

RESOLUTION NO. 11-18-21A

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A DISPOSITION AND DEVELOPMENT AGREEMENT (PROJECT PLAN B1 – HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT)

WHEREAS, on August 22, 2019, the City of Edgerton, Kansas (the “City”) adopted Ordinance No. 2021 establishing a Redevelopment District referred to as the Homestead Lane Retail District Redevelopment (TIF) District (the “District”);

WHEREAS, pursuant to K.S.A. 12-1770 *et seq.*, as amended, the City prepared Redevelopment Project Plan B1 (“Project Plan B1”), consisting of the construction of hotels, a conference center, travel center, restaurants, retail space, office space and associated infrastructure and site work (the “Project”), which is located on approximately 42 acres located in the southwest corner of Homestead Lane and 199th Street;

WHEREAS, pursuant to Ordinance No. 2099 passed on this date, the City established Project Plan B1 as a redevelopment project within the District; and

WHEREAS, the City and Woodstone Properties, LLC, a Missouri limited liability company (the “Developer”), desire to enter into a Disposition and Development Agreement (the “DDA”) that contains the terms for implementation of Project Plan B1, such as the manner and amount of reimbursing TIF eligible costs, the description of TIF eligible costs, performance standards, and the procedures and conditions for and priority of reimbursement, all as set forth in the DDA.

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

Section 1. Approval of Disposition and Development Agreement. The City Council hereby approves the DDA in substantially the form attached hereto as **Exhibit A**.

Section 2. Execution of Disposition and Development Agreement. Following publication of the Ordinance establishing Project Plan B1, the Mayor of the City is hereby authorized to enter into the DDA in substantially the form 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 DDA.

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

EXHIBIT A

FORM OF DISPOSITION AND DEVELOPMENT AGREEMENT

**EDGERTON HOMESTEAD LANE RETAIL DISTRICT
REDEVELOPMENT (TIF) PROJECT PLAN B1
DISPOSITION AND DEVELOPMENT AGREEMENT
(Edgerton Crossing Woodstone Project)**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the “**Agreement**”), is dated as of the ____ day of November, 2021, between the **CITY OF EDGERTON, KANSAS**, a Kansas municipal corporation (the “**City**”), and **WOODSTONE PROPERTIES, LLC**, a Missouri limited liability company (the “**Developer**”). The City and the Developer are sometimes hereinafter collectively referred to as the “**Parties**” and each a “**Party**”.

RECITALS

A. The Edgerton City Council adopted Ordinance No. 2021 on August 22, 2019, establishing a Redevelopment (“**TIF**”) District (the “**District**”). The City has identified multiple development projects located within the District.

B. On November 18, 2021, the City adopted Ordinance No. 2099 (the “**Ordinance**”) approving and adopting Redevelopment (TIF) Project Plan B1 (the “**Project Plan**”) located within the District and providing for the redevelopment of approximately 42 acres located in the southwest corner of Homestead Lane and 199th Street (the “**Property**”) and for other authorized, eligible improvements within the District. The Property is legally described on **Exhibit A** attached hereto.

C. The Property is owned by the Developer. The City and Developer entered into a Development Agreement dated September 10, 2021 (as supplemented and amended from time to time, the “**Development Agreement**”). The Development Agreement contains general terms for the development of the Property and the granting of certain incentives by the City.

D. The Project Plan contemplates the construction of hotels, a conference center, travel center, restaurants, retail space, office space and associated infrastructure (the “**Private Project Improvements**”) as reflected in the City development approvals (the “**Project**” as defined in **Section 3.1** herein). The City has received a Financial Analysis of the Project dated September 2021 and prepared by Columbia Capital Management, LLC (the “**Financial Analysis**”).

E. Developer is responsible for constructing or causing to be constructed the Private Project Improvements, subject to tenant/user/market demand, and for annually paying applicable ad valorem taxes and special assessments on the Property owned by Developer.

F. As contemplated in the Project Plan, the Parties desire to enter into this Agreement to set forth the terms for the implementation of the Project Plan, and to provide for reimbursement of a portion of the TIF Reimbursable Costs (defined in **Section 2.2** herein) on a “pay as you go” basis after construction of portions of some or all of the Private Project Improvements are completed and TIF Revenues (defined in **Section 1.3** herein) are subsequently received by the City.

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

ARTICLE ONE - PROJECT

Section 1.1 Authority. The City has authority to adopt tax increment financing (“**TIF**”) pursuant to the Kansas Tax Increment Redevelopment Act, codified at K.S.A. 12-1770 *et seq.* (Supp. 2014, *as amended*) (the “**Act**”), to promote, stimulate and develop the general and economic welfare of the State of Kansas and its communities.

Section 1.2 Purpose.

The purpose of this Agreement is to implement Project Plan B1 as generally described in the Recitals hereto and the approved development plans and building permits.

(a) This Agreement is entered into for the purpose of developing the Property and not for speculation in land holding.

(b) The City has determined that development of the Property pursuant to this Agreement is vital and in the best interest of the City and the health, safety and welfare of its residents, and in accordance with the public purposes and provisions of applicable State and local laws.

(c) This Agreement pertains to and affects the ability of the Parties to finance and carry out the purposes of this Agreement and the goals of the Project Plan.

Section 1.3 The Project Plan.

Project Plan B1 was created by the Ordinance, a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference. The Project Plan is a legislative document of the City. Nothing in this Agreement precludes amendment by the City of the Project Plan without consent of Developer provided the amendment does not change the nature or the scope of the Private Project Improvements to be constructed by Developer, amend the timing of the Project Plan, decrease the sources or approved amount of TIF Revenues (as defined below) available for reimbursement of Private TIF Reimbursable Costs (defined in **Section 2.2** hereof) or reduce the type or amount of Private TIF Reimbursable Costs set forth in this Agreement unless (i) this Agreement is terminated in accordance with **Section 6.5**; (ii) the amendment is requested by Developer; (iii) Developer received all potential reimbursement permitted under this Agreement; (iv) Developer consents to such amendment in writing; or (v) Developer has not timely cured any default of this Agreement and the time to cure has expired.

The City shall reimburse Developer for Private TIF Reimbursable Costs incurred by Developer with that portion of the Tax Increment (as defined by the Act) generated from the Property and received by the City from the County Treasurer (the “**TIF Revenues**”) in accordance with the procedure, priority and duration set forth in **Article Five**; provided Developer is not then in default of this Agreement beyond any applicable cure period, and further provided, however, that if Developer receives any reimbursement from TIF Revenues after Developer is notified that

Developer is in default under this Agreement and Developer does not cure such default before the end of any applicable cure period, then Developer shall repay to the City any reimbursement from TIF Revenues Developer received after Developer received notice of such default.

The Parties understand and agree that the City, in its sole discretion and without consent, may at any time during the term of this Agreement, reduce the size of the District provided, however, that such reduction shall not reduce the Property.

Section 1.4 Parties to the Agreement.

(a) The City is exercising governmental functions and powers and organized and existing pursuant to K.S.A. 13-101 et seq. and all amendments thereto, and is acting herein pursuant to the authority of the Act and Article 12, Section 5 of the Kansas Constitution.

(b) Developer is a Missouri limited liability company, authorized to do business and in good standing in the State of Kansas. Throughout the term of this Agreement, Developer shall maintain its status as a limited liability company in good standing and authorized to do business in the State of Kansas.

(c) The Parties are sophisticated buyers and sellers of real property and have participated in the drafting of this Agreement. The parties covenant and represent that they are fully authorized to enter into and to execute this Agreement and to bind the Parties, and have executed this Agreement after its review and consultation with legal counsel.

Section 1.5 Restrictions on Assignments and Transfer of Interests in Developer.

(a) Restrictions on Assignment of Rights and Obligations. The qualifications and identity of Developer are of particular importance to the City. It is because of Developer's qualifications and identity that the City is willing to enter into this Agreement. Except as otherwise set forth herein, Developer shall not assign, or otherwise transfer (whether voluntarily, by operation of law, or otherwise) this Agreement, or any of its rights or obligations under the Agreement, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. In the event of an assignment consented to by the City, the proposed assignee shall enter into an agreement (the "**Assignment Agreement**") expressly for the benefit of the City, pursuant to which such assignee shall assume all of the rights and obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject. Upon approval of the Assignment Agreement by the City, Developer shall be released from all of its rights and obligations under this Agreement accruing after the date of the Assignment Agreement.

(b) Transfer of Interests in Developer. Any change in ownership of the Developer that results in J. Shannon McMurdo no longer being the majority owner of Developer shall require the written consent of the City.

(c) Collateral Assignment. Notwithstanding subsection (a) above, Developer and its successors and assigns shall also have the right, without the City's consent, to collaterally assign to any Secured Lender (as defined below) as collateral any and all of Developer's rights and/or obligations under this Agreement. The City shall receive as soon as possible, but not less than 30 days following the date of such collateral assignment, written notice from Developer that it has

entered into a collateral assignment with a Secured Lender in connection with the Property, which notice shall specify the name, address and telephone number of the Secured Lender, as well as the title, date and parties to the collateral assignment agreement. Such Secured Lender shall have the right to perform any term, covenant, condition or agreement and to remedy, in accordance with the terms of this Agreement, any default by Developer under this Agreement, and the City shall accept such performance by any such Secured Lender with the same force and effect as if furnished by Developer. No Secured Lender shall be personally liable or obligated to perform the obligations of Developer under the Agreement unless and until such Secured Lender takes possession of the property as a mortgagee or by a receiver appointed at the request of mortgagee or becomes the Developer of the fee estate under this Agreement by foreclosure, or deed in lieu of foreclosure or otherwise. For purposes of this Section, "**Secured Lender**" means a bank, financial institution or other person or entity from which Developer has borrowed funds to finance all or a portion of the Project and in whose favor Developer has agreed to provide a security interest as collateral for such loan.

Before a Secured Lender may exercise any rights of Developer under the Agreement, the Secured Lender shall provide to the City not less than 10 days' written notice of the Secured Lender's intent to exercise its right to become the assignee of Developer under the Agreement, which notice shall include the effective date of the collateral assignment, and the title, date and parties to such collateral assignment agreement. The City is entitled to rely upon representations made in the notices described in this Section without further investigation or inquiry.

Provided that Developer has timely given the City written notice of a collateral assignment as described in this Section, the City agrees to provide the Secured Lender with the same notice of default at the same time such notice is given to Developer, and the Secured Lender shall have the same rights (but shall have no obligation) to cure, correct or remedy a default as are provided to Developer. If Developer fails to timely notify the City of such collateral assignment, failure of the City to provide a Secured Lender with the notice of default described in this paragraph shall not constitute a default of the City under this Agreement and the City shall have no liability to Developer or Secured Lender for failure to provide such notice. Further, except for providing the same notice of default as described herein, no collateral assignment to a Secured Lender shall increase, limit or otherwise modify the City's rights and obligations described in this Agreement.

(d) Lease of Property. Nothing in this section shall apply to Developer's lease of portions of the Property to other persons or entities. This Agreement shall not obligate, provide rights, or otherwise apply to any such lessees and any such leases shall not relieve Developer of its obligations under this Agreement, including but not limited to its obligations with respect to the leased property.

(e) Sale of Property. Nothing in this section shall limit Developer's right to sell or otherwise transfer the Property or portions thereof to other persons or entities, but such sale shall not relieve Developer of its obligations under this Agreement, including but not limited to its obligations with respect to the sold or transferred Property, unless Developer has been released from its obligations as provided in **Section 1.5(a)** above.

(f) Right to Receive TIF Revenue. Only the City, Developer, an assignee under an approved Assignment Agreement pursuant to **Section 1.5(a)**, or a Secured Lender pursuant to **Section 1.5(c)**, and not any other subsequent purchaser, assignee or tenant, unless expressly

consented to in writing by Developer and the City in accordance with the provisions of this Agreement, shall be entitled to receive TIF Revenues for any purpose.

(g) No Assignment if in Default. Notwithstanding anything in this Section to the contrary, no assignment or transfer of this Agreement is permitted if Developer is in default in the performance of any of the material terms, covenants, conditions or agreements of this Agreement and has not cured such default prior to the effective date of such assignment or transfer.

(h) City Costs. Developer shall be responsible for all City fees, including but not limited to professional consultant and advisor fees, if any, associated with a request for City action associated with any assignment under **Section 1.5** or estoppel certificate under **Section 1.6** herein.

Section 1.6 Estoppel Certificate.

Within 30 days of the City's receipt of a written request from Developer, and not more than once per year, the City shall execute, acknowledge and deliver a statement certifying that to the best of its knowledge but without any independent investigation: (a) this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as amended); (b) all sums required to be paid by Developer to the City under the terms of this Agreement due on or prior to the date of the statement have been paid in full; and (c) the City has not given any currently outstanding notices to the Developer or to any other party asserting any breach or violation of, or default under, any of the provisions of this Agreement or any other documents relating to the Private Project Improvements. Developer shall be responsible for any City fees associated with the City's preparation and issuance of such estoppel certificate.

ARTICLE TWO - TIF PROJECT

Section 2.1 Private Project Improvements. Developer shall perform or cause to be performed the Private Project Improvements subject to tenant/user/market demand, but consistent with the Development Plan (hereinafter defined in **Section 3.1**), City Code, and in accordance with and compliance with the Project Schedule (defined in **Section 3.3**).

Section 2.2 TIF Reimbursable Costs.

(a) The costs incurred as a result of the Private Project Improvements performed, or caused to be performed, by Developer which are eligible for TIF reimbursement include, but are not limited to: land acquisition, architectural and engineering costs (except those associated with vertical construction of non-parking structure buildings owned or leased by Developer); demolition; reclamation; geotechnical evaluation and structural study and improvements of the surface and/or subsurface; site preparation and development; utilities infrastructure, structured and surface parking, lighting, landscaping, and other associated infrastructure, hardscape and associated amenities; construction interest; and the TIF Fee (collectively, the "**Private TIF Reimbursable Costs**"). The Private TIF Reimbursable Costs are described in more detail on **Exhibit C**, attached hereto and incorporated herein by reference. All Private TIF Reimbursable Costs must be consistent with the Act. The City shall reimburse Developer from TIF Revenues for Private TIF Reimbursable Costs paid by the Developer or caused to be paid by the Developer pursuant to **Article Five** of this Agreement.

Cost estimates for the Private TIF Reimbursable Costs have been submitted by Developer and the City is entitled to rely on the estimated costs without making any independent investigation. Subject to available TIF Revenues received by the City and the provisions of this Agreement, including but not limited to **Section 2.3** and **Article Five** herein, Developer may be reimbursed for individual line items of Private TIF Reimbursable Costs set forth on **Exhibit C** in higher amounts than the estimates set forth thereon, subject to the aggregate maximum amount of Total TIF Reimbursable Costs set forth on **Exhibit C**. With the consent of the City, which shall not be unreasonably withheld, Developer may also be reimbursed for items not listed on **Exhibit C**, to the extent permitted under the Act, and subject to available TIF Revenues and the aggregate maximum amount of TIF Reimbursable Costs set forth on **Exhibit C** attached hereto.

(b) Developer may make or cause to be made other improvements to the Property that may be eligible for TIF financing under the Act, but if such costs are not included on **Exhibit C** as Private TIF Reimbursable Costs, such costs shall be considered “**Non-TIF Reimbursable Costs**” and not entitled to reimbursement, except where the City otherwise expressly consents in writing.

(c) The Project Plan also contemplates reimbursement to the City with TIF Revenues for public improvements including, but not limited to, certain public infrastructure improvements, adjacent to or substantially for the benefit of the District or for the benefit of The Logistics Park – Kansas City, including a new interchange and traffic signals (the “**Public TIF Reimbursable Costs**”). Reimbursement of the Public TIF Reimbursable Costs is subject to the priority, amount and duration as described in **Article Five** herein. Together, the Private TIF Reimbursable Costs and the Public TIF Reimbursable Costs are referred to as the “**TIF Reimbursable Costs**.”

Section 2.3 Reallocation of Line Items.

Developer has the right to be reimbursed for individual line items of Private TIF Reimbursable Costs set forth on **Exhibit C** in higher amounts than the estimates set forth therein, subject to the Total Maximum Aggregate of Eligible Private TIF Reimbursable Costs set forth on **Exhibit C**.

Section 2.4 Payment of Financing Costs

Interest cost to carry at a rate of 5% (per annum, non-compounding) (the “**Financing Costs**”) is an eligible Private TIF Reimbursable Cost as set forth on **Exhibit C** attached hereto. The City shall only reimburse Developer for Financing Costs accruing after the date the Project Plan is approved. For purposes of calculating the Financing Costs as a Private TIF Reimbursable Cost, Developer shall certify such expenses pursuant to **Article Five** as a separate line item expense. For the month in which such interest is initially imputed or incurred, it shall accrue from the 15th day of the month for costs funded from the 1st to the 14th day of a month and from the last day of the month imputed or incurred for costs funded after the 15th day of a given month. The Total Maximum Aggregate of Eligible Private TIF Reimbursable Costs set forth on **Exhibit C** attached hereto is exclusive of the Financing Costs.

Section 2.5 When TIF Reimbursement Not Required.

The City has no obligation to reimburse Developer for Private TIF Reimbursable Costs in excess of TIF Revenues received by the City from the Property or beyond the duration agreed to

in **Section 3.5** herein, regardless of whether or not there are unreimbursed Private TIF Reimbursable Costs remaining. In addition, the City shall have no reimbursement obligation during any period in which Developer is in material default of this Agreement beyond any applicable cure period or if this Agreement has been terminated in accordance with the terms hereof, or otherwise invalidated by a court of competent jurisdiction.

Section 2.6 Time is of the Essence. The Parties agree that time is of the essence in performing the obligations under this Agreement.

ARTICLE THREE – PROJECT DEVELOPMENT

Section 3.1 Scope of Development.

(a) The Property shall be developed in accordance with the Project Plan, and within the general controls established in the approved development plans for the Private Project Improvements (herein the **“Project”**), as the forgoing may be revised from time to time, subject to approval of the City in accordance with its development review and zoning processes (the **“Final Development Plan”**), which documents shall be incorporated herein by reference. A copy of the site plan is attached hereto as **Exhibit D** to reflect the general nature and type of proposed improvements contemplated by the Project Plan (the **“Site Plan”**).

(b) Any construction by Developer of the Private Project Improvements shall utilize a high quality of architectural design and materials that are in accordance with plan approvals by the City, and the Private Project Improvements shall be consistent with the approved Final Development Plan.

(c) Definitions:

- (1) For purposes of this Article, **“commencement of construction”** shall be defined to mean the commencement of site work.
- (2) For purposes of this Agreement, **“substantial completion”** or **“substantially complete”** or **“complete”** shall be defined to mean when the work is sufficiently complete, in accordance with the plans and applicable City codes, so that the work can be utilized for the purposes for which it was intended. Substantial completion may not require evidence of a Temporary Certificate of Occupancy (**“TCO”**) or final certificate of occupancy (**“CO”**) for all or any portion of the work if the work can be utilized for such purposes without such TCO or CO.

(d) After approval of the Project Plan, approval and execution of this Agreement, and receipt of any required City development approvals for which Developer shall promptly and diligently pursue, Developer shall promptly begin and thereafter diligently prosecute to complete the construction of the Private Project Improvements in accordance with the Project Schedule set forth in **Section 3.3** hereof. Subject to an Excused Delay (as defined in the Development Agreement), the Developer shall commence construction and development within the times specified herein or such reasonable extension of said date as may be granted by the City as provided herein, and Developer shall diligently pursue it to completion. The timing of

development set forth in **Section 3.3** is subject to revision from time-to-time as mutually agreed upon in writing between Developer and the City and is subject to the provisions herein.

Section 3.2 Progress Reports. During the term of this Agreement, upon the written request of the City, Developer shall submit to the City Administrator or his designee written reports of the progress of the construction of the Private Project Improvements. Such request shall not be made more frequently than every six (6) months.

Section 3.3 Project Schedule. Developer agrees to comply with the construction schedule set forth in Article VIII of the Development Agreement (the "**Project Schedule**").

Section 3.4 Development Performance Standards. Subject to the notice and cure periods set forth in **Section 6.1**, Developer is required to satisfy the following Performance Standards (the "**Performance Standards**") which are considered material to this Agreement or Developer will be considered in default of this Agreement:

(a) Payment of the TIF Fee and City's Annual Administrative Service Fee. Developer is responsible for the TIF Fee, which is a non-refundable amount equal to 1% of the total TIF Revenues estimated to be reimbursed to Developer pursuant to this Agreement. The TIF Fee for this Project is \$50,000, which is based upon the approved aggregate of Private TIF Reimbursable Costs but capped at the maximum TIF Fee that the City charges (the "**TIF Fee**"). The TIF Fee is included as a Private TIF Reimbursable Cost and is to be paid as follows:

- (1) Payment of the required City fees. The Developer is responsible for paying the City's TIF legal fee of \$20,000 and the Financial Analysis fee of \$14,000 at the time of execution of this Agreement.
- (2) Payment of the Redevelopment Project Plan Approval Fee. At the time of execution of this Agreement, Developer shall pay an amount equal to 25% of the TIF Fee (the "**Project Plan Fee**"). The Project Plan Fee for this Project will be \$12,500.
- (3) Balance of TIF Fee. The balance of the TIF Fee in the amount of \$37,500 shall be paid by Developer with the first Private TIF Reimbursable Cost disbursement. If there are not sufficient funds in the first Private TIF Reimbursable Cost disbursement, the City is authorized to continue to deduct the balance of the TIF Fee from each subsequent disbursement until paid in full.
- (4) Annual Administrative Fee. The annual administrative service fee of one percent (1.0%) of the annual TIF Revenues actually reimbursed to Developer or its assigns for Private TIF Reimbursable Costs (the "**City's Annual Administrative Fee**") shall be deducted by the City from TIF Revenues before disbursement of the remaining TIF Revenues. The City's Annual Administrative Fee is not an eligible Private TIF Reimbursable Cost.

- (b) Developer must be in compliance with **Sections 3.3** and **3.4** hereof.

(c) In accordance with **Section 4.4**, and subject to Developer's opportunity to cure set forth in **Section 6.1(d)**, Developer shall not be delinquent in any material respect on any of the ad valorem real property taxes or special assessments assessed against the real property in the City owned by Developer. Notwithstanding anything to the contrary herein and subject to the provisions of **Section 4.4**, the Developer shall have the right to pay any and all taxes and special assessments under protest in accordance with applicable law without violating any provision hereof.

(d) For the duration of the TIF Term (defined in **Section 3.5** herein), Developer shall not be delinquent on any City fees associated with the Project, including but not limited to City TIF fees, the City Costs described in **Section 1.5(h)** herein, and development fees, and shall be in compliance with all City Codes including the property maintenance codes applicable to the Property owned by Developer, subject to Developer's right to notice and cure under **Section 6.1(c)** hereof. Developer's obligation under this **Section 3.4(e)** does not restrict Developer from challenging the legality of any Code provision or any fee first levied against the Property or portion thereof or the Developer by the City after the execution of this Agreement. Developer shall not be deemed to be in default of this **Section 3.4(e)** for a violation of the City's property maintenance code unless Developer is in material breach of the property maintenance codes applicable to the Property owned by Developer beyond the notice and cure periods set forth in **Section 6.1**.

(f) **Civic Involvement.** The granting of economic development incentives is a discretionary decision of the City and is granted to promote, stimulate and develop the general and economic welfare of the quality of life in the City; therefore, civic and community involvement of any Developer receiving Private TIF Reimbursement is important to the City. During the TIF Term, Developer agrees to comply with Section 12.2 of the Development Agreement (the "**Civic Obligation**"). The Civic Obligation is not considered a TIF eligible expense and may not be deducted from the TIF disbursement.

Section 3.5 TIF Term. The TIF Term (hereafter defined) commences on the date Project Plan B1 is approved. Project Plan B1 shall terminate upon the earlier to occur of: (a) 20 years from the date on which Project Plan B1 is approved; or (b) reimbursement of all TIF Reimbursable Costs (the "**TIF Term**").

Section 3.6 Project Cost. The cost of developing, constructing, improving and operating the Private Project Improvements shall be the sole responsibility of Developer; however, the City shall make reimbursement to Developer in accordance with this Agreement for Private TIF Reimbursable Costs with TIF Revenues received by the City, provided Developer is not in material default of the Agreement beyond any applicable cure period set forth in this Agreement.

Section 3.7 City and Other Permits. Before commencing construction, Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work.

ARTICLE FOUR: ADMINISTRATION

Section 4.1 Rights of Access & Inspection.

(a) For the purpose of ensuring compliance with this Agreement, representatives of the City shall have the right of access to the Property, upon reasonable notice, without charges or fees, at normal construction hours during the period of construction, including, but not limited to the inspection of the work being performed in constructing the Project. Such representatives of the City shall check in with the Construction Superintendent in the Project Trailer, and shall conform their conduct to the requirements of the safety program in effect at the Project, shall at all times carry proper identification, shall insure their own safety, shall assume the risk of injury; and shall not interfere with the construction activity unless such activity is in violation of this Agreement, City Code, state or federal regulations, statutes or other law. This provision shall not preempt the City's exercise of its police powers to access the Project in accordance with local, state or federal law.

(b) For a period of 5 years after receiving a Certificate of Completion, Developer shall maintain records and supporting documentation associated with the Private Project Improvements constructed by Developer, customarily retained by a reasonable contractor performing similar work, and Developer agrees to make such documents available for inspection by the City upon written request with reasonable notice to Developer.

(c) The City has the right to inspect, at reasonable times and for a period of 5 years after receiving a Certificate of Completion, the books and records of Developer pertaining to the Private Project Improvements constructed by Developer as pertinent to the purposes of this Agreement, including but not limited to construction contracts and invoices documenting requests for reimbursement of Private TIF Reimbursable Costs, which the City shall keep confidential to the extent permitted by law.

Section 4.2 Local, State and Federal Laws. Developer shall carry out the provisions of this Agreement in conformity with all applicable local, state and federal laws and regulations.

Section 4.3 Anti-discrimination. Developer agrees that in the construction of the Project, Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

Section 4.4 Taxes & Assessments.

Developer shall pay when due all real estate taxes and assessments levied against the Property owned by Developer and all other real property of Developer within the City or Developer shall be in default of this Agreement. Developer, however, shall have the right to pay said taxes under protest in accordance with applicable law.

Developer shall promptly notify the City in writing of a protest of real estate taxes or valuation of any portion of the Property owned by Developer promptly after the appeal is filed but in no event later than ten (10) days after filing the appeal. In the event of an appeal of ad valorem taxes or valuation of all or any portion of the Property owned by Developer the disbursement of TIF Revenues shall be modified as set forth in **Section 5.2** herein. Any reduction in the assessed valuation of the Property may result in Developer's inability to receive full reimbursement for all Private TIF Reimbursable Costs set forth in **Exhibit C**.

ARTICLE FIVE: REIMBURSEMENT OF TIF REIMBURSABLE COSTS

Section 5.1 Certificate of Completion.

Reimbursement shall only be made to Developer after the City's issuance of a Certificate of Completion for a "definable portion thereof" of the Project associated with the Private TIF Reimbursable Costs for which reimbursement is sought, compliance with the Performance Standards and receipt by the City of acceptable documentation of such Private TIF Reimbursable Costs pursuant to this **Article Five** and **Exhibit F** and deduction of the City Annual Administrative Fee, and if applicable, the balance of the Project Plan Fee.

For purposes of this Article, "**a definable portion thereof**" means, with respect to the Project, the earlier of (i) substantial completion of the construction of any stand-alone building, along with any associated improvements required under the public zoning and other land use approvals and documents, which may include items such as infrastructure, parking, sewers, sidewalks, streets, utilities, and lighting (the "**Associated Improvements**") or (ii) the issuance of a temporary certificate of occupancy for a Private Project Improvement. "A definable portion thereof" may also include a smaller or more discrete portion of work associated with the Project, as determined by the City Administrator. If an improvement is partially completed in a manner which results in the material risk of physical damage to the Project, is unsightly, results in inability for the public and/or tenants (as the case may be) to utilize that portion of the improvement which is completed, or materially violates City ordinances or permits then the portion completed shall not be eligible for a Certificate of Completion until the additional improvements are made. If any of the improvements require additional improvements to be constructed contemporaneously or prior to receipt of permits, then all such items must be substantially completed to constitute a definable portion thereof.

(a) Any request for a Certificate of Completion shall include a description of the Private Project Improvement or definable portion thereof for which the certificate is requested and an affidavit of Developer certifying: (1) that the Private Project Improvement or definable portion thereof is substantially complete; (2) the costs of the substantially completed work that constitute Private TIF Reimbursable Costs; (3) that construction was in accordance with all applicable laws and codes; (4) that the costs were incurred in furtherance of the Project, complete a definable portion of the Project as contemplated by this **Section 5.1** and that the costs have not previously been submitted for CID, TIF or other City reimbursement; (5) that Developer's Contractor has no actual knowledge of outstanding or anticipated liens for the work constructed and Developer has no knowledge of Developer's Contractor's intent to file a lien; and (6) that Developer is not in material default under this Agreement (the "**Developer Affidavit**"). The Developer Affidavit form is attached as **Exhibit D**. Notwithstanding anything to the contrary, the existence of a lien or an intent to file a lien shall not be the basis of the City refusing to reimburse Developer for any Private TIF Reimbursable Costs, except that City shall have the right to temporarily withhold an amount of reimbursements equal to the amount of the lien or threatened lien until the earlier of the (i) lien has been discharged or (ii) City is satisfied that the lien is not going to adversely affect the City.

(b) Upon the City's receipt of a request for Certificate of Completion from Developer, the City shall physically inspect the completed Project or a definable portion thereof for which the Certificate of Completion is requested. If such Project or definable portion thereof is complete and appears to be in compliance with City Codes and the City has not notified Developer of an event of default which has not been cured, then the City will issue a Certificate of Completion

which confirms that the Private TIF Reimbursable Cost is eligible for reimbursement in accordance with this Agreement to the extent TIF Revenues are available. This Certificate of Completion shall not relieve Developer of constructing the improvements in accordance with local, state and federal laws and regulations, completing the improvements and achieving final Completion, nor should it be relied upon by any person or entity.

(c) The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any tenant, any holder of any deed of trust securing money loaned to finance the Project; nor does it substitute for Developer's need to receive any other City permits or certificates of occupancy, or Governing Body acceptance of public improvements.

Section 5.2 Reimbursement Procedures.

(a) Developer shall only be reimbursed for approved Private TIF Reimbursable Costs and only after receipt of a Certificate of Completion, as described in **Section 5.1**. Reimbursement shall only be made with TIF Revenues received by the City and deposited by the City in a separate, segregated account of the City (the "**Project Plan B1 Fund**") and for the duration set forth in this Agreement and/or **Exhibit C**. The City is under no obligation to provide financial assistance in excess of the available TIF Revenues, including but not limited to (1) where the TIF Revenues do not meet the estimates in the feasibility analysis; (2) the Private Project Improvements are not completed in the timeframe expected thereby reducing the TIF Revenues generated during the TIF Term; (3) Developer does not construct the same project upon which the feasibility analysis was based; (4) TIF Revenues do not fully reimburse the Private TIF Reimbursable Costs submitted by Developer; (5) the TIF Term expires pursuant to **Section 3.5** or if this Agreement is otherwise terminated in accordance with the terms hereof; or (6) Developer fails to meet the requirements of **Section 3.3**.

The Financial Analysis incorporated a number of development projections and a number of assumptions, including dates for commencement and completion of property, property tax collection at 100% and a 1% annual assessed valuation growth rate. In addition, the Financial Analysis assumes a constant mill levy. Changes in any of the projections or assumptions will change the amount of TIF Revenues generated from the Property. The mill levy may vary each year of the TIF Term based upon legislative actions and budgetary decisions made by the individual taxing jurisdictions.

(b) Reimbursement of Private TIF Reimbursable Costs will be made available on a "Pay-As-You-Go" basis with available TIF Revenues. The City will not issue full faith and credit TIF bonds.

(c) Priority. Subject to available TIF Revenues, the City and Developer shall be reimbursed the amounts and in the priority set forth below and on **Exhibit C** subject to the provisions of this Agreement:

- (1) The City shall receive the first priority for payment of the City Annual Administrative Fee which shall be deducted from the TIF Revenues prior to any other disbursement.

- (2) The City shall receive full payment of its TIF Fee prior to any other disbursement to Developer.
- (3) Provided Developer is not otherwise in default of this Agreement, the TIF Revenues relating to each calendar year after which the Developer receives a Certificate of Completion for a definable portion of the Project as defined in **Section 5.1**, excluding the City Annual Administrative Fee, shall be apportioned between the Developer and the City in the following percentages:

TIF Term Year	TIF Revenue Allocation	
	Developer	City
Years 1 – 15	50%	50%
Years 16 – 20	Described in (4) below	

- (4) The City shall receive 100% of the TIF Revenues for years 16 through 20 of the TIF Term unless, by the last day of the 15th year of the TIF Term, the Developer has satisfied both of the conditions in Section 4.3 of the Development Agreement. If the Developer has satisfied both of the conditions in Section 4.3 of the Development Agreement by such time, the TIF Revenues shall be paid 50% to the Developer and 50% to the City for years 16 through the end of the TIF Term.
 - (5) In no event will reimbursement to the Developer extend beyond the reimbursement of all Private TIF Reimbursable Costs.
- (d) Reimbursement to Developer:
- (1) Prior to receiving reimbursement, Developer must apply for and receive a Certificate of Completion and submit to the City Administrator copies of all invoices supporting its request for reimbursement in such detail as may reasonably be requested by the City Administrator, accompanied by a Certificate of Expenditures for the associated costs, which approval will not be unreasonably withheld or denied by the City Administrator. The Certificate of Expenditures form is included as **Exhibit E** Invoices must comply with the provisions set forth in **Exhibit F**, attached hereto and incorporated herein by reference. The invoice or other supporting documentation must identify the Project or definable portion thereof for which reimbursement is sought and clearly state the amount of reimbursement requested. Invoices must be submitted no more than biannually. Developer shall provide lien waivers in such form, and accompanied by such other information, as is reasonably requested by the City to evidence that the reimbursement is permitted. The City Administrator shall rule on the eligibility of the cost as soon as possible but no later than sixty (60) days of the submittal and if he/she fails to do so, the cost is deemed ineligible. If the City Administrator determines or is deemed to have determined hereunder the cost is ineligible, Developer may appeal the decision to the Governing Body by filing with the City Clerk, a written request for an appeal within seven (7) days of the City Administrator's written denial. Any

reimbursement of the disputed portion of any payment shall be stayed pending a final determination by the Governing Body of any appeal, however the balance shall be paid in the normal course.

- (2) After approval of the invoice, the City shall make disbursement to Developer in accordance with the priorities and duration set forth in **Exhibit C** and subparagraph (c) herein. Regardless of the entity making improvement to the Property or the entity that controls Property ownership, during the term of this Agreement, disbursement of the TIF Revenue for Private TIF Reimbursable Costs shall be made to Developer, unless the parties agree in writing to disburse the TIF Revenues to a third party, in which case, disbursements to a third party shall be deemed a disbursement to the Developer for purpose of determining the maximum Private TIF Reimbursable Costs and all other purposes of this Agreement.

(c) Disbursements: All disbursements for approved Private TIF Reimbursable Costs shall be made by the City from the Project Plan B1 Fund against approved invoices submitted to the City in accordance with the provisions contained herein. Such disbursements shall be made biannually within thirty (30) days after the City's receipt of the ad valorem tax payment from the County. Disbursements will only be made electronically through the automated clearinghouse ("ACH") or similar City approved payment method. Developer shall submit to the City the necessary financial information as required by the City to enable the use of the aforementioned payment methods and to enable the City to properly report such payments as required by state and federal law. The City shall have no liability to pay any Private TIF Reimbursable Costs from any source except from TIF Revenues received from the County and deposited in the Project Plan B1 Fund during the TIF Term in accordance with the Act.

Notwithstanding anything in this Agreement to the contrary, in any year in which ad valorem taxes are appealed by Developer, the City shall make a good faith determination of the amount of TIF Revenues subject to appeal (the "Disputed Amount") and the amount of TIF Revenues that would remain if the Developer is successful (the "Undisputed Amount"). The City agrees to disburse 100% of (or 75% of if the appeal is more than 15 years from the date on which Project Plan B1 was approved) of the Undisputed Amount. Once a final determination on the appeal has been made and assuming the appeal is successful, the City agrees to disburse to Developer the remaining balance of the Undisputed Amount that would apply to the new valuation. If the City was incorrect in its good faith determination and the "Undisputed Amount" was greater than the actual tax liability based on the new valuation, the City shall withhold the amount of the TIF Revenue disbursed in excess of the new valuation from the following years' TIF Revenue distribution or if there is no distribution to be made or all or a portion of the Property for which taxes were paid has been sold or assigned, Developer will return the amount of TIF Revenues Developer received from the City in excess of the actual tax liability based on the new valuation. If the appeal is not entirely successful, the City agrees to distribute 100% of TIF Revenues received attributable to any portion of the Disputed Amount which the Developer paid as a result of the appeal not being entirely successful.

Section 5.3 Reimbursement of Tenant or Purchaser incurred TIF Reimbursable Costs.

Notwithstanding anything in this Agreement to the contrary, in the event that a tenant or purchaser of a portion of the Property completes the Project, or a portion thereof, and as a result incurs Private TIF Reimbursable Costs, Developer shall be entitled to reimbursement of such Private TIF Reimbursable Costs so long as such costs have not been previously reimbursed or the right to such reimbursement has not otherwise been assigned by Developer with TIF Revenues, or other City funds, and further provided the Developer is not in default of this Agreement beyond the applicable cure period, and Developer submits a Certificate of Completion, invoices and other supporting documentation in accordance with the provisions of this Agreement and attached **Exhibits E, F and G**.

Section 5.4 City's Right to Make Additional TIF Reimbursements. The City, at any time during the term of this Agreement after the City has issued a Certificate of Completion for all of the Private Project Improvements, shall have the right to pay Developer an amount equal to all Private TIF Reimbursable Costs owed to Developer under this Agreement pursuant to **Exhibit C** and approved in the Certificate of Expenditures and thereafter terminate this Agreement in accordance with **Section 6.5**. Thereafter, the City may also elect to terminate this Agreement for convenience and/or terminate or otherwise amend the Project Plan in accordance with the Act, provided that the City has met all of the City's obligations contained in this Agreement

ARTICLE SIX - DEFAULTS & REMEDIES

Section 6.1 Defaults.

(a) Subject to any extensions granted in accordance with this Agreement, failure or delay by either Party to perform any term or provision of this Agreement, after receiving notice and failing to cure, as set forth herein, constitutes a default under this Agreement.

(b) A Party claiming a default ("**Claimant**") shall give written notice of default to the other party, specifying the default complained of. Notice shall be given to the Parties at the addresses set out in **Section 7.4** hereof.

(c) Claimant shall not institute proceedings against the other Party, nor be entitled to damages, if the other Party within fourteen (14) days from receipt of such notice commences to cure, correct or remedy such failure and shall complete such cure, correction or remedy within thirty (30) days from the date of such notice unless otherwise provided herein or unless such defaulting Party has commenced and is diligently working to cure the default and the time period necessary to cure is longer than thirty (30) days, in which case such cure period shall continue as long as reasonably necessary to allow for cure, not to exceed ninety (90) days unless such longer time is mutually agreed to by both parties in writing.

(d) Notwithstanding any provision herein to the contrary, if the City determines that the Developer-owned Property's ad valorem real property taxes or special assessments for the Private Project Improvements have not been paid, upon written notice by the City of such delinquency received by the Developer at the address indicated for Notices in this Agreement, the Developer shall pay such Property taxes and special assessments within ten (10) business days after receipt of such notice. Developer's failure to pay such Property taxes and special assessments within such ten (10) business day period shall constitute an event of default under this Agreement. The notice and cure rights set forth in this subsection shall only apply to the first two (2) instances

where the taxes and special assessments for the Property are not timely paid. Any additional instances where such taxes and special assessments are not timely paid shall constitute an event of default under this Agreement, with no notice and cure rights under this subsection. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Developer from contesting the assessed value of such Property or the taxes thereon, or any special assessment levied against the Property after execution of this Agreement; provided however, that Developer shall pay any and all amounts that are contested with respect to the Property under protest while any such proceedings are pending. Developer shall also notify the City anytime it chooses to appeal the assessed valuation of the Property or any portion thereof. An appeal of assessed value that reduces the assessed value of the Property below the amount set forth in the Financial Analysis upon which Project Plan B1 is based will likely result in Developer's inability to receive reimbursement for all TIF Reimbursable Costs set forth in **Exhibit C**.

(e) The entry of a decree or order by a court having jurisdiction in the premises for relief in respect of the Developer, or adjudicating the Developer bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, adjustment or composition of or in respect of the Developer under the U.S. Bankruptcy Code or any other applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee or similar official of or for the Developer or any substantial part of the Project property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order not stayed and in effect for a period of sixty (60) consecutive days, and such decree order causes Developer to be unable to perform Developer's obligations under this Agreement whether directly or as shown by evidence of a means of acceptable, alternative financing provided by the Developer to the City.

(f) The following shall constitute an event of default under this Agreement: the commencement by the Developer of a voluntary case, by it of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the Developer of bankruptcy or insolvency proceedings against it, or the filing by Developer of a petition or answer or consent seeking reorganization, arrangement or relief under the United States Bankruptcy Code or any other applicable federal or state law, or the consent or acquiescence by it to the filing of any such petition or the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Developer or any member of Developer, or any substantial part of their property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability or its failure to pay its debts generally as they become due, or the taking of corporate action by the Developer in furtherance of any such action.

Section 6.2 Legal Actions.

(a) Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas. Neither Party shall be entitled to attorney fees as a result of litigation relating to or arising out of this Agreement. Neither party shall at any time be liable for lost tax revenues or lost profits for any action arising under this Agreement or the transactions contemplated thereby.

(b) This Agreement is entered into, under and pursuant to, and is to be interpreted, construed and enforceable in accordance with the laws of the State of Kansas.

Section 6.3 Rights and Remedies Are Cumulative. Both Parties shall have available to it all remedies at law and equity. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

Section 6.4 Waivers.

(a) Any failures or delays by either Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(b) All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Parties and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision.

Section 6.5 Termination.

(a) If Developer is not in compliance with the Project Schedule set forth in Article , unless otherwise extended by written agreement of the Parties, or fails to thereafter diligently pursue the Project to completion, subject to tenant/user/market demand and Excused Delay (as defined in the Development Agreement), the City shall have the right to terminate this Agreement without any further right to cure.

(b) Upon reimbursement of all TIF Reimbursable Costs; or the expiration of the Project Plan in accordance with state law, whichever occurs first, this Agreement, by its terms, shall terminate and have no further force or effect. Notwithstanding the foregoing, the following provisions shall survive such termination: **Section 3.3(d)**, **Section 3.4(e)** and **Section 4.4**.

(c) Notwithstanding anything else in this Agreement, in the event of a default under this Agreement by Developer which is material and that is not timely cured pursuant to **Section 6.1** hereof, the City may terminate this Agreement. The City may also terminate this Agreement if the Developer is in default under the Development Agreement and such default has not been timely cured.

(d) If the City terminates this Agreement as provided herein, the City will notify Developer in writing, at least fourteen (14) days prior to terminating the Agreement. The intent of this provision is to provide notice to Developer, not to provide any additional right to cure.

(e) If Project Plan B1 or this Agreement is terminated or is otherwise invalidated by a court of competent jurisdiction or State action, the City's obligation to make any additional reimbursements of Private TIF Reimbursable Costs shall cease. Upon termination of this Agreement, the City may, but is not obligated, to terminate the TIF District and/or repeal the Project Plan.

ARTICLE 7 – MISCELLANEOUS

Section 7.1 Entire Agreement.

(a) This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed an original, and all of which together shall constitute one and the same instrument. Hand signatures transmitted by fax or electronic mail in portable document format (PDF) or similar format are also permitted as binding signatures to this Agreement.

(b) This Agreement incorporates and supersedes all prior negotiations or previous agreements between the parties and their predecessors in interest with respect to TIF discussions relating to this Property.

(c) This Agreement may only be modified by written instrument executed by the City and Developer.

Section 7.2 Headings. The captions and section headings contained in this Agreement are for convenience of reference only and shall not be considered in any interpretation of the provisions of this Agreement.

Section 7.3 Notices. Written notices, demands and communications between the City and Developer shall be sufficiently given by personal service or dispatched by registered or certified mail, postage prepaid, return receipt requested, or overnight courier, to the persons and addresses stated herein. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate in writing to the City Clerk, with a copy to the City Attorney. Notwithstanding anything to the contrary contained herein, notice personally served shall be deemed to have been received as of the date of such services or the date service is refused if written verification thereof is received from messenger service attempting such delivery.

To the City:	City Administrator Edgerton Community Building 404 East Nelson Edgerton, Kansas 66021 Phone: (913) 893-6231 Fax: (913) 893-6232 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 Developer:	Woodstone Properties, LLC Attn: J. Shannon McMurdo 2131 State Highway 265 Ste. C Branson, Missouri 65616

Phone : (417) 338-0501
Shannon@woodstonebuilders.com

With a copy to: Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112
Attention: Curtis J. Petersen
Phone: (816) 753-1000
cpetersen@polsinelli.com

Section 7.4 Confidentiality. Nothing in this Agreement grants either party any right to use, directly or indirectly, the trade names, trademarks, or other intellectual property of the other party in connection with any product, service, promotion or publication without prior written approval of the other party.

Section 7.5 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture between the City and Developer or as constituting Developer as the agent or representative of the City for any purpose or in any manner under this Agreement, being understood that Developer is an independent contractor hereunder. Each party (the “**Indemnifying Party**”) agrees to indemnify and hold harmless the other party (the “**Indemnified Party**”) against all claims for workers’ compensation, unemployment tax and withholding tax obligations related to this Project and asserted by anyone working for or employed on behalf of the Indemnifying Party.

Section 7.6 Non-Liability of City Officials and Employees. No member, official, representative, or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City for any amount which may become due to Developer or successor or on any obligations under the terms of the Agreement.

Section 7.7 Non-Liability of Developer Representatives and Employees. No shareholder, owner, manager, director, employee, affiliate or representative of Developer shall be personally liable or obligated to perform the obligations of Developer, pursuant to the provisions of the Agreement or for any default or breach of the Agreement by Developer.

Section 7.8 Third Party Beneficiary. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third-party beneficiary.

Section 7.9 Incorporation into Agreement. Unless otherwise provided herein, the Recitals and all the exhibits attached hereto are incorporated herein by reference.

Section 7.10 Conflict of Terms. It is the intention of the City and Developer that if any provision of this Agreement is capable of two constructions, one of which would render this provision valid and enforceable, then the provision shall have the meaning which renders it valid and enforceable.

Section 7.11 No Limitation of Governmental Functions or Police Powers. Nothing in this Agreement shall be construed as a limitation on the ability of the City to exercise its governmental functions or to diminish, restrict or limit the police powers of the City granted by the Kansas Constitution, statutes or by general law.

Section 7.12 Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

[SEAL]

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

WOODSTONE PROPERTIES, LLC,
a Missouri limited liability company

By: _____
J. Shannon McMurdo
Member

EXHIBIT A

Project Plan B1 Area Legal Description

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 B

Project Plan B1 Ordinance

Copy of Ordinance No. 2099 adopted by the Edgerton Governing Body on November 18, 2021.

EXHIBIT C

TIF Reimbursable Costs – Project Plan B1

The following items are estimated TIF eligible private and public costs for reimbursement with TIF Revenues generated from Project Plan B1. Reimbursement shall be made in the following priority as described more fully in **Section 5.2(c)** of the Agreement, or otherwise agreed to, in writing, by the City and Developer:

Description of Expenditure		Reimbursement to:	Estimated Reimbursement
Eligible TIF Fees (excluding Annual Administrative Fee)		Developer ¹	\$50,000
Private TIF Reimbursable Costs paid by Developer, including:		Developer	\$24,628,903 ^{2,3}
a. Land Acquisition	\$5,625,000		
b. Site Work Improvements Interior Roads, Grading, Utility Relocations and/or Improvements	\$12,397,700		
c. Architecture and Engineering	\$6,592,203		
d. TIF Study	\$14,000		
Estimated Private TIF Reimbursable Costs			\$24,678,903⁴
Public TIF Reimbursable Costs paid by City, including: The City's costs associated with public infrastructure improvements, adjacent to or substantially for the benefit of the District, including improvements to 199 th Street, and the construction and installation of publicly-owned infrastructure improvements which serve Logistics Park – Kansas City	\$8,500,000	City	
Estimated Public TIF Reimbursable Costs			\$8,500,000
Estimated Aggregate TIF Reimbursable Costs (excluding the City Annual Administrative Fee which is TBD and interest)			\$33,178,903

Notwithstanding any other provision of this Plan to the contrary, reimbursable expenditures shall at all times be consistent with the Act, including judicial interpretation of the Act.

¹ The TIF Fee is based upon 1% of the Private TIF reimbursable Costs, but cannot exceed \$50,000. This total excludes the Annual Administrative TIF Fee as it not an eligible Private TIF Reimbursable Cost. This sum shall be reimbursed to Developer if it has been paid by Developer and if not, it shall be deducted from the first Private TIF Reimbursable Cost payment (and thereafter until paid in full) and paid to the City.

² This amount includes sums which may be included in a subsequent Community Improvement District. At the time of certifying its costs to the City, Developer must elect the Project Plan and the incentive source for which it desires reimbursement and it shall not submit those same costs for reimbursement from any other reimbursement source.

- ³ The amount of the total Public TIF Reimbursable Costs does not include a sum for the Annual Administrative TIF Fee as this amount is to be determined as it is based upon the annual amount of TIF Revenues disbursed to Developer.
- ⁴ The Total Estimated Aggregate of TIF Reimbursable Costs does not include a sum for the Annual Administrative TIF Fee as this amount is to be determined as it is based upon the annual amount of TIF Revenues disbursed to Developer. It does also not include Financing Costs which are an eligible reimbursable expense in the manner described in the DDA.

EXHIBIT D
Site Plan of Project

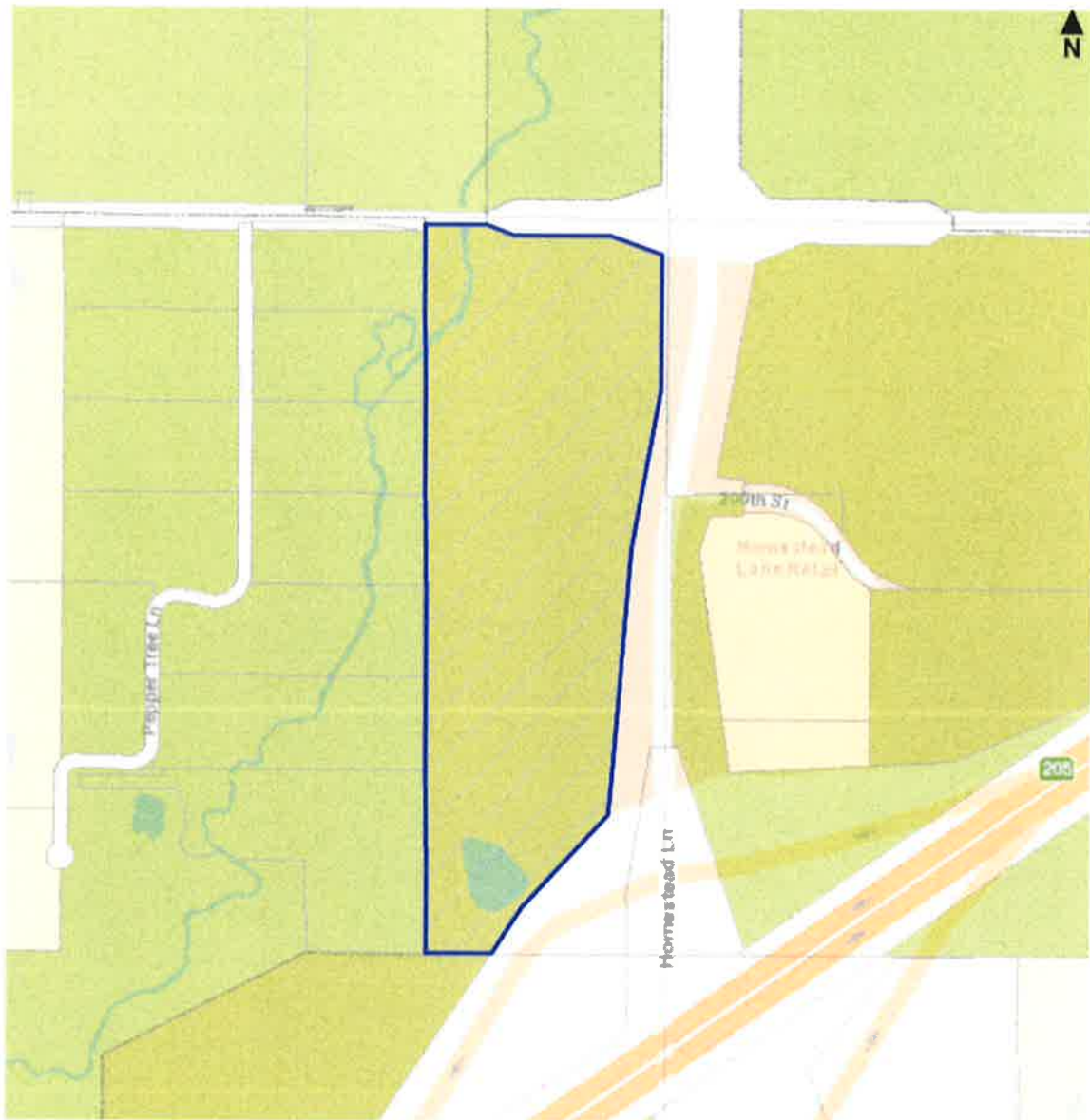


EXHIBIT E

Edgerton Homestead Lane Retail District Redevelopment (TIF) Project Plan B1 (Woodstone Project)

Request for Certificate of Completion and Affidavit of Developer

Woodstone Properties, LLC ("Developer") has constructed certain improvements that are the subject of the above-referenced Project Plan B1 (the "Project"). Implementation of Project Plan B1, including the procedures for reimbursement of eligible TIF expenses, is set forth in the Disposition and Development Agreement dated November __, 2021 (the "DDA") between the Developer and the City of Edgerton, Kansas ("City"). Unless otherwise defined herein, all terms shall have the definitions set forth in the DDA.

I, _____, being duly sworn, do state under oath for this affidavit the following:

1. I am over the age of 18 and am competent to attest to the facts herein. I have personal knowledge of the facts recited in this Affidavit and I am authorized by the Developer to make these representations.

2. Developer has completed a definable portion of the Project and requests a Certificate of Completion from the City. The Project or definable portion of the Project for which a Certificate of Completion is requested is described as: _____

(the "Completed Work").

3. The cost of the Completed Work that constitutes Private TIF Reimbursable Costs is \$_____.

4. To my actual knowledge, construction of the Completed Work was in accordance with all applicable federal, state and local laws and regulations.

5. The costs incurred for the Completed Work were in furtherance of the Project.

6. To my actual knowledge, Developer has no outstanding or anticipated liens on the Completed Work.

7. To my actual knowledge, Developer is not in default under the DDA.

FURTHER AFFIANT SAITH NOT.

Printed Name: _____

Title: _____

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this ____ day
of _____, 20 ____.

Notary Public

My appointment expires:

EXHIBIT F

Edgerton Homestead Lane Retail District Redevelopment (TIF) Project Plan B1 (Woodstone Project)

Certification of Expenditures Form

Request No. _____

Date Submitted: _____

Pursuant to **Section 5.2(d)** of the Disposition and Development Agreement dated November __, 2021 (the "DDA"), between the City of Edgerton, Kansas and the undersigned (the "Developer"), the Developer, by its undersigned representative, requests payment or reimbursement and hereby states and certifies as follows:

1. Developer has received a Certificate of Completion for the Project or Phase for which the costs submitted were incurred.
2. All terms in this request shall have and are used with the meanings specified in the DDA.
3. The names of the persons, firms or corporations to whom the payments requested hereby are due, the amounts to be paid and the general classification and description of the costs for which each obligation requested to be paid hereby was incurred are as set forth on **Attachment 1** hereto.
4. These costs have been incurred and are presently due and payable and are reasonable costs that are payable or reimbursable under the DDA.
5. Each item listed above has not previously been paid or reimbursed and no part thereof has been included in any other request previously filed with the City.
6. To the actual knowledge of the undersigned, there has not been filed with or served upon the Developer any notice of any lien, right to a 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.
7. To the actual knowledge of the undersigned, all work for which payment is now or has heretofore been requested (insofar as such payments relate to the construction, remodeling and renovation portions of the Project) has been performed in accordance with the plans and specifications therefor.
8. Lien waivers for costs for which payment is hereby requested have been received and are attached hereto as **Attachment 2** hereto.

WOODSTONE PROPERTIES, LLC,
a Missouri limited liability company

By: _____

Printed Name: _____

Title: _____

**ATTACHMENT 1
TO CERTIFICATION OF EXPENDITURE**

REQUEST NO. _____

DATED _____

Itemization of Costs

Payee	Amount	Description of Cost – Line Item of Private Reimbursable Cost
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FOR CITY USE ONLY

_____ APPROVED this _____ day of _____, 20____.

_____ DENIED this _____ day of _____, 20____.

By: _____

Title: _____

If Denied, basis for Denial:

EXHIBIT G

Submittal Requirements for Reimbursement of TIF Invoices

When submitting a reimbursement request, Developer shall apply the following requirements with respect to its documentation:

1. Complete request for Certificate of Completion, including affidavit included therein.
2. Evidence that the expense was an eligible TIF Reimbursable Cost in the DDA.
3. Indication of the time frame the expense was made.
4. Identification of the improvement for which reimbursement is sought.
5. Submission of invoices shall accompany the Certificate of Completion; and Certificate of Expenditures by Developer certifying that all expenses submitted are TIF Reimbursable Costs and have not been previously submitted or paid by TIF Revenues or other City sources.
6. Lien Waivers. These may only be waived by the City, and will generally only be done if the invoice reflects payment has been made.
7. Any other information requested by the City.
 - a. Individual receipts must total an aggregate of at least \$1,000.00 for submittal. After the project is complete, if increment is available submission of receipts for lesser amounts in the aggregate will be accepted and processed.
 - b. All expenses must be documented by itemized invoices. Handwritten notes or receipts with handwritten notes will not be accepted. If available, supporting receipts should be attached to any invoice submitted. In the case of services, the invoice should include itemization of the time spent on the project; description of the service performed; location where the service was performed; the name of the person and/or company performing the service; and information regarding the cost of the service (i.e. rate of pay and number of hours performed, or if a lump sum, the number of hours performed or type of work performed may be necessary to determine if the cost was reasonable and customary).

Submission of above information directly to City Administrator in the timeframe set forth in the DDA.