

RESOLUTION NO. 11-18-21B

RESOLUTION AUTHORIZING A COMMUNITY IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT FOR THE EDGERTON CROSSING WOODSTONE PROJECT

WHEREAS, the City of Edgerton, Kansas (the “City”), desires to promote, stimulate and develop the general welfare and economic prosperity of the City and its inhabitants and thereby to further promote, stimulate and develop the general welfare and economic prosperity of the State of Kansas; and

WHEREAS, the City has created the Community Improvement District (Woodstone Project) (the “District”) and imposed a 1% community improvement district sales tax;

WHEREAS, Woodstone Properties, LLC, a Missouri limited liability company (the “Developer”), desires to develop one or more hotels, a conference center, a travel center, restaurants, office and retail space (the “Project”) at the southwest corner of Homestead Lane and 199th Street, all as further described in the form of CID Development Agreement attached hereto as **Exhibit A** (the “CID Development Agreement”); and

WHEREAS, the City desires to provide for the development of the Project on the terms set forth in the CID Development Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS, AS FOLLOWS:

Section 1. Approval of Development Agreement. The Governing Body hereby approves the CID Development Agreement in substantially the form attached hereto as **Exhibit A**.

Section 2. Execution of CID Development Agreement. The Mayor of the City is hereby authorized to enter into the CID Development Agreement, in substantially the form presented to and reviewed by the Governing Body at this meeting (a copy of which upon execution shall be filed in the office of the City Clerk), with such changes therein as shall be approved by the Mayor, the Mayor’s signature thereon being conclusive evidence of his approval thereof. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the CID Development Agreement.

Section 3. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with respect to the CID Development Agreement.

Section 4. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body.

ADOPTED this 18th day of November, 2021.

CITY OF EDGERTON, KANSAS

[SEAL]

By: /s/
Donald Roberts, Mayor

ATTEST:

 /s/
Alexandria Clower, City Clerk

EXHIBIT A

FORM OF CID DEVELOPMENT AGREEMENT

CID DEVELOPMENT AGREEMENT

between the

CITY OF EDGERTON, KANSAS

and

WOODSTONE PROPERTIES, LLC

November __, 2021

Relating to the Edgerton Crossing Woodstone Project

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CID DEVELOPMENT AGREEMENT

THIS CID DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into by and between the **CITY OF EDGERTON, KANSAS**, a municipal corporation duly organized and existing under the laws of the State of Kansas (the “**City**”), and **WOODSTONE PROPERTIES, LLC**, a Missouri limited liability company (the “**Developer**,” and together with the City, the “**Parties**,” and each a “**Party**”), and is dated as of November ____, 2021 (the “**Effective Date**”).

RECITALS

WHEREAS, the Developer is the owner of certain privately-owned property located in the southwest quadrant of Homestead Lane and 199th Street, Edgerton, Johnson County, Kansas (the “**Property**”); and

WHEREAS, the City has the authority to undertake community improvement district financing pursuant to the Kansas Community Improvement District Act, K.S.A. 12-6a26 *et seq.* (the “**CID Act**”); and

WHEREAS, on September 22, 2021, Woodstone Properties, LLC, a Missouri limited liability company (the “**Developer**”), submitted a petition (the “**CID Petition**”) to the City requesting the formation of the CID (as defined below) and the levying of a CID Sales Tax (as defined below) in accordance with the CID Act; and

WHEREAS, pursuant to Ordinance 2100 adopted by the City on November 18, 2021 (the “**CID Ordinance**”), the City created a Community Improvement District encompassing the Property, the boundaries of which are legally described on **Exhibit B** and generally depicted on **Exhibit A** attached hereto (the “**CID**”) and approved the imposition of the CID Sales Tax, all in accordance with the CID Act; and

WHEREAS, the Developer seeks to construct or improve upon the Property certain improvements described in a general manner consisting of hotels, a conference center, travel center, restaurants, retail space, office space, other commercial buildings and, subject to the terms and conditions of this Agreement, all other items allowable under the CID Act (collectively, the “**Project**”); and

WHEREAS, the Parties agree that construction and improvement of the Project and the CID financing is to their mutual benefit; and

WHEREAS, the City and the Developer now desire to enter into this Agreement to formalize the development and financing of the Project.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement.

- A. The terms defined in this Article include the plural as well as the singular.
- B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Kansas Regulatory Basis of Accounting as prescribed by the Kansas Municipal Audit & Accounting Guide.
- C. All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.
- D. All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- E. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.
- F. The Article and Section headings herein are for convenience only and shall not affect the construction hereof,
- G. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The provisions of the CID Petition, and such resolutions and ordinances of the City introduced or adopted by the City Council which created the CID and approved the CID Sales Tax, and the provisions of the CID Act, as amended, are hereby incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof.

Section 1.02. Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

“**Agreement**” means this Woodstone CID Development Agreement, between the City and the Developer, as amended from time to time.

“**Applicable Law and Requirements**” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction,

writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authorities.

“Certificate of CID Costs” means a certificate relating to CID Costs in substantially the form attached hereto as **Exhibit C**.

“Certificate of Substantial Completion” means a certificate evidencing the Substantial Completion of a distinct portion of the Project, in substantially the form attached hereto as **Exhibit D**.

“CID” means the Community Improvement District created by the City on November 18, 2021 pursuant to Ordinance No. 2100.

“CID Act” means the Kansas Community Improvement District Act, K.S.A. 12-6a26 through 12-6a36, as amended and supplemented from time to time.

“CID Costs” means all costs that are eligible to be paid from CID Revenues in accordance with the CID Act.

“CID Fund” means the fund created pursuant to **Section 6.01** hereof.

“CID Revenues” means 100% of the amounts received by the City from the CID Sales Tax.

“CID Sales Tax” means the amount collected by the City from the imposition of a 1% sales and use tax pursuant to the CID Act.

“CID Sales Tax Term” means a term equal to twenty-two (22) calendar years, beginning on January 1, 2023 and ending on December 31, 2044.

“City” means the City of Edgerton, Kansas.

“City Event of Default” shall have the meaning set forth in **Section 9.02** of this Agreement.

“City Representative” means the Mayor or City Administrator of the City, and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement.

“City’s Annual Administrative Fee” shall have the meaning set forth in **Section 6.02** of this Agreement.

“Construction Plans” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Project, together with all supplements, amendments or corrections, submitted by the Developer and (if required to be pursuant to Applicable Law and Requirements) approved by the City in accordance with this Agreement.

“County” means Johnson County, Kansas.

“Developer” means Woodstone Properties, LLC, a limited liability company organized and existing under the laws of the State of Missouri, and any successors and assigns permitted pursuant to this Agreement.

“Developer Event of Default” shall have the meaning set forth in **Section 9.01** of this Agreement.

“Developer Representative” means J. Shannon McMurdo and such other person or persons designated and duly authorized to act on behalf of the Developer in matters relating to this Agreement.

“Development Agreement” means the Development Agreement dated September 10, 2021, between the City and the Developer, as supplemented and amended from time to time.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals required for the implementation of the Project and the CID, and consistent with this Agreement.

“Governmental Authorities” means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

“Pay As You Go” means “Pay-as-you-go financing” as defined in the CID Act.

“Permitted Subsequent Approvals” means the building permits and other governmental approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant.

“Plans” means Site Plans, Construction Plans and all other Governmental Approvals necessary to construct the Project in accordance with City ordinances and applicable laws of Governmental Authorities and this Agreement.

“Project” shall have the meaning described in the recitals to this Agreement.

“Substantial Completion” has the meaning set forth in **Section 4.06**.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations of City. The City makes the following representations and warranties, which are true and correct on the date hereof, to the best of the City’s knowledge:

A. **Due Authority.** The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

B. **No Defaults or Violation of Law.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. **No Litigation.** There is no litigation, proceeding or investigation pending or threatened against the City with respect to the Project or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

D. **Governmental or Corporate Consents.** No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

E. **No Default.** No default or City Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or a City Event of Default in any material respect on the part of the City under this Agreement.

Section 2.02. Representations of the Developer.

The Developer makes the following representations and warranties, which are true and correct on the date hereof, to the Developer's actual knowledge:

A. **Due Authority.** The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. **No Defaults or Violation of Law.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and

conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. **No Litigation.** No litigation, proceeding or investigation is pending or threatened against the Project, the Developer or any officer, director, member or shareholder of the Developer and affecting the Project. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

D. **Governmental or Corporate Consents.** As of the Effective Date, no additional consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity, in connection with the execution, delivery and performance by the Developer of this Agreement, other than Permitted Subsequent Approvals.

E. **No Default.** No default or Developer Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or a Developer Event of Default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument affecting the Property to which the Developer is a party or by which the Developer is or may be bound.

F. **Compliance with Laws.** The Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations contemplated by this Agreement.

Section 2.03. Developer's Acquisition of the Property. At the time that this Agreement is executed, Developer represents that it has fee simple title to all of the real property in the CID.

ARTICLE III REIMBURSEMENT OF DEVELOPER'S CID COSTS

Section 3.01. CID Costs, Generally. Subject to the terms of this Agreement, the City shall reimburse the Developer for CID Costs. The Developer shall be reimbursed on a Pay As You Go basis as further set forth in this Agreement. The City shall only be obligated to reimburse the Developer from the CID Fund in the manner set forth in **Article VI** hereof.

Section 3.02. Developer to Advance Costs. The Developer agrees to advance or cause to be advanced all CID Costs as necessary to complete the Project. The Developer also agrees to pay the fees and expenses of the City's legal counsel related to drafting and negotiating this Agreement and implementing the CID.

Section 3.03. City's Obligation to Reimburse Developer.

A. **Obligation to Reimburse.** Subject to the terms of this Agreement and the conditions in this Section, the City shall reimburse Developer for CID Costs. The Developer shall be reimbursed by the City for CID Costs from the CID Fund on a Pay As You Go basis.

B. **Timing of Reimbursement.** The City shall have no obligation to reimburse Developer until funds are available in the CID Fund and the conditions listed in **Section 6.01(C)** hereof are satisfied.

C. **Source of Reimbursement.** The City shall make payments from the CID Fund on a Pay As You Go basis.

Section 3.04. Developer Reimbursement Process.

A. All requests for reimbursement of CID Costs shall be made in a Certificate of CID Costs in substantial compliance with the form attached hereto as **Exhibit C**. Requests for reimbursement shall be submitted by the Developer to the City not more often than quarterly. The Developer shall provide itemized invoices, receipts or such other information reasonably satisfactory to the City to confirm that any such cost has been paid and qualifies as a CID Cost, and shall further provide a summary sheet detailing the costs requested to be reimbursed. Such summary sheet shall show the date such cost was paid, the payee, a brief description of the type of cost paid, and the amount paid. The Developer shall provide such additional information as reasonably requested by the City to confirm that such costs have been paid and qualify as CID Costs.

B. The City reserves the right, upon reasonable written notice to Developer, to have its engineer or other agents or employees inspect all work in respect of which a Certificate of CID Costs is submitted, to examine the Developer's and others' records relating to all expenses related to the invoices to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

C. The City shall have 30 calendar days after receipt of any Certificate of CID Costs to review and respond by written notice to the Developer. If the submitted Certificate of CID Costs and supporting documentation demonstrates that (1) the request relates to the CID Costs; (2) the expense has been paid; (3) Developer is not in material default under this Agreement; (4) there is no fraud on the part of the Developer; and (5) the conditions precedent listed in **Section 6.01(C)** have been satisfied, then the City shall approve the Certificate of CID Costs and make, or cause to be made, reimbursement from the CID Fund in accordance with **Article VI** (and subject to **Section 3.06**) hereof as funds are available in the CID Fund; provided, the City shall disburse CID Revenues (less the City's Annual Administrative Fee) to the Developer on no more than a monthly basis. If the City reasonably disapproves of the Certificate of CID Costs in accordance with this **Article III**, the City shall notify the Developer in writing of the reason for such disapproval within such 30-day period, in which event the Developer shall have the right to revise and re-submit the Certificate of CID Costs to address the City's reason for disapproval, and the City will review and approve (or disapprove) the revised Certificate of CID Costs in accordance with this Section. Approval of the Certificate of CID Costs will not be unreasonably withheld, conditioned or delayed.

Section 3.05. Right to Inspect and Audit. The Developer agrees that, up to one year after completion of the Project, the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review and audit, from time to time, all the Developer's books and records relating to the CID Costs (including, but not limited to, all general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices); provided, however, that (to the extent it may legally do so) the City agrees to maintain the confidentiality of the foregoing materials and, under no circumstances, allow the same to become public record.

Section 3.06. Limitation on City's Payment Obligations. Notwithstanding any other term or provision of this Agreement, the City's obligation to reimburse the Developer for CID Costs shall be limited to monies in the CID Fund and shall not be payable from any other source.

Section 3.07. The CID, Generally. The City shall not, under any circumstances other than by a future written agreement between the parties, terminate the CID or take any action to reduce the CID Sales Tax Term prior to such time as the Developer has been reimbursed for all CID Costs.

ARTICLE IV THE PROJECT

Section 4.01. Scope of the Project. Subject to the terms and conditions of this Agreement, the Developer shall construct, or cause to be constructed, the Project, subject to tenant/user/market demand.

Section 4.02. Project Schedule.

A. Subject to the terms and conditions of this Agreement, after the Effective Date and receipt of all applicable Governmental Approvals, the Developer shall use commercially reasonable efforts to promptly commence (or cause to be commenced), and shall promptly thereafter diligently prosecute to completion, the construction of the Project, subject to tenant/user/market demand.

B. The completion of the Project shall be evidenced by the Developer's delivery of a Certificate of Substantial Completion in accordance with **Section 4.06** of this Agreement.

C. The City agrees to act in good faith and use its best efforts to timely process and review all Plans and consider the issuance of all necessary permits and other approvals, including building permits, rezoning approvals, preliminary and final plat approval, and all other permits or approvals which are required for the Developer to construct the Project. To the extent the City determines that any Plans or other documents or requests submitted by the Developer for the City's approval are unacceptable, the City shall provide a written description detailing the portions of the Plans or documents that are unacceptable.

Section 4.03. Design of Project. In order to further the development of the Project, the City hereby authorizes the Developer to construct, or cause to be constructed, the Project according to the final Plans approved by the City.

Section 4.04. Plans and Construction.

A. **Plans.** The Developer shall submit Plans for the Project for review and approval by the City pursuant to the review and approval process set forth in the City ordinances and applicable state law.

B. **Construction Permits and Approvals.** Before commencement of construction of the Project, the Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required by any Applicable Law and Requirements. The City shall cooperate with and provide all usual assistance to the Developer in securing these permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law; except that the City shall not be required to issue any such permits or approvals for any portion of the Project not in conformance with this Agreement or City ordinances or policies.

C. **Development Schedule.** Subject to the terms and conditions of this Agreement, the Developer shall commence or cause to be commenced construction of the Project in good and workmanlike manner in accordance with the terms of this Agreement, and shall cause the Project to be completed with due diligence. Upon reasonable advance notice, the Developer shall meet with the City to review and discuss the design and construction of the Project in order to enable the City to monitor the status of construction and to determine that the Project is being performed and completed substantially in accordance with this Agreement.

D. **No Waiver.** Nothing in this Agreement shall constitute a waiver of the City's right to consider and approve or deny Governmental Approvals pursuant to the City's regulatory authority as provided by the City's ordinances and applicable state law.

Section 4.05. Rights of Access. Representatives of the City shall have the right of access to the Property, upon reasonable notice to Developer in advance, without charges or fees, at normal construction hours during the period of construction, for the purpose of ensuring compliance with this Agreement, including, but not limited to, the inspection of the work being performed in constructing, renovating, improving, equipping, repairing and installing the Project, so long as they comply with all safety rules. Except in case of emergency, prior to any such access, such representatives of the City will check in with the on-site manager. Such representatives of the City shall carry proper identification, shall insure their own safety, assuming the risk of injury, and shall not interfere with the construction activity.

Section 4.06. Certificate of Substantial Completion. Promptly after the Substantial Completion of a distinct portion of the Project in accordance with the provisions of this Agreement, the Developer may submit a Certificate of Substantial Completion to the City. "**Substantial Completion**" shall mean that the Developer shall have completed a distinct portion of the Project and, if required, shall have been granted a Temporary Certificate of Occupancy by the City

Building Official if such improvement requires a Temporary Certificate of Occupancy. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit D**. The City shall, within ten (10) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The City's execution of the Certificate of Substantial Completion shall constitute evidence of the satisfaction of the Developer's agreements and covenants to construct such distinct portion of the Project. The final Certificate of Substantial Completion to be submitted by the Developer shall contain a statement that such certificate is the final Certificate of Substantial Completion.

ARTICLE V DEVELOPER COVENANTS

Section 5.01. Operation of Project. The Project shall comply with all applicable building and zoning, health, property maintenance, environmental and safety codes and laws and all other applicable laws, rules and regulations. The Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by City ordinances and any Applicable Law and Requirements for the construction and operation of the Project, including but not limited to obtaining all necessary licenses and paying any necessary fees to obtain required permits and licenses.

Section 5.02. Taxes, Assessments, Encumbrances and Liens.

A. So long as the Developer owns the real property within the CID, the Developer shall pay (or cause to be paid), prior to delinquency, all real estate taxes and assessments on the real property owned by the Developer within the CID. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

B. Developer agrees to use commercially reasonable efforts to ensure that no mechanics' or other liens shall be established or remain against the Project, or the funds in connection with any of the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

ARTICLE VI REIMBURSEMENT OF CID COSTS; COMMUNITY IMPROVEMENT DISTRICT FINANCING

Section 6.01. CID Fund.

A. **Creation of CID Fund; Deposit of CID Revenues.** The City shall establish and maintain a separate fund and account known as the CID District Fund (Edgerton Crossing Woodstone Project) (the “CID Fund”). All CID Revenues shall be deposited into the CID Fund.

B. **Disbursements from the CID Fund.** All disbursements from the CID Fund shall be made only to reimburse CID Costs or to pay the City’s Annual Administrative Fee.

C. **Conditions Precedent to Reimbursements.** Developer hereby understands and agrees that it shall not receive any reimbursements from the CID Fund unless and until the conditions precedent set forth below have been fully satisfied as determined by City in its sole reasonable discretion:

1. Developer submits a Certificate of CID Costs for CID Costs of the Project;
2. City has approved the Certificate of CID Costs;
3. Developer shall be in full compliance with the terms and conditions of this Agreement;
4. With respect to the CID Costs that are the subject of the request for reimbursement, the Developer shall have advanced or cause to be advanced all costs and shall have provided evidence of such advances;
5. One or more Certificates of Substantial Completion shall have been submitted to and approved by the City; and
6. If Developer owns the real property within the CID, Developer shall have fully paid all outstanding property taxes on the Property that are then due, subject to Developer’s legal rights to protest.

Section 6.02. City’s Annual Administrative Fee. Developer consents to the City’s collection of an annual administrative fee equal to one percent (1%) of the annual CID Revenues actually received by the City (the “City’s Annual Administrative Fee”), which the City shall first deduct from such CID Revenues before disbursing the remaining CID Revenues to the Developer in accordance with this Agreement.

ARTICLE VII ASSIGNMENT; TRANSFER

Section 7.01. Transfer of Obligations.

A. Except as otherwise provided in this Agreement, the rights, duties and obligations hereunder of the Developer may not be assigned, in whole or in part, to another entity, without the prior approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed; provided that, no City approval is required for any such assignment to any entity affiliated with Developer or any entity in which Developer, its affiliates or its principals owns 51 percent or more of the ownership interest, or to any lender for financing purposes.

B. The Parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement.

ARTICLE VIII GENERAL COVENANTS

Section 8.01. Indemnification of City.

A. Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the "**City Indemnified Parties**") harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorney's fees, resulting from, arising out of, or in any way connected with:

1. The Developer's actions and undertakings in the implementation of this Agreement;
2. The negligence or willful misconduct of Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project; and
3. Any expense incurred by the City resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, coproducer, architect, contractor, consultant or other vendor.

This section shall not apply to willful misconduct or negligence of the City or its officers, employees or agents. This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act ("RCRA"; 42 U.S.C. Section 6901 et seq.) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns or has control of real property pursuant to any of Developer's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an "**Action**") is begun or made as a result of which the Developer may become obligated to one or

more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties shall give prompt notice to the Developer of the occurrence of such event.

C. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement with respect to any liability arising prior to the termination of this Agreement.

Section 8.02. Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for the reimbursement of the CID Costs or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

ARTICLE IX DEFAULTS AND REMEDIES

Section 9.01. Developer Event of Default. “Developer Event of Default” shall mean a default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement, and continuance of such default or breach for a period of thirty (30) days after the City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall promptly upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch. “Developer Event of Default” shall also mean any default of the Developer under the Development Agreement.

Section 9.02. City Event of Default. “City Event of Default” shall mean a default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement, and continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 9.03. Remedies Upon a Developer Event of Default.

A. Upon the occurrence and continuance of a Developer Event of Default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to terminate this Agreement or terminate Developer's rights under this Agreement.
2. The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default.
3. The City may suspend reimbursement to Developer of CID Costs until such time as the Developer Event of Default has been fully remedied.

B. Upon termination of this Agreement pursuant to this Section, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

C. If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

D. The exercise by the City of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City shall apply to obligations beyond those expressly waived.

E. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

F. Notwithstanding the foregoing or anything in this Agreement (including, without limitation, this Section) to the contrary, under no circumstances will: (i) Developer be liable for any special, punitive, remote, or consequential damages, including (without limitation) lost tax revenues; or (ii) the City or any third party be entitled to specifically enforce construction of the Project (or any portion thereof) by the Developer.

Section 9.04. Remedies Upon a City Event of Default.

A. Upon the occurrence and continuance of a City Event of Default the Developer shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law or in equity:

1. The Developer shall have the right to terminate this Agreement and the Developer's obligations hereunder;
2. The Developer may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement, to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developer resulting from such City Event of Default.

B. If the Developer has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Developer, then and in every case the Developer and the City shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Developer shall continue as though no such proceeding had been instituted.

C. Each of the Developer's remedies provided hereunder shall be cumulative and in addition to each other such remedy, and the exercise by the Developer of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the Developer shall apply to obligations beyond those expressly waived.

D. Any delay by the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the Developer of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

ARTICLE X GENERAL PROVISIONS

Section 10.01. Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

Section 10.02. Effect of Violation of the Terms and Provisions of this Agreement; No Partnership. The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants

running with the land have been provided. The Agreement shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Project or the CID. Subject to the limitations set forth in Section 9.03 hereof, the City shall have the right, if this Agreement or covenants herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. Nothing contained herein shall be construed as creating a partnership between the Developer and the City.

Section 10.03. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 10.04. Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

Section 10.05. Agreement Controls, The Parties agree that the Project will be implemented as agreed in this Agreement, subject to the terms and conditions hereof. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of CID Costs and all other methods of implementing the Project. The Parties further agree that this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof (including, without limitation, any memorandum of understanding) and is a full integration of the agreement of the Parties.

Section 10.06. Conflicts of Interest.

A. No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed. Upon receiving notice of such possible conflict, the City shall promptly disclose the same to Developer in writing and, from that point forward until the Parties reach a mutually-agreeable resolution, keep Developer apprised of the status of such possible conflict.

B. The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its actual knowledge, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Project, has or will have any interest, direct

or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 10.07. Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect until the Developer has been reimbursed for all CID Costs incurred in connection with the Project, unless the parties agree to terminate this Agreement at an earlier date.

Section 10.08. Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Kansas, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 10.09. Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 10.10. Tax Implications. The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

Section 10.11. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Representative and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Representative may seek the advice, consent or approval of the City Council before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section; provided, however, that (except as expressly provided otherwise herein or required pursuant to Applicable Law and Requirements) such supplemental agreement, request, demand, approval, notice or consent shall not require a public hearing before the City Council or formal approval thereof via resolution, ordinance or otherwise.

Section 10.12. Notice. All notices and requests required or desired to be given pursuant to this Agreement shall be sent as follows:

To the City:	City Administrator Edgerton Community Building 404 East Nelson P.O. Box 255 Edgerton, Kansas 66021 Phone: (913) 893-6231 BLinn@EdgertonKS.org
With a copy to:	Scott W. Anderson SA Legal Advisors LC 16201 W 95th Street, Suite 270 Lenexa, Kansas 66219 Phone (913) 600-2999 SAnderson@SALegalAdvisors.com
To the Developer:	Shannon McMurdo Woodstone Properties, LLC 2131 State Highway 265 Ste. C Branson, Missouri 65616 Phone : (417) 338-0501 Shannon@woodstonebuilders.com
With a copy to:	Polsinelli PC 900 W. 48 th Place, Suite 900 Kansas City, Missouri 64112 Attention: Curtis J. Petersen Phone: (816) 753-1000 cpetersen@polsinelli.com

or at such other addresses as the Parties may indicate in writing to the other in accordance with the provisions of this Agreement (with at least 10 days' notice of such change in writing), either by personal delivery, reputable overnight delivery service (such as UPS or FedEx), or by certified mail, return receipt requested. Any notice sent by: (a) certified mail, return receipt requested, shall be deemed delivered two (2) business days after deposited in the United States Mail; (b) personal delivery shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the business day following the date the notice is deposited with the overnight delivery service.

Section 10.13. Kansas Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. Any action to enforce the provisions of this Agreement shall be brought in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

Section 10.14. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format shall also be permitted as binding signatures to this Agreement.

Section 10.15. Consent or Approval. Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld, conditioned or unduly delayed.

Section 10.16. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CITY OF EDGERTON, KANSAS

(SEAL)

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

WOODSTONE PROPERTIES, LLC,
a Missouri limited liability company

By: _____
J. Shannon McMurdo, Member

Development Agreement (Woodstone CID District)

EXHIBIT A
MAP OF CID DISTRICT

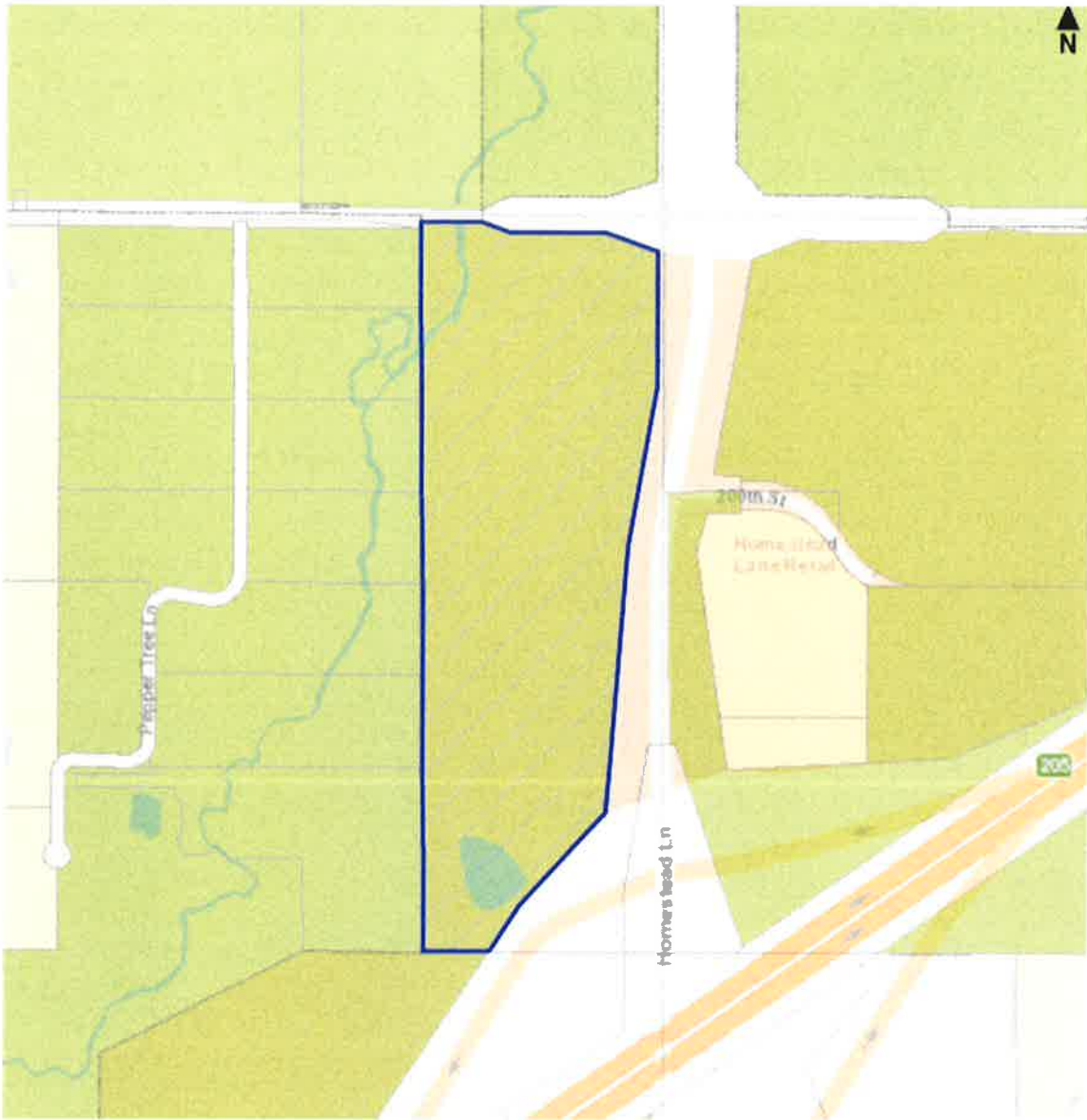


EXHIBIT B

LEGAL DESCRIPTION OF CID

The East One-Third (1/3) of the Northeast Quarter (NE 1/4) excluding that part in roads and Highways of Section 9, Township 15, Range 22, in the City of Edgerton, Johnson County, Kansas.

EXHIBIT C

FORM OF CERTIFICATE OF CID COSTS

CERTIFICATE OF CID COSTS

TO: City of Edgerton, Kansas
Attention: City Administrator

Re: Woodstone CID District

Terms not otherwise defined herein shall have the meaning ascribed to such terms in that certain Woodstone CID Development Agreement dated as of November ____, 2021 (the "Agreement"), between the City of Edgerton, Kansas ("City") and Woodstone Properties, LLC ("the Developer").

In connection with the Agreement, the undersigned hereby states and certifies that, to his or her actual knowledge:

1. Each item listed on *Schedule 1* hereto is a CID Cost and was incurred in connection with the construction of the Project.
2. These CID Costs have been paid and are reimbursable under the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the CID Fund, and no part thereof has been included in any other certificate previously filed with the City.
4. There is not now filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith,
5. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.
8. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this _____ day of _____, 20____.

WOODSTONE PROPERTIES, LLC

By: _____
Printed Name: _____
Title: _____

Approved for Payment this day of _____, 20____.

CITY OF EDGERTON, KANSAS

By: _____
Title: _____

EXHIBIT D

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

*Pursuant to **Section 4.06** of the Agreement, the City shall, within ten (10) days following delivery of this Certificate, carry out such inspections as it deems necessary to verify to its reasonable satisfaction as to the accuracy of the certifications contained in this Certificate.*

CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, Woodstone Properties, LLC (the “Developer”), pursuant to that certain Woodstone CID Development Agreement, dated as of November __, 2021, between the City of Edgerton, Kansas (the “City”) and the Developer (the “Agreement”), hereby certifies to the City, to its actual knowledge, as follows:

1. That as of _____, 20____, the construction, renovation, repairing, equipping and constructing of a distinct portion of the Project (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. The distinct portion(s) of the Project that has been completed is described as follows:
3. The distinct portion of the Project has been completed in a workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement).
4. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Project.
5. The City’s acceptance of this Certificate shall evidence the satisfaction of the Developer’s agreements and covenants to construct such distinct portion of the Project.

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, 20_____.

WOODSTONE PROPERTIES, LLC,
a Missouri limited liability Company

By: _____

Name: _____

Title: _____

ACCEPTED:

CITY OF EDGERTON, KANSAS

By: _____

Name: _____

Title: _____