CITY OF STOUGHTON - COMMON COUNCIL
RESOLUTION NO. _____

RESOLUTION RELATING TO THE ACQUISITION OF PROPERTY AT 501 EAST SOUTH STREET BY THE REDEVELOPMENT AUTHORITY

RECITALS

1. The Redevelopment Authority of the City of Stoughton has approved the acquisition of property located at 501 East South Street (the "Property"), in accordance with the Real Estate Purchase Agreement attached as Attachment A to this Resolution.

2. The City of Stoughton Plan Commission has reviewed the proposed acquisition of the Property pursuant to Wis. Stat. § 62.23(5), and has determined that acquisition by the Redevelopment Authority would be appropriate.

3. The Property is located in City of Stoughton Tax Increment District No. 5. The RDA intends to pay for the Property using tax increment expected to be generated by redevelopment of the Property. The Real Estate Purchase Agreement does not require payment of the Purchase Price until a third party has purchased the Property from the RDA, and completed construction of one or more buildings on the Property in accordance with plans approved by the RDA.

RESOLUTION

The Common Council of the City of Stoughton, Dane County, Wisconsin, resolves that it approves of the acquisition of the Property by the RDA, in accordance with the Real Estate Purchase Agreement attached as Attachment A to this Resolution, and further resolves that it will allocate funds from Tax Increment District No. 5 to pay for the purchase of the Property. The Common Council further resolves that the City shall (and does hereby) guarantee the RDA's performance of the RDA's obligations under the Real Estate Purchase Agreement attached as Attachment A to this Resolution.

The above resolution was duly adopted at a meeting of the Common Council of the City of Stoughton on the 23rd day of February, 2010.

APPROVED:

By _____
James Griffin, Mayor

ATTEST:

_____
Luann Alme, City Clerk

Attachment A – Real Estate Purchase Agreement

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is made this _____ day of_____, 2010, by and between the REDEVELOPMENT AUTHORITY OF THE CITY OF STOUGHTON ("Buyer"), and DONALD D. WHALIN (hereinafter referred to as "Seller").

In consideration of the mutual covenants and undertakings contained herein the parties agree as follows:

1. Agreement to Sell and Buy Property. Seller hereby agrees to sell to Buyer and Buyer agrees to buy from Seller in accordance with the provisions of this Agreement, the real property located at approximately 501 East South Street, in the City of Stoughton, Dane County, Wisconsin, more particularly described as all that parcel of improved real property consisting of not less than 98,010 contiguous square feet, with frontage on East South Street of approximately 330 feet, and improved with a warehouse building (the "Property"). An aerial photograph of the Property is attached as Attachment A.

2. Buyer's Obligation to Purchase the Property. Buyer's obligation to purchase the Property is contingent upon the following:

a. Seller providing a commitment for an owner's title insurance policy pursuant to Section 5;

b. Seller providing a survey map of the Property prepared by a registered land surveyor, at Seller's expense, not less than 20 days before closing. The map shall identify the legal description of the Property, the Property's boundaries and dimensions, visible encroachments upon the Property, total square footage, and easements or rights of way. The map shall show no significant encroachment(s), or any information materially inconsistent with any prior representations to Buyer. This contingency shall be deemed satisfied unless Buyer, within 8 days after Buyer's receipt of the map, delivers to Seller a copy of the map and a written notice which identifies the significant encroachment or the information materially inconsistent with prior representations.

3. No Displacement and Acknowledgment and Waiver of Rights Under Chapter 32. Seller represents and warrants that the sale of the Property to Buyer will not result in the displacement of persons or business concerns for purposes of Chapter 32, Wis. Stats. Seller acknowledges that Seller is not required to sell the Property and the City will not use its power of eminent domain for the purpose of acquiring the Property if Seller chooses to not sell the Property. Seller acknowledges Seller's agreement to sell the Property is voluntary. Seller acknowledges receipt of the Wisconsin Department of

Commerce pamphlets entitled *The Rights of Landowners Under Wisconsin Eminent Domain Law* and *Wisconsin Relocation Rights – Business, Farm and Nonprofit Organizations* (the "Pamphlets"). Seller acknowledges that having received and reviewed the Pamphlets, and being aware of rights, remedies, requirements and conditions referred to therein, Seller specifically waives the following:

a. Any right of Seller to receive a full narrative appraisal from Buyer or for Seller to obtain Seller's own appraisal, the reasonable cost of which, if timely produced, would have been paid by Buyer;

b. Any right of Seller to receive any maps or names of other owners relating to Buyer's purchase of the Property;

c. Any requirement that Buyer prepare, serve on Seller, or record a certificate of compensation concerning the Property;

d. Any requirement that a notice of the right to appeal the amount of compensation (the consideration paid and agreed to be paid in exchange for the Property) be served by Buyer or Seller, and any right Seller may have to appeal the amount of compensation paid or agreed to be paid herein.

4. Purchase Price. The Purchase Price for the Property will be $150,000. The Purchase Price, subject to adjustments provided for herein, shall be payable by Seller check on the last day of the second January after all of the following have occurred:

a. Buyer has closed on the purchase of the Property;

b. The improvements currently located on the Property have been removed, and any environmental contamination on the Property has been remediated;

c. A third party has purchased the Property from Buyer, and completed construction of one or more buildings on the Property in accordance with plans approved by Buyer.

For example, if all of the above steps (including completion of construction of one or more new buildings on the Property) are completed on June 1, 2012, the adjusted Purchase Price shall be payable on January 31, 2014. The parties intent is that the Purchase Price shall not be payable until after the Property is acquired and redeveloped by a private developer such that the Property is generating and Buyer is receiving tax increment generated by a completed redevelopment of the Property. Seller understands and agrees that there is no deadline by which the above steps must be completed, and that the Purchase Price may not be payable for many years. Interest shall not accrue on the unpaid Purchase Price.

At closing, Buyer shall provide Seller with the City of Stoughton's written guarantee of Buyer's obligation to pay the Purchase Price in accordance with the terms of this Agreement.

5. Title. Seller, at Seller's expense, shall promptly (and no later than 20 days before Closing) obtain and deliver to Buyer a commitment for an owner's title insurance policy (Current ALTA Owner's form) issued by a title insurance company licensed to issue title insurance in Wisconsin ("Title") showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable, subject only to liens which will be paid out of the proceeds of closing, naming Buyer as the proposed owner-insured of the Property in the amount of the Purchase Price (the "Commitment"). Buyer within 15 days after receipt of the Commitment, will make objections to the title to the Property based upon examination of the Commitment, said objections to be made by written notice or be deemed waived. If any objections are so made, Seller shall immediately commence and diligently endeavor in good faith to complete all actions necessary to cure such objections and shall be allowed 60 days after the making of such objections by Purchaser to cure such objections and obtain appropriate endorsements to the Commitment indicating that any such objections have been cured. Pending the correction of the title, the Closing Date and the payments hereunder required shall be postponed, but upon correction of the title and within 15 days after written notice of such correction given by Seller to Buyer, Seller and Buyer shall close and perform this Agreement according to its terms.

Buyer need not object to mortgages or other liens against the Property. If not sooner satisfied, Seller shall satisfy them at closing.

If Seller does not cure Buyer's objections by the Closing Date, or if title to the Property is not good and marketable of record in Seller at the Closing Date, then Buyer shall have the following options:

a. Buyer may terminate this Agreement, or

b. Buyer may elect to waive the objection and accept the title to Seller's interest in the Property in its unmarketable condition.

6. Additional Covenants and Warranties of Seller. Seller covenants with and warrants to Buyer as follows:

a. Prior to the Closing Date, Seller will not permit any lien or encumbrance to be placed against the Property or any part thereof and will not commit waste on the Property.

b. There are and at closing there will be no tenants, persons or entities occupying or having a right to occupy the Property or any part thereof, whether pursuant to a lease or other occupancy agreement or otherwise.

c. There is no action, litigation, investigation, condemnation or proceeding of any kind pending or, to Seller's best knowledge, threatened against Seller or the Property which could affect the Property, any portion thereof or title thereto. Seller shall give Buyer prompt written notice if any such action, litigation, investigation, condemnation, or proceeding is commenced on or prior to the Closing Date.

d. Seller shall promptly notify Buyer in writing if it acquires any knowledge which changes any representation or warranty set forth above or elsewhere in this Agreement. The notice shall describe in detail the nature of the change and the basis therefore. If there is a material adverse change in any of the foregoing representations prior to Closing, Buyer will have the right to terminate this Agreement by giving written notice to Seller within ten (10) days after it receives written notice of such material change. If Buyer so terminates this Agreement, neither party shall have further rights or obligations hereunder.

7. Closing. The closing shall take place not later than _____ (the "Closing Date"). The closing shall take place at the offices of Title or such other place as Seller and Buyer mutually agree. At the closing, Seller shall deliver to Buyer:

a. A Warranty Deed properly executed by Seller in recordable form conveying the Property to Buyer and warranting title thereto subject to no exceptions except those to which Buyer has not objected or has expressly agreed to pursuant to section 5 hereof.

b. A standard Seller's Affidavit with respect to judgments, bankruptcies, tax liens, mechanics liens, parties in possession, unrecorded interests, encroachment or boundary line questions, and related matters, properly executed on behalf of Seller.

c. A "marked-up" commitment (initialed by the appropriate title company officer) to issue a policy of title insurance subject to no exceptions except those to which Buyer has not objected or has expressly agreed to pursuant to Section 5 hereof. Seller shall be responsible for the payment of the premium for such policy of title insurance.

8. Real Estate Taxes and Special Assessments. Real estate taxes due and payable for all years prior to that in which Closing occurs, including any amounts otherwise payable for such years which may have been deferred pursuant to applicable

law, shall be paid by Seller. Real estate taxes due and payable for the year in which closing occurs, including any amount otherwise payable for such year which may have been deferred pursuant to applicable law, shall be prorated between Seller and Buyer based on the actual Closing Date. The proration shall be based on the net general real estate taxes for the year of closing, if known; otherwise on the net general real estate taxes for the preceding year. If proration is based on the taxes for the preceding year, an adjustment shall be made when the amount of taxes for the year of closing becomes available.

9. Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date.

10. Notices. All documents to be delivered and all correspondence and notices to be given in connection with this Agreement shall be in writing and given by personal delivery, by facsimile, or sent by a nationally recognized overnight courier or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller:
Donald D. Wahlin
416 South Academy Street
P.O. Box 606
Stoughton, WI 53589
Facsimile: (608) 873-2575

If to Buyer:
Laurie Sullivan, Finance Director
City of Stoughton
381 East Main Street
Stoughton, WI 53589
Facsimile: (608) 873-5519

With a copy to:
Matthew P. Dregne
Stafford Rosenbaum LLP
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
Facsimile: (608) 259-2600

A notice delivered personally shall be delivered personally to the person whose attention mailed notices are addressed. A notice sent by facsimile shall be deemed given to the party to whom it is sent on the date actually transmitted. A notice sent by mail shall be deemed to have been given to the party to whom it is addressed on the date the same is deposited in the United States registered or certified mail, return receipt requested, postage prepaid, properly addressed to such party at its then current address

for the giving of notices. Either party hereto may change such party's address for the service of notice hereunder by written notice of said change to the other party hereto, in the manner above specified ten (10) days prior to the effective date of said change.

11. Commissions. Seller hereby warrants to Buyer that all commissions, finder's fees or like charges incurred in connection with this transaction as a result of Seller's actions shall be paid by Seller and Seller will hold Buyer harmless for those charges.

12. Default. Should Seller default in the performance of its obligations hereunder or breach any warranty contained herein, and such default shall not be cured within ten (10) days after notice from Buyer, Buyer shall have and may pursue all rights and remedies available to it hereunder, at law or in equity, or otherwise, including, but not limited to, an action for damages or specific performance. However, notwithstanding anything else in this Agreement, Seller shall have the right to terminate this Agreement at any time before this transaction actually closes. Should Buyer default in the performance of its obligations hereunder or breach any warranty contained herein, and such default shall not be cured within ten (10) days after notice from Seller, Seller shall have and may pursue all rights and remedies available to it hereunder, at law or in equity, or otherwise, including, but not limited to, an action for damages or specific performance.

13. Risk of Loss. Risk of loss to the Property prior to the time of closing shall remain in Seller. In the event that prior to the time of closing, proceedings for the condemnation of the Land or any portion thereof are commenced by governmental authority having jurisdiction to do so, Buyer may, at its option, terminate this Agreement by written notice to Seller whereupon neither party shall have any further rights, obligations or liability hereunder. In the event of any such condemnation, and if this Agreement is not terminated on account thereof, Seller shall assign to Buyer at closing its rights to any such condemnation award.

14. Miscellaneous. All of the covenants, warranties, and provisions of this Agreement shall survive and be enforceable after the closing of this transaction. This is a final Agreement between the parties and contains their entire agreement and supersedes all previous understandings and agreements, oral or written, relative to the subject matter of this Agreement. The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement. Delivery of an executed copy of this Agreement by facsimile or email shall be deemed delivery of the executed original.

15. Time of the Essence. Except as otherwise stated herein, time is of the essence in the performance of this Agreement.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first set forth above.

BUYER:
REDEVELOPMENT AUTHORITY OF THE CITY OF STOUGHTON

_____
Date

By:_____
Dan Kittleson, Chairman

ATTEST

By:_____

SELLER:
DONALD D. WAHLIN

_____
Date

_____

Attachment A – Aerial Photograph of the Property

AERIAL PHOTO OF SUBJECT PROPERTY

ATTACHMENT A