

## COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (the "Assignment") is made and entered into as of the 11<sup>th</sup> day of June, 2018, by and among VHET, LLC, a Wisconsin limited liability company ("Developer"), STATE BANK OF CROSS PLAINS ("Bank"), and the City of Madison, Wisconsin municipal corporation (the "City").

### RECITALS

**WHEREAS**, pursuant to the terms and conditions of that certain Construction Loan Agreement dated June 11, 2018 by and between Developer and Bank ("Loan Agreement"), the Bank has agreed to make a loan to Developer in the amount of \$3,393,270.00 ("Loan");

**WHEREAS**, the Loan is evidenced by a Promissory Note dated June 11, 2018 (the "Note"), and secured by, among other things, a Mortgage encumbering Developer's interest in the real property described on Exhibit A ("Mortgage", and together with the Note, the Loan Agreement and other documents, the "Loan Documents");

**WHEREAS**, Developer and the City have entered into that certain Development Agreement dated \_\_\_\_\_, 2018 (the "Development Agreement");

**WHEREAS**, as a condition precedent to the obligation of Bank to make the Loan, the Bank has required that this Assignment be executed and delivered by Developer and consented to by the City.

**NOW THEREFORE**, in consideration of the Loan and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Assignment.** As additional collateral and security for the obligations of Developer to Bank under and in connection with the Loan, Developer hereby transfers, assigns and conveys to Bank all of its right, title and interest in, to and under the Developer Agreement. The City consents to and acknowledges the assignment of the Developer Agreement to Bank.

2. **Rights of Bank.** After the occurrence of an Event of Default by Developer under the Note or other Loan Documents, Bank may, at its sole option, exercise its rights, benefits and privileges under this Assignment and exercise all rights of Developer under the Development Agreement. However, this Assignment shall not constitute an assumption by Bank of any of the obligations of Developer under the Development Agreement. Notwithstanding the foregoing, Developer shall continue to be liable for all obligations of Developer under the Development Agreement. Developer hereby agrees to protect, defend, indemnify and hold harmless Bank from and against any and all loss, cost, liability or expense (including, but not limited to, reasonable attorneys' fees and expenses) resulting from any failure of Developer to perform and

observe, at the time and in the manner therein provided, each of the covenants, agreements and obligations of Developer contained in the Development Agreement.

3. Rights and Obligations of Developer. Developer may continue to receive and exercise all of the rights, benefits and privileges under the Development Agreement until Lender has certified to City that an "Event of Default" exists under the Note or Loan Documents.

4. Rights and Obligations of the City. Except for the additional promises and obligations under paragraph 8 (Consent and Attornment), nothing in this Assignment shall be construed to alter the City's rights or obligations under the Development Agreement.

5. Bank's Right to Cure. After the occurrence of a default or Event of Default by Developer under the Development Agreement that is not cured within any applicable cure period, Bank shall have the right and option at any time (but under no circumstances shall be obligated) to take in its name or in the name of Developer or otherwise, such action as Bank may at any time or from time to time reasonably determine to be necessary to cure any default of the Developer under the Development Agreement. Developer agrees to protect, defend, indemnify and hold harmless Bank from and against any and all loss, cost, liability or expenses (including, but not limited to, reasonable attorneys' fees and expenses) in connection with Bank's exercise of its rights hereunder except to the extent such loss, cost, liability or expenses arise from the gross negligence or willful misconduct of Bank.

6. Appointment of Bank as Attorney-in-Fact. Developer hereby irrevocably constitutes and appoints Bank its true and lawful attorneys-in-fact in Developer's name or in Bank's name, or otherwise, from and after the occurrence of an Event of Default under the Note or the other Loan Documents, to exercise and/or enforce all rights of Developer under the Development Agreement, and such power, being coupled with an interest, is irrevocable.

7. Representations, Warranties and Covenants of Developer. Developer represents and warrants that the Development Agreement is valid and in full force and effect, that it previously has not been assigned, transferred or hypothecated, that no defaults exist thereunder, and no event has occurred which, with notice or passage of time or both, would constitute a default or give rise to a claim thereunder. Developer covenants to perform its obligations under the Development Agreement, to give immediate notice to Bank of any notice of default served upon Developer with respect to its obligations under the Development Agreement. Developer represents and warrants that this Assignment does not, and the exercise by Bank of any of its rights hereunder will not, constitute a default or breach under the terms of the Development Agreement. Developer also covenants that it shall make no material changes in or amendments to the Development Agreement without the prior written consent of Bank and shall not tender or accept a surrender or cancellation of the Development Agreement, or further assign or create any further encumbrance or hypothecation of Developer's interest under the Development Agreement, without the prior written consent of Bank.

8. Consent and Attornment. The City hereby consents to terms and provisions of this Assignment and agrees to attorn to and recognize Bank as the successor in interest to the

Developer for all purposes of the Development Agreement so long as the Bank complies with the applicable terms of the Development Agreement.

9. Miscellaneous Provisions.

(a) This Assignment contains the entire agreement between the parties relating to the subject matter hereof and the rights granted herein and shall supersede any provisions contained in any other document with respect thereto.

(b) This Assignment shall be governed by and construed in accordance with the laws of the State of Wisconsin.

(c) If any of the provisions of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be deemed invalid or unenforceable, the remainder of this Assignment and the application of such provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby.

(d) This Assignment and any document or instrument executed pursuant hereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(e) Any notice to be delivered under this Assignment shall be sufficiently given or delivered if sent by registered or certified mail, postage pre-paid or delivered personally to the appropriate party at such party's last known legal address.

(f) This Assignment and the agreements and undertakings of the Assignor hereunder shall be binding upon Developer and the City and their respective successors and assigns and shall inure to the benefit of the Bank and its successors and assigns.

{Signature page follows}

IN WITNESS WHEREOF, VHET, LLC has caused this Assignment to be duly executed in its name and on its behalf as of the 11<sup>th</sup> day of June, 2018.

**DEVELOPER:  
as Borrower**

**VHET, LLC**

By: VH Holdings, LLC, Sole Member of  
VHET, LLC

By: \_\_\_\_\_  
David P. Simon, Manager of VH Holdings, LLC

STATE OF WISCONSIN     )  
  ) ss.:  
COUNTY OF DANE         )

Personally came before me this 11<sup>th</sup> day of June, 2018, David P. Simon to me known to be the Manager of VH Holdings, LLC, a member of VHET, LLC who on behalf of Developer executed the foregoing Assignment for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

SEAL

\_\_\_\_\_  
Notary Public, Dane County  
My commission \_\_\_\_\_

IN WITNESS WHEREOF, \_\_\_\_\_ and \_\_\_\_\_ on behalf of the City of Madison caused this Assignment to be duly executed in its name and on its behalf as of the \_\_\_\_ day of August, 2018.

**CITY OF MADISON**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Attorney

STATE OF WISCONSIN     )  
                                      ) ss.  
COUNTY OF DANE         )

Personally came before me this \_\_\_\_ day of June, 2018, \_\_\_\_\_ and \_\_\_\_\_ to me known to be the \_\_\_\_\_ and \_\_\_\_\_ of the City of Madison and being authorized so to do, executed the foregoing Assignment for the purposes therein contained for and on behalf of said City of Madison.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

SEAL

\_\_\_\_\_  
Notary Public, Dane County  
My commission \_\_\_\_\_

IN WITNESS WHEREOF, the Bank has caused this Assignment to be duly executed in its name and on its behalf as of the 11<sup>th</sup> day of June, 2018.

**BANK:**

**STATE BANK OF CROSS PLAINS**

By: \_\_\_\_\_  
Name: Kevin J. Mahaney  
Its: Vice-President

STATE OF WISCONSIN    )  
  ) ss.  
COUNTY OF DANE        )

Personally came before me this 11<sup>th</sup> day of June, 2018, Kevin J. Mahaney, to me known to me known to be the Vice-President of State Bank of Cross Plains, and being authorized so to do, executed the foregoing Assignment for the purposes therein contained for and on behalf of said Bank.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

SEAL

\_\_\_\_\_  
Notary Public, Dane County  
My commission \_\_\_\_\_

## EXHIBIT A

### **Legal Description**

The South 1/2 of the Northeast 1/4 and the South 10 acres of the North 1/2 of the Northeast 1/4 of Section 20, Town 7 North, Range 8 East, in the Town of Middleton, now in the City of Madison, Dane County, Wisconsin.

Including Lot 1, Certified Survey Map 7671, recorded in Vol. 40 of Certified Survey Maps, page 96, as #2649094, in the Town of Middleton, now in the City of Madison, Dane County, Wisconsin; EXCEPT Schewe Road dedicated on Certified Survey Map 7671 and ALSO EXCEPTING Certified Survey Map 2519.

EXCEPT from all of the above that part contained in the Town of Middleton.

ALSO DESCRIBED AS:

Lot 1, Dane County Certified Survey Map No. 7671, recorded in Volume 40 of Certified Survey Maps on pages 96-99 as Document Number 2649094, and lands located in all 1/4's of the NE1/4 of Section 20, Township 7 North, Range 8 East, City of Madison, Dane County, Wisconsin, described as follows:

Beginning at the East 1/4 corner of said Section 20; thence N89°41'23"W, 2349.11 feet along the South line of said NE1/4 to the Southeast corner of Lot 1, Certified Survey Map No. 2519; thence N01°36'31"E, 149.73 feet along the East line of and to the Northeast corner of said Lot 1; thence N89°37'45"W, 298.06 feet along the North line of said Lot 1 and the Westerly extension thereof to the West line of said NE1/4; thence N01°36'46"E, 1329.67 feet along the West line of said NE1/4 to the Northwest corner of the South 10 acres of the North 1/2 of said NE1/4; thence N89°59'30"E, 2120.85 feet along the North line of the South 10 acres of the North 1/2 of said NE1/4; thence S01°34'16"W, 65.92 feet; thence N89°59'21"E, 371.42 feet; thence N01°47'48"E, 65.91 feet to a point on the North line of the South 10 acres of the North 1/2 of said NE1/4; thence N89°59'30"E, 156.73 feet along said North line to a point on the West right-of-way line of White Fox Lane; thence S01°40'41"W, 1494.50 feet along the West right-of-way line of White Fox Lane, Outlot 3 of The Willows II and O.L. 1 of Autumn Ridge Reserve to the point of beginning. Containing 3,869,367 square feet (88.790 acres).

