CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: May 4, 2020

ITEM: Approval of Consent of the City to the Collateral Assignments of Development Agreements – Junction House 329, LLC

RESOLUTION: Approval of Consent to Collateral Assignment of the Development Agreement between Junction House 329, LLC and the City of West Des Moines

RESOLUTION: Approval of Consent to Collateral Assignment of the Upper Story Housing Program Agreement between Junction House 329, LLC and the City of West Des Moines

FINANCIAL IMPACT: None

BACKGROUND: On April 6, 2020, Junction House 329, LLC and the City of West Des Moines entered into two Development Agreements in which the City agreed to provide the Developer economic development incentives as consideration for the construction by the Developer of a 3-story mixed use building at 329 5th Street. Lincoln Savings Bank, as mortgagee of the property at 329 5th Street, has requested that the City consent to the assignment of the economic development incentives provided in the two Development Agreements as collateral for the loan made by the Developer and Lincoln Savings Bank. The Assignment of the TIF Development Agreement will only occur upon default by the Developer of the loan and assumption by Lincoln Savings Bank of the Development Agreement. The Assignment of the Upper Story Housing Development Agreement will result in payments being made directly to Lincoln Savings Bank if requested by the Bank.

The attached Resolutions approve the Consent of the City to the Collateral Assignments of the Development Agreements between Lincoln Savings Bank, Junction House 329, LLC, and the City of West Des Moines.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Approve the Consent of the City to the two Collateral Assignments.

Lead Staff Member: Katie Hernandez, Business Development Coordinator, Community & Economic Development & Christine Gordon, AIPC, Housing Planner, Community & Economic Development

STAFF REVIEWS

Department Director	Clyde Evans, Community and Economic Development Director
Appropriations/Finance	Tim Stiles, Finance Director
Legal	
Agenda Acceptance	AG

PUBLICATION(S) (if applicable)

Published In	NA	
Date(s) Published	NA	
Letter sent to surrounding property owners		N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee	NA		
Date Reviewed	NA		
Recommendation	Yes	No	Split

ATTACHMENTS:

Exhibit I	-	Collateral Assignment of the Development Agreement
Exhibit II	-	Collateral Assignment of the Upper Story Housing Development Agreement
Exhibit III	-	Resolution – Approving Collateral Assignment of the Development Agreement
Exhibit IV	-	Resolution – Approving Collateral Assignment of the Upper Story Housing Development Agreement

Exhibit I

Prepared by/Return to: Holly A. Stocker, 225 South 6th Street, Suite 3500, Minneapolis, MN 55402, 612.604.6490
Taxpayer Address: Junction House 329, LLC, 512 1/2 East Grand Avenue, Des Moines, IA 50309

COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Assignment") is made and entered into as of the ___ day of May, 2020, by and among **JUNCTION HOUSE 329, LLC**, an Iowa limited liability company ("Assignor"), **THE CITY OF WEST DES MOINES, IOWA**, a municipal corporation (the "City"), and **LINCOLN SAVINGS BANK**, an Iowa state-chartered banking corporation ("Lender").

Recitals

WHEREAS, Assignor and Lender have entered into that certain Construction Loan Agreement and Business Loan Agreement each dated on or about even date herewith (collectively, the "Construction Loan Agreements"), pursuant to which Lender has agreed to make a loan to Assignor in the original principal amount of $2,096,114.00 (the "Construction Loan") for the purpose of providing financing for the acquisition and development of certain property located at 329 5th Street, in West Des Moines, Iowa (the "Project"), legally described on Exhibit "A", attached hereto and incorporated by this reference; and

WHEREAS, the obligation of Assignor to repay the Construction Loan is evidenced by that certain Promissory Note dated on or about even date herewith (the "Construction Note"), in the original principal amount of $2,096,114.00, executed by Assignor and payable to Lender;

WHEREAS, Assignor and Lender have also entered into that certain Construction Loan Agreement dated on or about even date herewith (the "Bridge Loan Agreement," and together with the Construction Loan Agreements, the "Loan Agreements"), pursuant to which Lender has agreed to make a loan to Assignor in the original principal amount of $1,080,000.00 (the "Bridge Loan," and together with the Construction Loan, the "Loans"); and

WHEREAS, the Construction Note is secured by, among other things, (i) that certain Construction Mortgage dated on or about even date herewith (the "Construction Mortgage"), executed by Assignor, in favor of Lender, encumbering the Project, and (ii) that certain Assignment of Rents dated on or about even date herewith (the "Construction Assignment"), executed by Assignor, in favor of Lender; and

WHEREAS, the obligation of Assignor to repay the Bridge Loan is evidenced by that certain Promissory Note dated on or about even date herewith, in the original principal amount of $1,080,000.00 (the "Bridge Note," and together with the Construction Note, the "Notes"), executed by Assignor and payable to Lender; and

WHEREAS, the Bridge Note is secured by, among other things, (i) that certain Construction Mortgage dated on or about even date herewith (the "Bridge Mortgage," and together with the Construction Mortgage, the "Mortgages"), executed by Assignor, in favor of Lender, encumbering the Project, (ii) that certain Assignment of Rents dated on or about even date herewith (the "Bridge Assignment," and together with the Construction Assignment, the "Assignments"), executed by Assignor, in favor of Lender; and

WHEREAS, the City and Assignor have entered into that certain Agreement for Private Development dated as of April 6, 2020 (the "Development Agreement"), pursuant to which the City has agreed to provide certain incentive payments to Assignor through tax increment financing in connection with the Project and subject to the terms and conditions in the Development Agreement, which payments are defined in the Development Agreement as "Economic Development Grants"; and

WHEREAS, Lender has required, as an express condition to making the Loans, that Assignor assign its rights to the Economic Development Grants under the Development Agreement to Lender to secure the obligations of Assignor under the Notes and the Loan Agreements.

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, Lender and the City hereby agree as follows:

1. Capitalized Terms. Capitalized terms used herein but not otherwise defined herein shall have the meaning set forth in the Loan Agreements, as applicable.

2. Assignment. Assignor hereby assigns to Lender all of its right, title and interest in and to the Economic Development Grants under the Development Agreement, together with all documents and agreements attached as exhibits thereto, and all amendments, addenda and modifications thereof, whether made now or hereafter, to secure the obligations of Assignor under the Notes and the Loan Agreements. Lender acknowledges that this Assignment is subject to the terms and conditions of the Development Agreement. Nothing contained in this Assignment shall constitute Lender's assumption of any duties of Assignor, unless and until Lender elects to do so in writing to the City, as required by the Development Agreement, nor shall it constitute a release of Assignor from its obligations, under the Development Agreement.

3. Assignor Representations and Warranties. As of the date hereof, Assignor hereby represents and warrants to Lender that there have been no prior assignments of its rights under the Development Agreement, that the Development Agreement is a valid and enforceable agreement, that Assignor is not, and to the best of Assignor's knowledge, the City is not, in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. Except for leasing

and rentals permitted by the Development Agreement or under the Loan Agreements, or any one of the same, without the Lender's prior written consent, Assignor agrees not to sell, assign, pledge, mortgage or otherwise transfer or encumber its interest in the Development Agreement as long as this Assignment is in effect. Nothing herein shall limit any City consent requirements to the foregoing under the Development Agreement.

4. Present Assignment. This Assignment shall constitute a perfected, absolute and present assignment. Notwithstanding the foregoing or anything in this Assignment to the contrary, at any time prior to a Default (defined below), Lender grants to Assignor a revocable license to collect and receive the payments of Economic Development Grants, as they become due, under the Development Agreement, and to retain and use such payments for the construction, operation and maintenance of the Project, and to exercise all rights as Developer (as defined in the Development Agreement) under the Development Agreement, in each case subject to the terms hereof, the Mortgages and the other Loan Documents.

5. Attorney-in-Fact. Upon the occurrence of a default or event of default under either of the Note or the Loan Agreement and the continuance beyond any applicable cure period (a "Default"), without affecting any of Lender's rights or remedies against Assignor under any other Loan Document, Assignor shall be deemed to have irrevocably appointed Lender as Assignor's attorney-in-fact to exercise any or all of Assignor's rights in, to and under the Development Agreement and to give appropriate receipts, releases and satisfactions on behalf of Assignor in connection with the performance by any party to the Development Agreement and to do any or all other acts in Assignor's name or in Lender's own name that Assignor could do under the Development Agreement with the same force and effect as if this Assignment had not been made. In addition, upon a Default, Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured party under the Uniform Commercial Code as adopted in the State of Iowa with respect to any payments assigned hereunder. Assignor hereby authorizes Lender to deliver a copy of this Assignment to any other party to the Development Agreement to verify the rights granted to Lender hereunder.

6. City Consent. The City hereby consents and agrees to the Assignor's assignment of the Economic Development Grants that may be paid pursuant to the Development Agreement to the Lender under the terms and conditions of this Assignment. The City further represents and warrants to Lender that the Development Agreement is a valid agreement enforceable in accordance with its terms, that the City is not in default under the Development Agreement and that all of the City's covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date thereof. To the best knowledge of the City, as of the date hereof, (a) Assignor is not in default under the Development Agreement, and (b) all of Assignor's covenants, conditions and agreements under the Development Agreement have been performed as required therein.

7. Direction of Payments. The City hereby acknowledges and agrees that, after written notice from Lender to the City of a Default under this Assignment or revocation of the license granted to Assignor in Section 4, with a copy thereof provided by Lender to Assignor, all Economic Development Grants due to Assignor under the Development Agreement shall be paid to Lender at the address set forth in Section 14 until such time as Lender notifies the City that the Loans have been paid in full or otherwise. Unless and until such written notice is received by the

City, the parties agree that the City shall pay all Economic Development Grants under the Development Agreement to the Assignor, under the terms and conditions of the Development Agreement. To the extent any Economic Development Grants are paid to the Lender after a Default under this Assignment or revocation of the license granted to Assignor under Section 4, Assignor agrees that the City shall have no further liability to the Assignor for the same, and the Assignor releases the City from any claims related to or arising out of the City's payment of such Economic Development Grants to the Lender as described in this Assignment. Lender hereby acknowledges and agrees that Lender's right to receive Economic Development Grants pursuant to the Development Agreement is wholly contingent upon Assignor's compliance with, and as applicable, fulfillment of, the terms and conditions of the Development Agreement, or upon Lender's compliance with and fulfillment of the terms and conditions of the Development Agreement to the extent that Lender has assumed Assignor's duties or obligations under the Development Agreement as described in this Assignment. In no case shall Lender's rights to the Economic Development Grants under the Development Agreement be greater than Assignor's rights to the same.

8. Consent to Mortgages and Assignments. The City consents to the Mortgages and the Assignments to the extent the City's consent is required under the terms of the Development Agreement.

9. City Notice. The City agrees to provide Lender with copies of any notice of default given under the Development Agreement, and that Lender shall have the right, but not the obligation, to cure such default within the time period set forth in the Development Agreement.

10. No Amendment. Assignor hereby agrees that no material change or amendment shall be made to terms of the Development Agreement without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed. It shall be the Assignor's responsibility, and not that of the City, to ensure compliance with this Section 10.

11. Minimum Assessment Agreement. No provision of this Assignment shall be deemed or construed to alter, amend or modify, in any way, the terms of the Minimum Assessment Agreement executed by the City and the Assignor in connection with the Development Agreement and recorded with the Polk County Recorder in Book 17793 at Page 981.

12. No Waiver. This Assignment can be waived, modified, amended, terminated or discharged, and any rights hereunder assigned, only explicitly in a writing signed by the parties hereto. A waiver by a party hereto shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of a party's rights or remedies hereunder. All rights and remedies of a party shall be cumulative and shall be exercised singularly or concurrently, at the enforcing party's option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

13. Continuing Obligations. No provision of this Assignment shall be deemed or construed to alter, amend or modify, in any way, the rights and obligations of the City contained

in the Development Agreement. Except as expressly contemplated in Section 4, above, upon a Default, no provision of this Assignment shall be deemed or construed to alter, amend or modify, in any way, the rights and obligations of Assignor contained in the Development Agreement.

14. Notice. Any notice, request, demand or other communication hereunder shall be deemed duly given if delivered or postage prepaid, certified or registered, addressed to the party as set forth below:

If to the City:

City of West Des Moines
4200 Mills Civic Parkway
P.O. Box 65320
West Des Moines, Iowa 50265-0320
Attention: Ryan Jacobson

If to Assignor:

Junction House 329, LLC
Attention: Tim Rypma
512 1/2 East Grand Avenue
Des Moines, Iowa 50309

If to Lender:

Lincoln Savings Bank
Attn: Doug Parker
13523 University Avenue
Clive, Iowa 50325

15. This Assignment shall be governed by and construed in accordance with the laws of the State of Iowa and shall be effective as of the closing date for the Loans. If the Loans do not close by June 1, 2020, this Assignment shall be null and void.

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JUNCTION HOUSE 329, LLC, an Iowa limited liability company

By: _____
Tim Rypma
Its Manager

STATE OF IOWA)
) ss
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this ___ day of _____, 2020, by Tim Rypma, the Manager of Junction House 329, LLC, an Iowa limited liability company, for and on behalf of said limited liability company.

_____
Notary Public in the State of Iowa

My commission expires: _____

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

By: _____
Steven K. Gaer
Mayor

ATTEST:

By: _____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss
COUNTY OF POLK)

On this ____ day of _____, 2020, before me a Notary Public in and for said County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2020, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary Public in the State of Iowa

My commission expires:_____

LINCOLN SAVINGS BANK, an Iowa state-chartered banking corporation

By: _____
Doug Parker
Vice President

STATE OF IOWA)
) ss
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Doug Parker, Vice President of Lincoln Savings Bank, an Iowa state-chartered banking corporation, for and on behalf of the Iowa state-chartered banking corporation.

_____
Notary Public in the State of Iowa

My commission expires: _____

EXHIBIT "A"

[Legal Description of Project]

Lot 17, Block 18, First Addition to Valley Junction, an official plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa.

Exhibit II

Prepared by/Return to: Holly A. Stocker, 225 South 6th Street, Suite 3500, Minneapolis, MN 55402, 612.604.6490
Taxpayer Address: Junction House 329, LLC, 512 1/2 East Grand Avenue, Des Moines, IA 50309

COLLATERAL ASSIGNMENT OF UPPER STORY HOUSING DEVELOPMENT AGREEMENT

THIS COLLATERAL ASSIGNMENT OF UPPER STORY HOUSING DEVELOPMENT AGREEMENT (this "Assignment") is made and entered into as of the ____ day of May, 2020, by and among **JUNCTION HOUSE 329, LLC**, an Iowa limited liability company ("Assignor"), **THE CITY OF WEST DES MOINES, IOWA**, a municipal corporation (the "City"), and **LINCOLN SAVINGS BANK**, an Iowa state-chartered banking corporation ("Lender").

Recitals

WHEREAS, Assignor and Lender have entered into that certain Construction Loan Agreement and Business Loan Agreement each dated on or about even date herewith (collectively, the "Construction Loan Agreements"), pursuant to which Lender has agreed to make a loan to Assignor in the original principal amount of $2,096,114.00 (the "Construction Loan") for the purpose of providing financing for the acquisition and development of certain property located at 329 5th Street, in West Des Moines, Iowa (the "Project"), legally described on Exhibit "A", attached hereto and incorporated by this reference; and

WHEREAS, the obligation of Assignor to repay the Construction Loan is evidenced by that certain Promissory Note dated on or about even date herewith (the "Construction Note"), in the original principal amount of $2,096,114.00, executed by Assignor and payable to Lender;

WHEREAS, Assignor and Lender have also entered into that certain Construction Loan Agreement dated on or about even date herewith (the "Bridge Loan Agreement," and together with the Construction Loan Agreements, the "Loan Agreements"), pursuant to which Lender has agreed to make a loan to Assignor in the original principal amount of $1,080,000.00 (the "Bridge Loan," and together with the Construction Loan, the "Loans"); and

WHEREAS, the Construction Note is secured by, among other things, (i) that certain Construction Mortgage dated on or about even date herewith (the "Construction Mortgage"), executed by Assignor, in favor of Lender, encumbering the Project, and (ii) that certain Assignment of Rents dated on or about even date herewith (the "Construction Assignment"), executed by Assignor, in favor of Lender; and

WHEREAS, the obligation of Assignor to repay the Bridge Loan is evidenced by that certain Promissory Note dated on or about even date herewith, in the original principal amount of $1,080,000.00 (the "Bridge Note," and together with the Construction Note, the "Notes"), executed by Assignor and payable to Lender; and

WHEREAS, the Bridge Note is secured by, among other things, (i) that certain Construction Mortgage dated on or about even date herewith (the "Bridge Mortgage," and together with the Construction Mortgage, the "Mortgages"), executed by Assignor, in favor of Lender, encumbering the Project, (ii) that certain Assignment of Rents dated on or about even date herewith (the "Bridge Assignment," and together with the Construction Assignment, the "Assignments"), executed by Assignor, in favor of Lender; and

WHEREAS, the City and Assignor have entered into that certain Upper Story Housing Program Agreement for Private Development dated as of April 6, 2020 (the "Development Agreement"), pursuant to which the City has agreed to provide a forgivable loan, in an amount not to exceed $1,200,000.00, in connection with the Project and subject to the terms and conditions in the Development Agreement, which loan is to be paid in one or more disbursements, hereinafter referred to as "Loan Disbursements"; and

WHEREAS, under the terms of the Development Agreement, Assignor is obligated to execute a Promissory Note (the "Forgivable Note") as a condition precedent to receiving any Loan Disbursements; and

WHEREAS, Lender has required, as an express condition to making the Loans, that Assignor assign its rights to the Loan Disbursements under the Development Agreement to Lender to secure the obligations of Assignor under the Notes and the Loan Agreements.

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, Lender and the City hereby agree as follows:

1. Capitalized Terms. Capitalized terms used herein but not otherwise defined herein shall have the meaning set forth in the Loan Agreements, as applicable.

2. Assignment. Assignor hereby assigns to Lender all of its right, title and interest in and to the Loan Disbursements made pursuant to the Development Agreement and the Forgivable Note, together with all documents and agreements attached as exhibits thereto, and all amendments, addenda and modifications thereof, whether made now or hereafter, to secure the obligations of Assignor under the Notes and the Loan Agreements. Lender acknowledges that this Assignment of the Loan Disbursements, and its right to receive the same, is subject to the terms and conditions of the Development Agreement and the Forgivable Note. Nothing contained in this Assignment shall constitute Lender's assumption of any duties of Assignor under the Development Agreement or the Forgivable Note, unless and until Lender elects to do so in writing to the City, as required by the Development Agreement, nor shall it constitute a release of Assignor from its obligations under the Development Agreement or the Forgivable Note.

3. Assignor Representations and Warranties. As of the date hereof, Assignor hereby represents and warrants to Lender that there have been no prior assignments of its rights under the Development Agreement, that the Development Agreement is a valid and enforceable agreement, that Assignor is not, and to the best of Assignor's knowledge, the City is not, in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. Except for leasing and rentals permitted by the Development Agreement or under the Loan Agreements, or any one of the same, without the Lender's prior written consent, Assignor agrees not to sell, assign, pledge, mortgage or otherwise transfer or encumber its interest in the Development Agreement as long as this Assignment is in effect. Nothing herein shall limit any City consent requirements to the foregoing under the Development Agreement or the Forgivable Note.

4. Present Assignment. This Assignment shall constitute a perfected, absolute and present assignment of the Loan Disbursements to be made under the terms of the Development Agreement and pursuant to the Forgivable Note. This Assignment is not an assignment of the Development Agreement or the Forgivable Note, and is intended only to perfect Lender's right to receive the Loan Disbursements, to the extent otherwise payable to Assignor under the terms of the Development Agreement and under the terms of the Forgivable Note, until Lender notifies the City that no further Loan Disbursements shall be paid to Lender as provided in Section 7. In furtherance of the foregoing, nothing herein shall be deemed to prohibit Assignor from exercising its rights, nor relieve Assignor of its obligations, as Property Owner (as defined in the Development Agreement) under the terms of the Development Agreement and the Forgivable Note.

5. Attorney-in-Fact. Upon the occurrence of a default or event of default under either of the Notes or the Loan Agreements and the continuance beyond any applicable cure period (a "Default"), without affecting any of Lender's rights or remedies against Assignor under any other Loan Document, Assignor shall be deemed to have irrevocably appointed Lender as Assignor's attorney-in-fact to exercise any or all of Assignor's rights in, to and under the Development Agreement and the Forgivable Note and to give appropriate receipts, releases and satisfactions on behalf of Assignor in connection with the performance by any party to the Development Agreement or the Forgivable Note, or both, and to do any or all other acts in Assignor's name or in Lender's own name that Assignor could do under the Development Agreement or the Forgivable Note, or both, with the same force and effect as if this Assignment had not been made. In addition, upon a Default, Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured party under the Uniform Commercial Code as adopted in the State of Iowa with respect to any payments assigned hereunder. Assignor hereby authorizes Lender to deliver a copy of this Assignment to any other party to the Development Agreement to verify the rights granted to Lender hereunder.

6. City Consent. The City hereby consents and agrees to Assignor's assignment of the Loan Disbursements that may be paid pursuant to the Development Agreement and under the Forgivable Note to the Lender under the terms and conditions of this Assignment. The City further represents and warrants to Lender that the Development Agreement is a valid agreement enforceable in accordance with its terms, that the City is not in default under the Development Agreement and that all of the City's covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date thereof. To the best

knowledge of the City, as of the date hereof, (a) Assignor is not in default under the Development Agreement, and (b) all of Assignor's covenants, conditions and agreements under the Development Agreement have been performed as required therein.

7. Direction of Payments. The City hereby acknowledges and agrees that all Loan Disbursements due to Assignor under the Development Agreement and the Forgivable Note shall be paid to Lender at the address set forth in Section 14 until such time as Lender notifies the City that no further Loan Disbursements shall be paid to Lender. Assignor releases the City from any claims related to or arising out of the City's payment of such Loan Disbursements to the Lender as described in this Assignment and Assignor agrees that the City shall have no further liability to the Assignor for Loan Disbursements paid to Lender before Lender notifies the City that no further Loan Disbursements shall be paid to Lender, as above required. Lender hereby acknowledges and agrees that Lender's right to receive Loan Disbursements pursuant to the Development Agreement and under the Forgivable Note is wholly contingent upon Assignor's compliance with, and as applicable, fulfillment of, the terms and conditions of the Development Agreement and the Forgivable Note, or upon Lender's compliance with and fulfillment of the terms and conditions of the Development Agreement and the Forgivable Note, in each case, to the extent that Lender has assumed Assignor's duties or obligations under the Development Agreement and the Forgivable Note as described in this Assignment. In no case shall Lender's rights to receive Loan Disbursements under the Development Agreement and under the Forgivable Note be greater than Assignor's rights to the same.

8. Consent to Mortgages and Assignments. The City consents to the Mortgages and the Assignments to the extent the City's consent is required under the terms of the Development Agreement or the Forgivable Note.

9. City Notice. The City agrees to provide Lender with copies of any notice of default given under the Development Agreement or the Forgivable Note, or both, and that Lender shall have the right, but not the obligation, to cure such default within the time period set forth in the Development Agreement or the Forgivable Note, as applicable.

10. No Amendment. Assignor hereby agrees that no material change or amendment shall be made to terms of the Development Agreement or the Forgivable Note without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed. It shall be the Assignor's responsibility, and not that of the City, to ensure compliance with this Section 10.

11. Intentionally Deleted.

12. No Waiver. This Assignment can be waived, modified, amended, terminated or discharged, and any rights hereunder assigned, only explicitly in a writing signed by the parties hereto. A waiver by a party hereto shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of a party's rights or remedies hereunder. All rights and remedies of a party shall be cumulative and shall be exercised singularly or concurrently, at the enforcing party's option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

13. Continuing Obligations. No provision of this Assignment shall be deemed or construed to alter, amend or modify, in any way, the rights and obligations of the City contained in the Development Agreement or the Forgivable Note. Except as expressly contemplated in this Assignment, no provision of this Assignment shall be deemed or construed to alter, amend or modify, in any way, the rights and obligations of Assignor contained in the Development Agreement or the Forgivable Note.

14. Notice. Any notice, request, demand or other communication hereunder shall be deemed duly given if delivered or postage prepaid, certified or registered, addressed to the party as set forth below:

If to the City:

City of West Des Moines
4200 Mills Civic Parkway
P.O. Box 65320
West Des Moines, Iowa 50265-0320
Attention: Ryan Jacobson

If to Assignor:

Junction House 329, LLC
Attention: Tim Rypma
512 1/2 East Grand Avenue
Des Moines, Iowa 50309

If to Lender:

Lincoln Savings Bank
Attn: Doug Parker
13523 University Avenue
Clive, Iowa 50325

15. This Assignment shall be governed by and construed in accordance with the laws of the State of Iowa and shall be effective as of the closing date for the Loans. If the Loans do not close by June 1, 2020, this Assignment shall be null and void.

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JUNCTION HOUSE 329, LLC, an Iowa limited liability company

By: _____
Tim Rypma
Its Manager

STATE OF IOWA)
) ss
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this ___ day of _____, 2020, by Tim Rypma, the Manager of Junction House 329, LLC, an Iowa limited liability company, for and on behalf of said limited liability company.

_____
Notary Public in the State of Iowa

My commission expires: _____

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

By: _____
Steven K. Gaer
Mayor

ATTEST:

By: _____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss
COUNTY OF POLK)

On this ____ day of _____, 2020, before me a Notary Public in and for said County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2020, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary Public in the State of Iowa

My commission expires:_____

LINCOLN SAVINGS BANK, an Iowa state-chartered banking corporation

By: _____
Doug Parker
Vice President

STATE OF IOWA)
) ss
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Doug Parker, Vice President of Lincoln Savings Bank, an Iowa state-chartered banking corporation, for and on behalf of the Iowa state-chartered banking corporation.

_____
Notary Public in the State of Iowa

My commission expires: _____

EXHIBIT "A"

[Legal Description of Project]

Lot 17, Block 18, First Addition to Valley Junction, an official plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa.

Exhibit III

RESOLUTION APPROVING THE CONSENT TO COLLATERAL ASSIGNMENT OF THE DEVELOPMENT AGREEMENT BETWEEN JUNCTION HOUSE 329, LLC AND THE CITY OF WEST DES MOINES, IOWA

WHEREAS, on April 6, 2020, Junction House 329, LLC ("Developer") and the City of West Des Moines ("City") entered into an Agreement for Private development ("Development Agreement") in which the City agreed to provide the Developer economic development incentives ("Economic Development Grants") as consideration for Developer's construction of a mixed-use building, including office space anticipated to be occupied by retail and office enterprise tenants that would employ individuals therein, and multi-residential space that would include housing units for low or moderate income households on certain property located at 329 5th Street ("Development Property"); and

WHEREAS, pursuant to the terms of the Development Agreement, the Developer cannot assign its interests in the Development Agreement without the City's consent; and

WHEREAS, Lincoln Savings Bank, an Iowa state-chartered banking corporation ("Bank"), as mortgagee of the Development Property, has requested that the City consent to a Collateral Assignment of the Development Agreement by and among the Developer, City, and Bank ("Assignment"); and

WHEREAS, pursuant to the terms of the Assignment, the Developer will assign to the Bank all of its right, title, and interest in and to the Economic Development Grants under the Development Agreement, provided however that the Bank assumes no duties or obligations of the Developer under the Development Agreement pursuant to the Assignment unless the Bank elects to do so; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The form and content of the Collateral Assignment of Development Agreement by and among Junction House 329, LLC, the City, and Lincoln Savings Bank, the provisions of which are incorporated herein by reference, are in all respects authorized and approved.

2. The Mayor is authorized to sign the Collateral Assignment of the Development Agreement and the City Clerk is directed to attest to the Mayor's signature.

3. The Mayor and City Clerk are hereby authorized, empowered, and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Assignment as executed.

PASSED AND ADOPTED this _____ day of _____, 2020.

Steven K. Gaer, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

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Exhibit IV

RESOLUTION APPROVING THE CONSENT TO COLLATERAL ASSIGNMENT OF THE UPPER STORY HOUSING PROGRAM AGREEMENT BETWEEN JUNCTION HOUSE 329, LLC AND THE CITY OF WEST DES MOINES, IOWA

WHEREAS, on April 6, 2020, Junction House 329, LLC ("Developer") and the City of West Des Moines ("City") entered into an Upper Story Housing Program Agreement for Private development ("USH Agreement") in which the City agreed to provide the Developer economic development incentives in the form of a forgivable loan ("Forgivable Loan") as consideration for Developer's construction of a mixed-use building, including 16 housing units that would be rented exclusively to low or moderate income households and rented at or below Fair Market Rent for at least 15 years, on certain property located at 329 5th Street ("Development Property"); and

WHEREAS, pursuant to the terms of the USH Agreement, the Developer cannot assign its interests in the USH Agreement without the City's consent; and

WHEREAS, Lincoln Savings Bank, an Iowa state-chartered banking corporation ("Bank"), as mortgagee of the Development Property, has requested that the City consent to a Collateral Assignment of Upper Story Housing Development Agreement by and among the Developer, City, and Bank ("Assignment"); and

WHEREAS, pursuant to the terms of the Assignment, the Developer will assign to the Bank all of its right, title, and interest in and to the loan disbursement under the USH Agreement, provided however that the Bank assumes no duties or obligations of the Developer under the USH Agreement pursuant to the Assignment unless the Bank elects to do so.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The form and content of the Collateral Assignment of Upper Story Housing Development Agreement by and among Junction House 329, LLC, the City, and Lincoln Savings Bank regarding the USH Agreement, the provisions of which are incorporated herein by reference, are in all respects authorized and approved.

2. The Mayor is authorized to sign the Collateral Assignment of the Upper Story Housing Development Agreement and the City Clerk is directed to attest to the Mayor's signature.

3. The Mayor and City Clerk are hereby authorized, empowered, and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Assignment as executed.

PASSED AND ADOPTED this _____ day of _____, 2020.

Steven K. Gaer, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

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