

[Summary Published in *The Gardner News* on May 15, 2019]

ORDINANCE NO. 2010

AN ORDINANCE AUTHORIZING THE CITY OF EDGERTON, KANSAS, TO ENTER INTO AN ECONOMIC DEVELOPMENT GRANT AGREEMENT WITH HOSTESS BRANDS, LLC

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

WHEREAS, ELHC LI, LLC, a Kansas limited liability company, is constructing an approximately 765,000 sq. ft. warehouse and distribution facility located at the northeast corner of Waverly Road and 207th Street in Edgerton, Kansas (the "Facility"), the costs of which will be paid for or reimbursed with the proceeds of not to exceed \$60,000,000 of the City's Industrial Revenue Bonds (ELHC LI, LLC Project) Series 2019; and

WHEREAS, Hostess Brands, LLC, a Delaware limited liability company (the "Company"), desires to lease the Facility from ELHC on the condition that it receive a \$596,700 economic development grant (the "Grant") from the City; and

WHEREAS, Article 12, Section 5 of the Kansas Constitution gives the City home rule authority and, pursuant to such authority, the City is authorized to make economic development grants to facilitate economic development;

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

Section 1. Findings of Fact. The City finds and determines that the Grant is necessary to induce the Company to sign a lease and occupy the Facility. The City further finds and determines that the Company's use of the Facility will create a substantial number of jobs and other benefits for the community and will promote the public interest and public welfare of the community.

Section 2. Approval of Grant. The City hereby approves the Grant being made to the Company in an amount of \$596,700. The Grant shall be paid over a 6.5-year term solely from funds on deposit in the public infrastructure fund for Phase 2 of the Logistics Park. The Grant shall not be a general obligation of the City, and shall be subject to the provisions of the Kansas cash basis law, the Kansas budget law, and other laws of the State of Kansas.

Section 3. Authorization of Grant Agreement. The City is hereby authorized to enter into the Economic Development Grant Agreement (ELHC LI, LLC Project – Hostess Brands, LLC Grant) with the Company in substantially the form of **Exhibit A** (the "Grant Agreement"), with such changes therein as shall be approved by the officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof.

Section 4. Execution of Documents. The Mayor of the City is hereby authorized and directed to execute the Grant Agreement and such other documents, certificates and instruments as may be necessary

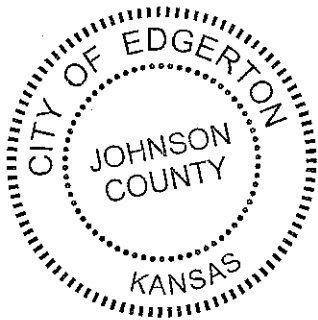
or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Grant Agreement and such other documents, certificates and instruments as may be necessary.

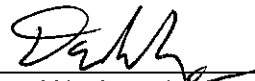
Section 5. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Grant Agreement.

Section 6. Effective Date. This Ordinance shall take effect and be in force from and after its passage, approval and publication in summary form in the official City newspaper.

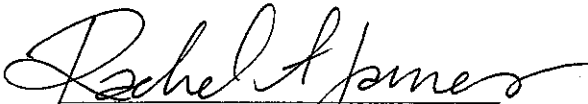
PASSED by the Council of the City of Edgerton, Kansas, this 9th day of May, 2019.

[SEAL]




Donald Roberts, Mayor

ATTEST:


Rachel A. James, City Clerk

APPROVED AS TO FORM:

Scott W. Anderson, City Economic Development Counsel

EXHIBIT A
FORM OF GRANT AGREEMENT

**ECONOMIC DEVELOPMENT GRANT AGREEMENT
(ELHC LI, LLC PROJECT – HOSTESS BRANDS, LLC GRANT)**

THIS ECONOMIC DEVELOPMENT GRANT AGREEMENT (the “Agreement”) is made this _____ day of May, 2019, between the **CITY OF EDGERTON, KANSAS**, a municipal corporation (the “City”), and **HOSTESS BRANDS, LLC**, a Delaware limited liability company (“Recipient”).

RECITALS:

A. ELHC LI, LLC, a Kansas limited liability company (“ELHC”), is constructing an approximately 765,000 sq. ft. warehouse and distribution facility located at the northeast corner of Waverly Road and 207th Street in Edgerton, Kansas (the “Facility”), the costs of which will be paid for or reimbursed with the proceeds of not to exceed \$60,000,000 of the City’s Industrial Revenue Bonds (ELHC LI, LLC Project) Series 2019 (the “Bonds”).

B. In connection with the issuance of the Bonds, ELHC will lease the Facility to the City pursuant to a Base Lease Agreement, and the City will sublease the Facility to ELHC pursuant to a Lease Agreement.

C. Recipient is leasing the entire Facility from ELHC for the purpose of operating a distribution center on the condition that the City agree to provide an economic development grant to Recipient.

D. The City desires Recipient’s presence at the Facility for furthering the public purposes for which the Bonds will be issued and for the potential for economic benefits which could result from Recipient’s presence, including but not limited to the possibility for creation of jobs and for investment of private capital in the local economy.

E. In recognition of such benefits and as set forth in Ordinance No. ____ approved by the City on May 9, 2019, the City is willing to make an economic development grant to Recipient on the terms and conditions set forth in this Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Economic Development Grant. Subject to the conditions precedent in **Section 2** and the availability of funds as described in **Section 3**, and compliance by Recipient with the other terms and provisions of this Agreement, the City agrees to make an economic development grant in the amount of \$596,700 (the “Grant”) to Recipient. The Grant shall be paid in thirteen equal installments of \$45,900 each, on April 1 and November 1 of each year, commencing April 1, 2021 and ending April 1, 2027 (or, if such date is not a business day, the next succeeding business day) (each such payment, a “Grant Payment”). Notwithstanding the foregoing, no Grant Payment shall be paid until such time that the Facility has been completed and Recipient is engaged in one or more of the Permitted Uses (as defined in **Section 4**) at the Facility, at which time the Facility shall be deemed “Operational.” Any Grant Payment due prior to the Facility being deemed Operational shall be paid by the City within sixty days following the date the Facility becomes Operational.

Section 2. Condition Precedent to Grant. The obligation of the City to make the Grant is conditioned on the Recipient entering into a lease agreement with ELHC for the Facility for a term of at least 6.5 years (the "Recipient Lease"). Recipient represents that a true and correct copy of the Recipient Lease has been delivered to the City's legal counsel. The City's legal counsel has reviewed an executed copy of the Recipient Lease.

Section 3. Grant Paid Solely from Public Infrastructure Fund.

Recipient acknowledges that the City and Edgerton Land Holding Company, LLC, a Kansas limited liability company, have entered in to the Logistics Park Phase Two Development Agreement dated as of January 25, 2018 (the "Development Agreement"). Article 5 of the Development Agreement created a Phase Two Public Infrastructure Fund (the "Fund"), and the City agreed to deposit certain Sources of Funds (as defined in the Development Agreement) in the Fund to complete certain public infrastructure improvements. Pursuant to the terms of the Development Agreement, the City and Commerce Bank, as trustee (the "Trustee") plan to enter in to a Master Trust Indenture (the "Master Indenture") whereby the City will agree to deposit all Sources of Funds with the Trustee and the Trustee will agree to administer the Fund.

Pursuant to Section 5.8(f) of the Development Agreement, the Master Indenture will contain a Grant Distribution Account (the "Grant Account"). The parties agree that all Grant Payments will be paid solely from funds available in the Grant Account according to the priority of payment provisions waterfall provided for in Section 5.8 of the Development Agreement and as provided in the Master Indenture. The Recipient acknowledges that the obligation of the City to make each Grant Payment is not a general obligation of the City and does not constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction, and each Grant Payment is not payable in any manner by taxation. Recipient acknowledges that it has reviewed Section 5.8 of the Development Agreement and acknowledges that the Grant will be paid in accordance with the waterfall provided for in such section. Recipient further acknowledges that the City may, from time to time, make additional grants that are to be paid from funds in the Grant Account on a parity with the Grant.

Section 4. Permitted Use of Facility. The Facility may be used by Recipient for the purpose of operating a warehouse and distribution center, and ancillary and related uses (the "Permitted Uses").

Section 5. Agreement of Recipient to Maintain Active Operations. Recipient agrees to use the Facility for one or more of the Permitted Uses and agrees to employ more than a nominal number of employees at the Facility, unless the Facility is closed for remodeling or repairs for a period not to exceed one year.

Section 6. Voluntary Community Involvement. Upon terms and conditions to which the parties may later agree during the term of this Agreement, Recipient will use reasonable efforts to participate in community events. These efforts may, but need not, include giving locally of cash or product donation and employee volunteer time. Additionally, Recipient agrees to be a member of Elevate Edgerton during the entire term of this Agreement, with an investment of at least the "Grow" level.

Section 7. Termination of Agreement. This Agreement shall terminate upon the earlier of (a) the City's election following its notice to Recipient of a breach by Recipient of its obligations under this Agreement and the expiration of a 45-day cure period, or (b) the date the final Grant Payment is made to Recipient. If this Agreement is terminated pursuant to clause (a) of the preceding sentence, the City shall have no obligation to make any Grant Payments which would become due after the expiration of Recipient's opportunity to cure. Notwithstanding anything contrary herein, if any Grant Payment is not made within

ninety (90) days of the dates set forth in Section 1 of this Agreement, Recipient may elect, in its sole discretion, to terminate this Agreement.

Section 8. Binding Effect; Governing Law. This Agreement shall be binding on and inure to the benefit of the parties and their respective officers, directors, shareholders, agents, attorneys, employees, successors, successors in interest and assigns. This Agreement shall be governed by and construed according to the laws of the State of Kansas.

Section 9. Representations. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; and (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions.

Section 10. No Waiver of Breach. No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

Section 11. Assignment. Subject to Recipient's rights of assignment or delegation provided herein, this Agreement may not be assigned or transferred by either party, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the other party. Notwithstanding anything to the contrary herein, Recipient may assign this Agreement and its rights under it or delegate its obligations under this Agreement to (i) any entity controlling, controlled by or under common control with Recipient, (ii) any entity resulting from the merger or consolidation of or with Recipient, or any entity controlling, controlled by or under common control with Recipient, (iii) any person or entity that acquires all (or substantially all) of the assets of Recipient, or any entity controlling, controlled by or under common control with Recipient, or (iv) any successor of Recipient, or any entity controlling, controlled by or under common control with Recipient, by reason of public offering, reorganization, dissolution, or sale of stock, membership or partnership interests or assets. Recipient may exercise such rights of assignment or delegation in the preceding sentence following at least seven (7) days' prior written notice to the City.

Section 12. Entire Agreement; Amendments in Writing. This Agreement and the acts provided for herein is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all parties.

Section 13. Notice Addresses. Any notice provided under this Agreement shall be sent by both email and first-class mail to the following email addresses and addresses:

If to the City: Edgerton City Hall
 Attention: City Administrator
 404 E. Nelson Street
 Edgerton, Kansas 66021
 Email: blinn@edgertonks.org

With a copy to: SA Legal Advisors LC
 Attention: Scott W. Anderson
 8801 Renner Blvd., Suite 403
 Lenexa, Kansas 66219
 Email: sanderson@SALegalAdvisors.com

If to Recipient: Hostess Brands, LLC
1 East Armour Boulevard
Kansas City, Missouri 64111
Email: jkalal@hostessbrands.com

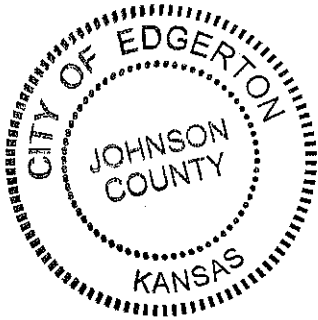
With a copy to: Hostess Brands, LLC
1 East Armour Boulevard
Kansas City, Missouri 64111
Email: jseabee@hostessbrands.com

Section 14. Payment Instructions. Each Grant Payment shall be delivered via U. S. Mail, or a nationally-recognized overnight courier service such as UPS or FedEx and sent to the notice address specified above.

Section 15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

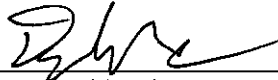
Section 16. Effective Date. This Agreement is effective hereto on the date first above written ("Effective Date"), and the term of this Agreement is the duration between the Effective Date and the date it terminates.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date first above written.



CITY:

CITY OF EDGERTON, KANSAS

By: 
Donald Roberts
Mayor

Attest:


Rachel James
City Clerk

Approved as to form:

Scott W. Anderson
City Economic Development Counsel

HOSTESS BRANDS, LLC,
a Delaware limited liability company

By: _____

Printed Name: _____

Date: _____