

RESOLUTION NO. 05-23-19C

RESOLUTION AUTHORIZING THE CITY OF EDGERTON, KANSAS TO ENTER INTO A COLLATERAL ASSIGNMENT OF RIGHTS UNDER THE LPKC DISTRICT NO. 2 COMMUNITY IMPROVEMENT DISTRICT AND PHASE 2 DEVELOPMENT AGREEMENT

WHEREAS, Edgerton Land Holding Company, LLC, a Kansas limited liability company (the "Developer"), is the master developer for Phase 2 of Logistics Park Kansas City pursuant to a Logistics Park Phase Two Development Agreement dated as of January 25, 2018 (the "Development Agreement"), between the City and the Developer; and

WHEREAS, the City has created LPKC District No. 2 Community Improvement District (the "District"), and will enter into a Development Agreement (the "CID Agreement") with ELHC LI, LLC, a Kansas limited liability company, which provides for the payment of certain reimbursements with CID revenues; and

WHEREAS, UMB Bank, N.A. (the "Lender") has made a loan to the Developer and its affiliates to finance certain infrastructure improvements within Phase 2 of the Logistics Park Kansas City; and

WHEREAS, Lender has required that certain payments under the Development Agreement and the CID Agreement be collaterally assigned to it to secure its loan;

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

Section 1. Approval of Collateral Assignment of Rights Under Development Agreement. The Governing Body hereby approves the Collateral Assignment of Rights Under Development Agreement (the "Development Agreement Assignment") in substantially the form attached hereto as **Exhibit A**.

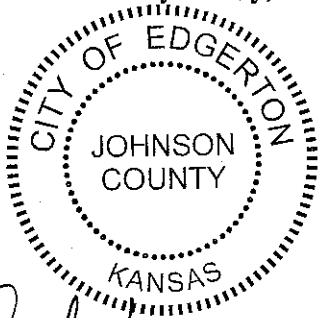
Section 2. Approval of Collateral Assignments of CID Revenues. The Governing Body hereby approves the Collateral Assignment of CID Revenues (the "CID Assignment") in substantially the form attached hereto as **Exhibit B**.

Section 3. Execution of Documents. The Mayor of the City is hereby authorized to acknowledge the Development Agreement Assignment and the CID Assignment, in substantially the forms presented to and reviewed by the City Council 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 acknowledgements of the Development Agreement Assignment and the CID Assignment.

Section 4. 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 Development Agreement Assignment and the CID Assignment.

Section 5. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the City Council.

ADOPTED this 23rd day of May, 2019.



[SEAL]

ATTEST:

Rachel A. James

City Clerk

CITY OF EDGERTON, KANSAS

By: *[Signature]*

Mayor

EXHIBIT A

FORM OF DEVELOPMENT AGREEMENT ASSIGNMENT

COLLATERAL ASSIGNMENT OF RIGHTS UNDER DEVELOPMENT AGREEMENT

THIS COLLATERAL ASSIGNMENT OF RIGHTS UNDER DEVELOPMENT AGREEMENT (this "Assignment"), is made as of May __, 2019, by **EDGERTON LAND HOLDING COMPANY, LLC**, a Kansas limited liability company ("Assignor"), with an address c/o NorthPoint Development, LLC, 4825 NW 41st Street, Suite 500, Riverside, Missouri 64150, to **UMB BANK N.A.**, a national banking association (together with its successors and assigns, as Lender under the Loan Agreement, sometimes "Assignee" and other times "Lender"), with an address at 1000 Grand Boulevard, Kansas City, Missouri 64106.

RECITALS:

A. Concurrently with this Assignment, the Lender is making a loan ("Loan") to ELHC LI, LLC, a Kansas limited liability company ("Borrower") evidenced by (i) that certain Promissory Note, dated as of the date hereof, made by Borrower in favor of Lender in the maximum principal amount of THIRTY-FIVE MILLION FOUR HUNDRED FORTY-SEVEN THOUSAND ONE HUNDRED ONE AND NO/100 DOLLARS (\$35,447,101.00) and (ii) that certain Promissory Note, dated as of the date hereof, made by Borrower in favor of Lender in the maximum principal amount of amount of SIX MILLION EIGHT HUNDRED THIRTY-TWO THOUSAND ONE HUNDRED NINETY-ONE AND NO/100 DOLLARS (\$6,832,191.00) (collectively, the "Note"), (iii) that certain Construction Loan Agreement ("Loan Agreement") by and between Lender and Borrower, dated as of the date hereof, and (iv) that certain Guaranty executed by Assignor and LPKC Holdings, LLC, a Kansas limited liability company in favor of Lender, dated as of the date hereof (the "Guaranty"), and such other documents evidencing Borrower's and Assignor's obligations to Lender with respect to the Loan (each a "Loan Document" and collectively the "Loan Documents"). All amounts owing or to be owed from time to time under the Loan Documents, together with all other obligations of the Borrower and Assignor in respect thereof, are hereinafter collectively referred to as the "Indebtedness."

B. Assignor is a party to that certain Logistics Park Phase Two Development Agreement dated January 25, 2018 ("Development Agreement"), together with the City of Edgerton, Kansas, a Kansas municipal corporation ("City") under which Assignor is entitled to certain reimbursements for constructing infrastructure and other public improvements, all of which is more specifically set forth in the Development Agreement.

C. In order to secure (i) the repayment of the Indebtedness; (ii) all other liabilities (primary, secondary, direct, contingent, sole, joint or several) due or to become due by Borrower and Assignor to the Lender arising out of or related to the Loan and (iii) performance by Assignor of all provisions set forth herein (collectively the "Obligations") and induce Assignee to make the Loan, Assignor has agreed to execute and deliver this Assignment.

NOW THEREFORE, in order to induce Assignee to make the Loan and in consideration therefor and other good and valuable consideration to Assignee paid (the receipt and sufficiency whereof are hereby acknowledged), Assignor hereby agrees as follows:

1. Incorporation of Recitals. The above recitals are incorporated by reference as substantive terms of this Assignment.

2. Assignment. As security for the Obligations, Assignor hereby collaterally assigns, transfers and sets over to Assignee, for the benefit of Assignee, and grants to Assignee, for the benefit of Assignee, a security interest in, and lien upon, all of Assignor's right, title and interest in and to any and all revenue or reimbursements generated by or otherwise attributable to the Development Agreement, any and all funds from time to time held pursuant to the Development Agreement, and all other funds from time to time paid or payable to Assignor, or to any other person or entity at the direction or for the benefit of Assignor, under or pursuant to the Development Agreement (collectively, "Development Agreement Collateral").

3. Direction to City; Notice to City by Assignor

(a) By Assignor's execution and delivery of this Agreement to Lender, Assignor hereby authorize and direct the City to pay the Development Agreement Collateral that Assignor is entitled to receive under the Development Agreement, directly to Borrower's operating account with Lender designated as Account No. 9872315154 at UMB Bank, N.A., 1010 Grand Blvd, Kansas City, Missouri 64106, Attention: Charles Gonzalez.

(b) By Assignor's execution and delivery of this Agreement to Lender, Assignor hereby authorize and direct the City, upon receipt of written notice from Lender to the City of the occurrence of an Event of Default under the Loan Documents, to pay the Development Agreement Collateral that Assignor is entitled to receive under the Development Agreement, directly to Lender at UMB Bank, N.A., 1010 Grand Blvd, Kansas City, Missouri 64106, Attention: Charles Gonzalez, or in such other manner as Lender instructs in writing to the City. Such direct payment by the City to the Lender for application to the Loan is the intent of this Agreement and such direct payment of the Development Agreement Collateral due from time to time shall discharge the City's obligations to make such payments to the extent such payments are made and the City shall have no further liability to Assignor for the amount of such sums so paid directly to Lender for application to amounts due and owing under the Loan Documents. Assignor hereby irrevocably appoints Lender its attorney-in-fact, which appointment shall be deemed to be coupled with an interest solely, to, upon the occurrence of an Event of Default under the Loan Documents, make demand upon the City for collection of the Development Agreement Collateral due from time to time, up to, and including the amount stated in Section 2 above, and to receive and make payment directly to Lender for application to the Loan the same pursuant to and in accordance with the terms and provisions of this Agreement, the Loan Documents and the Notes. Assignor and Lender hereby agree that the City shall have no duty to inquire or determine whether Assignor's obligations to Lender are in default or whether Lender is entitled to provide the notice of the occurrence of an Event of Default. Assignor and Lender authorize the City to rely on notices and communications that the City believes in good faith to be genuine and given by the appropriate party.

(c) Borrower shall promptly send a copy of this Agreement to the City advising the City that payments totaling the principal, interest and costs described in the Loan Documents otherwise to be made by the City to Assignor should be made in accordance with the terms hereof and to secure the City's acknowledgment of the collateral assignment

(and security interest) granted pursuant to the terms of this Agreement in the form attached as Exhibit A.

(d) Upon payment in full of Borrower's and Assignor's indebtedness to Lender as evidenced by the Loan Documents, this Agreement shall terminate and Lender shall notify the City of such payment in full. Upon such payment in full, the Development Agreement Collateral shall be deemed to be reassigned to Assignor and the City shall pay all future Development Agreement Collateral Assignor is entitled to receive as Assignor may thereafter direct in writing.

4. No Liability for Assignee.

(a) This Assignment is executed only as security for the Obligations, and, therefore, the execution and delivery of this Assignment shall not subject Assignee to, or transfer or pass to Assignee, or in any way affect or modify, the liability of Assignor under the Development Agreement, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all of the obligations of Assignor to the City or other persons under the Development Agreement shall be and remain enforceable by such other party, its successors and assigns, only against Assignor or persons other than Assignee and its respective successors and assigns, and that Assignee has not assumed any of the obligations or duties of Assignor under or with respect to the Development Agreement.

(b) This Assignment shall not operate to place responsibility for the development, control, care, management or repair of the Phase Two Land (as defined in the Development Agreement) or parts thereof, upon Assignee, nor shall it operate to make Assignee liable for the performance or observance of any terms, conditions, covenants or agreements contained in the Development Agreement or for any dangerous or defective condition of Phase Two Land or for any negligence in the development, management, upkeep, repair or control of the Phase Two Land resulting in loss or injury or death to any tenant, occupant, licensee, invitee, customer, employee or stranger, or for duties of the Assignor under or with respect to the Development Agreement.

5. Assignor's Representations, Warranties and Covenants. Assignor represents, warrants and agrees as follows:

(a) Assignor will faithfully abide by, perform and discharge each and every material obligation, covenant, condition, duty and agreement which the Development Agreement provides are to be kept, observed or performed by Assignor, and will promptly notify Assignee in writing of all defaults and events of default under the Development Agreement known to Assignor;

(b) to the Assignor's knowledge, the Development Agreement is in full force and effect, and Assignor will take all action which might reasonably be required to keep such agreement in full force and effect and to keep it from expiring or being canceled, rescinded or terminated;

(c) Assignor will not knowingly amend, cancel, rescind, abridge, modify or terminate the Development Agreement or knowingly waive, release, discharge or consent to the release of any other party to the Development Agreement of or from any obligation, covenant, condition or agreement to be kept, observed or performed by such other party;

(d) without the prior written consent of Assignee, which shall not be unreasonably withheld, conditioned or delayed, Assignor will not take any action (including, without limitation, the exercise of any right or option) which would permit, or give rise to a right permitting, any other party to the Development Agreement, or any other person or entity whatsoever, to cancel, rescind or terminate the Development Agreement;

(e) Assignor will enforce, at its sole cost and expense, short of termination, the performance and observance of each and every material covenant and condition of the Development Agreement to be performed or observed by the other party or parties thereto;

(f) at Assignor's sole cost and expense, Assignor will appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the rights, obligations, covenants, conditions, duties, agreements or liabilities of Assignor which materially affects Assignee's right, title and security interest in and to the Development Agreement Collateral;

(g) should Assignor knowingly fail to perform any act which this Assignment or Development Agreement requires or knowingly refrain from any act which this Assignment or Development Agreement requires, then Assignee may, but shall have no obligation to (and shall not thereby release such Assignor from any obligation hereunder), make such payment or do or prevent such act in such manner and to such extent as Assignee may deem reasonably necessary or advisable to protect the security provided hereby, which rights of Assignee shall specifically include, without limiting Assignee's general powers herein granted, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of Assignee hereunder (or any of them), and also the right to perform and discharge each and every one, or any one or more, of the obligations, covenants, conditions, duties and agreements of Assignor contained in the Development Agreement; and in exercising any such powers, Assignee may pay necessary or advisable costs and expenses and incur and pay reasonable attorneys' fees, and Assignor will reimburse Assignee for such costs, expenses and fees;

(h) Assignor is the lawful owner of the Development Agreement Collateral with full right to pledge, deliver, assign and transfer the Development Agreement Collateral to Assignee; so long as this Assignment is in effect, Assignor will not further assign, transfer or otherwise encumber its interest in any of the Development Agreement Collateral;

(i) the Development Agreement is legal, valid, binding and enforceable against Assignor in accordance with its terms; to the Assignor's knowledge, no party under any of the Development Agreement is, or with the giving of notice or the passage of time, or both, would be, in breach or default thereunder; and, to the Assignor's knowledge, all

obligations, covenants, conditions, duties and agreements have been kept, observed and performed as required thereunder; and

(j) Assignor has the right to make this Assignment, and this Assignment has been duly authorized by appropriate organizational action of Assignor's members and managers.

6. Attorney-in-Fact. Assignor hereby irrevocably authorizes Assignee, and appoints Assignee the attorney-in-fact of such Assignor, at Assignee's option, to (at any time during the existence and continuation of a breach or default of the Obligations, this Assignment or any other Loan Document) give any and all notices and to take any and all other actions required under any of the Development Agreement, or to receive any funds or realize upon any other rights or benefits thereunder. Such appointment shall be deemed to be coupled with an interest.

7. Survival. This Assignment and all rights herein assigned to Assignee shall survive the foreclosure of any deed of trust and any other Loan Document, but shall terminate upon the date the Loan and all amounts due under the Loan Documents are indefeasibly paid in cash in full.

8. Further Assurances. Assignor will, from time to time, at its sole cost and expense, do and perform any other act or acts, will execute, acknowledge, deliver and file, register, record and deposit (and will refile, reregister, rerecord and redeposit whenever required) any and all further instruments required by law or reasonably requested by Assignee in order to confirm, or further assure, the interests of Assignee hereunder, and will take such actions and execute such instruments and documents as Assignee may reasonably request to facilitate Assignee's exercise of Assignor's rights, obligations and duties under the Development Agreement or otherwise with respect to the Development Agreement Collateral.

9. Assignment by Assignee. Assignee may assign all or any of the rights assigned to it hereby, or arising under the Development Agreement, including, without limitation, the right to receive any or all payments due or to become due upon written notice to Assignor. In the event of any such assignment, such successor or assign of Assignee shall enjoy all rights and privileges and be subject to all obligations of Assignee hereunder.

10. Notice. Assignor shall give Assignee, at the place for giving notices to Assignee under the Loan Agreement, copies of all notices or communications to or from any party to the Development Agreement claiming any default, breach or violation by any other party thereto.

11. Events of Default. Assignor will be in "Default" under the terms of this Assignment upon the happening of any of the following events or conditions:

(a) Default by Assignor in the payment or performance of any Obligations; provided, however, that Assignor has received the benefit of all applicable notice and cure rights available to Assignor in the Loan Documents and Development Agreement.

(b) The making or furnishing of any warranty or representation to Lender which proves to have been false in any material respect when made or furnished.

(c) Any default by Assignor under any other documents or instruments evidencing or relating to the Loan, beyond all applicable notice and cure rights available to Assignor in the Loan Documents.

12. Assignor's Rights Prior to Default. By its acceptance of this Assignment, Assignee hereby agrees with Assignor that, so long as Assignor is not in Default, Assignee will not exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, titles, interests, powers, privileges, authorizations or benefits assigned and transferred to Assignee pursuant to this Assignment, and Assignor may exercise or enforce, or seek to exercise or enforce, such rights, titles, interests, powers, privileges, authorizations or benefits assigned and transferred to Assignee.

13. Remedies. Subject to the Loan Documents, Assignee shall have all the rights and remedies of a secured party under the Uniform Commercial Code of the State of Kansas with respect to the Development Agreement Collateral, and any other rights and remedies provided by law or equity or provided hereunder or under any other document executed in connection with the Loan.

14. Indemnification. Unless caused by the gross negligence or willful misconduct of Assignee, Assignor shall indemnify, protect, defend and hold Assignee and its respective successors and assigns harmless from and against any and all claims, demands, liabilities, losses, lawsuits, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) to which any such indemnified party may become exposed, or which any such indemnified party may incur, in exercising any of its rights under this Assignment or due to the execution of this Assignment, and shall otherwise pay when due, or reimburse any such indemnified party upon demand for, any and all costs and expenses incurred by any such indemnified party in connection with the Indebtedness.

15. No Partnership. This Assignment is not intended to create any partnership or joint venture among any Assignor and Assignee.

16. No Waiver. No delay, omission or failure of Assignee to exercise its rights or remedies under this Assignment upon the occurrence of any breach of or Default or Event of Default under the Loan Agreement, this Assignment or any other Loan Document, and no waiver of any breach of or Default or Event of Default under the Loan Agreement, this Assignment or any other Loan Document, shall be deemed to waive, exhaust or impair Assignee's ability or right to exercise such rights at a later time with respect to such breach, Default or Event of Default or with respect to any other such breach, Default or Event of Default, as the case may be.

17. Successors and Assigns. This Assignment shall bind and inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of Assignor and Assignee.

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IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of the day and year first above written.

ASSIGNOR:

EDGERTON LAND HOLDING COMPANY, LLC,
a Kansas limited liability company

By: _____
Name: _____
Title: _____

ASSIGNEE:

UMB BANK, N.A.

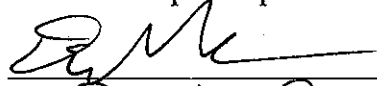
By: _____
Name: _____
Title: _____

CONSENT AND ACKNOWLEDGEMENT

The undersigned, a party to the Development Agreement as defined in the above Assignment, approves, ratifies, confirms and consents to the foregoing Assignment.

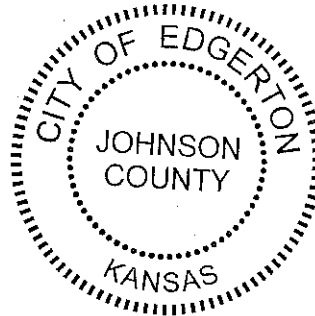
CITY:

CITY OF EDGERTON, KANSAS,
a Kansas municipal corporation

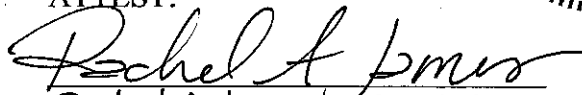
By: 

Name: Donald ROBERTS

Title: Mayor



ATTEST:


Rachel A. James, City Clerk

Dated this 23rd day of May, 2019.

**NOTICE AND ACKNOWLEDGMENT OF
COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT COLLATERAL**

The undersigned, the Mayor of the City of Edgerton, Kansas (the "City"), hereby acknowledges receipt of a copy (fully executed) of the Collateral Assignment of Rights Under Development Agreement (the "Assignment"), dated as of May __, 2019, by and between **EDGERTON LAND HOLDING COMPANY, LLC**, a Kansas limited liability company ("Assignor") and **UMB BANK, N.A.**, a national banking association (the "Lender"); and on behalf of the City, hereby agrees that, until the City receives written notice from Lender of the occurrence of an Event of Default under the Loan Documents, the Development Agreement Collateral to which the Assignor is entitled under the relevant Development Agreement will be forwarded by the City to the operating account of **ELHC LI, LLC**, a Kansas limited liability company ("Borrower") with Lender in accordance with the payment instructions set forth in Section 3(a) of the Assignment, and upon receipt by the City of written notice from Lender of the occurrence of an Event of Default under the Loan Documents, the City will forward all Development Agreement Collateral to which the Assignor is entitled under the relevant Development Agreement to Lender in accordance with payment instructions set forth in Section 3(b) of the Assignment for application to the Loans up to a total amount equaling the principal, interest and costs and other amounts due and owing under the Loan Documents. Such manner of payments shall continue until (i) Lender releases its collateral assignment of such Development Agreement Collateral by written instrument signed by an officer of Lender, at which time the Lender shall promptly notify the City in writing and provide the City with written acknowledgement of such release signed by Lender, and (ii) thereafter, Assignor provides the City written directions to pay the Development Agreement Collateral to Assignor at a different location. Capitalized terms used herein have the meanings assigned to them in the Assignment. The City shall have no duty to inquire or determine whether Assignor's obligations to Lender are in default or whether Lender is entitled to provide the notice of the occurrence of an Event of Default. The City may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party.

Immunity of Officers, Employees and Directors of the City. No recourse shall be had for the payment of Development Agreement Collateral or any claim based thereon or upon any obligation, covenant or agreement contained in the Assignment against any past, present or future officer, director, member, employee, agent or representative of the City, either directly or through 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 officers, directors, members, employees or agents as such is expressly waived and released as a condition of and in consideration for the execution of this Notice and Acknowledgment of Assignment of Development Agreement Collateral by the City.

Copy to Assignor and Lender. An executed counterpart of this Notice and Acknowledgement of Assignment of Development Agreement Collateral is being furnished by the undersigned to the above described Borrower, Wellsville, and Lender.

Dated as of: May __, 2019

CITY OF EDGERTON, KANSAS

By: 
Print: Donald Roberts
Title: Mayor

EXHIBIT B
FORM OF CID ASSIGNMENT

COLLATERAL ASSIGNMENT OF CID REVENUES

THIS COLLATERAL ASSIGNMENT OF CID REVENUES (this "Agreement"), dated the ____ day of May, 2019, is made and entered into between ELHC LI, LLC, a Kansas limited liability company (the "Borrower"), WELLSVILLE FARMS, LLC, a Missouri limited liability company ("Wellsville"), and UMB BANK, N.A., a national banking association (the "Lender").

RECITALS

The following recitals of fact are a material part of this Agreement:

A. Borrower and Lender have executed that certain Construction Loan Agreement of even date herewith (as the same may from time to time be amended, modified, restated or extended, the "**Loan Agreement**") between the Lender and Borrower. Lender has agreed to extend or issue a (i) a multiple-advance construction loan to Borrower in the original maximum amount of \$35,447,101.00 and (ii) a multiple-advance incentive loan to Borrower in the original maximum amount of \$6,832,191.00 (collectively, the "**Loans**"). Capitalized terms used herein and not otherwise defined herein have the meanings assigned to them in the Loan Agreement.

B. The Loans are evidenced by (i) a Promissory Note executed by Borrower and payable to Lender in the original maximum amount of \$35,447,101.00 and (ii) a Promissory Note executed by Borrower and payable to Lender in the original maximum amount of 6,832,191.00 (as each may be amended, modified, restated or renewed from time to time, a "**Note**" and collectively, the "**Notes**").

C. Lender has required as a condition of the consummation of certain transactions between the Borrower and Lender that Borrower collaterally assign to Lender (and grant to Lender a security interest in) all of Borrower's right, title and interest in and to certain payments, proceeds, reimbursements and other financial accommodations (collectively, the "**CID Revenues**") to which Borrower is entitled to receive from (i) the LPKC District No. 1 Community Improvement District (the "**Kubota CID**") under that certain Development Agreement dated as of May 24, 2018 between the CID and Wellsville (the "**Kubota Development Agreement**") and the LPKC District No. 2 Community Improvement District (the "**Hostess CID**"; hereinafter collectively with the Kubota CID, the "**CID**") under that certain Development Agreement dated as of May 30, 2019 between the CID and the Borrower (the "**Hostess Development Agreement**"; hereinafter together with the Kubota Development Agreement, the "**Development Agreement**"). The boundaries of the Kubota CID and Hostess CID are legally described and generally depicted on Exhibit A attached hereto.

D. Specifically, Lender has required that Borrower and Wellsville: (i) grant Lender a security interest in all CID Revenues that Borrower is entitled to receive under each Development Agreement; (ii) execute and deliver a copy of this Agreement to the City of Edgerton, Kansas (the "**City**"); (iii) take such steps as may be reasonably necessary to evidence and perfect the collateral assignment of (and security interest in) such CID Revenues to Lender in applicable public records; (iv) direct the City to forward to Borrower's operating account with Lender all CID Revenues until the City has received written notification from Lender of the occurrence of an Event of Default under the Loan Documents, and (v) upon receipt by the City of written notice from the Lender of the occurrence of an Event of Default under the Loan Documents, direct the City to forward to Lender all CID Revenues for application to amounts due and owing under the Loan Documents.

AGREEMENT

1. **Collateral Assignment.** Borrower and Wellsville hereby (a) grant to Lender a security interest in all of Borrower's and Wellsville's right, title and interest in and to the CID Revenues and all or any portion thereof and all accounts, contract rights, general intangibles and/or proceeds arising from such CID Revenues or any portion thereof that Borrower is entitled to receive; and (b) agrees that, upon the occurrence of an Event of Default under the Loan Documents, all CID Revenues due and payable to the Borrower or Wellsville shall be promptly paid by the City directly to Lender for application to the Notes solely for the purposes and in accordance with the terms and provisions provided in this Agreement.

2. **Direction to City; Notice to City by Borrower and Wellsville.**

(a) By Borrower's and Wellsville's execution and delivery of this Agreement to Lender, Borrower and Wellsville hereby authorize and direct the City to pay the CID Revenues that Borrower and Wellsville are entitled to receive under each Development Agreement, respectively, directly to Borrower's operating account with Lender designated as Account No. 9872315154, at UMB Bank, N.A., 1010 Grand Blvd, Kansas City, Missouri 64106, Attention: Charles Gonzalez. Borrower and Wellsville hereby grant to Lender a security interest in, and right of setoff against, such account as collateral security for the obligations of Borrower to Lender under the Loan Documents.

(b) By Borrower's and Wellsville's execution and delivery of this Agreement to Lender, Borrower and Wellsville hereby authorize and direct the City, upon receipt of written notice from Lender to the City of the occurrence of an Event of Default under the Loan Documents, to pay the CID Revenues that Borrower and Wellsville are entitled to receive under the applicable Development Agreement, directly to Lender at UMB Bank, N.A., 1010 Grand Blvd, Kansas City, Missouri 64106, Attention: Charles Gonzalez, or in such other manner as Lender instructs in writing to the City. Such direct payment by the City to the Lender for application to the Loans is the intent of this Agreement and such direct payment of the CID Revenues due from time to time shall discharge the City's obligations to make such payments to the extent such payments are made and the City shall have no further liability to Borrower or Wellsville for the amount of such sums so paid directly to Lender for application to amounts due and owing under the Loan Documents. Each of Borrower and Wellsville hereby irrevocably appoints Lender its attorney-in-fact, which appointment shall be deemed to be coupled with an interest solely, to, upon the occurrence of an Event of Default under the Loan Documents, make demand upon the City for collection of the CID Revenues due from time to time, up to, and including the amount stated in Section 1 above, and to receive and make payment directly to Lender for application to the Loans the same pursuant to and in accordance with the terms and provisions of this Agreement, the Loan Documents and the Notes. Borrower, Wellsville, and Lender hereby agree that the City shall have no duty to inquire or determine whether Borrower's or Wellsville's obligations to Lender are in default or whether Lender is entitled to provide the notice of the occurrence of an Event of Default. Borrower, Wellsville, and Lender authorize the City to rely on notices and communications that the CityD believes in good faith to be genuine and given by the appropriate party.

(c) Borrower shall promptly send a copy of this Agreement to the City advising the City that payments totaling the principal, interest and costs described in the Loan Documents otherwise to be made by the City to Borrower or Wellsville should be made in accordance with the terms hereof and to secure the City's acknowledgment of the collateral assignment (and security interest) granted pursuant to the terms of this Agreement in the form attached as **Exhibit C.**

(d) Upon payment in full of Borrower's indebtedness to Lender as evidenced by the Loan Documents, this Agreement shall terminate and Lender shall notify the City of such payment

in full. Upon such payment in full, the CID Revenues shall be deemed to be reassigned to Borrower and Wellsville and the City shall pay all future CID Revenues Borrower or Wellsville is entitled to receive as Borrower or Wellsville, as applicable, may thereafter direct in writing.

3. **Power of Attorney.** Borrower and Wellsville hereby irrevocably designate, make, constitute and appoint Lender (and all persons and entities designated by Lender), as Borrower's and Wellsville's attorney-in-fact, which appointment is deemed to be coupled with an interest subject to the provisions stated herein, with power, without notice to Borrower or Wellsville and at such time or times thereafter as Lender in its sole and absolute discretion may determine, in Borrower's, Wellsville's, or Lender's name to, upon the occurrence of an Event of Default under the Loan Documents:

(a) open all envelopes and mail (whether addressed to Borrower, Wellsville, and/or Lender) and process all money, checks, and other negotiable instruments received from the City that relate to the CID Revenues or other income resulting from Borrower's or Wellsville's ownership and/or interest in such CID Revenues or any portion thereof and crediting the same in accordance with the procedures established from time to time by Lender and Borrower and/or Wellsville;

(b) take control, in any manner, of any of the money described above;

(c) do all other acts and things deemed necessary by Lender in its sole and absolute discretion to fulfill Borrower's and Wellsville's obligations under this Agreement, including without limitation, giving notice to the City, and requesting an acknowledgment of the City, in accordance with and pursuant to the provisions of Section 2(c) above; and

(d) make, execute, complete and deliver to the City all reimbursement requests and such other documents as Lender shall consider necessary or appropriate to obtain reimbursement from the CID Revenues; to comply with all obligations of Borrower and Wellsville due and owing to the City as Lender shall consider necessary or appropriate and generally do, execute and perform any other act, matter, or thing whatsoever that in the opinion of Lender ought to be done, executed or performed in connection with the reimbursement requests from the City.

4. **Disbursement Arrangements.** All funds received by Lender from the City pursuant to this Agreement shall be for application to the Loans and thereafter applied against the obligations owed by Borrower to Lender under the terms of the Loan Documents.

5. **Delivery of Documentation.** Borrower and Wellsville shall promptly provide Lender with such information as Lender may reasonably request from time to time in order for Lender to verify the proper application of the CID Revenues and all interest and other income and the application of such amounts in accordance with the terms and provisions of this Agreement.

6. **Obligations Secured.** The CID Revenues and all interest and other income therefrom or any portion thereof, and the account balance generated from time to time by deposit thereof, shall provide security for any and all indebtedness, liabilities and obligations of Borrower to Lender.

7. **Modification of Terms.** By execution of this Agreement, all Loan Documents are deemed modified in all respects necessary to implement the terms and provisions of this Agreement. In all other respects, all Loan Documents shall remain in full force and effect as originally written. To the extent that any term or provision of this Agreement is held or deemed to be inconsistent with any term or provision of any Loan Document, this Agreement shall control.

8. **Further Documents, Etc.** Borrower and Wellsville shall execute any and all further documents and instruments at any time reasonably required by Lender to provide record notice of this Agreement and the amendments to the Loan Documents, to create, perfect and/or modify the collateral assignment or the liens and security interests granted to Lender under this Agreement in accordance with this Agreement and/or to give effect to the terms and provisions under this Agreement and all Loan Documents.

9. **Limitation on CID and Lender Obligations.** Any other term or provision in this Agreement or in any Loan Document or elsewhere to the contrary notwithstanding, the parties hereto acknowledge:

(a) Any and all obligations (including without limitation, fees, claims, demands, payments, damages, liabilities, penalties, assessments and the like) of or imposed upon the City or its directors, officers, agents, employees, representatives, advisors or assigns by the Lender, whether under this Agreement or any other Loan Document or elsewhere and whether arising out of or based upon a claim or claims of tort, contract, misrepresentation, or any other additional legal theory or theories whatsoever (collectively, the "City Obligations"), shall in all events be absolutely limited obligations and liabilities, payable solely out of the CID Revenues, to the extent such CID Revenues are available and Borrower or Wellsville is entitled to receive all or any portion thereof.

(b) The CID Revenues shall not be deemed to constitute a debt or liability of the City or the State of Kansas or of any political subdivision thereof within the meaning of any state constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the City or the State of Kansas or of any political subdivision thereof, but shall be payable solely from CID Revenues and shall otherwise impose no liability whatsoever, primary or otherwise, upon the City or the State of Kansas or of any political subdivision thereof or any charge upon the general credit or taxing power.

(c) In no event shall any director, officer, agent, employee, representative or advisor of the City, or any successor or assign of any such person or entity, be liable, personally or otherwise, for payment of the CID Revenues or any City Obligations.

It is further recognized and agreed that Lender, by entering into this Agreement and receiving Borrower's and Wellsville's CID Revenues for application to Borrower's Loan obligations to Lender, is not in any way assuming or agreeing to perform any of Borrower's or Wellsville's obligations with respect to the CID.

10. **Default and Remedies.**

(a) **Remedies on Default.** Unless performance is waived by the party for whose benefit a condition or obligation is intended, if any party to this Agreement fails to satisfy its obligations under this Agreement, and if, within 30 days' notice of such default by the non-defaulting party to the defaulting party, the defaulting party shall not have cured such default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said 30-day period (but in any event if the defaulting party shall not have cured such default within 45 days), the non-defaulting party or parties may, then or at any time thereafter, and while such default continues, take any one or more of the following actions:

(i) by mandamus or other suit, action or proceedings at law or in equity, to enforce its or their rights against the defaulting party and their officers, agents and

employees, and to require and compel duties and obligations required by the provisions of this Agreement; or

(ii) take any other action at law or in equity to enforce this Agreement.

11. Rights and Remedies Cumulative. The rights and remedies reserved by the parties and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The parties shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

12. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement.

13. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

14. Execution and Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

15. Amendments. The parties hereto agree that neither shall modify nor amend this Agreement in a manner that may be perceived to adversely affect the City, unless and until the parties obtain prior written consent from the City.

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

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BORROWER:

ELHC LI, LLC,
a Kansas limited liability company

By: NorthPoint Development, LLC, a
Missouri limited liability company, Manager

By: _____
Nathaniel Hagedorn
Manager

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

On this ____ day of May, 2019, before me personally appeared Nathaniel Hagedorn, to me known to be the person described in and who executed the foregoing instrument, who being by me duly sworn, did say he is the Manager of NorthPoint Development, LLC, a Missouri limited liability company, the Manager of ELHC LI, LLC, a Kansas limited liability company, and acknowledged said instrument to be his free act and deed and the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written above.

Print Name: _____
Notary Public in and for said County and State

My Appointment Expires:

WELLSVILLE:

WELLSVILLE FARMS, LLC,
a Missouri limited liability company

By: NPD Management, LLC, its Manager

By: _____
Nathaniel Hagedorn
Manager

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

On this ____ day of May, 2019, before me personally appeared Nathaniel Hagedorn, to me known to be the person described in and who executed the foregoing instrument, who being by me duly sworn, did say he is the Manager of NPD Management, LLC, the Manager of Wellsville Farms, LLC, a Missouri limited liability company, and acknowledged said instrument to be his free act and deed and the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written above.

Print Name: _____
Notary Public in and for said County and State

My Appointment Expires:

LENDER

UMB BANK, N.A., a national banking association

By: _____
Name: Charles Gonzalez
Title: Vice President

STATE OF MISSOURI)

)ss.

COUNTY OF JACKSON)

On this ____ day of May, 2019, before me, a Notary Public in and for said State, personally appeared Charles Gonzalez, Vice President of UMB Bank N.A., a national banking association, personally known to me to be the same person who executed, as such official, the within instrument on behalf of said national banking association and such person duly acknowledged to me that he executed the same for the purposes therein stated, and that the execution of the same was the free act and deed of said national banking association.

Notary Public

My Commission Expires:

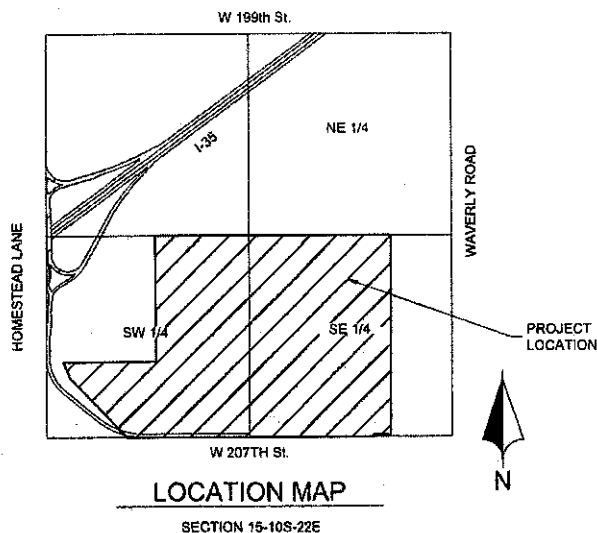
EXHIBIT A

PROJECT AREAS - LEGAL DESCRIPTIONS

KUBOTA CID

All that part of the Southeast and Southwest Quarters of Section 10, Township 15 South, Range 22 East of the Sixth Principal Meridian, together with all that part of Lots 1 thru 4, inclusive, ROCKWALL ESTATES, a platted subdivision, all in the City of Edgerton, Johnson County, Kansas, more particularly described as follows:

Beginning at the South Quarter corner of said Section 10; thence on Kansas State Plane North Zone bearings, South $88^{\circ}11'14''$ West, coincident with the South line of the Southwest Quarter of said Section 10, a distance of 1,686.12 feet; thence departing said South line, North $45^{\circ}15'45''$ West, coincident with the centerline of Homestead Road, as it now exists, a distance of 1,235.76 feet; thence departing said centerline, North $02^{\circ}16'47''$ West a distance of 106.90 feet; thence North $87^{\circ}45'15''$ East a distance of 1,237.62 feet; thence North $02^{\circ}16'53''$ West a distance of 1,626.96 feet to a point on the North line of the Southwest Quarter of said Section 10; thence North $88^{\circ}01'05''$ East, coincident with the North line of said Southwest Quarter, a distance of 1,292.89 feet to the Northwest corner of the Southeast Quarter of said Section 10; thence North $88^{\circ}18'55''$ East, coincident with the North line of said Southeast Quarter, a distance of 1,788.29 feet; thence departing said North line, South $01^{\circ}48'46''$ East a distance of 2,589.48 feet to a point on the North right-of-way line of 207th Street, as it now exists; thence South $88^{\circ}09'59''$ West, coincident with said North right-of-way line, a distance of 223.41 feet to the Southwest corner of said Lot 4, ROCKWALL ESTATES; thence departing said North right-of-way line, South $02^{\circ}17'25''$ East, a distance of 50.00 feet to a point on the South line of said Southeast Quarter; thence South $88^{\circ}09'59''$ West, coincident with said South line, a distance of 1,545.62 feet to the Point of Beginning, containing 8,971,222 square feet, or 205.951 acres, more or less.



HOSTESS CID

All that part of the Southwest Quarter of Section 11, Township 15 South, Range 22 East, in the City of Edgerton, Johnson County, Kansas being more particularly described as follows:

Beginning at the Southwest corner of said Southwest Quarter; thence North $02^{\circ}17'25''$ West, along the West line of said Southwest Quarter, a distance of 1,096.60 feet; thence departing said West line, North $88^{\circ}29'08''$ East, parallel with the South line of said Southwest Quarter, a distance of 2,617.96 feet to a point 70.00 feet west of the East line of said Southwest Quarter; thence South $02^{\circ}06'42''$ East, parallel with said East line, a distance of 1,096.56 feet to a point on the south line of said Southwest Quarter; thence South $88^{\circ}29'08''$ West along said south line, a distance of 2614.55 feet to the Point of Beginning, containing 2,868,722 square feet, or 65.857 acres, more or less.

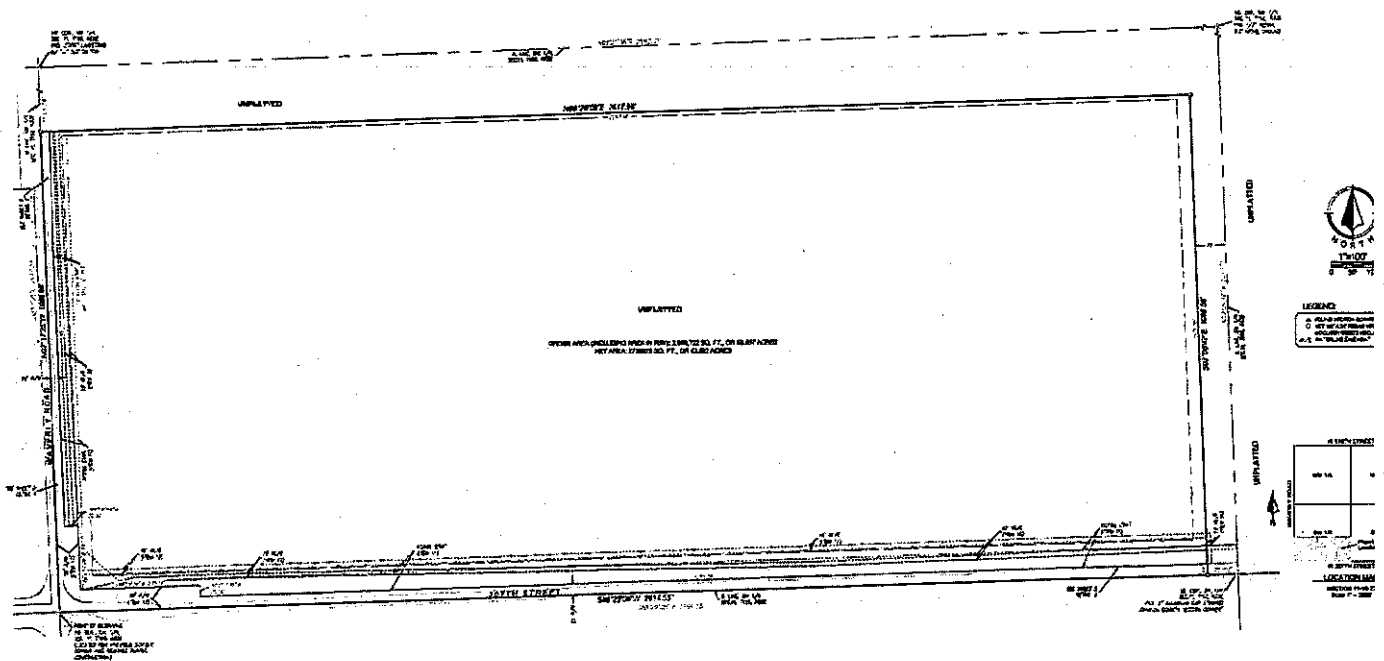


EXHIBIT B

**Notice and Acknowledgment of
Collateral Assignment of CID Revenue**

(See attached)

**NOTICE AND ACKNOWLEDGMENT OF
COLLATERAL ASSIGNMENT OF CID REVENUES**

The undersigned, the Mayor of the City of Edgerton, Kansas (the "City"), hereby acknowledges receipt of a copy (fully executed) of the Collateral Assignment of CID Payments (the "Assignment"), dated as of May __, 2019, by and between **ELHC, LI, LLC**, a Kansas limited liability company (the "Borrower"), **WELLSVILLE FARMS, LLC**, a Missouri limited liability company ("Wellsville"), and **UMB BANK, N.A.**, a national banking association (the "Lender"); and on behalf of the City, hereby agrees that, until the City receives written notice from Lender of the occurrence of an Event of Default under the Loan Documents, the CID Revenues to which the Borrower or Wellsville is entitled under the relevant Development Agreement will be forwarded by the City to Borrower's operating account with Lender in accordance with the payment instructions set forth in Section 2(a) of the Assignment, and upon receipt by the City of written notice from Lender of the occurrence of an Event of Default under the Loan Documents, the City will forward all CID Revenues to which the Borrower or Wellsville is entitled under the relevant Development Agreement to Lender in accordance with payment instructions set forth in Section 2(b) of the Assignment for application to the Loans up to a total amount equaling the principal, interest and costs and other amounts due and owing under the Loan Documents. Such manner of payments shall continue until (i) Lender releases its collateral assignment of such CID Revenues by written instrument signed by an officer of Lender, at which time the Lender shall promptly notify the City in writing and provide the City with written acknowledgement of such release signed by Lender, and (ii) thereafter, Borrower or Wellsville, as applicable, provides the City written directions to pay the CID Revenues to Borrower or Wellsville, as applicable, at a different location. Capitalized terms used herein have the meanings assigned to them in the Assignment. The City shall have no duty to inquire or determine whether Borrower's or Wellsville's obligations to Lender are in default or whether Lender is entitled to provide the notice of the occurrence of an Event of Default. The City may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party.

Immunity of Officers, Employees and Directors of the City. No recourse shall be had for the payment of CID Revenues or any claim based thereon or upon any obligation, covenant or agreement contained in the Assignment against any past, present or future officer, director, member, employee, agent or representative of the City, either directly or through 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 officers, directors, members, employees or agents as such is expressly waived and released as a condition of and in consideration for the execution of this Notice and Acknowledgment of Assignment of CID Revenue by the City.

Copy to Borrower and Lender. An executed counterpart of this Notice and Acknowledgement of Assignment of CID Revenues is being furnished by the undersigned to the above described Borrower, Wellsville, and Lender.

Dated as of: May __, 2019

CITY OF EDGERTON, KANSAS

By: 
Print: Donald Roberts
Title: Mayor