CITY OF STOUGHTON, 207 S FORREST ST, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL		
Collateral Assignment of Agreement for Subdivision Improvements Kettle Park West Phase II		
Committee Action:	Finance reviews on June 14, 2022	
Fiscal Impact:	Zero	
File Number:	R-129-2022	**Date** June 14, 2022

The City of Stoughton, Wisconsin, Common council does proclaim as follows:

RECITALS:

On March 22, 2022, the City entered into an agreement with Kettle Park West, LLC (Developer), titled Subdivision Improvements Kettle Park West Phase II outlining the obligations for this phase of development.

Developer is financing these improvements and is seeking Collateral Assignment of Subdivision Improvements Agreement by Kettle Park West, LLC to One Community Bank as outlined in Exhibit A; Collateral Assignment of Agreement for Subdivision Improvements.

RESOLUTION

The City of Stoughton, Wisconsin (the "City") hereby acknowledges the Collateral Assignment of Subdivision Improvements Agreement by Kettle Park West, LLC to One Community Bank, and consents thereto.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

_____

Mayor Tim Swadley Date

Council Action: _____ ☐ **Override** **Vote** _____

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Exhibit A

COLLATERAL ASSIGNMENT OF AGREEMENT FOR SUBDIVISION IMPROVEMENTS

THIS COLLATERAL ASSIGNMENT OF AGREEMENT FOR SUBDIVISION IMPROVEMENTS (this "Assignment") is made as of _____, 2022, by Kettle Park West, LLC, a Wisconsin limited liability company ("Borrower") to One Community Bank (the "Lender").

RECITALS:

WHEREAS, pursuant to that certain Land Development and Term Loan Agreement and Letter of Credit Agreement of even date herewith ("Loan Agreement"), by and between Borrower and Lender, Lender has this date agreed to loan to Borrower up to the aggregate principal amount of $5,000,000.00 (the "Development Loan") and issue a letter of credit to the City of Stoughton, Wisconsin, for the benefit of Borrower in the principal amount of $3,088,665.57 (the "Letter of Credit"), the repayment of which Development Loan and Letter of Credit are secured in part by a Construction Mortgage and Fixture Filing, Assignment of Leases and Rents, Assignment of Warranties, Contracts and Plans and Specifications and Selective Business Security Agreement (collectively, the "Mortgage" in this Assignment) pertaining to interests in certain land described in the Mortgage and the improvements to be constructed thereon (collectively, the "Property") owned by Borrower and located in Dane County, Wisconsin;

WHEREAS, the Borrower is a party to that certain Agreement for Subdivision Improvements Kettle Park West Phase II dated as of March 22, 2022, as may be amended or restated from time to time (the "Subdivision Improvements Agreement") relating to the Property, by and between the Borrower and the City of Stoughton, a Wisconsin municipal corporation (the "City");

WHEREAS, it is a condition precedent to Lender's obligation to make the Development Loans and issue the Letters of Credit to or for the benefit of Borrower that Borrower execute and deliver this Assignment with respect to the Subdivision Improvements Agreement;

ASSIGNMENT:

NOW, THEREFORE, in consideration of the promises and the covenants hereinafter contained, and to induce Lender to provide and maintain the Development Loans to Borrower pursuant to the Development Loan Agreement and issue the Letter of Credit for the benefit of Borrower, Borrower agrees as follows:

1. Assignment. As security for all obligations of Borrower under the Loan Agreement and the Letter of Credit Agreement, including, without limitation, the repayment of the Development Loans and the Letter of Credit (collectively, the "Obligations"), Borrower assigns, pledges and transfers to Lender for collateral purposes and grants to Lender a security interest in all of its rights, remedies (at law or in equity), title and interest in and to (a) the Subdivision Improvements Agreement and (b) all agreements, documents, certificates, instruments, and other materials relating to the Subdivision Improvements Agreement

(collectively, with the Subdivision Improvements Agreement, the "Assigned Documents") and (c) with all proceeds thereof, including, without limitation, its rights and remedies with respect to any breach by any counterparty of any of its representations, warranties, covenants and obligations under the Assigned Documents. Without limiting the generality of the foregoing, as security for the Obligations, Borrower specifically assigns, pledges and transfers to Lender for collateral purposes, and grants to Lender a security interest in all rights of Borrower to receive any sums of money or property in connection with the Assigned Documents.

2. Representations and Warranties. Borrower hereby acknowledges and affirms that the representations, warranties and covenants of the Borrower with respect to the Assigned Documents and the rights and remedies of Lender with respect to the pledge of security interest in and collateral assignment of the Assigned Documents made and granted hereby are more fully set forth in the Loan Agreement and the Letter of Credit Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

3. Performance and Enforcement. So long as no Event of Default, as defined in the Land Development Loan Agreement, the Letter of Credit Agreement or the Mortgage, has occurred and is continuing, insofar as the Borrower may have any right, privilege or claim under the Assigned Documents, the Borrower will perform all of its obligations under the Assigned Documents and timely exercise its enforcement rights under such Assigned Documents, will enforce the same diligently and will give Lender notice of each such enforcement undertaken by the Borrower.

4. Rights following Event of Default. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, power and authority to (a) declare this Assignment to be unconditional and absolute, and thereby succeed fully to all of Borrower's rights, remedies, title and interest in, to and under the Assigned Documents, (b) notify counterparties that the Assigned Documents have been assigned to Lender, whether or not it has commenced or completed foreclosure or taken possession thereof, and (c) exercise all rights of Borrower under the Assigned Documents. In furtherance of the foregoing, upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably authorizes and empowers Lender, in its sole discretion, to assert, either directly or on behalf of Borrower, any right, privilege or claim which Borrower then or thereafter may have under the Assigned Documents, as Lender may deem proper, and to receive and collect any and all damages, awards and other monies resulting therefrom and to apply the proceeds thereof against any Obligation then outstanding. Nothing herein shall be construed to require Lender to take any action in respect of the Assigned Documents, whether for the account of Borrower or otherwise.

5. Lender as Attorney-in-Fact. Borrower hereby irrevocably makes, constitutes and appoints Lender (and all officers, employees or agents designated by it) as its true and lawful attorney-in-fact for the purposes of enabling Lender or its agent or designee to exercise its rights under Section 4 hereof.

6. Notice of Events. Borrower shall keep Lender informed of all circumstances which have or may have a material and adverse effect upon the exercise of its rights and remedies under the Assigned Documents, including, without limitation, prompt notice of any breach or default by Borrower under any of the Assigned Documents. In any event, Borrower

shall not release, cancel, sell, compromise, waive, amend, alter or modify any of its rights or remedies under the Assigned Documents, without first obtaining the prior written consent of Lender.

7. Responsibilities of Borrower. Borrower expressly acknowledges and agrees that it shall remain liable under the Assigned Documents, to observe and perform all of the conditions and obligations therein contained to be observed and performed by it, and that neither this Assignment, nor any action taken by Lender pursuant hereto, shall cause Lender to be under any obligation or liability in any respect whatsoever to any party to the Assigned Documents or for the observance or performance of any of the representations, warranties, conditions, covenants, agreements or terms therein contained.

8. Lender not Responsible. Notwithstanding Lender's rights hereunder, Lender shall not be obligated to perform, and Lender does not undertake to perform, any obligation, covenant, condition or term with respect to the Assigned Documents on account of this Assignment. Lender shall have no responsibility on account of this Assignment for the control or care of the Assigned Documents, other than to handle the Assigned Documents in the same manner as it handles other collateral in the ordinary course of business.

9. Successor and Assigns. This Assignment and all obligations of Borrower hereunder shall be binding upon the successors and assigns of the Borrower (including any debtor-in-possession on behalf of the Borrower) and shall, together with the rights and remedies of Lender, inure to the benefit of Lender and all future holders of any instrument evidencing any of the Obligations and the respective successors and assigns. No sales of participations, sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Obligations or any portion thereof or interest therein shall in any manner affect the assignment made and security interest granted hereunder to Lender. Borrower may not assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Assignment.

10. Notices. All notices, requests and other communications to the Borrower or Lender hereunder shall be made in accordance with the provisions of the Loan Agreement.

11. No Waiver. No failure or delay on the part of Lender in exercising any right or remedy hereunder, and no course of dealing between Borrower on the one hand and Lender on the other hand shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy hereunder, under the Development Loan Agreement, under the Letter of Credit Agreement or under the Mortgage, preclude any other or further exercise thereof or the exercise of any other right or remedy hereunder or thereunder. The rights and remedies herein, in the Development Loan Agreement, in the Letter of Credit Agreement and in the Mortgage are cumulative and not exclusive of any rights or remedies which Lender would otherwise have. No notice to or demand on Borrower not required hereunder in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lender to any other or further action in any circumstances with notice or demand.

12. Amendment. No amendment or waiver of any provision of this Assignment, nor consent to any departure by Borrower from this Assignment, shall in any event be effective unless the same shall be in writing and signed by Lender and then such waiver or consent shall

be effective only the specific instance and for the specific purpose for which given.

13. Governing Law. This Assignment and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the internal laws (without giving effect to the conflict of law principles thereof) of the State of Wisconsin.

14. Severability. In case any provision in or obligation under this Assignment shall be invalid, illegal or unenforceable, in whole or in part, in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

15. Counterparts. This Assignment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, Borrower and Lender have caused this Assignment to be executed by their respective duly authorized officers as of the date first above written.

ASSIGNOR:

KETTLE PARK WEST, LLC (SEAL)

By: Forward Development Group, LLC,
its Manager

By: _____
Name: David M. Jenkins
Title: Manager

LENDER:

ONE COMMUNITY BANK (SEAL)
a Wisconsin state chartered bank

By: _____
Name/Title: Scott Hoerth, Senior Market President,
Commercial Banking

ACKNOWLEDGEMENT OF ASSIGNMENT AND CONSENT

The City of Stoughton, Wisconsin (the "City") hereby acknowledges the above Collateral Assignment of Subdivision Improvements Agreement by Kettle Park West, LLC to One Community Bank, and consents thereto. The City agrees that Lender shall have the same number of days afforded to Borrower to cure any breach or default by Borrower under the Subdivision Improvements Agreement, but Lender is not under any obligation to do so.

The City acknowledges appointment of Lender as Borrower's attorney-in-fact under above section 5 and agrees, upon receipt of Notice of Exercise from Lender, to recognize Lender as successor in interest of the Borrower for purposes of the Subdivision Improvements Agreement. The City agrees that Lender may, with the prior written consent of the City, which consent shall not be unreasonably withheld, delayed, or conditioned, further assign to a third party Lender's rights and obligations under either the Collateral Assignment or the Subdivision Improvements Agreement, and upon such assignment Lender shall be relieved of all obligations and requirements under the Subdivision Improvements Agreement.

Nothing in this Collateral Assignment of Subdivision Improvements Agreement, and nothing in the Loan Agreement or the Letter of Credit Agreement shall be construed to amend or modify the Subdivision Improvements Agreement.

Dated: _____, 2022.

CITY OF STOUGHTON (SEAL)
Dane County, Wisconsin

By: _____
Tim Swadley, Mayor

ATTEST:

_____
Candee Christen, City Clerk

CITY OF STOUGHTON
207 S. Forrest Street, Stoughton, WI. 53589
(608) 873-6459
www.ci.stoughton.wi.us

ESTOPPEL LETTER

June 9, 2022

One Community Bank
733 N. Main Street.
Oregon, Wisconsin 53575

RE: One Community Bank Loan to Kettle Park West, LLC ("Borrower")

The City of Stoughton, Wisconsin ("City") and the Borrower are parties to the Master Development Agreement (Kettle Park West Development) entered into as of October 1, 2020, as amended by the First Amendment to Master Development Agreement (Meadows at Kettle Park West) dated as of March 22, 2022 (the "First Amendment" and collectively the "Development Agreement"), and the Agreement for Subdivision Improvements Kettle Park West dated as of October 1, 2020 and Agreement to for Subdivision Improvements Kettle Park West Phase II dated as of March 22, 2022 (collectively the "Subdivision Agreement" and with the Development Agreement, the "Development Agreements").

The City understands this letter and the information contained in it is a necessity in One Community Bank ("Lender") determining whether or not it will fund the Land Development and Term Loan Agreement between the Lender and the Borrower dated as of June 10, 2022.

The City certifies and affirms as of the date of this letter:

1. With the exception of the First Amendment, Development Agreements have not been modified and are in full force and effect as written.

2. To our knowledge, neither the Borrower nor the City is in default or breach of the Development Agreements, as of the date of this letter. The term "to our knowledge" means the conscious awareness of facts or other information, without investigation, by the City Official Group. The "City Official Group" means any official of the City who has active involvement in the performance of the Development Agreements as of the date of this letter. The term "default or breach" refers to any act or failure that by itself, or with giving of notice or passage of time, or both, would constitute an event of default or other event empowering another person to take remedial or other action under the Development Agreements.

3. To our knowledge and subject to (a) the City's actual receipt of the letter of credit required by Section 6 of the Subdivision Agreement and Article IV.A of the Development Agreement; and (b) the recordation of the Replat of the Meadows (as defined in the First Amendment), the conditions precedent to Borrower's and the City's obligations under the Development Agreements are satisfied.

4. In accepting delivery of this letter, Borrower and Lender agree that the City shall have no duty to inquire or determine whether Borrower's obligations to Lender are in default. The City may rely on notices and communications it believes in good faith to be genuine and given by Lender.

   Notwithstanding any of the other provisions in this Letter, in the event of the commencement of a case pursuant to Title 11, United States Code, filed by or against Borrower, or in the event of the commencement of any similar case under then applicable federal or state law providing for the relief of debtors or the protection of creditors by or against Borrower, the City may act as the City deems necessary to comply with all applicable provisions of governing statutes and shall not be in violation of this paragraph as a result.

The information provided and the representations made in this letter are intended only for use and benefit of the Lender.

Dated: June 9, 2022.

CITY OF STOUGHTON, WISCONSIN

By _____
Tim Swadley, Mayor