

RESOLUTION NO. 04-27-17N

A RESOLUTION CONSENTING TO A SECOND SUPPLEMENTAL BASE LEASE, SECOND SUPPLEMENTAL LEASE AGREEMENT AND FIRST AMENDMENT TO PERFORMANCE AGREEMENT IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (ELHC XIV, LLC PROJECT), SERIES 2015 AND SERIES 2016

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

WHEREAS, the City is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the "Act"), to issue industrial revenue bonds to pay the cost of certain facilities (as defined in the Act) for the purposes set forth in the Act and to lease such facilities to private persons or entities; and

WHEREAS, the City has previously issued its \$38,000,000 Industrial Revenue Bonds (ELHC XIV, LLC Project), Series 2015 (the "Series 2015 Bonds"), for the purpose of acquiring, constructing, installing and equipping a 822,500 sq. ft. warehouse and distribution facility (the "Project") for the benefit of ELHC XIV, LLC, a Kansas limited liability company (the "Company");

WHEREAS, in connection with the issuance of the Series 2015 Bonds, the City entered into, among other documents, (a) a Base Lease Agreement dated as of December 1, 2015 (the "Base Lease"), between the Company and the City, whereby the Company leased certain land to the City on which the Project would be constructed, (b) a Lease Agreement dated as of December 1, 2015 (the "Lease Agreement"), between the City and the Company, whereby the City leased the Project to the Company, and (c) a Performance Agreement dated as of December 1, 2015 (the "Performance Agreement"), between the City and the Company, whereby the parties agreed to the terms of the real property tax abatement; and

WHEREAS, in order to finance the completion of the Project, the City issued its \$25,000,000 Industrial Revenue Bonds (ELHC XIV, LLC Project), Series 2016 (the "Series 2016 Bonds"), and in connection with the issuance of the Series 2016 Bonds the City entered into (a) a First Supplemental Base Lease Agreement dated as of September 1, 2016 (the "Supplemental Base Lease"), between the Company and the City, and (b) a First Supplemental Lease Agreement dated as of September 1, 2016 (the "Supplemental Lease"), between the City and the Company; and

WHEREAS, the Company has requested and the City has agreed to amend the legal descriptions attached to the Base Lease, as supplemented by the Supplemental Base Lease, the Lease Agreement, as supplemented by the Supplemental Lease Agreement, and the Performance Agreement;

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

Section 1. Second Supplemental Base Lease. The Governing Body hereby approves of the form of the Second Supplemental Base Lease Agreement (the "Second Supplemental Base Lease"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is

hereby authorized and directed to execute and deliver the Second Supplemental Base Lease for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the Second Supplemental Base Lease.

Section 2. Second Supplemental Lease Agreement. The Governing Body hereby approves of the form of the Second Supplemental Lease Agreement (the "Second Supplemental Lease Agreement"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the Second Supplemental Lease Agreement for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the Second Supplemental Lease Agreement.

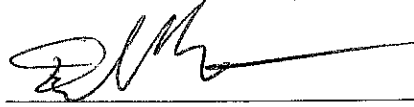
Section 3. First Amendment to Performance Agreement. The Governing Body hereby approves of the form of the First Amendment to Performance Agreement (the "First Amendment to Performance Agreement"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the First Amendment to Performance Agreement for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the First Amendment to Performance Agreement.

Section 4. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with respect to the First Supplemental Base Lease, First Supplemental Lease Agreement and First Amendment to Performance Agreement.

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

ADOPTED this 27th day of April, 2017.

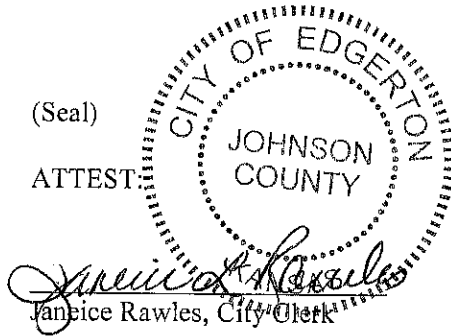
CITY OF EDGERTON, KANSAS



Donald Roberts, Mayor

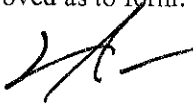
(Seal)

ATTEST



Janice Rawles, City Clerk

Approved as to form:



Scott W. Anderson, Bond Counsel