

**EDGERTON CITY COUNCIL  
MEETING AGENDA  
CITY HALL, 404 EAST NELSON STREET  
July 9, 2020  
7:00 P.M.**

Executive Order 20-52 issued by Governor Kelly requires any person in Kansas to cover their mouth and nose with a mask or other face covering when they are in inside any public space such as City Hall. Executive Order 20-52 includes a number of exemptions, including children 5 and younger and those with medical conditions that prevent mask use. The entire executive order may be found here: <https://governor.kansas.gov/executive-order-no-20-52/>

**Call to Order**

1. **Roll Call** \_\_\_ Roberts \_\_\_ Longanecker \_\_\_ Conus \_\_\_ Lewis \_\_\_ Smith \_\_\_ Beem
2. **Welcome**
3. **Pledge of Allegiance**

**Consent Agenda** *(Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action)*

4. Approve Minutes for June 25, 2020 Regular City Council Meeting

**Regular Agenda**

5. **Public Comments.** Persons who wish to address the City Council regarding items not on the agenda and that are under the jurisdiction of the City Council may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court or other outside tribunals are not permitted. Please notify the City Clerk before the meeting if you wish to speak. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.
6. **Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

**Business Requiring Action**

7. **PUBLIC HEARING ON PROPOSED PROJECT PLAN A1 WITHIN THE EDGERTON HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT**
8. **ORDINANCE NO. 2041 APPROVING AND ADOPTING REDEVELOPMENT PROJECT PLAN A1 WITHIN THE EDGERTON HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT PROJECT IN THE CITY OF EDGERTON, KANSAS**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**9. RESOLUTION NO. 07-09-20A APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A DISPOSITION AND DEVELOPMENT AGREEMENT (PROJECT PLAN A1 – HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT)**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**10. Report By The City Administrator**

- Marketing and Communications Quarterly Report

**11. Report By the Mayor**

**12. Future Meeting Reminders:**

- July 14<sup>th</sup>: Planning Commission Meeting – 7:00 PM
- July 23<sup>rd</sup>: City Council Meeting – 7:00 PM
- August 11<sup>th</sup>: Planning Commission Meeting – 7:00 PM
- August 13<sup>th</sup>: City Council Meeting – 7:00 PM
- August 27<sup>th</sup>: City Council Meeting – 7:00 PM

**13. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B)(2) FOR CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY, PUBLIC WORKS DIRECTOR, AND CITY ADMINISTRATOR FOR THE PURPOSES OF PENDING LITIGATION**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**14. Adjourn** Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**EVENTS**

July 15<sup>th</sup>: Senior Lunch and BINGO – 12:00 PM to 2:30 PM

July 28<sup>th</sup>: Municipal Court

**City of Edgerton, Kansas**  
**Minutes of City Council Regular Session**  
**June 25, 2020**

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on June 25, 2020. The meeting convened at 7:06 PM with Mayor Roberts presiding.

**1. ROLL CALL**

Ron Conus	present
Clay Longanecker	present
Josh Lewis	absent
Katee Smith	present
Josh Beem	absent

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator Beth Linn
- City Attorney Lee Hendricks
- City Clerk/Planning and Zoning Coordinator Chris Clinton
- Development Services Director Katy Crow
- Finance Director Karen Kindle
- Public Works Director Dan Merkh
- Public Works Superintendent Trey Whitaker
- Marketing and Communications Manager Kara Banks
- Animal Control/Codes Enforcement Officer Charlie Lydon

**2. WELCOME**

**3. PLEDGE OF ALLEGIANCE**

**CONSENT AGENDA**

4. Approve Minutes for June 11, 2020 Regular City Council Meeting.
5. Approve Concurrence to Bid the Homestead Lane Intersection Improvements
6. Approve Application FP2020-01, Final Plat for DeLong Trucking, Generally Located at 32612 W. 191<sup>st</sup> Street, Edgerton, Kansas

Councilmember Longanecker motioned to approve the Consent Agenda, motion seconded by Councilmember Conus. The Consent Agenda was approved, 3-0.

**REGULAR AGENDA**

**7. Public Comments.**

Caleb Flake from McClure Engineering thanked the Council and City Staff for their time and help with the Site Plan and Plats for the DeLong Companies.

**8. Declaration.**

There were no declarations made at this time.

**BUSINESS REQUIRING ACTION**

**9. CONSIDER RESOLUTION NO. 06-25-20A PROVIDING FOR A DEADLINE OF JULY 20, 2020 FOR REMOVAL OF YARD NUISANCES AT 502 EAST 2<sup>ND</sup> STREET, EDGERTON, KANSAS PURSUANT TO EDGERTON CITY CODE CHAPTER VIII, ARTICLE 3 AND ALLOWING FOR THE CITY TO ABATE THE COSTS ASSOCIATED WITH THE REMOVAL OF SAID NUISANCES**

Ms. Katy Crow, Development Services Director, and Mr. Charlie Lydon, Animal Control/Code Enforcement Officer, approached the Council. She stated the property located at 502 E. 2<sup>nd</sup> Street has had numerous code enforcement violations over the past five (5) years. In August of 2015, the owner of the property passed away. Ms. Crow explained property taxes entered a delinquent status and were not paid for several years. In April of 2018, City Staff brought before the Governing Body Resolution No. 04-26-18A which allowed the City to move forward in abating the onsite nuisances which were in violation of Edgerton City Code Chapter VIII, Article 3, Section 8-308. Prior to the City bringing in resources to abate said nuisances, a family member of the deceased property owner moved to action and cleaned up the trash and debris. Ms. Crow explained in 2019, tall grass and weeds violations continued to occur on this parcel, which resulted in the assessments for the mowing costs being added to the property tax role for this property.

She stated the property was sold through the tax sale process on October 29, 2019. Per the Deputy Director of Legal for Johnson County, there was a 120-day redemption period due to an Internal Revenue Service (IRS) tax lien. Ms. Crow said pursuant to that requirement, the Sheriff's Deed was signed on March 18, 2020. The deed was then recorded, and the ownership updated on the tax rolls listing the new owner as R-7 Capital Funding, LLC located at 921 E. Hayward Avenue in Independence, Missouri. Ms. Crow explained deed documents do not list an individual's name.

Ms. Crow said Codes Enforcement has continued to monitor the property for basic maintenance and cleanliness since the ownership change. Between January and March of this year, the parcel continued to amass multiple piles of yard waste, miscellaneous debris, and automotive tires. The growth of yard waste piles is an indicator that someone is adding to them. She stated the same camper trailer that was on the property in 2018 is still onsite. The exterior is covered with mold and City Staff has not entered the property to determine if the trailer is secure and weather or rodent tight. Ms. Crow explained there is an inoperable vehicle due to expired tags on the property. The presence of those items is a violation of Sections 8-308 and 8-403 of the Edgerton City Code. She explained an Order of Violation for these sections of the City Code were sent via certified mail to the owner on April 2, 2020. The letter was returned to City Staff labeled as unclaimed and the Postal Service was unable to forward it.

Ms. Crow informed the Council that between April and June of this year, the property has had multiple tall grass and weeds violations. On April 23, 2020, a "Notice to Remove" was sent to the owner via certified mail and a public notice was posted in the Gardner News.

The letter and public notice informed the owner of the nuisance and provided a time frame of ten (10) days to abate the condition. The letter sent via certified mail was sent to the owner's address in Independence, Missouri and a letter was sent via regular mail to the property address in Edgerton and to a corporation with the same name at an address in Oklahoma City, Oklahoma which has an authorized agent for mail receipt. The letters sent via regular mail have not been returned. Ms. Crow stated the inoperable vehicle was removed early May of 2020. The tall grass and weeds have not been taken care of and the City has maintained the grass on the property since May 4, 2020. Ms. Crow explained the abatement costs to date are \$341.48.

Ms. Crow stated the City Attorney has prepared Resolution No. 06-25-20A pursuant to Section 8-311 of the Edgerton City Code. City Staff would recommend the Governing Body approve the resolution to find the existence of the yard nuisances a violation of the City Code and remand the property owner to abate the nuisances by July 20, 2020. This allows for the publication twice of Resolution No. 06-25-20A on July 1, 2020 and July 8, 2020 and the requisite 10 days after publication. Ms. Crow said should the deadline not be met, the approved resolution authorizes the City, by its agent, to abate the conditions causing the violations and remove the nuisance from the property pursuant to Section 8-311 of the Edgerton City Code. Ms. Crow explained Resolution No. 06-25-20A states that should it be necessary to abate these conditions, any and all costs incurred by the City, including attorneys' fees, shall be charged against the property as provided in Section 8-314, by having the City Clerk certify the costs of cleanup to the Johnson County Clerk to be collected by the County Treasurer and paid to the City as other City taxes.

Councilmember Longanecker inquired who maintains the lot at this time. Ms. Crow answered City Staff hires a contractor to mow the lot. Councilmember Longanecker asked if the City has received any correspondence from the property owner. Mr. Lydon answered City Staff has not received any replies. The Deed does not list a person, only the company of R-7 Capital Funding as the property owner. Councilmember Conus inquired if anybody lives on the property. Mr. Lydon replied nobody has resided in the house for at least twenty-five (25) years. Councilmember Conus inquired if the property owner would read the publishing in the newspaper. Mr. Lee Hendricks, City Attorney, answered the City has attempted to contract the property owner but they have not responded so it is best for the City to go an extra route. He stated this could either go to municipal court with fines or the route City Staff has elected due to the lack of correspondence from the property owner. Ms. Crow said City Staff have sent notices through the regular mail and certified mail. The resolution will be published two weeks in a row and posted on the property. Mayor Roberts said the City prefers the property owner to maintain the lot and structure clean it up. Councilmember Longanecker stated the property has been in a state of disrepair for too long and needs to be addressed. Ms. Crow stated she wished the house could be renovated but the damage is too extensive. Mr. Hendricks clarified the deadline for the property owner to abate the nuisances will be July 20, 2020 and not July 7, 2020 as posted on the agenda. Councilmember Longanecker requested clarification on when the City could take action on the property. Mr. Hendricks answered that the City could take action 10 days after the second publication of the resolution.

Councilmember Longanecker motioned to approve Resolution No. 06-25-20A.  
Councilmember Smith seconded the motion. Resolution No. 06-25-20A was approved, 3-0.

**10. CONSIDER RESOLUTION NO. 06-25-20B DEEMING THE PROPERTY LOCATED AT 502 E 2<sup>ND</sup> STREET, EDGERTON KANSAS AN IMMEDIATE HAZARD PURSUANT TO EDGERTON CITY CODE CHAPTER IV, ARTICLE 4, SECTION 4-412**

Ms. Crow and Mr. Lydon addressed the Council. She said this is the same property as Resolution 06-25-20A. In addition to the violations presented before the Council, there are also multiple broken or missing windows. It appears the front door of the house is either ajar or missing. City Staff has not entered the property to determine the condition of the interior. She explained pursuant to Edgerton City Code Chapter IV, Article 4, Section 4-412, the Governing Body may direct the public officer to erect barricades or cause the property to be vacated, taken down, repaired, shored, or otherwise made safe without delay. Such action may be taken without prior notice or hearing to the property owner.

Ms. Crow stated the City Attorney has prepared Resolution No. 06-25-20B pursuant to Section 4-412 of the Edgerton City Code. City Staff recommends the Council approve the resolution to find the existence of broken windows and unsecured doors a violation of the City Code and instruct the public officer and Codes Enforcement Officer to cause the property to be made safe without delay. The resolution also has the same provision as Resolution No. 06-25-20A with regards to the fees incurred by the City.

Mayor Roberts asked when the property could be secured. Mr. Hendricks stated the City's Code allows immediate action to take place with no publishing or correspondence and can be done before the July 20, 2020 deadline. Councilmember Conus stated he is concerned about kids and teens entering the property and getting hurt.

Councilmember Conus motioned to approve Resolution No. 06-25-20B. The motion was seconded by Councilmember Smith. Resolution No. 06-25-20B was approved, 3-0.

**11. CONSIDER RESOLUTION NO. 06-25-20C PROVIDING FOR A HEARING TO DISCUSS A POSSIBLE DANGEROUS AND UNFIT STRUCTURE EXISTING AT 502 E 2<sup>ND</sup> STREET IN THE CITY OF EDGERTON, JOHNSON COUNTY, KANSAS PURSUANT TO CITY OF EDGERTON CITY CODE, CHAPTER IV, ARTICLE 4, SECTION 4-405**

Ms. Crow and Mr. Lydon explained to the Council the owner of the property has been unresponsive to notifications sent regarding the upkeep and maintenance of the property. The City Code provides that when it appears to the public officer that the structure is dangerous, unsafe, or unfit for human habitation, they may report such finding to the Governing Body. Ms. Crow said upon receipt of the report, and pursuant to Chapter IV, Article 4, Section 4-401, should the Governing Body of the City find a structure unfit for human use or habitation because of dilapidation, defects, unsanitary conditions, or conditions which provide a general blight upon the neighborhood or surrounding properties, the Governing Body may fix a time and place at which the owner, the owner's agent, any lienholder of record and any occupant of the structure may appear and show cause why the structure should not be condemned and ordered repaired or demolished.

Ms. Crow stated the City Attorney prepared Resolution No. 06-25-20C pursuant to Section 4-405 of the Edgerton City Code to set the date and time for the hearing. The resolution

must be published once each week for two consecutive weeks, and thirty (30) days must elapse between the last publication and the date set for the hearing. Publication of the resolution will occur on July 1, 2020 and July 8, 2020 with a public hearing set for Thursday, August 13, 2020 at 7:00 PM. City Staff would recommend approval of Resolution No. 06-25-20C in order to continue moving forward with the process to abate this nuisance.

Councilmember Conus inquired what would be done with the recreational vehicle (RV) on the parcel. Ms. Crow replied it would be removed. Councilmember Conus asked where it would be relocated to. Mr. Hendricks answered it would most likely end up in a trash dump. Councilmember Conus inquired if the City could be held responsible for removing the property. Mr. Hendricks replied the property owner could sue for the property but that is very unlikely due to the City taking all of these steps. Mayor Roberts said he does not know how many owners there have been of the property, but none have maintained this property. Mr. Lydon stated he knows of at least 5 since he has been employed by the City. Councilmember Smith asked what the final outcome would be of the property. Mr. Hendricks answered there would be a resolution up for consideration following the public hearing and it would establish another deadline to have the structure addressed. Councilmember Longanecker asked if the property could be fully addressed by the fall. Ms. Beth Linn, City Administrator, replied it is a possibility. Mr. Hendricks stated it is important for the citizens to see the City take a hard stance on these issues, so properties are maintained. Ms. Crow informed the Council only Resolution No. 06-25-20A is required to be posted on the property, but all of the approved resolutions will be posted. Mayor Roberts requested City Staff take all precautions when posting the resolutions on the property.

Councilmember Smith motioned to approve Resolution No. 06-25-20C. The motion was seconded by Councilmember Longanecker. Resolution No. 06-25-20C was approved, 3-0.

## **12. Report by The City Administrator**

- Ms. Crow provided an update on the status of the upcoming vaccine clinic. She stated Mr. Lydon and Ms. Kara Banks, Marketing and Communications Manager, have been working diligently to provide this service while meeting the recommendations of social distancing. She said the event will be at Martin Creek Park and explained how the traffic will flow during the event. She stated Mr. Lydon was able to prepare the rabies certificates ahead of time due to the reservation process. Ms. Crow said there were three (3) appointments for each fifteen (15) minute time slot for a maximum of four (4) pets per appointment. Some extra slots have become available for residents. They can call City Hall to be added into a time slot. Ms. Crow explained a staging area will be set up for those who do not have a reservation. Mayor Roberts requested an update after the event to see how the event went. Ms. Crow said the residents seem to like the reservation idea instead of waiting in line. Mayor Roberts said this is a popular event and residents have come from other municipalities to partake in the event, but this year the reservation process made it easier to put Edgerton residents first.
- Mr. Hendricks stated last month his firm started as the City Prosecutor due to the previous one resigning. He explained as part of prosecutorial discretion defendants may be allowed to amend their speeding tickets to have the moving violation reduced to a non-moving violation by paying the associated court costs and double the fee. He stated this would only be for drivers who have a previously unremarkable record. Mr. Hendricks

requested the Council guide him on the approach of the prosecutor's discretion and outline when an amendment could and could not be offered. He suggested that drivers with a CDL and those caught speeding in a school zone should not be allowed to amend their tickets. He stated CDL drivers should be held to a higher standard and due to the elevated risk to children in school zones, amendments should not be offered in those cases. Mr. Hendricks recommends the Council provide a policy on when the amendments could be offered up to a set amount over the speed limit. He used the example of drivers ticketed for twenty (20) miles per hour (MPH) or less over the speed limit could be offered the amendment.

Councilmember Longanecker inquired if a driver is issued a citation for 15 MPH over the speed limit if their license is suspended. Mr. Hendricks stated it is not. Mayor Roberts said 20 MPH over the posted speed limit is really fast so it might be best to use a percentage of the speed, such as 10% of the posted number. Councilmember Longanecker said the highways in the County are dangerous due to people speeding on them as well.

Mr. Hendricks stated officers rarely right tickets 10 MPH or under, so if the posted speed limit is 45 MPH, then to be eligible for the amendment, the driver would be going under 10 MPH over the limit and most likely not ticketed. He cautioned the court might have to be extended due people fighting tickets if there is no amendment policy in place. He stated a common policy is 15 MPH or less amendment policy.

Councilmember Smith inquired if there was a way to separate it out depending on the location of where the offense occurred. Mr. Hendricks stated that is possible, however it should not be up to the prosecutor to decide the credibility of the reasons people may provide for their actions. Ms. Linn said only a small section of 56 Highway is in Edgerton and none of Interstate 35 is. Mayor Roberts said there are speed drops in the City that need to be patrolled. Mr. Hendrick said he is fine with the Council requesting some information from other municipalities before setting a policy. The Council agreed drivers ticketed for speeding in a school zone and CDL holders should not be able to amend their tickets. Mayor Roberts agreed it is rare for an officer to pull over and ticket a driver for doing 10 MPH or under over the limit. Mayor Roberts said the County has allowed drivers to go on diversion. Mr. Hendricks replied this policy would be only for speeding tickets and the paperwork for a diversion program would not be worth the hassle for the City. The Council agreed to allow amendments to speeding tickets for up to 15 MPH over the posted speed limit.

- Ms. Linn provided sales tax income to the Council. She said overall the tax payments are positive numbers. Mayor Roberts asked if the report was year to date. Ms. Linn answered it is. Mayor Roberts asked if the City's payment increased from last year. Ms. Linn stated it has. Mayor Roberts said he is surprised and is interested to see what the next month brings.

### **13. Report by the Mayor**

Mayor Roberts said the 3<sup>rd</sup> of July Community Picnic is quickly approaching. The Council is to be at Martin Creek Park at 5:30 PM. Mayor Roberts said City Staff has done a lot of work



in a short amount of time to hold this event. He stated the crew has already been prepping for the fireworks display.

**14. Future Meeting Reminders:**

- July 9th: City Council Meeting – 7:00 PM
- July 14th: Planning Commission Meeting – 7:00 PM
- July 23rd: City Council Meeting – 7:00 PM
- August 11<sup>th</sup>: Planning Commission Meeting – 7:00 PM
- August 13<sup>th</sup>: City Council Meeting – 7:00 PM
- August 27<sup>th</sup>: City Council Meeting – 7:00 PM

**15. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B)(2) FOR CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY, PUBLIC WORKS DIRECTOR, AND CITY ADMINISTRATOR FOR THE PURPOSE OF PENDING LITIGATION**

Councilmember Smith motioned to recess into executive session pursuant to K.S.A 75-4319(B)(2) for consultation with an attorney deemed privileged in the attorney-client relationship to include the City Attorney, Public Works Director, and the City Administrator for the purposes of pending litigation for 20 minutes. Councilmember Conus seconded the motion. The meeting recessed into executive session at 7:46 PM, 3-0.

Councilmember Smith motioned to return to open session. Councilmember Longanecker seconded the motion. Open session resumed at 8:16 PM, 4-0.

Councilmember Smith motioned to recess into executive session pursuant to K.S.A 75-4319(B)(2) for consultation with an attorney deemed privileged in the attorney-client relationship to include the City Attorney, Public Works Director, and the City Administrator for the purposes of pending litigation for 10 minutes. Councilmember Conus seconded the motion. The meeting recessed into executive session at 8:16 PM, 3-0.

Councilmember Smith motioned to return to open session. Councilmember Longanecker seconded the motion. Open session resumed at 8:26 PM, 4-0.

Councilmember Smith motioned to recess into executive session pursuant to K.S.A 75-4319(B)(2) for consultation with an attorney deemed privileged in the attorney-client relationship to include the City Attorney, Public Works Director, and the City Administrator for the purposes of pending litigation for 10 minutes. Councilmember Conus seconded the motion. The meeting recessed into executive session at 8:26 PM, 3-0.

Councilmember Smith motioned to return to open session. Councilmember Longanecker seconded the motion. Open session resumed at 8:36 PM, 4-0.

Councilmember Smith motioned to distribute payments in the amount of \$10,400 to the Rogers for easement acquisition at 605 W Morgan Street, \$7,500 to Top Brass, LLC for easement acquisition at 101 W 5<sup>th</sup> Street, and \$7,000 to Deep, LLC for easement acquisition

at 100 W 5<sup>th</sup> Street in preparation for construction of the 56 Highway Multi-Use trail. The motion was seconded by Councilmember Longanecker. The payments were approved, 3-0.

Councilmember Longanecker motioned to approve an additional \$25,000 payment and allowance to retain any personal property for the Owens at 410 W Braun Street in preparation for construction of the 207<sup>th</sup> Street Grade Separation Project. Councilmember Smith seconded the motion. The payment and allowance were approved, 3-0.

## 16. Adjourn

Councilmember Smith motioned to adjourn the meeting, seconded by Councilmember Longanecker. The motion carried and the meeting adjourned at 8:38 PM, 3-0.

## EVENTS

June 27<sup>th</sup>: Low-Cost Animal Vaccination Clinic – 8:30 AM to 1:30 PM RESERVATIONS

ARE REQUIRED – Visit [petvaccinationclinic.eventbrite.com](http://petvaccinationclinic.eventbrite.com) to make a reservation

July 3<sup>rd</sup>: Community Picnic and Fireworks Show (Park Opens at 5:00 PM, Fireworks around 9:45 PM)

July 15<sup>th</sup>: Senior Lunch and BINGO – 12:00 PM to 2:30 PM

July 28<sup>th</sup>: Municipal Court

**CITY OF EDGERTON, KANSAS**

**COUNCIL AGENDA ITEM**

---

**Council Meeting Date:** July 9, 2020  
**Agenda Item:** Ordinance Establishing Project Plan A1  
**Subject:** Edgerton Homestead Lane Retail TIF District

---

**Summary:**

On August 22, 2019, the City created the Homestead Lane Retail TIF District on property generally located at the northeast and northwest corners of Interstate 35 and Homestead Lane (the “District”). Pursuant to an Amended and Restated Development Agreement with My Store III Inc. (the “Developer”), the City agreed to consider a TIF project plan for the redevelopment of 12.162 acres located in the northeast corner of Interstate 35 and Homestead Lane (the “Project Plan Area”) that is within the District.

The Developer proposes to construct a truck stop, truck parking, truck maintenance facility, truck wash, restaurants, and associated infrastructure improvements on the Project Plan Area. The City proposes to construct an interchange and other necessary public infrastructure improvements. Together, these improvements are referred to as “Project Plan A1.”

In order to create a project plan within a TIF District, the City needs to take the following actions:

1. Prepare a feasibility study;
2. Prepare a project plan;
3. Have the project plan considered by the Planning Commission;
4. Set a date for a public hearing on the project plan;
5. Notify the county, school district and property owners and publish notice of the public hearing; and
6. Approve an ordinance creating the project plan.

The City has taken all of the actions described in 1 through 5 above. The final step in establishing Project Plan A1 is approval of the accompanying Ordinance by a 2/3 Council vote.

[Summary Published in *The Gardner News* on July 15, 2020]

**ORDINANCE NO. 2041**

**AN ORDINANCE APPROVING AND ADOPTING REDEVELOPMENT PROJECT PLAN A1 WITHIN THE EDGERTON HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT PROJECT IN THE CITY OF EDGERTON, KANSAS**

**WHEREAS**, pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “Act”), a city is authorized to assist in the development and redevelopment of eligible areas located within the city in order to promote, stimulate and develop the general and economic welfare of the State of Kansas and its communities;

**WHEREAS**, in order to promote, stimulate and develop the general and economic welfare of the City of Edgerton, Kansas (the “City”), the Edgerton City Council on August 22, 2019 adopted Ordinance No. 2021 establishing a Redevelopment District (the “District”) pursuant to the Act;

**WHEREAS**, pursuant to the Act, the City, in cooperation with the Edgerton Planning Commission, prepared a Redevelopment Project Plan for an area within the District (“Project Plan A1”); and

**WHEREAS**, Project Plan A1 was found by the Edgerton Planning Commission on April 14, 2020 to be consistent with the intent of the comprehensive plan for the development of the City, and such finding is included in Planning Commission Resolution No. 04-14-20A;

**WHEREAS**, the purpose of Project Plan A1 is to construct a truck stop, truck parking, truck maintenance facility, truck wash, restaurants, and associated infrastructure and site work (the “Project”);

**WHEREAS**, Project Plan A1 provides for reimbursement to the Project developer for various TIF eligible expenses associated with the development of the Project and reimbursement to the City for TIF eligible costs associated with certain public infrastructure improvements, all as described in more detail in Project Plan A1;

**WHEREAS**, pursuant to Resolution No. 05-28-20C adopted on May 28, 2020, the City gave notice of its intent to consider Project Plan A1 and conduct a public hearing on the proposed Project Plan A1 at this meeting;

**WHEREAS**, a feasibility study has been completed which indicates the benefits derived from Project Plan A1 are significant;

**WHEREAS**, in accordance with the Act, Project Plan A1, including a summary of the

feasibility study and a description and map of the area to be redeveloped, has been on file in the office of the City Clerk and available for viewing during regular office hours; and

**WHEREAS**, the City will require that the Project developer enter into a Disposition and Development Agreement with the City that establishes the terms for implementing Project Plan A1.

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

**Section 1. Approval of Project Plan A1.** Project Plan A1, a copy of which is on file and available for inspection in the office of the City Clerk, is hereby adopted and approved.

**Section 2. Project Plan A1 Boundary.** The boundary of the Project Plan A1 area is legally described as follows:

All that part of the NW 1/4 of Section 10, Township 15, Range 22, in Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW 1/4 of said Section 10; thence S 2° 03' 46" E, along the West line of the NW 1/4 of said Section 10, a distance of 991.99 feet; thence N 87° 35' 22" E, a distance of 280.86 feet, to a point on the North right-of-way line of Interstate Highway No. 35, as established in the Warranty Deed recorded in Book 201108 at Page 001191, in the Office of the Register of Deeds, Johnson County, Kansas, said point also being the true point of beginning; thence continuing N 87° 35' 22" E, a distance of 185.94 feet; thence Easterly and Southeasterly, along a curve to the right having a radius of 390.00 feet, a central angle of 32° 01' 48" and whose initial tangent bearing is S 69° 47' 26" E, an arc distance of 218.02 feet, to the point of tangency; thence S 37° 45' 38" E, a distance of 93.64 feet, to a point of curvature; thence Southeasterly and Easterly, along a curve to the left having a radius of 320.00 feet and a central angle of 21° 31' 36", an arc distance of 120.23 feet; thence S 30° 41' 48" W, a distance of 59.41 feet, to a point on the North line of the South Half of the NW 1/4 of said Section 10; thence S 1° 47' 20" E, a distance of 638.10 feet, to a point on the North right-of-way line of said Interstate Highway No. 35; thence S 85° 06' 40" W, along the North right-of-way line of said Interstate Highway No. 35, a distance of 509.79 feet; thence N 10° 04' 47" W, along the North right-of-way line of said Interstate Highway No. 35, a distance of 802.50 feet; thence N 15° 12' 54" E, along the North right-of-way line of said Interstate Highway No. 35, a distance of 141.15 feet; thence N 88° 57' 08" E, along the North right-of-way line of said Interstate Highway No. 35, a distance of 116.36 feet; thence N 0° 38' 21" E, along the North right-of-way line of said Interstate Highway No. 35, a distance of 76.42 feet, to the true point of beginning, containing 12.162 acres, more or less.

**Section 3. Ordinance Transmittal.** In accordance with the Act, following publication of the summary of this Ordinance, the City Clerk is authorized and directed to transmit a copy of the description of the land within the Project Plan A1 and a map indicating the boundaries of Project Plan A1 to the County Clerk, County Assessor, County Treasurer and Board of County Commissioners of Johnson County, Kansas, and the Board of Education of Unified School District

No. 231 of Johnson County, Kansas.

**Section 4. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by a 2/3 vote of the Governing Board of the City and publication in an official City newspaper.

**PASSED** by the Council of the City of Edgerton, Kansas, this 9<sup>th</sup> day of July, 2019.

---

Donald Roberts, Mayor

[SEAL]

ATTEST:

---

Chris Clinton, City Clerk

Approved as to form:

---

Scott W. Anderson, Bond Counsel

**CITY OF EDGERTON, KANSAS**

**COUNCIL AGENDA ITEM**

---

**Council Meeting Date:** July 9, 2020

**Agenda Item:** Resolution Approving a Disposition and Development Agreement With My Store III Inc.

**Subject:** Edgerton Homestead Lane Retail TIF District – Project Plan A1

---

**Summary:**

On August 22, 2019, the City created the Homestead Lane Retail TIF District on property generally located at the northeast and northwest corners of Interstate 35 and Homestead Lane (the “District”). Pursuant to an Amended and Restated Development Agreement with My Store III Inc. (the “Developer”), the City agreed to consider a TIF project plan for the redevelopment of 12.162 acres located in the northeast corner of Interstate 35 and Homestead Lane (the “Project Plan Area”) that is within the District.

On this date, the City approved an Ordinance establishing Project Plan A1 for the Project Plan Area. Project Plan A1 provides for My Store III, Inc. (the “Developer”) to develop a truck stop, truck parking, truck maintenance facility, truck wash, restaurants, and associated infrastructure improvements on the Project Plan Area. The City proposes to construct an interchange and other necessary public infrastructure improvements. Together, these improvements are referred to as “Project Plan A1.”

The Disposition and Development Agreement (the “DDA”) contains a description of the TIF eligible costs for Project Plan A1, and the method and priority for reimbursing the Developer and the City for those costs. In particular, the DDA provides that eligible costs are to be reimbursed by the City on a pay-as-you go basis, with the annual TIF revenues being split between the City and the Developer. The DDA also establishes \$1,750,000 as the maximum Developer reimbursement.

## RESOLUTION NO. 07-09-20A

### RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A DISPOSITION AND DEVELOPMENT AGREEMENT (PROJECT PLAN A1 – 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 A1 (“Project Plan A1”), consisting of the construction of a truck stop, truck parking, truck maintenance facility, truck wash, restaurants, and associated infrastructure and site work (the “Project”), which is located on approximately 12.162 acres located in the northeast corner of Interstate 35 and Homestead Lane;

**WHEREAS**, pursuant to an Ordinance passed on this date, the City established Project Plan A1 as a redevelopment project within the District; and

**WHEREAS**, the City and My Store III Inc., a Kansas corporation (the “Developer”), desire to enter into a Disposition and Development Agreement (the “DDA”) that contains the terms for implementation of Project Plan A1, 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 A1, 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 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 DDA.

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

**ADOPTED** this 9<sup>th</sup> day of July, 2020.

**CITY OF EDGERTON, KANSAS**

By: \_\_\_\_\_  
Donald Roberts, Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Chris Clinton, City Clerk

Approved as to form:

\_\_\_\_\_  
Scott W. Anderson, Bond Counsel

**EXHIBIT A**

**FORM OF DISPOSITION AND DEVELOPMENT AGREEMENT**

**EDGERTON HOMESTEAD LANE RETAIL DISTRICT  
REDEVELOPMENT (TIF) PROJECT PLAN A1  
DISPOSITION AND DEVELOPMENT AGREEMENT  
(On the Go Travel Plaza)**

**THIS DISPOSITION AND DEVELOPMENT AGREEMENT** (the “**Agreement**”), is dated as of the \_\_\_\_ day of July, 2020, between the **CITY OF EDGERTON, KANSAS**, a Kansas municipal corporation (the “**City**”), and **MY STORE III INC.**, a Kansas corporation (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 July 9, 2020, the City adopted Ordinance No. \_\_\_\_\_ (the “**Ordinance**”) approving and adopting Redevelopment (TIF) Project Plan A1 (the “**Project Plan**”) located within the District and providing for the redevelopment of approximately 12.162 acres located in the northeast corner of Interstate 35 and Homestead Lane (the “**Project Area**”) and for other authorized, eligible improvements within the District. The Project Area is legally described on **Exhibit A** attached hereto.

C. The Property is owned by the Developer. The City and Developer entered into an Amended and Restated Development Agreement dated December 2, 2019, as amended by the First Amendment to Amended and Restated Development Agreement dated June 1, 2020 (as amended “**Development Agreement**”). The Development Agreement contains general terms for the development of the Project Area and the granting of certain incentives by the City.

D. The Project Plan contemplates the construction of a truck stop, truck parking, truck maintenance facility, truck wash, restaurants, and associated infrastructure (the “**Private Project Improvements**”) as reflected in the City development approvals (the “**Project**” as defined in **Section 3.1** herein).

E. Subject to **Section 1.7** herein, Developer, or its successors and assigns as provided herein, is responsible for constructing or causing to be constructed the Private Project Improvements and for annually paying its applicable ad valorem taxes and special assessments on the Property.

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 the Private Project Improvements is 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 A1 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.

(d) If there are any mortgages or other security interests filed on the Property prior to recording this Agreement or a Memorandum thereof by or on behalf of the Developer, Developer shall obtain and provide to the City, such lender’s recorded subordination of its mortgage or other security interest to this Agreement and the terms herein and shall indemnify and hold harmless the City regarding the same (the “**Subordination Agreement**”). A copy of such Subordination Agreement shall be recorded and provided to the City prior to receipt of reimbursement for any Private TIF Reimbursable Costs (as defined herein).

### **Section 1.3 The Project Plan.**

Project Plan A1 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 Project Plan Area 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 Project Plan Area.

#### **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 Kansas corporation, 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 corporation 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. Subject to the foregoing, the Agreement shall be binding on the Parties’ successors and assigns.

(b) Transfer of Interests in Developer. Developer shall, prior to the sale, conveyance, merger or other transfer of any interest in Developer (including without limitation any shares of stock of Developer and any transfers by operation of law), deliver to the City a request for approval of such transfer, and no such transfer shall be permitted except with the prior approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. Upon submission by Developer of any request to the City for a transfer of any interest in Developer that requires the City's prior approval, the City shall have the right to request such documentation and information as the City shall reasonably determine is necessary or desirable to determine whether such transfer is acceptable to the City. Except for transfers of interest that do not require the City's prior approval, any purported transfer by Developer or any party owning any interest in Developer of any interest in Developer without the consent of the City shall be null and void. In addition, the City may require Developer, as a condition precedent to the transfer of any interest in Developer, to require the transferee to enter into an agreement with the City, upon terms acceptable to the City, obligating the transferee to comply with the requirements of the Project Plan and the obligations in this Agreement

(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. Subject to the Bond Documents, 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)(i)** above.

(f) Right to Receive TIF Revenue. Only the City, Developer, an assignee under an approved Assignment Agreement pursuant to **Section 1.5(a)(i)**, or a Secured Party, pursuant to subsection (b) hereof, 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 and 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. The Parties agree that the City is entitled to deduct such fees and costs from remaining funds, if any, in the \$10,000 TIF retainer (the "**TIF Retainer**") previously submitted by Developer. If there are no funds remaining in the TIF Retainer or if the City has refunded to the Developer the balance of the TIF Retainer, then at the City's discretion, the City may require Developer to submit an additional retainer before commencing such work.

## **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 consistent with the Development Plan (hereinafter defined in **Section 3.1**), City Code, and in accordance with the Schedule set forth 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 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 the City's Policy & Procedures, 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 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.

(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, 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 Contingency and Reallocation of Line Items.**

Within the attached **Exhibit C** is an unallocated amount within the Private TIF Reimbursable Costs designated as contingency (the “**Contingency**”). The funds within the line item designated as Contingency are to be made available, if necessary, to fund cost overruns within one or more Private TIF Reimbursable Costs line items set forth on **Exhibit C** with the exception of the TIF Project Plan Fee, land acquisition costs, and temporary construction financing costs, all of which are not eligible for the application of Contingency.

If at the time Developer submits any Request for Certificate of Completion (as described in **Section 5.1**) the aggregate amount previously certified for reimbursement for any eligible Private TIF Reimbursable Costs line item, together with the amount for which certification is sought in such Request for Certificate of Completion for such Private TIF Reimbursable Costs line item, exceeds the reimbursable amount set forth in **Exhibit C** for such line item, then Developer to the extent that: (1) there remains unallocated Contingency, and (2) the total amount certified for Private TIF Reimbursable Costs previously, together with the amount of Private TIF Reimbursable Costs for which certification is requested in the current Certificate of Completion, does not exceed the Total Maximum Aggregate amount of Private TIF Reimbursable Costs set out in **Exhibit C**; then Developer shall have the right to allocate such amount of the Contingency for such line items of eligible Private TIF Reimbursable Costs in the **Exhibit C**.

In addition to utilization of the Contingency and subject to the limitations contained in this **Section 2.3**, 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 is not an eligible Private TIF Reimbursable Cost. However, construction financing costs on Private TIF Reimbursable Costs (excluding the TIF Fee, special assessments, interest and contingency) at the actual rate, but not to exceed the amount charged if financing were obtained via an arm’s length transaction with a national, regulated financial institution by a quality credit borrower, and in no event more than 6% per annum (the “**Construction Financing Costs**”) are an eligible Private TIF Reimbursement and set forth on **Exhibit C** attached hereto. The interest shall be simple interest and shall not be compounded. The City shall only reimburse Developer for Construction Financing Costs accruing after the date the Project Plan is approved and during construction of the eligible improvements (which is estimated to be 24 months) plus up to the earlier of an additional 6 months or the date of the first TIF disbursement made under the Project Plan that reimburses Developer for Private TIF Reimbursable Costs but in no event beyond thirty two (32) months after a building permit for any portion of the Project is issued by the City unless otherwise agreed to in writing by the City.

For purposes of calculating the Construction Financing Interest cost 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 15<sup>th</sup> day of the month for costs funded from the 1<sup>st</sup> to the 14<sup>th</sup> day of a month and from the last day of the month imputed or incurred for costs funded after the 15<sup>th</sup> day of a given month.

### **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 Project Plan Area 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 proposed improvements contemplated by the Project Plan (the “**Site Plan**”).

(b) Developer shall construct the Private Project Improvements utilizing 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 set forth in **Section 7.1**, 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 shall commence or cause to be commenced construction of the Project according to the following schedule and shall thereafter diligently pursue work on the Project:

(a) Developer shall commence or cause to be commenced construction of the Private Project Improvements as quickly as possible, but no later than August 1, 2020 and the Project shall be substantially complete, as evidenced by a CO or TCO on or before December 31, 2021 (the “**Project Schedule**”);

Commencement of the work by the dates indicated herein shall be conditioned upon the Developer receiving the necessary approvals from the City within a reasonable period of time so as to allow construction to proceed by the commencement date.

(b) The Developer and City further agree that the commencement, prosecution and completion of the Private Project Improvements and construction under the Project Schedule shall be subject to **Section 7.1** of this Agreement. In addition to adjustments as a result of an Excused Delay under **Section 7.1**, the Developer and City Manager may agree, in writing, to minor adjustments to the Project Schedule set forth above; provided, however, that any adjustment(s) to the Project Schedule that change the Project Schedule by more than sixty (60) days, other than as a result of an Excused Delay, may in the City Manager’s discretion require an amendment by the Governing Body. Provided the Developer is diligently prosecuting the work, nothing in this Section shall prohibit the Developer from commencing the Project earlier than the date indicated in the preceding paragraph, and prosecuting the substantial completion of the Project in accordance with the City approved plans in a timely fashion to Completion. Expiration of the permit under which the Project is being constructed without reaching substantial completion of the work shall be deemed a failure to diligently pursue construction but this is not an exclusive basis upon which such determination may be made.

**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. In accordance with the City TIF Policy and Procedures, 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, not to exceed \$50,000. The TIF Fee for this Project is \$17,500 and is based upon the approved maximum aggregate of Private TIF Reimbursable Costs (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 retainer and City fees. The Developer is responsible for paying the City's TIF legal fee of \$20,000 and the City's TIF Feasibility Study fee of \$14,000 at the time of execution of this Agreement. The Developer has paid the \$10,000 TIF Retainer with the submission to the City of Developer's application requesting approval of a Project Plan. The \$10,000 TIF Retainer will be applied toward payment of these fees.
- (2) Payment of the Redevelopment Project Plan Approval Fee. At the time of execution of this Agreement, Developer shall pay an amount equal to the lesser of 25% of the TIF Fee or \$7,500 (the "**Project Plan Fee**"). The Project Plan Fee for this Project will be \$4,375.
- (3) Balance of TIF Fee. The balance of the TIF Fee, estimated at \$13,125 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-half of one percent (0.5%) 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) Lender Commitment. Upon request of the City, and after submitting for a building permit or otherwise commencing construction of the applicable Private Project Improvements, Developer shall provide to the City's Financial Advisor a copy of a letter from a potential lender or lenders containing a commitment to finance the applicable Private Project Improvements, or alternatively, a commitment to finance a substantial portion of the applicable Private Project Improvements provided evidence of sufficient private equity is available to complete the balance of the applicable Private Project Improvements. If the potential lender is not a banking institution or financial institution, the lender must also provide documentation of its ability to provide such financing. The City agrees that it shall keep confidential such letter and any other financial information related to Developer absent a Court Order (provided, however, that Developer shall be promptly notified of any such required disclosure prior to the City making such disclosure, so that Developer may seek a protective order or otherwise seek to prevent or limit such disclosure), and the City shall cause the City's Financial Advisor to keep the letter and financial information confidential, including, without limitation, not disclosing them to the City. Any financial information located within the public record as part of Governing Body approved documents or

included in Developer's TIF application submitted to the City (excluding the financial information submitted directly by Developer to the City's Financial Advisor) is not covered by this provision.

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

(d) In accordance with **Section 4.4** and subject to **Section 1.7** 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 and its successors, 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.

(e) 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(g)** herein, and development fees, and shall be in compliance with all City Codes including the property maintenance codes applicable to the Property, 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 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 actively participate in the civic, charitable, educational, philanthropic and economic development activities of the City. At a minimum: (1) at all times during the TIF Term (defined in **Section 3.5** herein), Developer must be a dues-paying member in good standing with Elevate Edgerton at a level that makes the Developer eligible to be elected to the Board; and (2) during the TIF Term, Developer shall annually sponsor at a minimum level of \$1,000 one City festival, event or activity within the corporate limits of the City. Each of (1) and (2) in this paragraph constitutes a separate performance requirement (a "**Civic Obligation**"). Payment of the first annual sponsorship must occur no later than June 1, 2021. Neither the Elevate Edgerton membership nor the sponsorship are considered TIF eligible expenses 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 A1 is approved. Project Plan A1 shall terminate upon the earlier to occur of: (a) 20 years from the date on which Project Plan A1 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, 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 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.

**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, for itself and its successors and assigns, 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.**

Subject to **Section 6.1(d)** and **1.7**, Developer or its assigns shall pay when due all real estate taxes and assessments, if any, levied against the Property and all real property of Developer within the

City or Developer shall be in default of this Agreement. Notwithstanding this paragraph, Developer or its assigns shall have the right to pay said taxes under protest in accordance with applicable law. Developer or its assigns shall promptly notify the City in writing of a protest of real estate taxes or valuation of any portion of this Property prior to the City's first annual distribution of TIF Revenue reimbursement after the appeal is filed but in no event later 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 the disbursement of TIF Revenues shall be modified as set forth in **Section 5.2** herein.

If as a result of Developer's protest, there is a reduction of the assessed valuation of the Property below the Total Assessed Value amount at substantial completion of the applicable Private Project Improvements, which Total Assessed Value amount is identified in Column 3 of the feasibility study upon which the Project Plan is based, such reduction will potentially 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 including execution and recording of the Subordination Agreement, if any, 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 A1 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 TIF Feasibility Study, prepared for the Project, 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 no annual increase in appraised valuation after the Private Project Improvements are stabilized. In addition, the Feasibility Study assumes a constant mill levy. Changes in any of the projections or assumptions will change the amount of TIF Revenues generated from the Project Plan Area. 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 – 20	50%	50%

- (4) In no event will reimbursement to the Developer either (a) extend beyond the reimbursement of all Private TIF Reimbursable Costs, or (b) exceed the Reimbursement Cap.
- (5) The City’s approval of the Project Plan and the amount and priority of TIF reimbursement is based in part upon the feasibility study which makes certain assumptions with respect to assessed valuation and as a result, the generation of a minimum amount of TIF revenue. It is estimated that the Project Plan shall generate a minimum of \$2.47 million in available TIF revenue over its life.

(d) Reimbursement to Developer:

- (1) Prior to receiving reimbursement, Developer must apply for and receive a Certificate of Completion and submit to the City Manager copies of all invoices supporting its request for reimbursement in such detail as may reasonably be requested by the City Manager, accompanied by a Certificate of Expenditures for the associated costs, which approval will not be unreasonably withheld or

denied by the City Manager. 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 Manager 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 Manager determines the nature or amount of the request for reimbursement is outside the scope of this Agreement, 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 Manager'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. The Governing Body shall act in good faith when making such decisions, and the Parties agree that the determination of the Governing Body shall be a final decision

- (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.

(e) Disbursements: All disbursements for approved Private TIF Reimbursable Costs shall be made by the City from the Project Plan A1 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. 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 A1 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 A1 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 credit 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, subject to **Section 1.7** if the City determines that the 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 five (5) business days after receipt of such notice. Developer's failure to pay such Property taxes and special assessments within such five (5) 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 the 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 feasibility study upon which Project Plan A1 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 or 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 does not commence construction of the Project on or before the time required by **Section 3.3** hereof, unless otherwise extended by written agreement of the Parties, or fails to thereafter diligently pursue the Project to completion, 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.

(d) In the event of three (3) or more material defaults by Developer under this Agreement, the City may terminate this Agreement without any further right to cure.

(e) 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.

(f) If Project Plan A1 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 Excused Delay and Force Majeure.** The performance of Developer's obligations shall be excused or extended at Developer's option, as a consequence of events caused by force majeure or excusable delay (collectively "**Excused Delay**") applicable to the portion of the Project on account of (i) acts of war or terrorism, (ii) fire or other similar casualty or unusual and extraordinary occurrence, (iii) strikes or lockouts, (iv) explosion, (v) riot or civil commotion within the City, or (vi) judicial writ, order or decree. For the purposes of this Agreement, adverse weather and pandemic shall not be the basis of an Excused Delay.

### **Section 7.2 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.

(d) This Agreement or a Memorandum thereof, may be filed by either Party with the Johnson County Register of Deeds.

**Section 7.3 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 7.4 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](mailto:BLinn@EdgertonKS.org)

With a copy to:       Scott W. Anderson  
SA Legal Advisors LC  
8847 Penrose Lane, Suite 108  
Lenexa, Kansas 66219  
Phone (913) 538-7556  
[SAAnderson@SALegalAdvisors.com](mailto:SAAnderson@SALegalAdvisors.com)

To Developer:        MyStore III Inc.  
14728 W. 93<sup>rd</sup> Street  
Lenexa, Kansas 66215

**Section 7.5 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 7.6 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 7.7 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 7.8 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 7.9 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 7.10 Incorporation into Agreement.** Unless otherwise provided herein, the Recitals and all the exhibits attached hereto are incorporated herein by reference.

**Section 7.11 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 7.12 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 7.13 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:

\_\_\_\_\_  
Chris Clinton, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott W. Anderson  
Economic Development Counsel

**MY STORE III, Inc.,**  
a Kansas corporation

By: \_\_\_\_\_  
Moussa Sobaiti  
President and CEO

## EXHIBIT A

### Project Plan A1 Area Legal Description

All that part of the NW 1/4 of Section 10, Township 15, Range 22, in Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW 1/4 of said Section 10; thence S 2° 03' 46" E, along the West line of the NW 1/4 of said Section 10, a distance of 991.99 feet; thence N 87° 35' 22" E, a distance of 280.86 feet, to a point on the North right-of-way line of Interstate Highway No. 35, as established in the Warranty Deed recorded in Book 201108 at Page 001191, in the Office of the Register of Deeds, Johnson County, Kansas, said point also being the true point of beginning; thence continuing N 87° 35' 22" E, a distance of 185.94 feet; thence Easterly and Southeasterly, along a curve to the right having a radius of 390.00 feet, a central angle of 32° 01' 48" and whose initial tangent bearing is S 69° 47' 26" E, an arc distance of 218.02 feet, to the point of tangency; thence S 37° 45' 38" E, a distance of 93.64 feet, to a point of curvature; thence Southeasterly and Easterly, along a curve to the left having a radius of 320.00 feet and a central angle of 21° 31' 36", an arc distance of 120.23 feet; thence S 30° 41' 48" W, a distance of 59.41 feet, to a point on the North line of the South Half of the NW 1/4 of said Section 10; thence S 1° 47' 20" E, a distance of 638.10 feet, to a point on the North right-of-way line of said Interstate Highway No. 35; thence S 85° 06' 40" W, along the North right-of-way line of said Interstate Highway No. 35, a distance of 509.79 feet; thence N 10° 04' 47" W, along the North right-of-way line of said Interstate Highway No. 35, a distance of 802.50 feet; thence N 15° 12' 54" E, along the North right-of-way line of said Interstate Highway No. 35, a distance of 141.15 feet; thence N 88° 57' 08" E, along the North right-of-way line of said Interstate Highway No. 35, a distance of 116.36 feet; thence N 0° 38' 21" E, along the North right-of-way line of said Interstate Highway No. 35, a distance of 76.42 feet, to the true point of beginning, containing 12.162 acres, more or less.

**EXHIBIT B**

**Project Plan A1 Ordinance**

Copy of Ordinance No. \_\_\_\_\_ adopted by the Edgerton Governing Body on July 9, 2020.

## EXHIBIT C

### TIF Reimbursable Costs – Project Plan A1

The following items are estimated TIF eligible private and public costs for reimbursement with TIF Revenues generated from Project Plan A1. 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:	Maximum Reimbursement
Eligible TIF Fees (excluding Annual Administrative Fee)		Developer <sup>1</sup>	\$17,500
Private TIF Reimbursable Costs paid by Developer, including:	Estimated Costs	Developer	\$4,143,271 <sup>2,3</sup>
a. Public Street Improvements	594,220		
b. Land Acquisition	850,000		
c. Site Work Improvements	1,869,051		
d. Parking	780,000		
e. Architecture and Engineering	50,000		
f. Annual Administrative TIF Fee (0.5% of annual TIF Revenues Reimbursed to Developer)	TBD		
<b>Maximum Aggregate Private TIF Reimbursable Costs</b>			<b>\$1,750,000<sup>4</sup></b>
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 a new interchange and traffic signals	1,500,000	City	
Sanitary Sewer Easements	200,000	City	
TIF Study	7,033		
<b>Maximum Aggregate Public TIF Reimbursable Costs</b>			<b>\$1,707,033</b>
<b>Maximum Aggregate TIF Reimbursable Costs</b> (excluding the City Annual Administrative Fee which is TBD)			<b>\$3,147,395</b>

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.

<sup>1</sup> The TIF Fee is based upon 1% of the Private TIF reimbursable Costs in the estimated amount of \$1,750,000 (which amount represents the Total Private TIF Reimbursable Costs less the TIF Fee). This total excludes the Annual Administrative TIF Fee as it is TBD based upon eligible TIF Revenue disbursed. 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.

- <sup>2</sup> 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.
- <sup>3</sup> 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.
- <sup>4</sup> The Total Maximum 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.

**EXHIBIT D**

**Site Plan of Project**



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 A1  
(On the Go Travel Plaza)**

**Certification of Expenditures Form**

Request No. \_\_\_\_\_

Date Submitted: \_\_\_\_\_

Pursuant to **Section 5.2(d)** of the Disposition and Development Agreement dated July \_\_\_\_, 2020 (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.

**MY STORE II, INC.,**  
a Kansas corporation

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
-------	--------	---

---

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, including reference to why the expense was incurred.
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. All invoices/receipts must be submitted/billed to the Developer. If the invoice was billed to a contractor/subcontractor, the cost(s) must be reflected in a subsequent invoice to the Developer.
  - b. 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.
  - c. 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 Manager in the timeframe set forth in the DDA.