice that the Developer desires the City to inspect the Public Improvements, the City Engineer shall inspect the improvements and, if acceptable to the City Engineer, the Common Council shall by resolution certify such completed improvements as being in compliance with the standards and specifications of the City. Before obtaining certification of any such improvements, the Developer shall: (1) present to the City valid lien waivers from all persons providing materials or performing work on the improvements for which certification is sought; (2) provide as built drawings to the City Engineer consisting of four hard copies on paper, one electronic copy as a pdf file, and one electronic copy in dwg format or another digital format that is acceptable to the City; and (3) provide to the City the affidavit required to demonstrate compliance with prevailing wage rate requirements. Certification by the City Engineer does not constitute a waiver by the City of the right to take action on account of defects in or failure of any improvements that are detected or which occur following such certification.

The Developer agrees that the Public Improvements will not be accepted by the City, and an occupancy permit for the Project will not be issued, until the Public Improvements have been inspected and approved by the City Engineer and furthermore until all outstanding City costs, including engineering and inspection charges, have been paid in full and affidavits and lien waivers are received by the City indicating that the contractors and their suppliers have been paid in full for all work and materials furnished under this Agreement, and prevailing wage rate requirements have been satisfied. The water main and the respective service laterals shall not be accepted until a complete breakdown of all construction, engineering and administrative costs incurred by the Developer is submitted to the City Engineer. In addition, the water system installation shall not be accepted until a bacteriologically safe sample is obtained and tested by a certified agency, and the City has been provided with a report from such agency confirming such testing. The Developer shall be responsible to flush the main, obtain the samples, and have all tests completed as may be required for the City's acceptance, under the direct supervision of the City's water utility personnel. In addition, the Developer shall clean the storm sewers in accordance with the directives of the City Engineer. Thereafter, upon acceptance by the City, ownership and control of the Public Improvements shall be turned over without any restrictions to the City.

The Developer agrees to provide for maintenance and repair of all required Public Improvements until such improvements are formally accepted by the City.

The City will provide timely notice to the Developer whenever inspection reveals that an improvement does not conform to the required standards and specifications or is otherwise defective. The Developer shall have 30 days from the issuance of such notice to cure the defect.

(i) *Guarantee of Public Improvements.* The Developer agrees to guarantee and warrant all work performed under this Agreement for a period of one year from the date of final acceptance by the City of the work completed by the Developer against defects in workmanship or materials. If any defect appears during the guarantee period, the Developer agrees to make required replacement or acceptable repairs of the defective work at its own expense, including total and complete restoration of any disturbed surface or component of the

improvements on lands where the repairs or replacement is required, to the standard provided in the approved plans and specifications. All guarantees or warranties for materials or workmanship of suppliers and third-party contractors for work performed under this Agreement which extend beyond the above guarantee period shall be assigned by the Developer to the City.

3. Fees and Dedications.

(a) Developer shall dedicate to the City a 75-foot-wide portion of the Property fronting the Yahara River, depicted as Outlot 1 on the certified survey map attached as Attachment G.

(b) Developer shall convey easements to the City, allowing for the City's installation and maintenance of storm sewer and public water facilities at the locations shown in Attachment L.

(c) Developer shall pay a fee in lieu of land dedication to the City in the amount of \$54,200 and a park improvement fee in the amount of \$1,941.53, at the time a building permit for the Project is applied for.

(d) Developer shall reimburse the City for its actual engineering costs in excess of \$2,500 incurred in connection with the design, review, inspection, testing, and acceptance of the Public Improvements. Bills outstanding for more than 30 days shall bear interest at the rate of 1-1/2 percent per month.

(e) At or before the time the City conveys the Property to Project Owner, Developer shall either (i) pay \$10,000 (the "Attorney Fees") to the City as a contribution to the City's legal expenses associated with this transaction, or (ii) inform the City that Developer elects to have Attorney Fees paid for as part of, and included in the definition of, the City's Contribution.

4. Tax Increment Guarantee.

(a) The parties acknowledge and agree that the Actual Tax Increment is intended to be sufficient to pay certain financial contributions that the City and RDA have made and will make to facilitate the Project, including but not limited to the City Contribution, the City's capitalized interest expense and the development incentive payments provided for in this Agreement. Developer guarantees that, beginning in calendar year 2013, the City will receive Actual Tax Increment in an amount not less than \$610,753, plus interest of 5 percent per year accruing from January 1, 2012 and amortized over 25 years as provided for in Attachment H. Developer guarantees that the Actual Tax Increment received each year beginning in calendar year 2013 shall be not less than the "Total Payment" amount shown for each calendar year on Attachment H. This guarantee shall continue until the City has received Actual Tax Increment equal to \$610,753, plus 5 percent interest accruing from January 1, 2012. The parties acknowledge that the payment shown in calendar year 2012 on Attachment H is an anticipated capitalized interest payment to be made by the City and that Developer's guarantee does not apply to such payment.

(b) Notwithstanding anything contained in Section 4(a) above, in the event the City delays the Closing under the Offer for one hundred eighty (180) days as provided for in Section 3(c) of the Remediation Agreement, the City, the Developer and the Project Owner agree to modify and amend this Agreement to reflect a Project completion date in 2012 and to defer the payments in Attachment H, the Developer's Tax Increment guaranty and the special assessment lien created below to reflect a one (1) year delay in the Project's increased tax payments.

(c) Developer's Tax Increment guarantee obligation shall be secured by Developer's unlimited corporate guarantee, in the form attached as Attachment I. Such guarantee shall be provided to the City on or before the execution of this Agreement.

5. Special Assessment. Developer and Project Owner acknowledge the special benefit to the Property of the City's financial contributions to the Project pursuant to this Agreement, including but not limited to the City Contribution and the development incentive payments provided for in this Agreement. Developer and Project Owner consent to the City levying a special assessment against the Property in the amount of \$610,753, subject to adjustment as provided for in Section B.4(b) above.

(a) Developer and Project Owner waive all rights to notice and hearing related to the special assessment in the amount of \$610,753 described in section 5 (a) above, and waive all rights to object to procedural or other irregularities in the levy of such special assessment.

(b) The final special assessment resolution shall provide that the special assessment may be paid in installments, with interest at 5 percent per year, corresponding to the "Total Payment" amount set forth in Attachment H, subject to adjustment as provided for in Section B 4(b) above. Payment of the special assessment installments shall commence in 2013, subject to adjustment as provided for in Section B.4(b) above.

(c) The City may levy the special assessment provided for in Section B.4(b) above at any time.

(d) The City agrees that special assessment installment payments due each year shall be reduced by the sum of the Actual Tax Increment paid by the Project and any payments made pursuant to the Developer's guarantee under section B.4(a) of this Agreement in each such year.

6. Tax Agreement. Developer shall execute and deliver to the City for recording with the Dane County Register of Deeds the Tax Agreement attached as Attachment J.

7. Waiver of Right to Challenge Assessed Value. Developer and the Project Owner hereby waive the right to contest or challenge any assessed valuation of the Property that is equal to or greater than the "Total Valuation" for the applicable assessment year set forth on Attachment K, as may be amended by Section B 4(b) above. Developer and the Project Owner hereby agree that such assessment is reasonable and waive any and all rights to appeal such

assessment. This waiver shall apply until Tax Increment District No. 5 is terminated, or until 2017, whichever is sooner.

**C. DEVELOPMENT INCENTIVE PAYMENTS.**

The City shall provide development incentive grant funding to Developer in the amount of \$568,000, less the amount of the City Contribution. The resulting amount shall be paid to Developer in four equal installment payments, one installment upon each of the following milestones: (i) completion of building foundations; (ii) completion of all building roofs and exterior walls so that buildings are fully enclosed; (iii) all building mechanicals are installed; (iv) Developer has received Developer's final construction draws from Developer's lenders. The City shall not pay the development incentive grant funding using funds borrowed on a tax-exempt basis.

**D. REPRESENTATIONS AND WARRANTIES.**

Developer and Project Owner warrant that Developer's and Project Owner's execution, delivery and performance of this Agreement have been duly authorized and do not conflict with, result in a violation of, or constitute a default under any provision of Developer's or Project Owner's articles of organization or membership agreements, or any agreement or other instrument binding upon Developer or Project Owner, or any law, governmental regulation, court decree, or order applicable to Developer, Project Owner or to the Property.

**E. CONDITIONS PRECEDENT TO TID AGREEMENT OBLIGATIONS.**

All of the following events must occur before this Agreement, and the obligations imposed on the parties by this Agreement, shall become effective.

1. The RDA, City, and Developer must approve and execute this Agreement and the Remediation Agreement, and the Project Owner must approve and execute this Agreement.

2. Developer shall provide commitment letters demonstrating it has secured sufficient financing to pay for the Project, as required by the Offer. In addition, Developer's lender(s), other than Dane County, shall provide a letter or other writing acceptable to the City, stating that such lenders will provide to the City, prior to the RDA's conveyance of the Property to the Project Owner, a written agreement acceptable to the City, consenting to the City's levy under Section B. 5 of this Agreement of a special assessment in the amount of \$610,753, and waiving all rights to notice and hearing related to the special assessment. The parties understand and agree that one purpose of such agreement is to obtain the lender(s)'s waiver of any right to challenge the validity or priority of the special assessment.

3. The conditions precedent to remediation obligations in section 4 of the Remediation Agreement must be satisfied.

4. The RDA must acquire title to the Property pursuant to the Commercial Offer to Purchase.

5. The conditions precedent to Developer's (or Project Owner's) obligation to purchase the Property pursuant to the Offer must be satisfied.

#### F. GENERAL CONDITIONS.

1. No Vested Rights Granted. Except as provided by law, or as expressly provided in this Agreement, no vested rights to develop the Project shall inure to Developer by virtue of this Agreement. Nor does the City warrant that Developer is entitled to any other approvals required for development of the Property or construction of the Project as a result of this Agreement.

2. No Waiver. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City, the RDA and Developer, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults. Any party's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by another party hereto.

3. Amendment/Modification. This Agreement may be amended or modified only by a written amendment approved and executed by the RDA, the City, Developer and the Project Owner.

4. Remedies upon Default. A default is defined herein as a party's breach of, or failure to comply with, the terms of this Agreement and the failure to cure such breach within thirty (30) days after the date of written notice from the non-defaulting party. The parties reserve all remedies at law or in equity necessary to cure any default or remedy any damages or losses under this Agreement. Rights and remedies are cumulative, and the exercise of one or more rights or remedies shall not preclude the exercise of other rights or remedies. The Project Owner reserves the right, but not the obligation, to cure any default by the Developer hereunder.

5. Entire Agreement/Appendices Incorporated. This written Agreement and the attachments hereto, the Remediation Agreement, and the Commercial Offer to Purchase shall constitute the entire Agreement between Developer and the City as of the date hereof.

6. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the invalid part, term, or provision was never part of the Agreement.

7. Binding Effect. The obligations of Developer under this Agreement shall be binding on its successors and assigns and shall inure to the benefit of the RDA and the City and their successors and assigns.

8. Immunity. Nothing contained in this Agreement constitutes a waiver of the City's or the RDA's sovereign immunity under applicable law.

9. Notice. Any notice required or permitted by this Agreement shall be deemed effective when personally delivered in writing, or faxed, as follows:

To Developer: David Porterfield  
Movin' Out, Inc.  
600 Williamson Street  
Madison, WI 53703  
Fax: 608/819-0623

With a copy to: Douglas Buck  
Foley & Lardner, LLP  
150 East Gilman Street  
Madison, WI 53703  
Fax: 608/258-4296

To the City: City Clerk  
City of Stoughton  
381 East Main Street  
Stoughton, WI 53589  
Fax: 608/873-5519

With a copy to: Matthew P. Dregne  
Stafford Rosenbaum LLP  
222 West Washington Avenue, Suite 900  
P.O. Box 1784  
Fax: 608/259-2600

To Project Owner: NEF Assignment Corporation  
120 South Riverside Plaza, 15th Floor  
Chicago, IL 60606  
Attn: Senior Vice President – Asset Manager

10. Recordation. The City or RDA may record a copy of this Agreement, or a memorandum thereof, in the office of the Dane County Register of Deeds.

11. Personal Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by any party arising out of this Agreement shall be deemed to be proper only if such action is commenced in Circuit Court for Dane County unless it is determined that such Court lacks jurisdiction. Developer hereby consents to personal jurisdiction in Dane County. Developer also expressly waives the right to bring such action in, or to remove such action to, any other court whether state or federal, unless it is determined that the Circuit Court for Dane County lack jurisdiction.

12. Ratification. Developer hereby approves and ratifies all actions taken to date by the City and the RDA, and their officers, employees and agents in connection with the District, and in connection with the zoning and other approvals relating to the Property and the Project.

13. Compliance with Laws. Developer shall comply with all federal, state and local laws with respect to the Project, including but not limited to laws governing building and construction, the environment, nondiscrimination, and employment and contracting practices, to the extent they are applicable.

14. No Partnership. The City and RDA do not, in any way or for any purpose, become a partner, employer, principal, agent or joint venturer of or with Developer.

15. Good Faith. All parties to this Agreement shall exercise good faith in performing any obligation that party has assumed under the terms of this Agreement including, but not limited to, the performance of obligations that require the exercise of discretion and judgment.

16. Applicable Law. This Agreement shall be construed under the laws of the state of Wisconsin.

17. No Private Right or Cause of Action. Nothing in this Agreement shall be interpreted or construed to create any private right or any private cause of action by or on behalf of any person not a party hereto.

18. Effective Date. This Agreement shall be effective as of the date and year first written above.

19. Term. This Agreement shall continue in full force and effect until such time as Developer's obligations under Sections B.1. through B.7. (inclusive) of this Agreement have been fully satisfied, at which point this Agreement shall terminate and be of no further force or effect. At that time, if this Agreement has been recorded the parties shall jointly execute and record a release of the Agreement.

20. Construction of Agreement. Each party participated fully in the drafting of each and every part of this Agreement. This Agreement shall not be construed strictly in favor of or against any party. It shall be construed simply and fairly to each party.

21. Counterparts. This Agreement may be executed in one or more counterpart copies, each of which so executed, irrespective of the date of execution and delivery, which may be by facsimile, shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first set forth above, and by so signing this Agreement, certify that they have been duly authorized by their respective entities to execute this Agreement on their behalf.

CITY OF STOUGHTON  
Dane County, Wisconsin

By \_\_\_\_\_  
Donna Olson, Mayor

ATTEST:

\_\_\_\_\_  
Maria P. Hougan, Deputy City Clerk

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, the above-named Donna Olson, Mayor, and Maria P. Hougan, Deputy City Clerk, of the City of Stoughton, to me known to be the persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers by the City's authority.

Subscribed and sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

REDEVELOPMENT AUTHORITY OF THE  
CITY OF STOUGHTON  
Dane County, Wisconsin

By \_\_\_\_\_  
Dan Kittleson, Chairman

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, the above-named Dan Kittleson, Chairman of the Redevelopment Authority of the City of Stoughton, to me known to be the person and offices who executed the foregoing instrument and acknowledged that he executed the same as such officer by the Redevelopment Authority of the City of Stoughton.

Subscribed and sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

**DEVELOPER:**  
MOVIN' OUT DEVELOPMENT LLC.  
By Movin' Out, Inc.  
Its sole member

By \_\_\_\_\_

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010 the above named \_\_\_\_\_, to me known to be the person who executed the foregoing acknowledged that he executed the same on behalf of Movin' Out, Inc., and Movin' Out Development LLC.

Subscribed and sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

**PROJECT OWNER:**  
MOVIN' OUT STOUGHTON LLC.  
By MOVIN' OUT STOUGHTON MM LLC,  
Its sole member

By \_\_\_\_\_

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010 the above named \_\_\_\_\_, to me known to be the person who executed the foregoing acknowledged that he executed the same on behalf of Movin' Out Stoughton, and Movin' Out Stoughton MM LLC.

Subscribed and sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

Drafted by and approved as to Form:

\_\_\_\_\_  
Matthew P. Dregne  
City Attorney

Attachments:

- A – Commercial Offer to Purchase Dated April 1, 2010
- B – Description of Joint Stormwater Basin
- C – Description of Eighth Street Expansion and Storm Sewer Addition
- D – Description of Public Water Main Onsite and in Eighth Street
- E – Description of River Bank Restoration Work.
- F – Prevailing Wage Rate Determination
- G – Certified Survey Map
- H – Tax Increment Guarantee
- I – Form of Corporate Guarantee
- J – Form of Tax Agreement
- K – Tax Increment Pro Forma
- L – Utility Easement Exhibits

**ATTACHMENT A**

**COMMERCIAL OFFER TO PURCHASE DATED APRIL 1, 2010**

**ATTACHMENT B**  
**DESCRIPTION OF JOINT STORMWATER BASIN**

**ATTACHMENT C**

**DESCRIPTION OF EIGHTH STREET EXPANSION AND STORM SEWER ADDITION**

**ATTACHMENT D**

**DESCRIPTION OF PUBLIC WATER MAIN ON SITE AND IN EIGHTH STREET**

**ATTACHMENT E**

**DESCRIPTION OF RIVER BANK RESTORATION WORK**

**ATTACHMENT F**  
**PREVAILING WAGE RATE DETERMINATION**

**ATTACHMENT G**  
**CERTIFIED SURVEY MAP**

**ATTACHMENT H**  
**TAX INCREMENT CASH FLOW**

**ATTACHMENT I**  
**FORM OF CORPORATE GUARANTEE**

**ATTACHMENT J**  
**FORM OF TAX AGREEMENT**

**ATTACHMENT K**  
**TAX INCREMENT PRO FORMA**

**ATTACHMENT L**  
**UTILITY EASEMENT EXHIBITS**