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

| **RESOLUTION OF THE COMMON COUNCIL** | | |
|---|---|---|
| Collateral Assignment of Development Agreement with RHD Properties, LLC for 51 West Project<br><br>Committee Action:<br><br>Fiscal Impact: Zero | | |
| **File Number:** | R-90-2022 | **Date 4/26/22** |

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

THIS COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Assignment") is made as of April 26, 2022, by RHD Properties, LLC, a Wisconsin limited liability company ("Borrower") to One Community Bank (the "Lender").

RECITALS:

WHEREAS, pursuant to that certain Letter of Credit Agreement of even date herewith, by and between Borrower and Lender, Lender agreed to issue a letter of credit to the City of Stoughton, Wisconsin, for the benefit of Borrower in the aggregate amount of Ten Million Nine Hundred Thousand Dollars ($10,900,000) (the "Letter of Credit"), the repayment of which is secured in part by a Mortgage, Assignment of Leases and Rents, and Commercial 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 to Undertake Development (51 West Development), approved by the City on April 12, 2022 by R-79-2022, (the "Development 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 issue the Letter of Credit to or for the benefit of Borrower that Borrower execute and deliver this Assignment with respect to the Development Agreement;

ASSIGNMENT:

NOW, THEREFORE, in consideration of the promises and the covenants hereinafter contained, and to induce Lender to issue the Letter of Credit for the benefit of Borrower, Borrower agrees as follows:

1. Assignment. As security for all obligations of Borrower's Letter of Credit

Agreement, including, without limitation, the repayment the Letter of Credit (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 Development Agreement and (b) all agreements, documents, certificates, instruments, and other materials relating to the Development Agreement (collectively, with the Development 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 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 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 a material and adverse effect upon the exercise of its rights and remedies under 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. Notices under this Assignment may be given to Lender and Borrower at their respective addresses first set forth below until written notice of change of such address is given to the other party as provided in the following sentence. All notices are sufficiently given when given to Lender or Borrower, as the case may be, in accordance with the provisions of this paragraph 10. All notices shall be in writing and shall be deemed given: (a) on the actual date of receipt as indicated on the delivery receipt if deposited in the United States registered or certified mail, postage prepaid and properly addressed, return receipt requested; (b) on the next Business Day if sent by reputable overnight courier for overnight delivery and following delivery to such courier; or (c) on the date of personal delivery of such written notice:

If to Lender:

One Community Bank
733 North Main Street
Oregon, Wisconsin 53575
Attention: Lukas Trow, Market President

If to Borrower:

RHD Properties, LLC
1081 Eagle Court
Edgerton, WI 53534
Attention: Robert Dvorak

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 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 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.

[Signatures on following page]

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**:
**RHD PROPERTIES, LLC** (SEAL)

By: _____
Name: Robert H. Dvorak
Title: Managing Member

**LENDER**:
**ONE COMMUNITY BANK** (SEAL)
a Wisconsin state chartered bank

By: _____
Name/Title: Lukas W. Trow, Market President

## ACKNOWLEDGEMENT OF ASSIGNMENT AND CONSENT

The City of Stoughton, Wisconsin hereby acknowledges the above Collateral Assignment of Development Agreement by RHD Properties, LLC to One Community Bank, and consents thereto. Nothing in this Collateral Assignment of Development Agreement, and nothing in the Letter of Credit Agreement shall be construed to amend or modify the Development Agreement or the City's obligation under the Development Agreement.

Dated: April 26, 2022.

**CITY OF STOUGHTON** (SEAL)
Dane County, Wisconsin

By: _____
Tim Swadley, Mayor

ATTEST:

_____
Candee Christen, City Clerk

COUNTERSIGNED:

Provision has been made to pay the liability that will accrue under this Agreement.

_____
_____, Finance Director

Approved as to Form:

_____
Matthew P. Dregne, City Attorney

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

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

_____
Mayor Tim Swadley Date

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