

## **ENVIRONMENTAL REMEDIATION AGREEMENT**

This Environmental Remediation Agreement (“Agreement”) is made and executed as of the \_\_\_\_ day of \_\_\_\_\_, 2010, by and between CITY OF STOUGHTON REDEVELOPMENT AUTHORITY (“Seller”) and MOVIN’ OUT DEVELOPMENT LLC (“Buyer”).

### **RECITALS**

WHEREAS, Seller and Buyer (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 Exhibit A) regarding the purchase by Buyer from Seller of certain real property located at 623 Eighth Street, Stoughton, Wisconsin, as more specifically described in the document attached hereto as Exhibit A (the “Property”); and

WHEREAS, it has come to Seller’s and Buyer’s attention that certain conditions at the Property, as identified in the Remedial Action Options Report prepared by Ayres Associates dated August 27, 2010 and approved by the Wisconsin Department of Natural Resources on October 19, 2010 (the “Remedial Action Report”) (a copy of which is attached hereto as Exhibit B) may require remediation in order to satisfy all applicable laws for redevelopment of the Property for residential use; and

WHEREAS, pursuant to the Offer, Seller and Buyer have agreed to enter into a Development Agreement (“TID Agreement”) regarding the terms of the redevelopment of the Property, and this Environmental Remediation Agreement (the “Agreement”) regarding the remediation of the Property.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the covenants, agreements and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Remedial Investigation. Seller engaged an environmental consulting firm to complete contamination assessment activities on the Property and prepare a Remedial Action Report. The Remedial Action Report identified areas of the Property where the soil contains levels of polycyclic aromatic hydrocarbons (“PAH”), lead, and arsenic that exceed the non-industrial direct contact residual contaminant levels (“RCL”) identified in Chapter NR 720 of the Wisconsin Administrative Code. The Remedial Action Report also identified isolated areas of the Property where the soil contains levels of PAHs, lead, and arsenic that exceed industrial direct contact RCLs under the same chapter. The Remedial Action Report further identified an isolated area in the northern portion of the Property where the soil contains a level of benzene above the RCL mandated in Chapter NR 720 (collectively, the “Conditions”). Ayres Associates stated in the Remedial Action Report that remediation of these Conditions on the Property is required to prevent direct human contact with near surface soil contamination. The proposed

remediation activities include removing and properly disposing of contaminated soil from isolated areas of the Property, as well as excavating contaminated soil from other areas of the Property, reusing it as backfill on the Property and capping the backfilled areas.

2. Remediation Activities. The remediation activities associated with the Property shall be divided into three categories, as follows:

- (i) cap construction, which is defined as the construction of all buildings, parking lots, and other impermeable surfaces on the Property that will serve as caps for contaminated soil, in accordance with Buyer's proposed development plan for the Property, a drawing of which is currently being prepared by Vierbicher and preparation and compliance with a Cap Maintenance Agreement to be entered into with the Wisconsin Department of Natural Resources ("WDNR") ("Category (i) Activities");
- (ii) all remediation activities, excluding Category (i) Activities, described at pages 10-13 of the Remedial Action Report as the preferred alternative, or Alternative 2 – Hot Spot Soil Removal and Capping ("Category (ii) Activities"); and
- (iii) any other remediation activities (excluding Category (i) and Category (ii) Activities), needed to satisfy all applicable legal requirements for redevelopment of the Property for residential use, and obtain a Conditional Case Closure determination from the WDNR, or any other agency with jurisdiction over the Conditions, stating that no further investigation, remediation or monitoring is necessary with respect to the Property ("Category (iii) Activities"). For purposes of satisfying the terms of this Agreement, the only acceptable conditions on the Conditional Case Closure determination are performance of the Category (i) Activities, listing of the property on the GIS database of sites with residual soil contamination, and any other reasonable but currently unforeseen condition to which Buyer consents. Buyer shall not unreasonably withhold its consent to other reasonable conditions of closure.

These three categories are hereinafter referred to collectively as "Remediation." Buyer understands and agrees that the Conditional Case Closure determination issued by the WDNR, or any other agency with jurisdiction over the Conditions, may require listing of the Property on the state's GIS database of sites with residual soil contamination and may require current and future owners of the Property to enter into a Cap Maintenance Agreement, which requires the owner to maintain all of the capped areas of the property, and properly manage and/or dispose of any contaminated soils that may be disturbed in the course of future use or development of the Property. Buyer hereby agrees to enter into such a Cap Maintenance Agreement with WDNR, or any other agency with jurisdiction over the Conditions, and maintain the caps for as long as it owns or controls the Property. Buyer further agrees that neither the GIS listing nor the Cap Maintenance Agreement shall have any effect on Buyer's willingness to purchase the Property, or on the purchase price of the Property.

3. Wisconsin Department of Commerce Grant. Seller has applied to the Wisconsin Department of Commerce for Blight Elimination and Brownfield Redevelopment funds (“BEBR Funds”) to address the Conditions at the Property. Any BEBR funds awarded to Seller shall be used as follows:

- (a) Seller may use any or all of the BEBR Funds to complete the Category (ii) and Category (iii) Activities;
- (b) If Seller discovers that the BEBR Funds will be insufficient to pay for the completion of all Category (ii) and Category (iii) Activities, Seller shall notify Buyer in writing as soon as practicable. Buyer shall not be obligated to purchase the Property under the terms of the Offer unless and until Seller completes the Category (ii) and (Category iii) Activities. After providing such notice, Seller, in its sole discretion, and notwithstanding the provisions of section 6. (a) of this Agreement, may discontinue all Category (ii) and Category (iii) Activities. Seller shall be given 180 days from the date of the notice to seek additional funding for the project. Buyer shall not be permitted to withdraw or terminate the Offer, the TID Agreement, or this Agreement unless and until the 180-day period has expired, and Seller has been unable to secure sufficient funding to complete the Category (ii) and Category (iii) Activities. If Seller is unable to secure additional funding in that 180-day period, Buyer has the express right to withdraw or terminate the Offer, the TID Agreement and this Agreement. If Seller secures sufficient funding to complete all Category (ii) and Category (iii) Activities within 180 days, Seller shall resume the Remediation of the Property pursuant to this Agreement as soon thereafter as practicable; and
- (c) If any BEBR Funds remain after all Category (ii) and Category (iii) Activities have been completed and paid for, Seller agrees to reimburse Buyer with any remaining BEBR Funds (to the extent permitted by the terms and conditions of the BEBR grant program or any contract between Seller and the grantor) for Buyer’s expenses associated with the completion of the Category (i) Activities or installation of deep foundations (“geopiers”) on the Property. When requesting reimbursement of such expenses Buyer shall provide Seller with proof satisfactory to Seller of such expenses.

4. Conditions Precedent to Remediation Obligations. All of the following events must occur before this Agreement, and the Remediation obligations imposed on the parties by this Agreement, shall become effective:

- (a) Seller must be awarded a minimum of \$200,000 in BEBR Funds;
- (b) Environmental Consultant must receive written approval from WDNR to implement the “preferred alternative” (Alternative 2) as set forth in the Remedial Action Report;

- (c) Seller must close on its purchase of the Property from Donald D. Wahlin, DDW Enterprises, and STI Holdings, Inc.

5. Environmental Consultant. Seller hereby agrees to engage Ayres Associates, or another environmental consulting firm reasonably acceptable to and approved in writing by Buyer, (“Environmental Consultant”) to conduct and/or supervise the Performance of all Category (ii) and Category (iii) activities on the Property. Buyer accepts Seller’s identification of Ayres Associates as an acceptable environmental consulting firm for any and all Category (ii) and Category (iii) Activities.

6. Timing of Category (ii) and Category (iii) Activities. Seller is aware that time is of the essence with respect to the Remediation of the Property, and agrees to:

- (a) Complete all Category (ii) Activities within 60 days of Seller’s closing on its acquisition of the Property, plus any delays allowed under the terms of the construction contract with the soil remediation contractor, and subject to the limitations in section 3.(b) of this Agreement;
- (b) Commence, diligently pursue and complete as soon as practicable any and all Category (iii) Activities; and
- (c) Upon completion of all Category (ii) and Category (iii) Activities, Seller will provide Buyer with a copy of the report prepared by Environmental Consultant for submittal to WDNR, or any other agency with jurisdiction over the Conditions, summarizing the Category (ii) and Category (iii) Activities, and stating that in Environmental Consultant’s professional judgment, the Property will meet the applicable standards for residential use after completion of the Category (i) Activities by the Buyer.

7. Remediation Costs. Seller and the Environmental Consultant have entered into the agreement for professional services attached as Exhibit C. Seller shall be responsible for and shall directly pay all costs of Category (ii) and Category (iii) Activities, excepting the Environmental Consultant costs paid by Buyer under the next sentence. Buyer shall be responsible for and shall directly pay all costs of Category (i) Activities, and shall reimburse Seller for the Environmental Consultant costs Seller incurs under Exhibit C, excluding the cost of preparing bid specifications, up to a maximum total reimbursement of \$39,650. At the time Seller conveys the Property to Buyer or Buyer’s successor or assign, Buyer or Buyer’s successor or assign shall reimburse Seller for all Environmental Consultant costs due under Exhibit C at the time of closing, excepting the cost of preparing bid specifications, up to \$39,650. Buyer shall reimburse Seller for all remaining Environmental Consultant costs under Exhibit C that become due after closing, excepting the cost of preparing bid specifications, upon request, up to a total reimbursement for all Environmental Consultant costs under Exhibit C of \$39,650.

8. Completion of Remediation. Upon acquisition of the Property, Buyer shall complete all Category (i) Activities and request from WDNR, or any other agency with jurisdiction over the Conditions, a final Conditional Case Closure determination, stating that no further investigation, remediation or monitoring is necessary with respect to the Property. Seller

agrees to reasonably cooperate with Buyer to enable Buyer to obtain such closure determination, including reliance upon the work performed by the Environmental Consultant.

9. Control of Remediation. Subject to the limits and obligations upon Seller and Buyer as stated herein, Seller and Buyer agree that Seller shall reasonably control and lead any and all Category (ii) and Category (iii) Activities on the Property and that Buyer shall reasonably control and lead any and all Category (i) Activities on the Property. Seller and Buyer shall conduct the Remediation of the Property in a manner consistent with applicable federal, state, and/or local law. In addition:

- (a) Seller and Buyer shall perform, or cause to be performed, all of their obligations under this Agreement in good faith and in compliance with all applicable environmental laws, in a good, safe, and workmanlike manner.
- (b) Seller and Buyer shall obtain or cause to be obtained all necessary permits, licenses, certificates, or other approvals required in connection with the performance of their obligations hereunder.
- (c) Seller shall permit no mechanics, materialmen, laborers, environmental, or other liens to be made or imposed upon the Property as a result of the performance of its obligations hereunder.

10. The Parties' Obligations Regarding Progress of Remediation. Seller shall keep Buyer apprised of the progress and performance of any Category (ii) and Category (iii) Activities, and Buyer shall keep Seller apprised of the progress and performance of any Category (i) Activities, including, without limitation, providing periodic reports on the activities performed and providing copies of all testing results and copies of all notices, documents, or correspondence that it may receive from any governmental agency with regard to any matter subject to this Agreement as well as responses to such correspondence. Each party shall provide the other party with copies of all correspondence, documents, reports or other non-privileged written communication to any governmental agency with regard to any matter subject to this Agreement at the same time such communication is sent to the agency.

11. Governing Law. This Agreement shall be construed and interpreted according to the internal laws of the State of Wisconsin.

12. Entire Agreement. This Agreement, the Offer, and the Agreement to Undertake Development in City of Stoughton Tax Increment District No. 5, constitute the entire understanding and agreement of the parties with respect to the subject matter hereof.

13. Agreement Not Limited. This Agreement is not limited by any other agreement between the Seller and any other party including but not limited to the "Option to Purchase" between Seller and Donald D. Wahlin, DDW Enterprises, and STI Holdings, Inc. (a copy of which is attached hereto as part of Exhibit A).

14. Amendment. Seller and Buyer may amend, modify, and supplement this Agreement only in writing.

15. Assignment. Buyer may assign this its rights and benefits under Agreement to Movin' Out Stoughton LLC and in that event Movin' Out Stoughton LLC shall assume Buyer's rights and obligations under this Agreement.

16. Waiver. No delay or omission by any party hereto in exercising any right or power hereunder shall impair any such right or power or be construed to be a waiver thereof, unless such waiver is set forth in a written instrument duly executed by the party granting such waiver. A waiver by any party hereto of any of the covenants, conditions or agreements hereof to be performed by any other party shall not be construed as a waiver of any succeeding breach of the same or any other covenant, agreement, restriction, or condition hereof.

17. Further Assurance. The parties agree to execute any further documents and to take any further actions as may be reasonable and appropriate in order to carry out the purposes and intent of this Agreement.

18. Notices. All notices, requests, demands and other communications hereunder shall be given in accordance with the "Delivery of Documents and Written Notices" provision in the Commercial Offer to Purchase dated April 1, 2010, a copy of which is attached hereto as Exhibit A. In addition, the parties agree to send by first class mail copies of all notices, requests, and demands to: NEF Assignment Corporation, 120 South Riverside Plaza, 15th Floor, Chicago, IL 60606 Attn: Senior Vice President – Asset Manager.

19. Construction. 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.

20. 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 undersigned have executed this Agreement as of the date above written.

CITY OF STOUGHTON REDEVELOPMENT  
AUTHORITY

By \_\_\_\_\_  
Dan Kittleson, Chair

MOVIN' OUT DEVELOPMENT LLC

By \_\_\_\_\_  
Its \_\_\_\_\_