
DEVELOPMENT AGREEMENT

by and among

THE CITY OF MADISON, WISCONSIN, and

FOURTEEN02 PARK, LLC and MOVIN' OUT, INC.

EXHIBITS

- Exhibit A Legal Description of the Project Parcel
- Exhibit B Cedar Street Extension
- Exhibit C Property Purchase Agreement
- Exhibit D Form of Housing Land Use Restriction
- Exhibit E Form of Grocery Land Use Restriction

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”), dated as of this ___ day of _____, 2021 (the “Effective Date”), is made by and among the CITY OF MADISON, a Wisconsin municipal corporation (the “City”), and FOURTEEN02 PARK, LLC, a Wisconsin limited liability company (the “Owner”), and Movin’ Out, Inc., a Wisconsin nonstock corporation (“MOI”).

RECITALS

WHEREAS, the City owns certain real property more fully described on Exhibit A as the “Property”;

WHEREAS, the City has selected Owner to develop the Property, less the Cedar Street Extension (as defined herein) (the “Project Parcel”), on the terms set forth in this Agreement;

WHEREAS, the Owner is indirectly controlled by MOI and Rule Enterprises, LLC;

WHEREAS, the City and Owner desire to cooperate in the development of the Property as a public-private project in accordance with the terms of this Agreement; and

WHEREAS, the parties hereby desire to enter into this Agreement to set forth the following terms and conditions related to the development of the Property.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

DEVELOPMENT OF THE PROJECT

Section 1.1. Development. The City and Owner will develop the Property in accordance with this Agreement and will cooperate with one another in connection therewith.

Section 1.2. Project Description. The development of the Property contemplated by this Agreement consists of two primary components: (1) the “Private Development” and (2) the “Cedar Street Extension” (together, the “Project”), with the Project anticipated to be comprised of several sub-components (each, a “Project Element”), as generally described below:

(a) Private Development. The Private Development shall consist of a two-unit condominium building with the following components to be constructed on the Property as defined below:

- (1) A grocery store of no less than twenty-four thousand (24,000) square feet, which may include such ancillary or complementary space for storage and office, related to the grocery use, and/or community room (the “Grocery” or the “Grocery Unit”);

(2) A housing component (the “Residential Unit”) comprising one hundred and fifty (150) apartments with ninety-four (94) income restricted units as follows: thirty (30) units restricted to residency by persons earning at or below thirty percent (30%) of the Dane County median income (“AMI”) (the “30% Units”); sixty-four (64) units restricted to residency by persons earning at or below fifty percent (50%) of the AMI (the “50% Units”). In addition, sixty (60) units restricted to residency by persons earning at or below eighty percent (80%) of the AMI (the “80% Units”). The final unit mix shall be determined based on an application to the City for Affordable Housing Funds and subsequent underwriting and approval by the City. Such City Funding shall apply to the 30% Units and the 50% Units (collectively the “AHF Units”).

(b) Cedar Street Extension. The Cedar Street Extension will consist of an east / west extension of Cedar Street along the northern boundary line of the Property, shown on Exhibit B. The City shall construct, or cause to be constructed, the Cedar Street Extension prior to the date that the Private Development is placed in service. It is agreed and understood that Owner intends to use the Cedar Street Extension as right of way access to the Project.

ARTICLE II

CONVEYANCE OF THE PROPERTY

Section 2.1. Real Estate Transfer.

(a) The City shall convey the Project Parcel to MOI at no cost (who in turn will contribute the Project Parcel to the Owner as a contribution to the Project), pursuant to the terms of a real estate purchase agreement which includes the material terms attached hereto as Exhibit C (the “Project Parcel Purchase Agreement”). The consummation of the purchase and sale of the Project Parcel shall occur pursuant to the terms of the Project Parcel Purchase Agreement and subject to the conditions set forth in Section 3.1 below (the “Project Parcel Closing”).

(b) The Cedar Street Extension shall be retained by the City as public right-of-way. The City shall enter into a public works contracts with a contractor of the City’s selection pursuant to a statutory bidding process for construction of the Cedar Street Extension. The City shall be responsible for all of the capital costs of the initial construction costs of the Cedar Street Extension, at the City’s sole expense.

(c) Upon completion of the Private Development, the Grocery Unit may be transferred, subject to the Grocery Restriction (defined below), by Owner to a third party to operate the Grocery, in which event, upon recording of a deed for the Grocery Unit, neither Owner nor MOI shall have any further obligations to the City with respect to compliance with the Grocery Restriction and the City’s sole recourse with respect to the Grocery Restriction shall be against the owner of the Grocery Unit, its tenants and occupants.

ARTICLE III

PROJECT FINANCING AND SECURITY

Section 3.1. Closing.

(a) At or before the Project Parcel Closing, and as a condition to the City's obligation to convey the Project Parcel to MOI, Owner, MOI and the City shall execute and deliver, as applicable, the following documents, or otherwise obtain necessary approvals as stated here:

- (1) Loan Agreement for Affordable Housing Fund proceeds as described below, subject to budgetary approval by the Common Council of the City of Madison in the year of closing. A thirty-year land use restriction applicable to the AHF Units in the Residential Unit, will be required by this document and recorded.
- (2) The Project Parcel Purchase and Sale Agreement.
- (3) Evidence of a reservation by the Wisconsin Housing and Economic Development Authority (“WHEDA”) of 4% housing tax credits for the Residential Unit in the Private Development.
- (4) A special warranty deed conveying the Project Parcel to MOI; together with a quit claim deed conveying the Project Parcel from MOI to the Owner.
- (5) Land use approvals required to commence construction of the Project.
- (6) Copies of the declaration of condominium and condominium plat (the “Condominium Documents”) to be recorded by Owner immediately following the deeds, which condominium documents shall establish the Grocery Unit and the Residential Unit.
- (7) Evidence of a five year lease with a commercial entity in the business of operating a grocery store in the Grocery Unit, or a purchase agreement whereby a third party operator agrees to purchase the Grocery Unit and operate it accordance with the Grocery Restriction.
- (8) A land use restriction on the Grocery Unit, requiring that a grocery store be in operation for ten (10) years in the Grocery Unit on the Project Parcel in the form of the attached Exhibit E (the “Grocery Restriction”). The Grocery Restriction shall be recorded against the Grocery Unit immediately after the Condominium Documents and prior to any project financing documents. Upon transfer of the Grocery Unit to a third party subject to the Grocery Restriction, Developer shall have no further obligations to the City in connection with the Grocery Unit or the Grocery Restriction.
- (9) A land use restriction on the Residential Unit, (the “Housing Restriction”) generally in the form attached hereto as Exhibit D. The Housing Restriction shall

be recorded against the Residential Unit immediately after the Condominium Documents and prior to any project financing documents.

Section 3.2. Summary of Funds for Project Development.

(a) A loan from the City to the Owner to support the AHF Units in the amount of up to Three Hundred Thousand Dollars (\$300,000) (the “City Funding”).

(b) Owner shall be responsible for all other costs of the Private Development and will obtain total debt and equity commitments necessary for completion of the Project Elements of the Private Development (the “Private Funding”), provided, however, the City hereby acknowledges and agrees that Owner shall not be responsible to provide Private Funding for buildout of the Grocery Unit. Beginning sixty (60) days before the Project Parcel Closing, within ten days of written notice to Owner, Owner shall provide the City with loan commitments or other documentary evidence in order to ensure sufficient funding exists for the completion of the Private Development.

ARTICLE IV

LAND USE APPROVALS; PERMITTING

Section 4.1. Land Use Approvals.

(a) Applications. As soon as reasonably possible after the Effective Date, Owner will submit application materials required under the City of Madison municipal code for zoning, urban design and any other municipal land use and development approvals required in order to undertake the Private Development (collectively, the “Land Use Approvals”).

(b) City Cooperation. The City will reasonably cooperate with Owner in processing the applications for Land Use Approvals in connection with the Private Development. This section does not obligate the City to make any application on behalf of Owner, bear responsibility for gaining approvals or removing zoning conditions for the Private Development, or alleviate Owner’s obligations under Section 4.1(a).

Section 4.2. Building and Construction Permits; Fees. Owner shall comply with all applicable City building codes and construction requirements and shall be responsible for obtaining all building permits with respect to construction of the Private Development and Owner shall pay the normal and customary City charges and shall be responsible for obtaining all building permits prior to such construction.

ARTICLE V

CONSTRUCTION OF PROJECT

Section 5.1. Cedar Street Extension. The Cedar Street Extension will be designed and constructed in accordance with the final design determined by the City.

Section 5.2. Private Development.

(a) Design. Owner shall (i) prepare and submit detailed plans and specifications for the Private Development for review and approval by the City in accordance with applicable City ordinances, (ii) shall be solely responsible for all pre-development costs associated with the Private Development, including, without limitation, architectural, engineering, planning and design fees, legal, accounting and other professional fees, and any, filing or other development fees, (iii) shall be solely responsible for the total cost and expense for the construction of its the Private Development;

(b) Bidding. No portion of the Private Development shall be construed as “public construction” and, as such, Owner shall not be required to comply with Wisconsin law governing public construction, including but not limited to Wis. Stat. §§ 62.15, 66.0901 and 779.14.

ARTICLE VI

CONTRACT COMPLIANCE PROVISIONS

The following provisions shall be incorporated in the City Funding documents, but Owner agrees and understands that in order to comply with these Contract Compliance Provisions, Owner must proceed in accordance with this Article VI in advance of execution of this Development Agreement. These requirements shall apply only to the design and construction of the Private Development.

Section 6.1. Accessibility Accommodations. Owner agrees to ensure the Private Development will be accessible to persons with physical disabilities in compliance with Section 39.05 of the Madison General Ordinances and the Americans with Disabilities Act, where applicable.

Section 6.2. Non-Discrimination. In the performance of their obligations hereunder, Owner agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. Owner further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity, or national origin.

Section 6.3. Ban The Box. Arrest and Criminal Background Checks. (Sec. 39.08, MGO. Applicable to contracts exceeding \$25,000.)

A. Definitions. For purposes of this section, “Arrest and Conviction Record” includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

“Conviction record” includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

“Background Check” means the process of checking an applicant’s arrest and conviction record, through any means.

B. Requirements. For the duration of this Agreement, the Owner shall:

1. Remove from all job application forms any questions, check boxes, or other inquiries regarding an applicant’s arrest and conviction record, as defined herein.
2. Refrain from asking an applicant in any manner about their arrest or conviction record until after conditional offer of employment is made to the applicant in question.
3. Refrain from conducting a formal or informal background check or making any other inquiry using any privately or publicly available means of obtaining the arrest or conviction record of an applicant until after a conditional offer of employment is made to the applicant in question.
4. Make information about this ordinance available to applicants and existing employees, and post notices in prominent locations at the workplace with information about the ordinance and complaint procedure using language provided by the City.
5. Comply with all other provisions of Sec. 39.08, MGO.

C. Exemptions: This section does not apply when:

1. Hiring for a position where certain convictions or violations are a bar to employment in that position under applicable law, or
2. Hiring a position for which information about criminal or arrest record, or a background check is required by law to be performed at a time or in a manner that would otherwise be prohibited by this ordinance, including a licensed trade or profession where the licensing authority explicitly authorizes or requires the inquiry in question.
3. The contractor is identified by the City as being subject to the Vulnerable Populations Resolution adopted by the Common Council on May 21, 1996 (Substitute Resolution No. 53, 279.)

To be exempt under sec. C. 1. or 2. above, Owner must demonstrate to the City that there is a law or regulation that requires the hiring practice in question. If so, the Owner is exempt from this section for the position(s) in question.

Section 6.4. Workforce Utilization. Owner agrees that, within thirty (30) days after the commencement of construction of the Private Development, Owner will provide to the City of Madison Affirmative Action Department certain workforce utilization statistics upon request, using a form to be furnished by the City.

If this Agreement is still in effect, or if the City enters into a new agreement with Owner, within one year after the date on which the form was required to be provided, Owner will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the City Affirmative Action Department no later than one year after the date on which the first form was required to be provided or within thirty (30) days after the form is provided by the City to Owner, whichever is later.

Owner further agrees that, for at least twelve (12) months after commencement of construction of the Private Development, it will notify the City of Madison Affirmative Action Department of each of its job openings at facilities in Dane County for which applicants not already employees of Owner are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. Owner agrees to interview and consider candidates referred by the Affirmative Action Department if the candidate meets the minimum qualification standards established by the Owner, and if the referral is timely. A referral is timely if it is received by Owner on or before the date stated in the notice.

Section 6.5. Affirmative Action. As used in this Section 6.5, the term "Owner" means Owner and all contractors and subcontractors who perform work on the Project. The Owner agrees and understands that an Affirmative Action Plan is required by this Agreement:

Article I

The Owner shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity, or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Owner. The Owner agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

Article II

The Owner shall in all solicitations or advertisements for employees placed by or on behalf of the Owner state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity, or national origin.

Article III

The Owner shall send to each labor union or representative of workers with which it has a collective bargaining Agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Owner's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

Article IV

(This article applies only to non-public works contracts.)

The Owner agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The Owner warrants and certifies that one of the following paragraphs is true (check one):

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 CFR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 CFR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.
- C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.*
- D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract takes effect is less than fifty thousand dollars (\$50,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.*

** Options C and D under Article IV are not available to the Owner under this Agreement.*

Article V

(This article is not applicable)

Article VI

The Owner will maintain records as required by Section 39.02 (9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

Article VII

In the event of the Owner's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action Provisions of this contract or Sections 39.02 and 39.03 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

1. Cancel, terminate or suspend this contract in whole or in part.
2. Declare the Owner ineligible for further City contracts until the Affirmative Action requirements are met.
3. Recover on behalf of the City from the prime Owner 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or ten thousand dollars (\$10,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Owner in the manner described above. The preceding sentence shall not be construed to prohibit a prime Owner from recovering the amount of such damage from the noncomplying subcontractor.

Article VIII

(This article is not applicable)

Article IX

The Owner shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE and WBE" shall be substituted for the term "small business" in this article.)

Section 6.6. Affirmative Action Definitions.

(a) Targeted Business Enterprise (TBE) shall mean any businesses certified by the Department of Civil Rights in one of the following categories: Section 3 enterprise, small business enterprise, minority business enterprise, women business enterprise, or disadvantaged business enterprise, as those terms are defined in MGO 39.02(9)(a)(9)-(12).

(b) Maximum Feasible Opportunity shall mean using good faith efforts in taking actions including, but not limited to, the items below, which shall be taken in the aggregate to the greatest extent possible:

- (1) Attendance at the pre-bid meeting.
- (2) Using the City of Madison's directory of TBEs to identify TBEs from which to solicit bids.
- (3) Assuring that TBEs are solicited whenever they are potential sources.
- (4) Referring prospective TBEs to the City of Madison Affirmative Action Division, Department of Civil Rights for certification.
- (5) Dividing total project requirements into smaller tasks and/or quantities, where economically feasible, to permit maximum feasible TBE participation.

(6) Establishing delivery schedules, where requirements permit, which will encourage participation by TBEs.

(7) Providing TBEs with specific information regarding the work to be performed.

(8) Contacting TBEs in advance of the deadline to allow such businesses sufficient time to prepare a bid.

(9) Utilizing the bid of a qualified and competent TBE when the bid of such a business is deemed reasonable (i.e., 5% above the lowest bidder), although not necessarily low.

(10) Contacting TBEs which submit a bid, to inquire about the details of the bid and confirm that the scope of work was interpreted as intended.

(c) Goal shall mean the percentage of the total value of construction of the Private Development contracted to TBE's set by DCR based on a schedule of values provided by Owner. Should the Owner meet the Goal, then the Owner shall be deemed to be in compliance with Section 6.5. For clarity, in the event that the Goal is not met, then compliance with Section 6.6(b) will be reviewed.

ARTICLE VII

INSURANCE

The parties shall purchase and maintain such insurance coverages as may be required by the parties' respective lenders and risk managers.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

Section 8.1. Representations and Warranties by the City. The City represents and warrants that:

(a) The City is a municipal corporation duly organized and existing under the laws of the State of Wisconsin. The City has the power to enter into this Agreement and carry out its obligations hereunder and provision has been made to pay the liability that will accrue under this Agreement.

(b) There is not pending, nor to the best of the City's knowledge after due inquiry is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder, or the validity or enforceability of this Agreement.

Section 8.2. Representations and Warranties by the Owner. Owner respectively represents and warrants that:

(a) As of the Effective Date, Owner:

(1) is a limited liability company organized and validly existing under the laws of the State of Wisconsin.

(2) has duly authorized the execution of this Agreement and the performance of its obligations hereunder, and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, is prevented, limited by or conflicts with or results in a breach of, any indebtedness, agreement or instrument of whatever nature to which Owner is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(3) There are no pending or threatened legal proceedings of which Owner has knowledge which seek to restrain or enjoin the transactions contemplated by this Agreement or which question the authority of Owner to execute and deliver this Agreement or the validity of this Agreement.

ARTICLE IX

EVENTS OF DEFAULT

Section 9.1. Notice and Opportunity to Cure. Whenever any party to this Agreement alleges a default by the other, the party alleging the default shall provide written notice to the other specifying the nature of the default and the actions necessary to cure the default. Subject to reasonable unavoidable delays, if the alleged default is not cured within thirty (30) days after the defaulting party's receipt of such notice, the non-defaulting party may take any one or more of the actions set forth below:

(a) The non-defaulting party may suspend its performance under this Agreement until it receives assurances from the defaulting party that the defaulting party will cure its default and continue its performance under this Agreement.

(b) The non-defaulting party may cancel and terminate this Agreement.

(c) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the non-defaulting party, including any actions to collect any payments due under this Agreement or to pursue any claims for monetary damages at law or to enforce performance and observance of any obligation, agreement, or covenant by the defaulting party under this Agreement.

The non-defaulting party may elect to take no such action, notwithstanding an event of default not having been cured within said thirty (30) day period. No notice of such election by the non-defaulting party shall be required.

Section 9.2. No Remedy Exclusive. No remedy hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right accruing upon any default shall impair any such right or shall be construed to be a waiver thereof, but any such right may be exercised from time to time and as often as may be deemed expedient.

Section 9.3. No Implied Waiver. In the event any provision contained herein should be breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any rights or remedies which the non-breaching party shall have and shall not be deemed a waiver of any subsequent default of any such terms, conditions and covenants to be performed hereunder.

Section 9.4. Duty to Provide Information. Each party shall have the obligation to communicate information upon the reasonable request of the other party where the information can reasonably be deemed necessary to ensure performance under this Agreement. Failure to comply with this section may be deemed a default under this Article IX. This section shall not apply to communications that are subject to attorney-client privilege or any other recognized privilege under the law.

ARTICLE X

ADDITIONAL PROVISIONS

Section 10.1. Amendments; Incorporation of Exhibits. As the parties continue work on the pre-development activities contemplated herein and prepare the various agreements referenced above in connection with the design, development, and financing of the Private Development, the parties will amend this Agreement to incorporate additional details, terms and conditions and the various agreements referenced above may be appended as exhibits to this Agreement. The parties may amend this Agreement, including but not limited to extending any deadlines, only by a written document agreed to by the parties.

Section 10.2. Consents and Approvals; Good Faith. Except for matters for which there is a standard of discretion specifically set forth herein, wherever this Agreement provides for a determination, decision, selection, consent, approval, acceptance, adoption, satisfaction, or other action, the parties hereto shall exercise good faith in undertaking such actions and shall not unreasonably withhold, condition or delay any determination, decision, selection, consent, approval, acceptance, adoption, satisfaction or other action that may be necessary to fully implement the terms of this Agreement.

Section 10.3. Conflict of Interests. No official or employee of the City directly working on this Agreement shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No official, or employee of any party to this Agreement shall be personally liable to any other party, or any of their respective successors in interest, in the event of any default or breach by a party to this Agreement for any amount which

may become due to any other party on any obligations under the terms of this Agreement, except in the case of willful misconduct.

Section 10.4. Restrictions on Use. In accordance with applicable law, the Owner shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Private Development, or any part thereof. This provision shall survive the termination of this Agreement.

Section 10.5. Broker's Commission. The parties acknowledge that no broker's commission or finder's fee is payable with regard to this transaction. Each party agrees to indemnify and hold the other harmless from and against all liability, claims, demands, damages, or costs of any kind arising from or connected with any broker's commission or finder's fee or other charge claimed to be due any person arising from the indemnifying party's conduct with respect to this transaction.

Section 10.6. Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.7. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, transmitted by facsimile, delivered by a recognized overnight carrier, or delivered personally to the following addresses:

If to Owner:	c/o Rule Enterprises Attn: Brandon Rule 1023 S. 26th Street Milwaukee, WI 53204 And c/o Movin' Out, Inc. Attn: Executive Director 902 Royster Oaks Drive, Suite 105 Madison, WI 53714
With a copy to:	Foley & Lardner, LLP Attn: Katherine Rist 150 East Gilman Street, Suite 5000 Madison, WI 53703
If to MOI:	Movin' Out, Inc. Attn: Executive Director 902 Royster Oaks Drive, Suite 105 Madison, WI 53714

unenforceable shall not be affected thereby and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 10.13. Intentionally Deleted.

Section 10.14. Inspection of Records. The City shall, from the date of this Agreement, have the right upon reasonable notice and during business hours to audit and inspect any and all records, contracts, financial statements, ledgers or written documents from, to or in the possession of Owner which relate to the Contract Compliance Provisions in Article VI as applicable to the construction of the Private Development and which are generated by the responsibilities of this Agreement. The City's rights hereunder shall apply to not only those records and documents that are within the physical control and custody of Owner but also any records, statements and documents that may be within the custody and control of third parties or generated by third parties in the performance of the obligations and responsibilities hereunder, including but not necessarily limited to the architect, contractor and all subcontractors of Owner.

ARTICLE XI

TERMINATION OF AGREEMENT

Section 11.1. Termination. This Agreement shall terminate upon the earlier of the following:

(a) In the event the conditions set forth in Section 3.1(a) are not satisfied, Owner shall have the option to terminate this Agreement upon written notice to the City.

(b) May 1, 2021 if the conditions stated in Sections 3.1 and 3.2 have not been satisfied unless the parties agree in writing to extend the time period for satisfying the conditions.

Section 11.2. Expiration. If not terminated pursuant to Article IX following an uncured default or Section 11.1 above, this Agreement shall expire upon the date the certificate of occupancy is received for the Private Development. No such termination shall terminate any indemnification or other rights or remedies arising hereunder due to any default which occurred and was continuing prior to such termination.

Section 11.3. Effect of Termination. Upon termination of this Agreement pursuant to this Article XI, this Agreement shall be null and void and, except for obligations that expressly survive termination, and no parties shall have any further obligations or liabilities hereunder. Upon such termination the Owner and the City shall deliver to each other such documents as may be necessary to evidence the termination of this Agreement.

Section 11.4. Authority. Each of the undersigned individuals signing this Agreement represent and warrant that they have the power and authority to sign this Agreement on behalf of the entity they represent.

(Signatures begin on next page.)

CITY OF MADISON, WISCONSIN,
a municipal corporation

By: _____
Satya Rhodes-Conway
Mayor

By: _____
Maribeth Witzel-Behl
City Clerk

APPROVED:

APPROVED AS TO FORM:

David P. Schmiedicke
Finance Director

Michael R. Haas, City Attorney

The execution of this Agreement by City officials was authorized by Enactment No. _____,
File No. _____, adopted _____, 2020.

[Signatures Continue on Following Page]

OWNER:

FOURTEEN02 PARK, LLC

By: Fourteen02 Park MM, LLC
Its: Managing Member

By: Rule Enterprises, LLC, Member

By: _____
Brandon Rule, Manager

By: Movin' Out Taxable, LLC, Member

By: Movin' Out, Inc., Sole Member

By: _____
Kathryne Auerback, Executive Director

MOI:

MOVIN' OUT , INC.:

By: Kathryne Auerback, Executive Director

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

A part of the Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Twenty-Six (26), Township Seven (7) North, Range Nine (9) East of the Fourth Principal Meridian, Dane County, Wisconsin, more particularly described as follows:

Beginning at point of intersection of the West line of South Park Street and South line of Cedar Street as shown in the Woodland Plat of the City of Madison extended Westerly; thence West along said Westerly prolongation of the South line of Cedar Street to a point 500 feet East of, measured at right angles to, the West line of Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Twenty-six (26), Township Seven (7) North, Range Nine (9) East of the Fourth Principal Meridian, Dane County, Wisconsin; thence South 250 feet on a line parallel to and 500 feet East of, measured at right angles to, said West line of Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of said Section Twenty-six (26); thence East on a line parallel and 250 feet south of, measured at right angles to, the said Westerly prolongation of the South line of Cedar Street to the West line of South Park Street; thence Northerly along said West line of Park Street to the point of beginning, containing 3.49 acres, more or less.

EXHIBIT B

CEDAR STREET EXTENSION

EXHIBIT C

PROPERTY PURCHASE AGREEMENT

1. Property. MOI, or its assigns (the “Buyer”) shall purchase, and the City of Madison (the “Seller”) shall sell and convey by Special Warranty Deed (the “Deed”), Seller’s right, title and interest in and to the Property as shown on Exhibit A, less the right-of-way that is designated for the Cedar Street Extension.
2. Effective Date. The “Effective Date” shall be the later date of execution of the Agreement by the Seller or the Buyer, as indicated on the signature page.
3. Purchase Price. Subject to the adjustments and prorations described in this Agreement, the total purchase price to be paid by Buyer to Seller for the Property is \$0 (the “Purchase Price”).
4. Breakage Fee. Within seven (7) days after the Effective Date, the sum of Twenty-Five Thousand Dollars (\$25,000) (the “Earnest Money”), in the form of Buyer’s check, shall be deposited with the Title Company as earnest money to be applied against the total Purchase Price on the Closing Date. If the purchase and sale under this Agreement fails to close due to the failure of any contingency due to Seller’s default, Buyer shall be entitled to a refund of all earnest money. If, however, such purchase and sale fails to close after all of the contingencies due to Buyer’s default, then Seller shall retain the earnest money as liquidated damages and Buyer shall have no further obligations or liabilities relating to this Agreement.
5. Due Diligence. Buyer will have one hundred twenty (120) days after the Effective Date (the “Due Diligence Deadline”) within which to conduct such due diligence activities as Buyer deems necessary to satisfy itself that the development is feasible and the Property can be used for Buyer’s Intended Use, including but not limited to performing an architectural, engineering, construction, and environmental review of the Property that is satisfactory to Buyer and Buyer’s engineers, architects, lenders, environmental consultants, and attorneys. Such review may include, but is not limited to, the right to conduct any desired tests and inspections of the Property. Buyer and its agents and representatives shall have the right to enter upon the Property to perform any and all inspections or testing of the Property, however, Buyer shall provide Seller with at least forty-eight (48) hours’ notice of entry onto the Property. Buyer shall repair at its cost any damage to the Property caused by the testing conducted by Buyer or its agents or representatives, and shall indemnify and hold Seller harmless from and against any damages that Buyer or its agents or representatives caused to the person or property of third parties during the course of inspections or tests permitted under this Agreement. If such review discloses any evidence of any condition that is not satisfactory to Buyer, Buyer shall have the option of: (a) declaring this Agreement null and void, in which case the Earnest Money shall be returned

to Purchaser and neither party shall have any further rights or duties to each other hereunder, or (b) giving Seller a period of twenty-one (21) days to cure such conditions.

Buyer will have until the expiration of the Due Diligence Deadline to obtain or review a survey of the Property and/or Real Property prepared by a registered Wisconsin land surveyor. The survey shall show sufficient information and detail to permit the Title Company to eliminate its standard survey exception from the title insurance policy. Buyer shall notify Seller in writing of any objection to the state of facts revealed by such survey. Seller shall have twenty-one (21) days following receipt of such objection to cure such objection.

6. Buyer Contingencies. If the Buyer timely terminates the Agreement as a result of any of the Buyer's contingencies, the Earnest Money shall be promptly refunded to the Buyer. In addition to the Due Diligence contingency above, Buyer shall have the following contingencies:
 - a. Land Use Approvals. Buyer will have until the Closing Date (the "Approvals Deadline") to receive all Municipal development and zoning approvals that Buyer deems necessary at Buyer's sole discretion to allow Buyer's Intended Use at the Property, including without limitation, obtaining any design, zoning approvals and utility agreements needed, with terms acceptable to Buyer.
 - b. Project Financing. Buyer will have ninety (90) days after the Effective Date (the "Financing Deadline") within which to receive all confirmations, awards, and approvals from lenders that Buyer deems necessary, at Buyer's sole discretion to allow Buyer to develop and construct the Property for its Intended Use, including but not limited to any approvals needed for loans from the Wisconsin Housing and Economic Development Authority.

The Buyer's Contingency Period may be extended upon written agreement of the parties.

7. Title Insurance. No later than fifteen (15) days after the Effective Date, Seller shall furnish and deliver to Buyer for examination an ALTA commitment for marketable title insurance on the Property issued by a responsible title insurance company, licensed by the State of Wisconsin, committing said title insurance company to issue title insurance to the Property by an owner's standard form ALTA policy (Form B) in the amount of the full Purchase Price, showing all liens, encumbrances and other matters of record, together with legible copies of all documents that appear as exceptions to title. Buyer shall have until the end of the Due Diligence Period to deliver to Seller written notice of objection to the condition of title. If Buyer fails to timely deliver such notice, then Buyer shall be deemed to have approved of the condition of title as shown by such commitment. Exceptions to title approved by Buyer hereunder shall be deemed to be Permitted Exceptions. If, within twenty-one (21) days following delivery of Buyer's notice of objection, Seller is unable to cure such defects, Buyer shall have the option either to:

- (a) Terminate this Agreement, in which case this Agreement shall be null and void, and Buyer shall be entitled to the expeditious return of its earnest money; or
- (b) Waive any defects of title and perform pursuant to the terms of this Agreement, notwithstanding any defects in title.

Buyer shall have the right to obtain an updated title commitment prior to Closing. If the updated title commitment shows any additional exceptions to title (other than the Permitted Exceptions), Buyer may provide Seller with written notice of objection to the condition of title prior to Closing, and Seller shall cure such defect within five (5) days of receiving written notice (and the Closing Date shall be extended by the same) or else Buyer may terminate the Agreement and receive a full refund of its earnest money.

All costs of providing such title commitment, and of issuing the title policy pursuant to such commitment, shall be borne by Seller and shall be paid at or before Closing. Seller shall provide a gap endorsement to the title policy, at Seller's expense. Buyer may obtain any other endorsements to the title policy, at Buyer's expense, and Seller agrees to cooperate in providing any information or documents reasonably required by the title company to obtain such endorsements.

The City represents and warrants to Buyer and MOI that, as of the date hereof, and as of the Closing Date, (1) there are no at- or above-grade structures or other improvements located on the Property; (2) all previously existing at- or above-grade structures and improvements were demolished by the City and that the City complied with the Environmental Protection Provisions set forth on Exhibit B of that certain Quitclaim Deed recorded on October 8, 2012, as Document Number 4920307, in the Register of Deed's Office for Dane County (the "Deed") in their entirety, including, but not limited to, performance of all required remediation and abatement described in Exhibit B, Sections 1 and 2 of the Deed, to permit residential occupation of the Property; 3) the City has no knowledge of any underground structures or other underground improvements on the Property; and 4) the City has no knowledge of any contamination on the Property or adjacent to the Property that existed (i) prior to the City taking fee simple title to the Property pursuant to the Deed that would necessitate the United States to perform remedial or corrective action as set forth in the Deed; or (ii) after the City took fee simple title to the Property.

8. Closing.

- a. The Closing shall take place at the Title Company within sixty (60) days after the satisfaction or waiver of the Financing Deadline. Notwithstanding the foregoing, Buyer shall have the right, with approval from the Seller but which approval is solely subject to establishing that Buyer is complying with the terms of this Agreement in good faith, to extend the Closing date by additional periods of up to thirty (30) days each by giving written notice of such extension to Seller, provided

however, that Closing shall occur no later than July 31, 2021. Such closing date is referred to herein as the "Closing Date."

- c. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by the Agreement.
- d. All real estate taxes with respect to the Property shall be prorated between the Buyer and the Seller as of the date of Closing based upon the latest known assessment and latest known mil rate.
- e. The Seller shall be responsible for any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the Property for any work commenced as of the date of Closing.

9. Survival of Warranties and Representations Indemnification. Any warranty, representation or agreement herein contained shall survive the Closing, and Seller shall indemnify Buyer from and against any and all costs, expenses, liabilities and damages, including attorney's fees, arising out of the breach of any such warranty, representation or agreement by Seller.

EXHIBIT D

HOUSING LAND USE RESTRICTION

This Land Use Restriction Agreement (the “Restriction”) is made and entered into on this ___ day of _____ 2021, by and between Fourteen02 Park, LLC, a Wisconsin limited liability company, or its assigns (“Owner”) and the City of Madison, a Wisconsin municipal corporation (the “City”). Owner and the City may be referred to in this Restriction individually as a “Party” and collectively as the “Parties”.

RECITALS

- A. The City is the fee simple owner of property located at _____, in Madison, Wisconsin, which is more fully described in the legal description attached hereto and incorporated herein as Exhibit A (the “Property”). The City entered into a Development Agreement on the ___ day of _____, 2021 (the “Development Agreement”) with Owner and Movin’ Out, Inc. (“MOI”) whereby City agreed to convey the Property to MOI at no cost on the condition that MOI convey the Property to the Owner for the development of, among other things, a one hundred fifty (150) unit multifamily apartment development in a mixed use condominium building (as legally described on the attached Exhibit B, the “Residential Unit”) subject to the restrictions set forth in this Restriction.
- B. As consideration for the conveyance of the Property at no cost, the City and Owner wish to restrict the Residential Unit on the Property as provided for in this Restriction.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Owner agree as follows:

1. **Recitals.** The recitals are incorporated in this Section 1 as if fully set forth in this Section 1.
2. **Uses Restricted.** Owner hereby agrees that at least 40% of the units, a minimum of sixty (60) units, in the Residential Unit (the “Permanently Affordable Units”) shall be set aside for occupancy by individuals (collectively, the “Low Income Tenants”) whose income does not exceed 60% of the Dane County, Wisconsin area median income. The Permanently Affordable Units shall be distributed throughout the Residential Unit with at least 20% of the dwelling units on each floor at any given time being Permanently Affordable Units. The maximum rent (including utilities) for the Permanently Affordable Units may be no more than allowed for a 60% CMI unit under the Wisconsin Standard Multifamily Lending Limits (“ML Limits”) developed annually, and as may be updated from time to time, by the Wisconsin Housing and Economic Development Agency (“WHEDA”). For purposes of this Restriction, a dwelling unit occupied by an individual or family who at initial occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant during such individual’s or family’s tenancy in such unit unless the individual’s or family’s income, as the case may be, as of the most recent determination date exceeds 140% of the applicable income limit and after such determination, but before the next annual determination date, any residential unit of comparable or smaller size in the

Residential Unit is occupied by a new resident whose income exceeds the income limit applicable to qualify as a Low Income Tenant. Owner shall obtain and maintain on file and available for inspection by the City an income certification (“**Income Certification**”) for each Low Income Tenant residing in the Residential Unit, and shall make such Income Certifications available for inspection by the City upon request. Each year, owner shall prepare and submit to the City, a certificate executed by Owner stating the percentage of the dwelling units of the Residential Unit that were occupied by Low Income Tenants or held vacant and available for occupancy by, Low Income Tenants during such year.

3. **Enforcement.** This Restriction shall be enforceable in law or in equity by the City against Owner or against any party who hereafter acquires an interest in the Residential Unit.
4. **Specific Performance.** The City may enforce this Restriction against Owner by action for specific performance. The City shall have the right to recover from Owner all costs, fees and expenses incurred in the enforcement of this Restriction. AHF LURA compliance is sufficient for compliance with this Restriction.
5. **Default and Cure.** In the event of a default under this Restriction, Owner shall have a period of one (1) year to cure the default beginning on the date of notice of default from the City to owner (the “Cure Period”).
6. **Expiration.** This Restriction shall not expire.
7. **Runs with the Land.** This Restriction constitutes a covenant running with the Residential Unit and shall be binding upon the successors, and assigns of the parties hereto until terminated. References to “Owner” in this Restriction shall include all subsequent owners, occupiers, or tenants of all or part of the Residential Unit. Notwithstanding the foregoing, during the period starting on the date hereof and extending until the expiration of the period that is 30 years from the date of completion of the Residential Unit, defined as the date final payment is issued by the City under the Affordable Housing Loan Agreement (the “Foreclosure Period”), this Restriction shall terminate upon foreclosure or deed in lieu of foreclosure of any first mortgage loan encumbering the Residential Unit. If this Restriction is terminated pursuant to the foregoing sentence, this Restriction shall be revived according to the original terms if, during the Foreclosure Period, the owner of record before foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Residential Unit.
8. **Recording.** This Restriction shall be executed and recorded in connection with the Project Parcel Closing as that term is described in the Development Agreement.
9. **Amendment.** This Restriction shall only be amended or terminated by a written document signed by the Owner and the City, approved by the Common Council, and recorded with the Dane County Register of Deeds.

10. **Entire Agreement.** This Restriction sets forth the entire agreement of the Parties with respect to the subject matter of this Restriction and supersedes any previous or other agreements, understandings, statements, and negotiations, whether written or oral.
11. **Notices.** Whenever any provision of this Restriction requires the giving or delivery of written notice, it shall be deemed to have been validly given if delivered by hand, by certified or registered mail, return receipt requested, by confirmed facsimile transmission, or by Federal Express, express mail, or other internationally recognized overnight carrier. Notices are effective when received by the intended party. A party may change its recipient of notices by providing written notice to the other party. Notice addresses are as follows:

If to City: City of Madison
 Attn: Real Estate Manager
 215 Martin Luther King, Jr. Blvd., Room 300
 Madison, WI 53703

with a copy to: City Attorney's Office
 210 Martin Luther King, Jr. Blvd., Room 401
 Madison, WI 53703

If to Owner:

with a copy to:

12. **Invalidity.** Should any provision of this Restriction be deemed invalid or unenforceable by a court of competent jurisdiction, the remainder of this Restriction shall not be affected and each term and condition shall be valid and enforceable.
13. **Governing Law.** This Restriction has been negotiated and executed in the State of Wisconsin and shall be governed, interpreted, and enforced in accordance with the laws of the State of Wisconsin.

EXHIBIT E

FORM OF GROCERY LAND USE RESTRICTION

This Land Use Restriction Agreement (the “Restriction”) is made and entered into on this ___ day of _____ 20__, by and between Fourteen02 Park, LLC, a Wisconsin limited liability company, or its assigns (“Owner”) and the City of Madison, a Wisconsin municipal corporation (the “City”). Owner and the City may be referred to in this Restriction individually as a “Party” and collectively as the “Parties”.

RECITALS

- A. The City is the fee simple owner of property located at _____, Madison, Wisconsin, which is more fully described in the legal description attached hereto and incorporated herein as Exhibit A (the “Property”). The City entered into a Development Agreement on the ___ day of _____, 2021 (the “Development Agreement”) on the condition that the Owner restrict the uses of a portion of the Property as provided for in this Restriction.
- B. The City and Owner wish to restrict a portion of the Property (as legally described on the attached Exhibit B, the “Grocery Unit”) as provide for in this Restriction. [INSERT GROCERY CONDO UNIT DESCRIPTION ON EXHIBIT B]

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Owner agree as follows:

1. **Recitals.** The recitals are incorporated in this Section 1 as if fully set forth in this Section 1.
2. **Uses Restricted.** The Grocery Unit shall be occupied by a commercial enterprise in the business of operating a grocery store, and the use of the Grocery Unit shall be for a grocery store, which may include such ancillary or complementary space for storage, office and/or community room.
3. **Enforcement.** This Restriction shall be enforceable in law or in equity by the City against Owner or against any party who hereafter acquires an interest in the Grocery Unit.
4. **Specific Performance.** The City may enforce this Restriction against Owner or any tenant of the Grocery Unit that is not using the Grocery Unit for a grocery store, by action for specific performance. The City shall have the right to recover from Owner all costs, fees and expenses incurred in the enforcement of this Restriction.
5. **Default and Cure.** In the event of a default under this Restriction, Owner shall have a period of one (1) year to cure the default beginning on the date of termination or expiration of the lease for the Grocery Unit occupant (the “Cure Period”). The default shall be deemed cured when a commercial enterprise in the business of operating a grocery store occupies and uses the Grocery Unit in the manner stated in Section 2.

6. **Runs with the Land.** This Restriction constitutes a covenant running with the Grocery Unit and shall be binding upon the heirs, successors, and assigns of the parties hereto. References to “Owner” in this Restriction shall be with reference to the then current owner of the Grocery Unit, and shall include all subsequent owners, occupiers, or tenants of all or part of the Grocery Unit. Upon the transfer of the Grocery Unit to a third party, Owner named herein shall have no further obligations to the City hereunder.
7. **Recording.** This Restriction shall be executed and recorded in connection with the Project Parcel Closing as that term is described in the Development Agreement.
8. **Expiration.** This Restriction shall be effective for ten (10) years from the date first written above.
9. **Amendment.** This Restriction shall only be amended by a writing signed by the Owner and the City and recorded with the Dane County Register of Deeds.
10. **Entire Agreement.** This Restriction sets forth the entire agreement of the Parties with respect to the subject matter of this Restriction and supersedes any previous or other agreements, understandings, statements, and negotiations, whether written or oral.
11. **Notices.** Whenever any provision of this Restriction requires the giving or delivery of written notice, it shall be deemed to have been validly given if delivered by hand, by certified or registered mail, return receipt requested, by confirmed facsimile transmission, or by Federal Express, express mail, or other internationally recognized overnight carrier. Notices are effective when received by the intended party. A party may change its recipient of notices by providing written notice to the other party. Notice addresses are as follows:

If to City: City of Madison
 Attn: Real Estate Manager
 215 Martin Luther King, Jr. Blvd., Room 300
 Madison, WI 53703

with a copy to: City Attorney’s Office
 210 Martin Luther King, Jr. Blvd., Room 401
 Madison, WI 53703

If to Owner:

with a copy to:

12. **Invalidity.** Should any provision of this Restriction be deemed invalid or unenforceable by a court of competent jurisdiction, the remainder of this Restriction shall not be affected and each term and condition shall be valid and enforceable.

13. **Governing Law.** This Restriction has been negotiated and executed in the State of Wisconsin and shall be governed, interpreted, and enforced in accordance with the laws of the State of Wisconsin.