

**RESOLUTION NO. 04-27-17V**

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

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**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 \$46,350,000 Industrial Revenue Bonds (ELHC XXXIII, LLC Project), Series 2016 (the "Bonds"), for the purpose of acquiring, constructing, installing and equipping a 927,000 sq. ft. warehouse and distribution facility (the "Project") for the benefit of ELHC XXXIII, LLC, a Kansas limited liability company (the "Company");

**WHEREAS**, in connection with the issuance of the Bonds, the City entered into, among other documents, (a) a Base Lease Agreement dated as of August 1, 2016 (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 August 1, 2016 (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 August 1, 2016 (the "Performance Agreement"), between the City and the Company, whereby the parties agreed to the terms of the real property tax abatement; and

**WHEREAS**, the Company has requested and the City has agreed to amend the legal descriptions attached to the Base Lease, Lease Agreement and Performance Agreement;

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

**Section 1. First Supplemental Base Lease.** The Governing Body hereby approves of the form of the First Supplemental Base Lease Agreement (the "First 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 First 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 First Supplemental Base Lease.

**Section 2. First Supplemental Lease Agreement.** The Governing Body hereby approves of the form of the First Supplemental Lease Agreement (the "First 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 First 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 First 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 Amendment to Base Lease, First Amendment to 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.

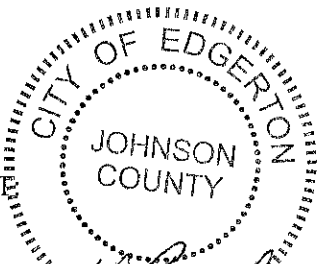
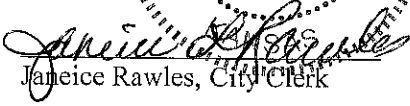
ADOPTED this 27<sup>th</sup> day of April, 2017.

CITY OF EDGERTON, KANSAS

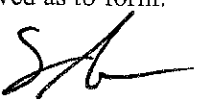
  
Donald Roberts, Mayor

(Seal)

ATTEST

  
  
Janeice Rawles, City Clerk

Approved as to form:

  
Scott W. Anderson, Bond Counsel