

RESOLUTION NO. 05-25-23A

**RESOLUTION AUTHORIZING THE CITY TO EXECUTE AND
DELIVER A LEASE SUBORDINATION AGREEMENT IN
CONNECTION WITH THE ELHC LII, LLC PROJECT**

WHEREAS, the City of Edgerton, Kansas (the “City”) is a duly organized and existing municipal corporation under the laws of the State of Kansas;

WHEREAS, the City issued its Taxable Industrial Revenue Bonds (ELHC LII, LLC Project), Series 2021 (the “Bonds”), in the aggregate maximum principal amount of \$52,000,000, pursuant to a Trust Indenture dated as of June 1, 2021 (the “Indenture”), between the City and UMB Bank, N.A., as trustee (the “Trustee”), for the purpose of acquiring, purchasing, improving, constructing and equipping a commercial project, consisting of an approximately 1,028,880 sq. ft. warehouse and distribution facility, to be located at 20500 Corliss Road in Edgerton, Kansas (the “Project”);

WHEREAS, the Project was leased by ELHC LII, LLC, a Kansas limited liability company (the “Company”) to the City pursuant to a Base Lease Agreement dated as of June 1, 2021 (the “Base Lease”), between the Company and the City, and subleased by the City to the Company pursuant to a Lease Agreement dated as of June 1, 2021 (the “Lease Agreement”), between the City and the Company;

WHEREAS, the Company is requesting that the City execute a Lease Subordination Agreement in the form attached as **Exhibit A** (the “Lease Subordination”), whereby the City will subordinate its interests under the Base Lease and the Lease Agreement to the lender named in the Lease Subordination to allow the Company to refinance the Project; and

WHEREAS, the City desires to execute the Lease Subordination to assist the Company in refinancing the Project;

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

Section 1. Approval of Lease Subordination. The Governing Body hereby approves the Lease Subordination in substantially the form attached hereto as **Exhibit A**.

Section 2. Execution of Lease Subordination. The Mayor of the City is hereby authorized to execute and deliver the Lease Subordination, 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 Lease Subordination.

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 Lease Subordination.

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

ADOPTED this 25th day of May, 2023.

CITY OF EDGERTON, KANSAS

[SEAL]

By: /s/
Donald Roberts, Mayor

ATTEST:

/s/
Alexandria Clower, City Clerk

Approved as to form:

/s/
Scott W. Anderson, Bond Counsel

EXHIBIT A
FORM OF LEASE SUBORDINATION

LEASE SUBORDINATION AGREEMENT

RECORDING REQUESTED BY
AND RETURN TO:

FIRST AMERICAN TITLE INSURANCE COMPANY

LEASE SUBORDINATION AGREEMENT

This Lease Subordination Agreement ("**Agreement**"), made as of _____, 2023, between the CITY OF EDGERTON, KANSAS, a municipal corporation organized and existing under the laws of the State of Kansas ("**Ground Tenant**"), USAA LIFE INSURANCE COMPANY, a life insurance company organized under the laws of Texas ("**Lender**") and ELHC LII, LLC, a Kansas limited liability company ("**Borrower**").

R E C I T A L S

A. On or about June 1, 2021, Borrower ground leased the real property described on Exhibit "A" attached hereto (the "**Premises**") to Ground Tenant, pursuant to a Base Lease Agreement dated as of June 1, 2021 (as amended from time to time, the "**Ground Lease**").

B. Immediately following such Ground Lease, Ground Tenant subleased the Premises to Borrower pursuant to a Lease Agreement dated as of June 1, 2021, a memorandum of which has been recorded as Instrument No. 20210630-0012743 in the public records of Johnson County, Kansas (the "**Lease**").

C. The City's interest in the Ground Lease and the Lease were assigned pursuant to an Assignment of Lease Agreements dated June 23, 2021 by the City to UMB Bank, N.A., a national banking association ("**UMB**"), which is the Trustee under the Trust Indenture dated as of June 1, 2021 between the City and UMB.

D. In connection with the Ground Lease and the Lease, the Borrower and the City entered into the following agreements: (i) an Origination Fee Agreement dated as of June 1, 2021 (the "Origination Fee Agreement"); and (ii) Performance Agreement dated as of June 1, 2021 (the "**Performance Agreement**").

E. Lender has now agreed to make a loan to Borrower in the aggregate amount of FORTY-NINE MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (\$49,800,000.00) (the "**Loan**") which will repay the construction loan made by UMB Bank, N.A.

F. The Loan, in part, is evidenced by a Promissory Note dated _____, 2023, in the principal sum of FORTY-NINE MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (\$49,800,000.00) (herein, together with all notes issued and accepted in substitution or exchange therefor, and as any of the foregoing may from time to time be modified, extended, renewed, consolidated, restated or replaced, called the "**Note**"), executed by Borrower and payable to Lender.

G. The Loan is secured, in part, by a Mortgage, Security Agreement and Fixture Filing dated _____, 2023, made by Borrower in favor of Lender and to be recorded in the public

records of Johnson County, Kansas (herein, together with any and all modifications or amendments thereto, called the “**Mortgage**”).

H. Lender has required, as a condition precedent to making of the Loan, in addition to the leasehold mortgage and other documents executed by Borrower in favor of Lender, that Ground Tenant subordinate its leasehold interest in the Ground Lease and otherwise agree as hereinafter set forth.

Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Ground Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Estoppel.** As of the date of this Agreement, the Lease, the Ground Lease, Origination Fee Agreement and Performance Agreement are in full force and effect; no default has occurred by either the City or the Borrower under the terms of the Lease, the Ground Lease, Origination Fee Agreement or Performance Agreement and there is no existing condition, but for the passage of time or the giving of notice, or both, would result in a default under any of the Lease, the Ground Lease, Origination Fee Agreement and/or the Performance Agreement; the Completion Date has occurred.
2. **Leasehold Mortgage.** The City acknowledges that the Lender is the holder of a Leasehold Mortgage and is entitled to all protections under Section 10.4 of the Lease including, without limitation the right to receive notices of default under Section 10.4(d) of the lease (which would include notice that Borrower is in default under the Performance Agreement and/or Origination Fee Agreement) and the right to cure defaults under Section 10.4(d)(iv) and (vii) of the Lease. The address to which notices are to be sent to Lender is set forth in Section 8 hereof.
3. **Subordination.** The Ground Lease is and at all times shall be subordinate to the Mortgage and all renewals, modifications and amendments thereof and thereto and to all other documents securing the Loan.
4. **Termination.** Ground Tenant agrees that upon completion of any foreclosure proceedings with respect to the Premises or upon any conveyance of the Premises in lieu of foreclosure, the Ground Lease shall, except as otherwise provided in Section 5 hereof, terminate and be of no further force or effect. Upon any such termination: (a) the Ground Lease shall immediately terminate; (b) all of Ground Tenant’s rights with respect to the Premises shall immediately cease; (c) Lender and its Successors (as hereinafter defined) shall have no liability to Ground Tenant with respect with respect to the Ground Lease, the Performance Agreement, the Origination Fee Agreement or the Premises. For the purposes hereof, the Lender’s “Successors” shall mean: (i) each of the Lender’s successors and assigns; and (ii) each purchaser at a foreclosure or conveyance in lieu of foreclosure.
5. **Lease.** Ground Tenant and Borrower, agree that upon termination of the Ground Lease pursuant to this Agreement, the Lease shall terminate and be of no further force or effect. Notwithstanding anything to the contrary contained in the Ground Lease or the Lease,

Ground Tenant agrees to deliver to Lender physical possession of, and title to, by quitclaim deed and bill of sale, any improvement or other personal property located on the Premises upon termination of the Ground Lease, which conveyance shall be, as is, where is and subject to damage, destruction or taking by eminent domain.

6. **Obligations.** Ground Tenant acknowledges that neither Lender nor any successor shall have any obligation to indemnify, or to assume the indemnification obligations of any third party, on account of any early termination of the Ground Lease or the Lease or with respect to any other matters set forth in the Ground Lease.
7. **Attornment.** Lender or its Successor has the right, by giving written notice to Ground Tenant, to elect to keep the Ground Lease in full force and effect following the completion of any foreclosure proceeding or conveyance in lieu thereof, in which event neither the Lender nor any Successor shall: (a) be liable to the Ground Tenant for any past act, omission or default on the part of the Borrower; (b) be subject to any offsets or deficiencies which Ground Tenant might be entitled to assert against the Borrower as landlord under the Ground Lease; (c) be obligated to perform any construction or other improvements to the Premises; and/or (d) be obligated to indemnify the Ground Tenant in connection with any subsequent termination of the Ground Lease or the Lease by Lender or Successor; provided however that Lender or its Successor shall remain obligated to make the payments under Section 2.3 of the Performance Agreement and Section 2.1 of the Origination Fee Agreement.
8. **Notices.** All notices, demands, requests, consents or approvals and other communications required or permitted hereunder will be in writing, and will be addressed to such party at the address set forth below or to such other address as any party may give to the other in writing for such purpose:

If to Borrower:

ELHC LII, LLC
4825 NW 41st Street, Suite 500
Riverside, Missouri 64150
Attention: Nathaniel Hagedorn
Telephone: (816)-888-7380

With a copy to:

Levy Craig Law Firm
4520 Main Street, Suite 1600
Kansas City, Missouri 64111
Attention: Scott Seitter
Telephone: (815) 460-1821

If to Ground Tenant:

Attention: _____
Telephone: _____

With a copy to:

Attention: _____
Telephone: _____

If to Lender:

USAA Life Insurance Company
c/o Affinius Capital Advisors LLC
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230
Attention: Asset Manager, Capital Markets

With a copy to:

USAA Life Insurance Company
c/o Affinius Capital Advisors LLC
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230
Attention: General Counsel

All such communications, if personally delivered, will be conclusively deemed to have been received by a party hereto and to be effective when so delivered; if sent by overnight courier service, on the day after deposit thereof with such service; or if sent by certified or registered mail, on the later of the date received or the date delivery is refused.

9. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of Borrower, Ground Tenant, and Lender and their respective successors and assigns, provided, however, that neither Borrower nor Ground Tenant may assign this Agreement in whole or in part without the prior written consent of Lender and Lender at any time may assign this Agreement in whole or in part to any person or entity.
10. **Continued Effectiveness of this Agreement.** The terms of this Agreement and the rights and obligations of Lender, the Ground Tenant, and Borrower arising hereunder will not be

affected, modified or impaired in any manner or to any extent by (a) any renewal, replacement, amendment, extension, substitution, revision, consolidation, modification or termination of or any of the Loan; (b) the validity or enforceability of any document evidencing or securing the Loan; (c) the release, sale, exchange for surrender, in whole or in part, of any collateral security, now or hereafter existing, for any of the Loan; (d) any exercise or nonexercise of any right, power or remedy under or in respect of the Loan; or (e) any waiver, consent, release, indulgence, extension, renewal, modification, delay or other action, inaction or omission in respect of the Loan, all whether or not the Ground Tenant had notice or knowledge of any of the foregoing and whether or not it will have consented thereto.

11. **Counterpart.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement.
12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

[Signature Pages Follow]

Executed in and to be governed by the laws of the State of Ohio as of the date first above written.

BORROWER

ELHC LII, LLC, a Kansas limited liability company

By: NPD Management, LLC, a Missouri limited liability company, Manager

By: _____
Name: Nathaniel Hagedorn
Title: Manager

STATE OF _____)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2023, before me, a notary public in and for the above county and state, personally appeared Nathaniel Hagedorn, the Manager of NPD Management, LLC, a Missouri limited liability company, the Manager of ELHC LII, LLC, a Kansas limited liability company, who acknowledged that he signed the foregoing instrument on behalf of the company.

Notary Public
My commission expires:

[Borrower Signature Page to Lease Subordination Agreement]

GROUND TENANT:

CITY OF EDGERTON, KANSAS

By: _____
Name: _____
Title: _____

STATE OF _____)
) SS.
COUNTY OF _____)

On this ____ day of _____, 2023, before me, a notary public in and for the above
county and state, personally appeared _____, the
_____ of the CITY OF EDGERTON, KANSAS, a municipal
corporation organized under the laws of the State of Kansas, who acknowledged that he signed the
foregoing instrument on behalf of the City.

Notary Public
My commission expires:

LENDER:

USAA LIFE INSURANCE COMPANY, a life insurance company organized under the laws of Texas

By: Affinius Capital Advisors LLC, a Texas
limited liability company, its authorized
agent

By: Affinius Capital LLC, a Delaware
limited liability company, its sole member

By: _____
Name: _____
Title: _____

STATE OF)
) SS:
COUNTY OF)

On this _____ day of _____, 2023, before me, a notary public in and for the above county and state, personally appeared _____, _____ of Affinius Capital LLC, a Delaware limited liability company, as sole member of Affinius Capital Advisors LLC, a Texas limited company, as authorized agent of USAA Life Insurance Company, a life insurance company organized under the laws of Texas, who acknowledged that he signed the foregoing instrument on behalf of the company.

Notary Public
My commission expires:

ACKNOWLEDGMENT OF UMB

The undersigned is executing this Agreement for acknowledgement purposes at the request of Borrower.

UMB:

UMB BANK, N.A.

By: _____

Name: _____

Title: _____

STATE OF _____)
) SS.
COUNTY OF _____)

On this ____ day of _____, 2023, before me, a notary public in and for the above county and state, personally appeared _____, the _____ of the UMB Bank, N.A., a national bank association, who acknowledged that he signed the foregoing instrument on behalf of the association.

Notary Public

My commission expires:

This instrument was prepared by:

INSTRUMENT PREPARED BY:

[Lender Signature Page to Lease Subordination Agreement]

EXHIBIT A

DESCRIPTION OF PROPERTY