

Res 147

# Contract Cover Sheet

*Note: Shaded areas are for County Executive review.*

Department <b>Exec/Office of Economic Development</b>	Contract/Addendum #: <b>13183</b>																				
1. This contract, grant or addendum: <input checked="" type="checkbox"/> AWARDS <input type="checkbox"/> ACCEPTS	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%;">Contract</th> <th style="width: 50%;">Addendum</th> </tr> <tr> <td colspan="2" style="text-align: center; font-size: small;">If Addendum, please include original contract number</td> </tr> <tr> <td><input type="checkbox"/> POS</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Grant</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Co Lease</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Co Lessor</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Intergovernmental</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Purchase of Property</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Property Sale</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Other</td> <td><input type="checkbox"/></td> </tr> </table>	Contract	Addendum	If Addendum, please include original contract number		<input type="checkbox"/> POS	<input type="checkbox"/>	<input type="checkbox"/> Grant	<input type="checkbox"/>	<input type="checkbox"/> Co Lease	<input type="checkbox"/>	<input type="checkbox"/> Co Lessor	<input type="checkbox"/>	<input type="checkbox"/> Intergovernmental	<input type="checkbox"/>	<input type="checkbox"/> Purchase of Property	<input type="checkbox"/>	<input type="checkbox"/> Property Sale	<input type="checkbox"/>	<input type="checkbox"/> Other	<input type="checkbox"/>
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<input type="checkbox"/> Other	<input type="checkbox"/>																				
2. This contract is discretionary <input type="checkbox"/> Yes <input type="checkbox"/> No																					
3. Term of Contract or Addendum: <b>8/17/17 - 3/31/2113</b>																					
4. Amount of Contract or Addendum:																					
5. Purpose: <b>Collateral Assignment of Lease: Madison on Broadway</b>																					
6. Vendor or Funding Source: <b>Madison on Broadway LLC</b>																					
7. MUNIS Vendor Code:																					
8. Bid/RFP Number:																					
9. If grant: Funds Positions? <input type="checkbox"/> Yes <input type="checkbox"/> No Will require on-going or matching funds? <input type="checkbox"/> Yes <input type="checkbox"/> No																					
10. Are funds included in the budget? <input type="checkbox"/> Yes <input type="checkbox"/> No																					
11. Account No. & Amount, Org & Obj. _____ Amount \$ <u>384,000</u> Account No. & Amount, Org & Obj. _____ Amount \$ _____ Account No. & Amount, Org & Obj. _____ Amount \$ _____																					
12. If this contract awards funds, a purchase requisition is necessary. Enter requisition # & year _____																					
13. Is a resolution needed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please attach a copy of the Resolution. If Resolution has already been approved by the County Board, Resolution No. & date of adoption <u>2017 RES 147</u>																					
14. Does Domestic Partner equal benefits requirement apply? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																					
15. Director's Approval:																					

Contract Review/Approvals				Vendor
Initials	Ftnt	Date In	Date Out	Vendor Name
<u>MG</u> Received	_____	<u>8/10/17</u>	_____	<b>Madison Broadway</b> Contact Person  Phone No.  E-mail Address
<u>MB</u> Controller	_____	<u>8/11/17</u>	<u>8/11/17</u>	
<u>CC</u> Corporation Counsel	_____	<u>8/10/17</u>	<u>8/10/17</u>	
<u>AB</u> Risk Management	_____	<u>8/10/17</u>	<u>8/10/17</u>	
<u>Cac</u> Purchasing	_____	<u>8/10/17</u>	<u>8/10/17</u>	
_____ County Executive	_____	_____	_____	

**Footnotes:**

- 1.
- 2.

<b>Return to:</b> Name/Title: Dave Phillips Phone: 608-267-4114 E-mail Address: phillips@countyofdane.com	Dept.: OED Mail Address: CCB, RM 421
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**Certification**

The attached contract: *[check as many as apply]*

- conforms to Dane County's standard Purchase of Services Agreement form in all respects
- conforms to Dane County's standard Purchase of Services Agreement form with modifications and is accompanied by a revision copy<sup>1</sup>
- is a non-standard contract which has been reviewed or developed by corporation counsel and which has not been changed since that review/development
- is a non-standard contract previously review or developed by corporation counsel which has been changed since that review/development; it is accompanied by a revision copy<sup>1</sup>
- is a non-standard contract not previously reviewed by corporation counsel; it is accompanied by a revision copy
- contains non-standard/indemnification language which has been reviewed or developed by risk management and which has not been changed since that review/development
- contains non-standard insurance/indemnification language which has been changed since review/development or which has not been previously seen by risk management; it is accompanied by a revision copy
- contains non-standard affirmative action/equal opportunity language which has been reviewed or developed by contract compliance and which has not been changed since that review/development
- contains non-standard affirmative action/equal opportunity language which has been changed since the earlier review/development by contract compliance or which has not been previously seen by contract compliance; it is accompanied by a revision copy<sup>1</sup>

Date: 08/10/2017

Signed: 

Telephone Number 264-4006


Print Name: DAVID B. PHILLIPS

**Major Contracts Review (DCO Sect. 25.20)** This review applies only to contracts which both exceed \$100,000 in disbursements or receipts and which require county board review and approval.

**Executive Summary** (attach additional pages, if needed).

1. **Department Head**  Contract is in the best interest of the County.  
Describe any deviations from the standard contracting process and any changes to the standard Purchase of Services Form Agreement.

Date: 08/10/2017

Signature: 


2. **Director of Administration**  Contract is in the best interest of the County.  
Comments:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

3. **Corporation Counsel**  Contract is in the best interest of the County.  
Comments:

Date: 8/10/2017

Signature: 

<sup>1</sup> A revision copy is a copy of the contract which shows the changes from the standard contract or previously revised/developed contract by means of overstrikes (indicating deletions from the standard language) and underlining (showing additions to the standard language).

## COLLATERAL ASSIGNMENT OF LEASE

THIS COLLATERAL ASSIGNMENT OF LEASE (the "**Assignment**") is made effective as of \_\_\_\_\_, 2017, by and among **MADISON ON BROADWAY, LLC**, a Wisconsin limited liability company, whose principal office is located at \_\_\_\_\_ ("**Borrower**"), **WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY**, a Wisconsin public body corporate and politic, whose principal office is located at 201 West Washington Avenue, Suite 700, Madison, Wisconsin 53703 ("**Lender**"), and the **COUNTY OF DANE**, a political and geographic subdivision of the State of Wisconsin, whose principal address is \_\_\_\_\_ (the "**County**"), (collectively referred to as "**Parties**") (individually as "**Party**").

### RECITALS

**WHEREAS**, Borrower is the owner of a 48-unit family and special needs multifamily housing rental development known as Madison on Broadway (the "**Project**"), and more particularly described on Exhibit A attached to this Assignment (the "**Mortgaged Property**");

**WHEREAS**, the County and Borrower have entered into a Lease, dated as of \_\_\_\_\_, 2017 (the "**Lease**"), which, among other things, sets forth the terms and conditions for Borrower to lease Unit Two of the Madison on Broadway Condominium (the "**Leased Premises**");

**WHEREAS**, on \_\_\_\_\_, 2017, Lender made a loan to Borrower in the original aggregate principal amount of \$8,000,000.00 (the "**Loan**"). The proceeds of the Loan were, and will continue to be, used to finance the Project, and were used to construct the Leased Premises prior to its sale to the County. The Loan is secured by, among other things, a Multifamily Mortgage, Assignment of Rents and Security Agreement, dated \_\_\_\_\_, and recorded on \_\_\_\_\_, as Document No. \_\_\_\_\_, in the Office of the Register of Deeds for Dane County, Wisconsin, (the "**Mortgage**"); and

**WHEREAS**, pursuant to the terms of the Loan Agreement, dated \_\_\_\_\_, between Borrower and Lender (the "**Loan Agreement**"), Lender requires that the County consent to this Assignment, and that Borrower enter into this Assignment as a condition of obtaining the Loan and the release of the Leased Premises from the Mortgage.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

### AGREEMENT

1. **Recitals.** The foregoing recitals are adopted by the Parties, incorporated herein by reference and made a part of this Assignment.

2. **Assignment.** As a condition of obtaining the Loan and the release of the Leased Premises from the Mortgage, Borrower hereby assigns, grants, and conveys to Lender all of its rights, title, and interest under the Lease. The Parties agree that such assignment is being done solely for the purpose of securing all payments and obligations of Borrower in relation to the Loan and all Loan obligations of Borrower for construction purposes or other purposes in relation to the development or use of the Property, and that Lender will not exercise its rights under this Assignment unless Borrower is in default under the terms and conditions of any Loan Documents (as defined below), this Assignment, or any other obligation secured by this Assignment.

3. **Payment and Performance.** Borrower agrees to pay to Lender all amounts owed to Lender that are secured by this Assignment in a timely manner, and Borrower agrees to strictly perform (1) all of Borrower's obligations under this Assignment; (2) all of Borrower's obligations under the Lease; and (3) all of Borrower's obligations under any agreements between Borrower and Lender associated with, or related to, the Loan (collectively, the "**Loan Documents**" as such term is defined in the Loan Agreement).

4. **Notice.** Borrower agrees that at no time shall Borrower be in default under the terms and conditions of the Lease, and in the event that Borrower shall be in default of the Lease, or any default under the Lease is about to take place, Borrower agrees to immediately notify Lender. In the event that Borrower shall be in default of the Lease, the County shall notify Lender pursuant to Section 17 below, and shall give Lender a reasonable opportunity to either step into the Lease, or cure such default on account of Borrower.

5. **Warranties and Representations by Borrower.** Borrower hereby represents and warrants that as of the date of signing this Assignment, the following:

- a. **Right to Assign.** Borrower has full right and approval from the County to assign the Lease for collateral purposes.
- b. **No Prior Assignment.** Borrower has not conveyed or previously assigned any right under the Lease prior to entering into this Assignment.
- c. **No Further Transfer.** Borrower will not sell, assign, encumber, or otherwise dispose of any of Borrower's rights in the Lease other than those issued in this Assignment; notwithstanding the foregoing, Borrower may sublease the Premises as contemplated in the Loan Documents or as otherwise approved of in writing in advance by Lender.

6. **Warranties and Representations By Borrower and the County.** Borrower and the County individually hereby represent and warrant that as of the date of signing this Assignment (a) the Lease is in full force and effect in accordance with their terms and (b) there is no existing default by Borrower or the County under the Lease and no event has occurred which, with the passage of time or giving of notice, or both, would constitute a default by Borrower or the County under the Lease. Borrower and the County individually further represent that attached hereto as Exhibit B is a true, correct and complete copy of the Lease.

7. **Lender's Right to Step in to the Lease.** Lender shall have the right, but not the obligation, at any time upon a default by Borrower under the Loan Documents, this Assignment, or the Lease, to perform Borrower's duties and receive Borrower's benefits under the Lease with the County with respect to the Leased Premises. In the event of a default by Borrower under the Lease, Lender shall be given a reasonable opportunity to cure any default by Borrower under the terms of the Lease, all on the same terms and conditions as Borrower. Lender may engage any agent or agents as Lender may deem appropriate to carry out the terms and conditions of the Lease.

8. **Modification of Lease.** County and Borrower agree that they shall not modify, amend, or terminate the Lease without the prior written consent of Lender.

9. **Lender's Right to Confer with the County.** Lender shall have the right at any time, even though no default may have occurred under this Assignment or the Lease, to confer with the County to determine whether, to the County's knowledge, any default has occurred in relation to Borrower's performance under the Lease.

10. **Consent by the County.** County hereby consents to this Assignment so long as Lender does not exercise its rights to assume the Lease until such time as either: (a) Lender is notified of an actual default under this Assignment or the Lease; or (b) Lender has declared a default under any of the Loan Documents. Upon the occurrence of (a) or (b) in the preceding sentence, Lender shall have the right and authority to assume all rights of Borrower under the Lease. In such event, the County shall, upon request by Lender, execute an amendment to the Lease naming Lender as Tenant, as such term is defined in the Lease.

11. **Legal Expenses.** If any legal action or other proceeding between Lender and Borrower is brought for the enforcement of this Assignment, or because of an alleged or actual dispute, breach, default or misrepresentation between Lender and Borrower in connection with any provision of this Assignment, and Lender shall be successful in the enforcement of this Assignment, Lender shall be entitled to recover from Borrower reasonable attorneys' fees and other costs incurred in such action or proceeding in addition to any other relief to which it may be entitled.

12. **No Waiver.** The failure of Lender to insist upon any one or more instances of strict performance of any of the terms of this Assignment or to institute any action, including the rights and privileges granted to it shall not be construed as a waiver of such terms.

13. **Binding Effect.** This Assignment binds and inures to the benefit of the Parties and their respective successors and permitted assigns, as the case may be.

14. **Termination.** This Assignment shall terminate upon Borrower's repayment in full of all amounts due and owing to Lender under the Loan Documents.

15. **Governing Law and Venue.** This Assignment has been negotiated and executed in the State of Wisconsin and shall be governed by and interpreted and construed in accordance with the laws of the State of Wisconsin. In the event of any dispute, the venue of any litigation shall be the Circuit Courts of Dane County, Wisconsin.

16. **Right to Record Memorandum of Assignment.** The Parties agree that Lender may execute a Memorandum of Assignment on behalf of the Parties, in a form as set forth in Exhibit C attached to this Assignment, and cause the Memorandum of Assignment to be recorded with the Register of Deeds of Dane County. Upon the termination of this Assignment, or the termination of the Lease, at the request of any Party, Lender will execute a document in recordable form, amending or terminating the Memorandum of Assignment as applicable.

17. **Notice of Default.** Upon a default by Borrower under the Lease or under any of the Loan Documents, and prior to the County, or Lender enforcing any remedy against Borrower that would have a material adverse effect on the County, or Lender except in the case of an emergency, the County, in the case of a default under the Lease, shall endeavor in good faith to notify Lender; and Lender, in the case of a default under any of the Loan Documents, shall endeavor in good faith to give notice to the County. The County, and Lender shall then discuss the specifics of the default and the alternative remedies that may be available to address the default in light of the relevant facts and circumstances. In connection with any such effort that involves Lender assuming any obligations under the Lease, the County shall in good faith carefully consider granting any reasonable request from Lender to further amend the Lease so that no defaults exist under the Lease at the time of assumption.

Notices of default shall be given to the County and Lender at the following addresses:

County: Dane County Department of Workforce & Economic Development  
Attn: Director  
City-County Building, Rm. 421  
210 Martin Luther King Jr., Bvd.  
Madison, WI 53703

Lender: Wisconsin Housing and Economic Development Authority  
Attn: General Counsel  
201 West Washington Avenue, Suite 700  
Madison, WI 53703-2727

In either case, with copy to:

Borrower: Madison on Broadway, LLC  
Attn: Executive Director  
902 Royster Oaks Drive, Suite 105  
Madison, WI 53714

18. **Multiple Counterparts.** This Assignment may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK;  
SIGNATURE PAGE FOLLOWS]**

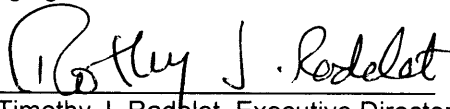
**EACH PARTY ACKNOWLEDGES THAT THEY HAVE CAREFULLY READ AND FULLY UNDERSTAND ALL OF THE PROVISIONS OF THIS ASSIGNMENT.**

*IN WITNESS HEREOF*, the parties have hereunto set their hands the day and year first above written.

**BORROWER:**

MADISON ON BROADWAY, LLC,  
a Wisconsin limited liability company

By: Madison on Broadway MM, LLC,  
a Wisconsin limited liability company  
its Managing Member

By:   
Timothy J. Radelet, Executive Director  
of Movin' Out, Inc.

**LENDER:**

Wisconsin Housing and Economic  
Development Authority

By: \_\_\_\_\_  
Sean O'Brien, Director, Commercial Lending

**COUNTY OF DANE:**

By: \_\_\_\_\_  
Janis L. Zimmerman, Real Estate Coordinator

**EXHIBIT A**

**Legal Description of Mortgaged Property**

[INSERT]

**EXHIBIT B**

**Copy of Lease**



**EXHIBIT C**

**Form of Memorandum of Collateral Assignment of  
Lease**

**See attached six (6) pages**

MEMORANDUM OF  
COLLATERAL ASSIGNMENT  
OF LEASE

Document Number

Document Title

Recording Area

Name and Return Address

Legal Services  
Wisconsin Housing and Economic  
Development Authority  
P.O. Box 1728  
Madison, WI 53701-1728

Parcel Identification Number (PIN)  
See Exhibit A attached

## MEMORANDUM OF COLLATERAL ASSIGNMENT OF LEASE

THIS MEMORANDUM OF COLLATERAL ASSIGNMENT OF LEASE (the "**Memorandum**") is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between **MADISON ON BROADWAY, LLC**, a Wisconsin limited liability company, ("**Borrower**"), **WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY**, a Wisconsin public body corporate and politic, ("**Lender**"), and the **COUNTY OF DANE**, a political and geographic subdivision of the State of Wisconsin, (the "**County**") (collectively referred to as "**Parties**") (individually as "**Party**").

Borrower is the owner of Unit 1 of the Madison on Broadway Condominium, located at \_\_\_\_\_, Madison, Dane County, Wisconsin (the "**Project**"), and more particularly described on Exhibit A attached to this Memorandum (the "**Mortgaged Property**").

County, as landlord, and Borrower, as tenant have entered into a Lease, dated \_\_\_\_\_, 2017, for Unit Two of the Madison on Broadway Condominium, more particularly described on Exhibit B attached to this Memorandum (the "**Premises**"), which, among other things, sets forth the terms and conditions for Borrower to lease the Premises from the County (the "**Lease**").

Pursuant to a Collateral Assignment of Lease (the "**Assignment**"), of even date herewith, by and between the Parties, Borrower has assigned all right title and interest under the Lease to Lender, and the County has consented to such assignment.

Pursuant to the Assignment, the Parties have agreed that this Memorandum may be recorded by Lender, and requires only the signature of Lender.

Original copies of the Assignment are in possession of the Parties. The Assignment contains other terms not herein set forth but which are incorporated by reference herein. This Memorandum is executed for the purpose of placing parties dealing with the Mortgaged Property on notice of the existence of the Assignment. Additional information concerning the terms of the Assignment can be obtained from the Parties, at the following addresses:

Borrower:	Madison on Broadway, LLC Attn: Executive Director 902 Royster Oaks Drive, Suite 105 Madison, WI 53714
Lender:	Wisconsin Housing and Economic Development Authority Attn: General Counsel 201 West Washington Avenue, Suite 700 Madison, WI 53703-2727
County:	Dane County Department of Workforce & Economic Development Attn: Director City-County Building, Rm. 421 210 Martin Luther King Jr., Bvd. Madison, WI 53703

This Memorandum is intended for recording purposes only, and does not modify, supersede, add to, or change all or any of the terms of the Lease or the Assignment in any respect.

[Signatures on Following Page]

**IN WITNESS HEREOF**, Lender has hereunto set its hands the day and year first above written.

**LENDER:**

Wisconsin Housing and Economic  
Development Authority

By: \_\_\_\_\_  
Sean O'Brien  
Director, Commercial Lending

STATE OF WISCONSIN        )  
  ) ss  
COUNTY OF DANE         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, the above-named Sean O'Brien, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Kathleen A. Kober  
Notary Public, State of Wisconsin  
My Commission expires: May 8, 2020

**COUNTY:**

COUNTY OF DANE

By: \_\_\_\_\_  
Janis L. Zimmermann  
Real Estate Coordinator

STATE OF WISCONSIN     )  
  ) ss  
COUNTY OF DANE        )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, the above-named Janis L. Zimmermann, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission expires: \_\_\_\_\_

**BORROWER:**

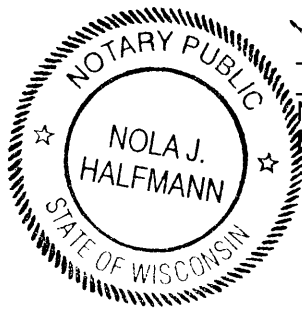
Madison on Broadway, LLC

By: Madison on Broadway MM, LLC,  
a Wisconsin limited liability company  
its Managing Member

By: *Timothy J. Radelet*  
Timothy J. Radelet, Executive Director  
of Movin' Out, Inc.

STATE OF WISCONSIN        )  
  ) ss  
COUNTY OF DANE         )

Personally came before me this 9<sup>th</sup> day of August, 2017, the above-named Timothy J. Radelet, to me known to be the person who executed the foregoing instrument and acknowledged the same.



*Nola J. Halfmann*  
*Nola J. Halfmann*  
Notary Public, State of Wisconsin  
My Commission expires: 12-11-2020

**EXHIBIT A**  
**TO**  
**MEMORANDUM OF COLLATERAL ASSIGNMENT OF LEASE**  
**Legal Description of Mortgaged Property**



**EXHIBIT B**  
**TO**  
**MEMORANDUM OF COLLATERAL ASSIGNMENT OF LEASE**

**Legal Description of Premises**