

Res 147

# Contract Cover Sheet

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

Department <b>Exec/Office of Economic Development</b>	Contract/Addendum #: <b>13182</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;">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>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
Received	_____	<u>8/10/17</u>	_____	<b>Madison Broadway</b> Contact Person  Phone No.  E-mail Address
Controller	_____	<u>8/11/17</u>	<u>8/11/17</u>	
Corporation Counsel	_____	<u>8/10/17</u>	<u>8/10/17</u>	
Risk Management	_____	<u>8/10/17</u>	<u>8/10/17</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: 08/17/2017

Signed: 

Telephone Number 266-4006


Print Name: DAVID B. RAKIPS

**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: 08/18/2017

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).

## LEASE

In consideration of the mutual promises and covenants contained in this Lease, dated as of \_\_\_\_\_, 2017, County of Dane, Wisconsin (the "Landlord") and Madison on Broadway, LLC, a Wisconsin limited liability company (the "Tenant") agree as follows:

1. PREMISES. Landlord agrees to lease to Tenant, and Tenant agrees to lease from Landlord, Unit Two (the "Premises") of Madison on Broadway Condominium (the "Condominium"). Tenant acknowledges that the Condominium is to be governed by a certain Declaration of Condominium of Madison on Broadway Condominium (the "Condominium Declaration").

2. CONDITION OF PREMISES. Tenant acknowledges and agrees that Tenant is leasing the Premises "AS IS", and Landlord makes no warranties, express or implied, as to fitness, merchantability, use or condition of the Premises. Tenant leases the Premises without representation or warranty of Landlord, express or implied, in fact or by law, and without recourse, with respect to: (a) the condition of the Premises and (b) the ability to use the Premises for any particular purpose.

3. COMMON ELEMENTS. Tenant shall be entitled to the reasonable nonexclusive use of the common elements of the Condominium appurtenant to the Premises. Tenant's use of such common elements shall be subject to the terms of the Condominium Declaration.

4. TERM. The Lease term shall commence upon the date hereof and shall terminate on March 31, 2113.

5. RENT. Tenant has paid to Landlord on the date hereof the sum of Twenty Dollars (\$20) as rent for the Premises for the entire Lease term.

6. UTILITIES AND SERVICES. Tenant shall pay when due all charges for all utilities used in the Premises.

7. USE. The Premises may be used and occupied for any lawful use. The Premises may not be used as an accessory use to the residential component of the Condominium. The Premises shall be a separate use. Tenant will not use the Premises in any manner that may increase the insurance risk or prevent the

obtaining of insurance. It is the intent of Tenant to sublease the Premises to a third party, which Landlord hereby acknowledges.

8. **MAINTENANCE AND REPAIR.** Tenant shall, at its expense, keep and maintain in good order, condition and repair the Premises.

9. **COVENANTS.**

(a) **Compliance with Laws.** Tenant agrees to comply with all laws, orders, ordinances and regulations and with any direction made pursuant to law of any public officer, relating to Tenant's use of the Premises.

(b) **Surrender.** Tenant agrees upon the termination of this Lease for any reason to remove Tenant's personal property and trade fixtures and those of any other persons claiming under Tenant, and to quit and deliver up the Premises to Landlord peaceably and quietly in as good order and condition as the same are at the commencement of this Lease or thereafter may be improved by Tenant, reasonable use and wear, fire and other casualty loss excepted.

(c) **Personal Property Taxes.** Tenant agrees to pay, before delinquency, any and all taxes levied or assessed and which become payable during the Lease term upon Tenant's equipment, furniture, fixtures and other personal property located in the Premises.

(d) **Real Estate Taxes and Assessments.** Tenant agrees to pay, before delinquency, any and all real estate taxes and special assessments levied or assessed and which become payable during the Lease term upon the Premises.

(e) **Signage.** Tenant may place any signs on the exterior of the Premises provided they comply with applicable municipal ordinances.

(f) **Expenses of Operating the Premises.** Tenant shall, at its expense, obtain any and all services related to the operation of the Premises that it desires, including without limitation the provision of janitorial services, furniture, and supplies necessary for operation of the Premises in compliance with Section 7 hereof.

(g) **Financing.** Landlord shall not finance the Premises or otherwise encumber its interest in the Premises without Tenant's prior written consent. Tenant shall have the right to encumber its leasehold interest in the

Premises and execute and deliver a collateral assignment hereof in connection with any such financing, and Landlord agrees to execute such consent to collateral assignment as Tenant's lender may reasonably require.

10. INSURANCE. During the Lease term, Tenant shall keep in full force and effect, at its expense: (a) a policy of commercial general liability insurance covering the Premises, with a combined single limit of not less than \$1,000,000; and (b) insurance against fire, vandalism, malicious mischief and such other perils as are from time to time included in a "special form" property insurance policy, insuring Tenant's merchandise, trade fixtures, furnishings, equipment and all other items of personal property of Tenant located on or within the Premises, in an amount not less than their full replacement value. Tenant's commercial general liability insurance policy shall name Landlord and Tenant as insureds. A copy of the paid-up policies evidencing such insurance or certificates of insurers shall be delivered to Landlord prior to the commencement date of this Lease and upon renewals not less than 30 days prior to the expiration of such coverage. The property insurance for the Premises shall be maintained in accordance with the requirements of the Condominium Declaration.

11. DAMAGE OR DESTRUCTION. In case of damage to the Premises by fire, vandalism, malicious mischief or any other casualty, the Premises may be repaired or rebuilt in accordance with the requirements of the Condominium Declaration.

12. INDEMNIFICATION. Tenant shall defend and indemnify Landlord and save it harmless from and against any and all liability, damages, costs and expenses, including reasonable attorneys' fees, arising from any negligence or willful misconduct of Tenant or its officers, members, contractors, licensees, agents, servants, employees, guests, invitees, visitors or subtenants in or about the Premises.

13. IMPROVEMENTS AND ALTERATIONS. Tenant may make, at any time and from time to time, any alterations or improvements ("Improvements") to the Premises it desires including, without limitation, alterations to Improvements previously made by Tenant. All Improvements shall be made at Tenant's sole cost and expense. Tenant shall obtain all necessary permits, and Landlord shall cooperate as needed by Tenant to obtain said permits; further, Tenant shall provide Landlord with copies thereof. Tenant shall promptly repair any damage and perform any necessary cleanup resulting from any Improvements. All Improvements (except trade fixtures, furniture and equipment

belonging to Tenant) in existence upon termination of this Lease shall be Landlord's property and shall remain upon the Premises, all without compensation to Tenant. Tenant agrees not to create, incur, impose or permit any construction liens against the Premises by reason of any Improvement and Tenant agrees to hold Landlord harmless from and against any such lien claim. At its expense, Tenant shall cause to be discharged, within thirty days of the filing thereof, any construction lien claim filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to, or on behalf of Tenant.

14. EMINENT DOMAIN. In the event the entire Premises is lawfully condemned or taken in any manner for any public or quasi-public use or purpose, or sold or conveyed in lieu of condemnation, this Lease shall terminate as of the date of such taking or conveyance. In the event only a portion of the Premises is taken or conveyed, the Premises shall be repaired or rebuilt in accordance with the requirements of the Condominium Declaration. Landlord shall be entitled to all awards payable to Landlord for its fee interest in the Premises resulting from a taking, and Tenant shall be entitled to all awards payable to Tenant for its leasehold interest in the Premises resulting from a taking including, without limitation, moving expenses, the cost of any Improvements made by Tenant to the Premises and losses incurred by Tenant as a result of the taking; provided however that Landlord and Tenant agree that all such condemnation proceeds shall be applied first to rebuilding and restoring any damage to the Premises as a result of such condemnation. Landlord hereby covenants and agrees that it will not use any taking or eminent domain powers and authority it may have to initiate or pursue condemnation with respect to the Premises during the Term, except that the County may exercise its condemnation powers or authority pursuant to section 32.05 of the Wisconsin Statutes to facilitate the construction, relocation, widening, or make any other improvement to any alley, street, road, highways, or other public right-of-way.

15. ASSIGNMENT AND SUBLETTING. Tenant may assign this Lease and/or sublet all or any portion of the Premises, without Landlord's consent, upon such terms as Tenant desires. Landlord acknowledges that Tenant may charge its subtenants higher rents than the rent that Tenant is paying under this Lease. Landlord shall have no right to any profits made by Tenant as a result of Tenant subletting all or any portion of the Premises.

16. DEFAULT.

(a) Defaults. If Tenant (i) fails to pay any installment of rent or other charges hereunder when due and such default is not cured within five days after receipt of written notice thereof from Landlord, or (ii) fails to perform any other covenant, term, agreement or condition of this Lease and such default is not cured within 30 days after receipt of written notice thereof from Landlord (unless the default is of a nature that it cannot be cured within 30 days, in which event Tenant must commence the cure within the 30-day period and diligently prosecute same to completion) then Landlord, in addition to all other rights and remedies available to Landlord at law or in equity or by other provisions hereof, may immediately re-enter the Premises and remove all persons and property and, at Landlord's option, terminate this Lease or terminate Tenant's right to possession of the Premises without terminating the Lease. Tenant further agrees that in case of any such termination Tenant will indemnify Landlord against all damages which Landlord may incur by reason of such termination including, without limitation, reasonable attorneys' fees.

If Tenant shall default in the observance or performance of any term or covenant of this Lease, or if Tenant shall fail to pay any sum of money, other than rent required to be paid by Tenant hereunder, Landlord may, without waiving or releasing Tenant, remedy such default at the expense of Tenant after notice and expiration of any applicable cure period. If Landlord makes any expenditures or incurs any obligations for the payment of money in connection with Tenant's default including, but not limited to, reasonable attorneys' fees, Tenant shall pay to Landlord as additional rent such sums paid or obligations incurred, with costs and interest at the rate of 12% per year.

Any cure of any default by Tenant made or tendered by any Investor Member (defined below) of the Tenant shall be deemed to be a cure by the Tenant and shall be accepted or rejected on the same basis as if made or tendered by the Tenant.

(b) Unpaid Sums. Any amounts owing from Tenant to Landlord under this Lease shall bear interest at the annual rate of 12% calculated from the date due until the date of payment.

17. **ESTOPPEL CERTIFICATE**. Within fourteen (14) days after written request from Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate in form and content reasonably acceptable to Landlord. Within fourteen (14) days after written request from Tenant, Landlord

shall execute, acknowledge and deliver to Tenant an estoppel certificate in form and content reasonably acceptable to Tenant.

18. **OPTION TO PURCHASE.** Landlord acknowledges and agrees that Tenant shall have the Option to Purchase the Premises for a purchase price (the "Purchase Price") of Three Hundred Eighty-Four Thousand dollars even (\$384,000.00) (the "Option"). The option contained herein shall be exercisable by Tenant at any time after January 1, 2026, until the end of the Lease term. The Option shall be deemed exercised if and when Tenant notifies Landlord in writing (the "Exercise Notice") of Tenant's election to exercise the Option. The date, if any, upon which Tenant exercises the Option shall be called the "Exercise Date." The closing on the sale of the Premises to Tenant ("Closing") shall occur on the date set forth in the Exercise Notice, which date shall be no sooner than 30 days but no later than 90 days after the Exercise Date. Tenant shall have the right assign its rights to acquire the Premises under this section to an affiliate by providing written notice to Landlord prior to Closing.

19. **RIGHT OF FIRST REFUSAL.** Tenant shall have a right of first refusal to purchase the Premises, upon the terms and conditions set forth in this Section 19 (the "Right of First Refusal"). If Landlord receives a bona fide offer to purchase the Premises from a third party purchaser (the "Offer") whether or not solicited, prior to accepting such Offer, Landlord shall deliver a complete and accurate copy of the Offer to Tenant, together with a written statement to the effect that Landlord intends to accept the Offer if Tenant does not exercise its rights hereunder (the "Offer Notice"). If Tenant desires to purchase the Premises, it shall be on substantially the terms and conditions set forth in the Offer, except that the price shall be lesser of (i) the Purchase Price stated in Section 18 above; and (ii) the price set forth in the Offer, and Tenant shall notify Seller in writing within thirty (30) days following Tenant's receipt of the Offer Notice. If Buyer fails to exercise its Right of First Refusal pursuant to this Section, the Premises may be sold, transferred or assigned pursuant to the Offer to a bona fide third-party purchaser subject to the terms of this Lease, and Tenant's Right of First Refusal shall remain in full force and effect after such a transfer and binding on the transferee. Notwithstanding the foregoing, if a transfer pursuant to an Offer presented to Tenant does not close, or if the Offer is later materially amended, then the Tenant's Right of First Refusal shall survive and the Landlord must comply with this Section as to any new or amended Offers. For the purposes of this Section, a material amendment to an Offer shall include, but not be limited to, any adjustment in the purchase price under the Offer or any extension in the time for closing under the Offer by more than thirty (30) days. In the event the Landlord receives an Offer which is not a bona fide, arms-length or unrelated, third party



offer, or otherwise transfers the Premises to a related party or pursuant a non-arms-length transaction, then such transfer shall be made subject to this Lease and Tenant's Right of First Refusal shall remain in full force and effect after such a transfer and binding on the transferee. Tenant shall have the right assign its rights to acquire the Premises under this section to an affiliate by providing written notice to Landlord prior to Closing.

20. QUIET ENJOYMENT. Landlord covenants that if Tenant shall pay the rent and observe and perform all the terms, covenants and conditions of this Lease on its part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises subject to the terms and conditions of this Lease.

21. CONDOMINIUM OBLIGATIONS AND RIGHTS ASSIGNED TO TENANT. All rights (other than approval related to the sale of the Premises) and obligations of the Landlord pursuant to the Condominium Declaration are hereby assigned by Landlord and assumed by Tenant, including without limitation the right to vote and the obligation to pay assessments levied by the Condominium.

22. AFFORDABILITY REQUIREMENTS. Landlord and Tenant acknowledge that Tenant owns Unit 1 of the Condominium (the "Residential Unit") and intends to operate a multifamily residential rental development therein. In consideration of the terms and provisions of this Lease, Tenant covenants to Landlord that Tenant will maintain the Residential Unit in accordance with the occupancy restrictions set forth in the Land Use Restriction Agreement for Low Income Housing Tax Credits to be executed by Tenant in favor of the Wisconsin Housing and Economic Development Authority with respect to the Residential Unit ("WHEDA LURA") during the term thereof, it being acknowledged and agreed that the Residential Unit affordability restrictions contained in this Lease shall terminate upon the expiration or earlier termination of the WHEDA LURA. A violation of the WHEDA LURA, as determined by WHEDA in its reasonable discretion, shall be deemed an event of default by Tenant of this Lease.

23. REPORTING REQUIREMENTS. Tenant shall provide to Landlord an annual written report which shall, at a minimum, include the following information: number of tenants, how many sub-units in the Residential Unit are rented to tenants with household incomes at 60%, 50% and 30% of Area Median Income ("AMI" as determined by the U.S. Department of Housing and Urban Development), the number of eviction actions filed, the reason for eviction, the number of eviction notices, issued to the tenants in the twelve months preceding the eviction filing, the number of eviction judgments granted, writs executed,

and/or other case resolution (e.g. vacated prior to execution of writ or allowed to stay with conditions) in a form supplied by the County, and any other information that may affect the status of the Premises or would be necessary for determining tenants compliance with the terms, covenants, and conditions of this Agreement. The eviction report described in this section shall be due to the COUNTY no later than January 15 and shall reflect the period from January 1 to December 31 of the previous calendar year.

### 23. MISCELLANEOUS PROVISIONS.

(a) Successors and Assigns. This Lease shall inure to and be binding upon Landlord and Tenant and their respective successors and assigns.

(b) Non-waiver. Waiver by Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition of this Lease.

(c) Entire Agreement. This Lease contains all covenants and agreements between Landlord and Tenant relating to the Premises. No prior agreements or understandings pertaining thereto shall be valid or of any force or effect. This Lease shall not be altered, modified or amended except in writing signed by Landlord and Tenant.

(d) Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

(e) Memorandum. At the request of either party, Landlord and Tenant shall execute, acknowledge, and deliver a Memorandum of Lease, which shall be in recordable form, provide public notice of the principal terms hereof, including but not limited to the Option and Right of First Refusal.

(f) Notices. All notices which Landlord or Tenant may be required, or may desire, to serve on the other may be served by personal service or by mailing by registered or certified mail, postage prepaid, at such address as the parties may from time to time designate to the other in writing. In addition, any notice sent by Landlord or by Tenant pursuant to this Lease shall also be sent to Tenant's investor member (the "Investor Member") at:

WNC Housing, L.P.

17782 Sky Park Circle  
Irvine, CA 92614  
Attention: Michael J. Gaber

The time of rendition of such notice shall be deemed to be the time when the notice is delivered to or rejected by the recipient.

In Witness Whereof, the parties hereto have executed this Lease as of the date first set forth above.

LANDLORD:

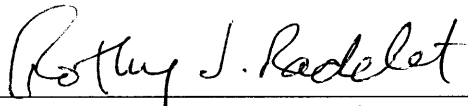
COUNTY OF DANE, WISCONSIN

BY \_\_\_\_\_  
Janis L. Zimmermann, Real Estate  
Coordinator

TENANT:

MADISON ON BROADWAY, LLC

By: Madison on Broadway MM, LLC  
Its: Managing Member

BY  \_\_\_\_\_  
Timothy J. Radelet, Executive  
Director of Movin' Out, Inc.