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

RESOLUTION OF THE COMMON COUNCIL		
Irrevocable Standby Letter of Credit regarding Developer Agreement with R.O. B. Real Estate Brokerage & Builders, LLC re Parker Cole Addition		
Committee Action:		
Fiscal Impact:	$801,590	
File Number:	R-108-2022	**Date** 5/10/2022

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

RECITALS:

WHEREAS, the Common Council approved the pre-annexation agreement with R.O.B. Real Estate Brokerage & Builders, LLC for the Parker Cole Addition under Resolution R-97-2022 on April 26, 2022; and,

WHEREAS, the pre-annexation agreement indicates the developer shall be solely responsible for the cost of constructing any and all public improvements needed to serve the development territory, including the cost of extending any off-site improvements to the territory; and

WHEREAS, the City's Planning and Development Department has indicated that a Irrevocable Standby Letter of Credit in the amount of $801,590 should be provided to the City of Stoughton; and,

WHEREAS, the attached Irrevocable Standby Letter of Credit, Exhibit A, and Exhibit B have all been reviewed as to form by the City Attorney; and,

WHEREAS, the City of Stoughton's standard practice is that developer's agreements requires that the Irrevocable Standby Letter of Credit shall be issued by an entity that is acceptable to the City or has a rating of its long-term unsecured debt not lower than A1 by Moody's Investors Service or A+ by Standard and Poor's; and,

WHEREAS, One Community Bank does not currently have a relationship with either rating agency because the bank is privately held and has not issued any public debt instruments; and,

WHEREAS, One Community Bank has provided information to both the City of Stoughton Finance Committee and City of Stoughton Common Council sufficient to deem that One Community Bank's Irrevocable Standby Letter of Credit is acceptable to the City;

NOW THEREFORE BE IT RESOLVED, that the Common Council finds the Irrevocable Standby Letter of Credit from One Community Bank in the attached format approved by the City Attorney is hereby accepted by the City of Stoughton Common Council.

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

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

_____

Mayor Tim Swadley Date

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

IRREVOCABLE STANDBY LETTER OF CREDIT
(Construction and Guarantee of Public Improvements)

One Community Bank
2401 Jackson Street
Stoughton, Wisconsin 53589
(608) 873-2010

BENEFICIARY	LETTER OF CREDIT NO.	DATE
The City of Stoughton, a Wisconsin municipal corporation	_____	May 12th, 2022

This Letter of Credit is issued to secure certain obligations of ROB Real Estate Brokerage & Builders, LLC under the Agreement to Undertake Development (Isham St Development) entered into as of the 12th day of May, 2022 (the "Development Agreement"). We hereby authorize you to draw on us for the account of ROB Real Estate Brokerage & Builders, LLC up to an aggregate amount of Eight Hundred One Thousand Five Hundred Ninety Dollars and 00/100 ($801,590.00) available by your drafts at sight to be accompanied by:

1. Your draft in the form attached as Exhibit A.

2. This original Letter of Credit.

2. An affidavit in the form attached as Exhibit B.

This Letter of Credit and each extended, renewed or replacement letter of credit shall be automatically extended without amendment for a period of one year from its expiration date, unless at least 45 days before such expiration date we notify the City in writing at 207 S. Forrest Street, Stoughton, Wisconsin 53589, Attn: Finance Director, that the Letter of Credit will not be extended for an additional one-year period, or that the Letter of Credit will be renewed or replaced by a letter of credit in an amount that is less than the amount required by Development Agreement, which amount shall be specified in a written notice to One Community Bank at 2401 Jackson Street, Stoughton, Wisconsin, 53589, Attn: Loan Servicing Department , at least ninety (90) days prior to the then expiration date of the Letter of Credit.

SPECIAL INSTRUCTIONS:

Partial drawings are ☒ permitted.

All drafts must be marked "Drawn Under Letter of Credit of One Community Bank, No. ____ Dated May 12, 2022."

Insofar as applicable, this Letter of Credit is subject to the International Standby Practices (1998), International Chamber of Commerce Publication #590. This Letter of Credit shall be construed and interpreted in accordance with the laws of the State of Wisconsin, including insofar as applicable the Uniform Commercial Code as in effect in the State of Wisconsin.

Draft - Not Final

We agree with you to pay draft(s) drawn under and in compliance with the terms of this Letter of Credit if presented at this office together with this Letter of Credit on or before the close of our business on May 12, 2022.

Dated: May 12th 2022.

One Community Bank

By: _____
Steve Peotter, President and CEO

Draft - Not final

EXHIBIT A

Form of Sight Draft

Drawn under One Community Bank Letter of Credit No. _____

Date: _____, 20___.

$_____

Pay to the order of the CITY OF STOUGHTON, a Wisconsin municipal corporation

_____ Dollars

To: One Community Bank

By: _____

_____
(Name/Title)

Draft - Not final

EXHIBIT B

[City of Stoughton Letterhead]

AFFIDAVIT IN SUPPORT OF LETTER OF CREDIT NO. _____
(Construction and Guarantee of Public Improvements)

_____, _____ of the City of Stoughton, after being duly sworn certifies that the following are true and correct:

1. I am authorized by the City of Stoughton to sign and deliver this Affidavit to One Community Bank pursuant to the Agreement to Undertake Development (51 West Development) entered into as of the _____ day of _____, 2022 (the "Development Agreement").

2. The City is due $_____ from RHD Properties, LLC ("Developer"), because Developer has failed to perform its obligations set forth in the Development Agreement. Accordingly, the City of Stoughton draws on this Letter of Credit No. _____ in the amount of $_____.

OR

2. The City has received notice from One Community Bank that Letter of Credit No. _____ will not be extended for an additional term of one (1) year or that Letter of Credit No. _____ will be renewed or replaced by a letter of credit in an amount less than the amount required by the Development Agreement. Accordingly, the City draws on Letter of Credit No. _____ in the amount of $_____, which amount does not exceed the Letter of Credit amount required by the Development Agreement.

3. The City acknowledges that proceeds drawn from Letter of Credit No. _____ must be used to construct public improvements described in the Development Agreement.

4. This Affidavit is made and delivered to One Community Bank on _____.

[*Signature on following page*]

Draft - Not final

Under penalties of perjury I declare this Affidavit is true, correct and complete.

City of Stoughton

By: _____
Title: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

This instrument was acknowledged before me on _____, 20___, by _____, as the _____ of City of Stoughton, a Wisconsin municipal corporation.

_____
(Print name) _____
Notary Public, State of Wisconsin
My Commission (Expires) (Is) _____

Draft - Not final

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