

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
SEPTEMBER 25, 2014
7:00 PM**

Call to Order

1. **Roll Call** ____ Roberts ____ Longanecker ____ Brown ____ Crooks ____ Cross ____ Troutner
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. Agenda Approval

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. **CONSIDER ORDINANCE NO. 981 ANNEXING LAND [OWNED BY VICTOR AND LORI SMITH] INTO THE CITY OF EDGERTON, KANSAS**

Motion: _____ Second: _____ Vote: _____

8. **CONSIDER ORDINANCE NO. 982 ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 15 ACRES OF LAND [LOCATED AT THE NORTHWEST CORNER OF I-35 HIGHWAY AND HOMESTEAD LANE] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RURAL RESIDENTIAL (RUR) TO CITY OF EDGERTON HEAVY SERVICE COMMERCIAL DISTRICT (C-2)**

Motion: _____ Second: _____ Vote: _____

9. **CONSIDER RESOLUTION NO. 09-25-14A CONSENTING TO THE ASSIGNMENT OF A BASE LEASE, LEASE AGREEMENT AND RELATED BOND DOCUMENTS IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (ELHC I, LLC PROJECT), SERIES 2013.**

Motion: _____ Second: _____ Vote: _____

10. **Report by the City Administrator**

11. **Report by the Mayor**

12. **Future Meeting/Event Reminders:**

- October 9th 7:00 PM – City Council Meeting
- October 14th 7:00 PM – Planning Commission Meeting
- October 15th 8:00 AM – City of Edgerton hosts Chamber Coffee
- October 15th Noon – Senior Lunch
- October 23rd 7:00 PM – City Council Meeting

13. **Adjourn** Motion: _____ Second: _____ Vote: _____

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 981 Annexing Land [Owned By Victor And Lori Smith] Into The City Of Edgerton, Kansas

Department: Administration

Background/Description of Item: Victor and Lori Smith, owners of Parcel # 4F211512-3006 located at 20040 Edgerton Road at the intersection of Nelson Street and Edgerton Road have submitted a Consent for Annexation Form to request annexation into the City of Edgerton. The Consent for Annexation Form is attached with a map of the property location.

Kansas Statute 12-520 states that the governing body of any city, by ordinance, may annex land to such city if that land adjoins the city and a written petition for consent to annexation is filed with the city by the owner. The Smiths have filed that written petition and is located contiguous to property already within the City of Edgerton corporate city limits.

City Attorney prepared Ordinance No. 981.

Enclosure: Draft Ordinance No. 981
 Consent for Annexation
 Property Map

Related Ordinance(s) or Statute(s): K.S.A. 12-520

Recommendation: Approve Ordinance No. 981 Annexing Land [Owned By Victor And Lori Smith] Into The City Of Edgerton, Kansas

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: September 25, 2014

ORDINANCE NO. 981

AN ORDINANCE ANNEXING LAND [OWNED BY VICTOR AND LORI SMITH] INTO THE CITY OF EDGERTON, KANSAS

WHEREAS, the land legally described in the attached **Exhibit A**, located at 20040 Edgerton Road, adjoins the City of Edgerton, Kansas; and

WHEREAS, the owners of the land described in **Exhibit A** attached hereto have signed a written consent authorizing the City to annex such land pursuant to K.S.A. 12-520, as amended, said Consent attached as **Exhibit A**; and

WHEREAS, the governing body of the City of Edgerton, Kansas finds it advisable to annex such land.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, JOHNSON COUNTY, KANSAS:

SECTION ONE: Annexed Property. That the land described in **Exhibit A** attached hereto is hereby annexed and made a part of the City of Edgerton, Kansas.

SECTION TWO: Filing of Ordinance. The Clerk of the City of Edgerton, Kansas shall cause a certified copy of this ordinance to be filed with the County Clerk, Register of Deeds, and County Election Commissioner of Johnson County, Kansas.

SECTION THREE: Effective Date. This ordinance shall take effect and be in force from and after its adoption and publication in the official newspaper of the City of Edgerton, as provided by law.

ADOPTED AND APPROVED this 25th day of September, 2014, by the Governing Body of the City of Edgerton, Kansas.

Donald Roberts, Mayor

Attest:

Janeice L. Rawles, City Clerk

Approved as to form and legality:

Patrick G. Reavey, City Attorney

Exhibit A

Legal Description

A tract of land in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, of Section 12, Township 15, Range 21, Johnson County, Kansas described as follows: Beginning at a point 863.86 feet South of the Northeast corner of the Northeast $\frac{1}{4}$ of Section 12, said point being on the East line of said Quarter Section; Thence North 88 degrees 33 minutes West, 323.22 feet; thence South 1 degree 27 minutes West, 94.23 feet; thence North 87 degrees 05 minutes West 98.49 feet; thence South 01 degrees 16 minutes East, 32.38 feet; thence South 69 degrees 03 minutes East 220.49 feet; thence South 88 degrees 38 minutes East, 211.53 feet to a point on the East line of said Quarter Section; thence North 200.50 feet and along the East line of said Quarter Section to the point of beginning, except that part in road.

CONSENT FOR ANNEXATION FORM
(Adjoining Property by Request)


TO: The Governing Body of the City of Edgerton, Kansas.

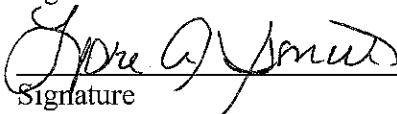
The undersigned owner of record of the following described land hereby petitions the Governing Body of the City of Edgerton, Kansas to annex such land to the City. The land to be annexed is described as follows:

[Insert or attach full legal description]

The undersigned further warrants and guarantees that they are the only owner(s) of record of the land.

OWNERS OF LAND TO BE ANNEXED:

	<i>Victor Smith</i>	<i>9-17-14</i>
Signature	Printed Name	Date

	<i>Lori A. Smith</i>	<i>9-17-14</i>
Signature	Printed Name	Date

Signature	Printed Name	Date
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ENTERED IN TRANSFER RECORD
DATE Feb 3 2004
EX
JOHN A BARTOLAC, COUNTY CLERK
JOHNSON COUNTY, KANSAS

KANSAS WARRANTY DEED
470421

THIS INDENTURE, Made on the 24th day of December, 2003, by and between Mark D. Verhulst and Mary Ann Verhulst, husband and wife of the County of Johnson, State of Kansas, herein called the grantor whether one or more, and Victor R. Smith, a married man of the County of Johnson, State of Kansas, herein called the grantee whether one or more.

Pursuant to K.S.A. 79-1437e, a real estate sales validation questionnaire is not required due to Exception # 3

WITNESSED: THAT SAID GRANTOR, in consideration of the sum of One Dollar and other valuable consideration the receipt of which is hereby acknowledged, does by these presents, Grant, Bargain, Sell and convey unto the said grantee, his heirs and assigns, all the following described real estate, situated in the County of Johnson and State of Kansas, to-wit:

SEE ATTACHED LEGAL DESCRIPTION **pg 3**

SUBJECT TO covenants, conditions, easements, restrictions and reservations of record, if any.

TO HAVE AND TO HOLD THE SAME, Together with all and singular, the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, forever. And said grantor for his heirs, executors or administrators, does hereby covenant, promise and agree to and with said grantee, that at the delivery of these presents he is lawfully seized in his own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances, that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of what nature or kind soever except as hereinbefore stated, and except for the lien of taxes, both general and special, not now due and payable.

AND that he will warrant and forever defend the same unto the said grantee, his heirs and assigns, against said grantor, his heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

WORDS and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

IN WITNESS WHEREOF, The said grantor has hereunto set his hand and seal the day and year above written.

Mark D. Verhulst
Mark D. Verhulst

Mary Ann Verhulst
Mary Ann Verhulst

STATE OF Kansas

COUNTY OF Johnson

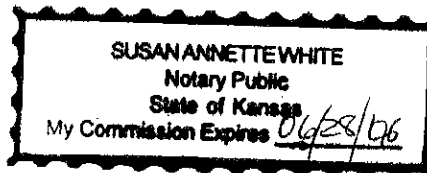
On this 24th day of December, 2003 before me, the undersigned, a Notary Public, personally appeared Mark D. Verhulst and Mary Ann Verhulst, husband and wife to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that he/she/they executed the same as his/her/their free act and deed.

Witness my hand and notarial seal subscribed and affixed in said County and State, the day and year first above written.

My term expires 06/28/06

K Return to
Northwest Title & Escrow
4444 N. Belleview #110
Gladstone, Mo. 64116
816-452-0020

Susan Annette White
Notary Public in and for said County and State
Susan Annette White



Legal Description

A tract of land in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 12, Township 15, Range 21, Johnson County, Kansas described as follows: Beginning at a point 863.86 feet South of the Northeast corner of the Northeast $\frac{1}{4}$ of Section 12, said point being on the East line of said Quarter Section; Thence North 88 degrees 33 minutes West, 323.22 feet; thence South 1 degree 27 minutes West, 94.23 feet; thence North 87 degrees 05 minutes West 98.49 feet; thence South 01 degrees 16 minutes East, 32.38 feet; thence South 69 degrees 03 minutes East 220.49 feet; thence South 88 degrees 38 minutes East, 211.53 feet to a point on the East line of said Quarter Section; thence North 200.50 feet and along the East line of said Quarter Section to the point of beginning, except that part in road.

LEGEND

AIMS Imagery: Current Imagery (2012)

Parcel Line

Lot Line

Original Lot Line



Disclaimer: No person shall sell, give, reproduce, or receive for the purpose of selling or offering for sale, any portion of the data provided herein. Johnson County makes every effort to produce and publish the most current and accurate information possible. Johnson County assumes no liability whatsoever associated with the use or misuse of such data, and disclaims any representation or warranty as to the accuracy and currency of the data.



9/24/2014

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 982 Adopting a Recommendation By The City Planning Commission To Approve Rezoning Of Approximately 15 Acres Of Land [Located At The Northwest Corner Of I-35 Highway And Homestead Lane] In Edgerton, Kansas From Johnson County Rural Residential (RUR) To City Of Edgerton Heavy Service Commercial District (C-2)

Department: Administration

Background/Description of Item: The City of Edgerton received an application RZ-08-12-2014 for rezoning from Larry S. Alsup, property owner, and Tim Gates, realtor, requesting to rezone approximately 15 acres located on the northwest corner of I-35 Highway and Homestead Lane from Johnson County RUR to City of Edgerton Heavy Service Commercial District (C-2) zoning. The property requested to be rezoned was annexed into the City of Edgerton in August 2014. The property owner has requested to rezone the parcel to heavy service commercial to match the existing zoning on the property directly north of this parcel.

Johnson County Planning staff, on behalf of the City of Edgerton, reviewed this rezoning application with respect to the Edgerton Comprehensive Plan, Zoning and Subdivision Regulations, and the laws in Kansas, in particular the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. Attached is the staff report including the review of this rezoning based on the Golden Criteria. The Planning Commission held a public hearing on September 9, 2014 regarding this rezoning. The Planning Commission recommended approval of the application with the following stipulations:

1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

City Attorney has prepared draft ordinance No. 982.

Enclosure: Draft Ordinance No. 982
Staff Report from September 9, 2014 Planning Commission
Application RZ-08-12-2014

Related Ordinance(s) or Statute(s):

Recommendation: Approve Ordinance No. 982 Adopting a Recommendation By The City Planning Commission To Approve Rezoning Of Approximately 15 Acres Of Land [Located At The Northwest Corner Of I-35 Highway And Homestead Lane] In Edgerton, Kansas From Johnson County Rural Residential (RUR) To City Of Edgerton Heavy Service Commercial District (C-2)

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: September 24, 2014

ORDINANCE NO. 982

AN ORDINANCE ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 15 ACRES OF LAND [LOCATED AT THE NORTHWEST CORNER OF I-35 HIGHWAY AND HOMESTEAD LANE] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RURAL RESIDENTIAL (RUR) TO CITY OF EDGERTON HEAVY SERVICE COMMERCIAL DISTRICT (C-2)

WHEREAS, the Planning Commission has recommended, subject to the conditions recited herein below, that a rezoning request -- from Johnson County Rural Residential (RUR) District to City of Edgerton Heavy Service Commercial (C-2) Zoning District -- be approved for approximately 15 acres of land, located at the Northwest corner of I-35 Highway and Homestead Lane, the legal description of which is set forth below; and

WHEREAS, all newspaper and mailed notifications were performed and a public hearing was properly held before the City Planning Commission.

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

Section 1. That the following legally described property [at the Northwest corner of I-35 Highway and Homestead Lane] is, subject to the below conditions, hereby rezoned from Johnson County Rural Residential (RUR) District to City of Edgerton Heavy Service Commercial (C-2) Zoning District, and City Staff is directed to reflect said rezoning in the City's Official Zoning map and other City records:

All that part of the Southeast Quarter of Section 09, Township 15 South, Range 22 East, Sixth Principal Meridian, Johnson County, Kansas described as follows; Commencing at the Northeast corner of the Southeast Quarter of said Section 09; thence South 88 degrees 26 minutes 35 seconds West along the North line of the Southeast Quarter of said Section 09, a distance of 630.50 feet to a point on the Northerly right of way line for Interstate 35 as now established; Thence South 31 degrees 44 minutes 01 seconds West along said highway right of way, a distance of 512.96 feet; thence South 31 degrees 44 minutes 59 seconds West along said highway right of way, a distance of 277. 13 feet; thence South 88 degrees 22 minutes 28 seconds West, a distance of 985. 18 feet; thence North 02 degrees 09 minutes 43 seconds West, a distance of 288.57 feet; thence North 61 degrees 23 minutes 59 seconds East, a distance of 820.43 feet to a point on the North line of the Southeast Quarter of said Section 09; thence North 88 degrees 26 minutes 35 seconds East along the North line of the Southeast Quarter of said Section 09, a distance of 691.24 feet to the point of beginning containing 659, 710 square feet or 15. 14 acres more or less.

Section 2. The above rezoning is conditioned on the following: (a) All Site Plan application requirements of the City shall be met; (b) All infrastructure requirements of the City shall be met; and (c) Prior to issuance of building permits, the property shall be developed in accordance with a site plan reviewed and approved by the City.

Section 3. That the Governing Body, in making its decision on the rezoning, considered City Staff's comments and recommendations. The Governing Body also based its decision on the following criteria:

- a) The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.
- b) Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties.
- c) The extent to which the zoning amendment may detrimentally affect nearby property has been addressed.
- d) The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial.
- e) Consistency with the Comprehensive Plan, Utilities and Facilities Plans, Capital Improvement Plan, Area Plans, ordinances, policies, and applicable City Code of the City of Edgerton.

Section 4. This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 25th DAY OF SEPTEMBER, 2014.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

JANEICE RAWLES, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

STAFF REPORT

September 9, 2014

To: Edgerton Planning Commission
Fr: Beth Linn, City Administrator
Mike Mabrey, Zoning Administrator
Re: Application RZ-08-12-2014 for rezoning of approximately 15.14 acres near the northwest corner of I-35 and Homestead Lane from RUR, County Rural Zoning District, to C-2, Heavy Service Commercial Zoning District

APPLICATION INFORMATION

Applicant: Tim Gates, realtor

Property Owner: Larry S. Alsup Revocable Trust,
Larry S. Alsup, Trustee

Requested Action: Rezoning from RUR, County Rural Zoning District, to C-2, Heavy Service Commercial Zoning District

Legal Description: Part of Section 9, Township 15, Range 22

Site Address/Location: Near the northwest corner of I-35 and Homestead Lane

Existing Land Use: Farm and vacant

Existing Zoning: County RUR, Rural District zoning

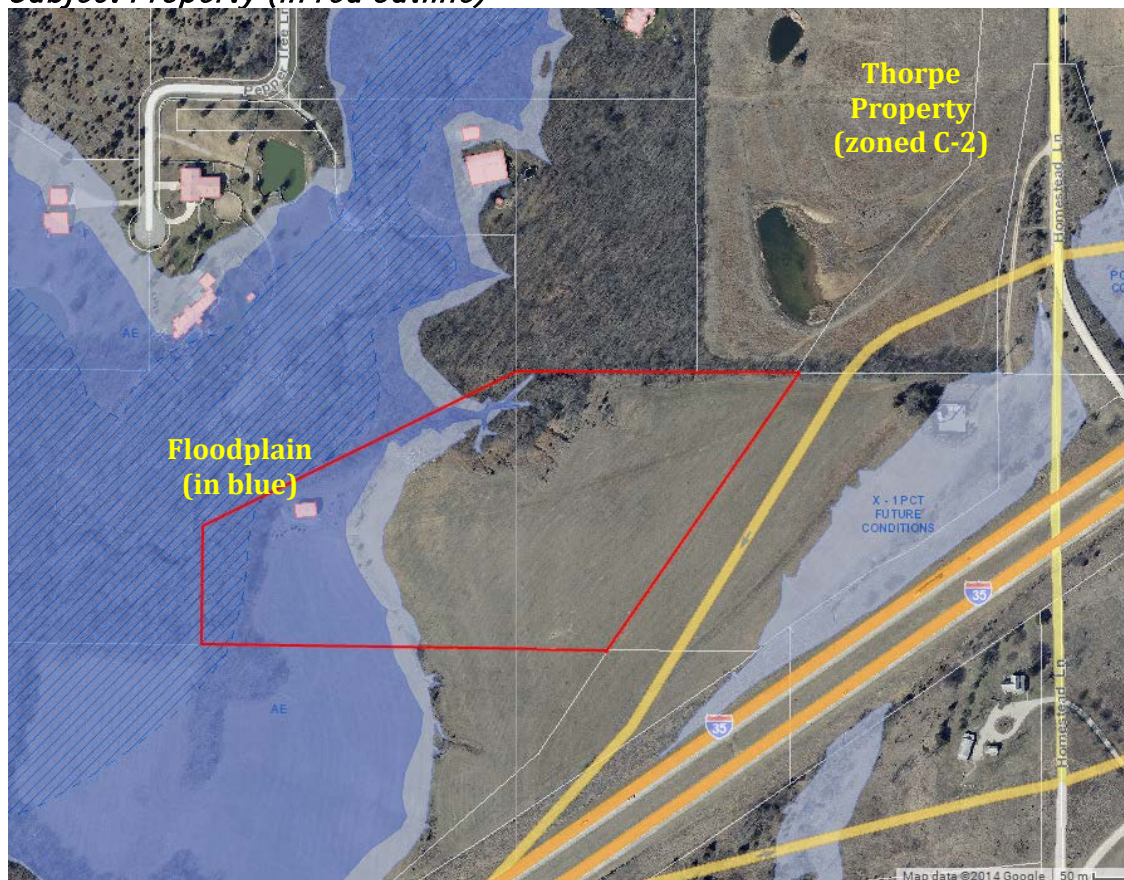
Existing Improvements: Farm building

Site Size: Approximately 15.14 acres

BACKGROUND INFORMATION

The subject property is located near the northwest corner of I-35 and Homestead Lane, but it has no direct access to a public street. The applicant has indicated that the Alsup property will gain access to Homestead Lane across the adjacent Thorpe property, already zoned C-2. No access to Pepper Tree Lane will occur.

Subject Property (in red outline)



Reason For Rezoning Request: The landowner desires to put commercial zoning in place, the same zoning as on adjacent property to the north, and the recommended zoning/use (commercial) provided in Edgerton's Comprehensive Growth Plan for the area around the I-35 interchange, which coincides with the growth generated by the BNSF intermodal and the adjacent logistics park. The requested zoning is C-2, Heavy Service Commercial Zoning District. The City's Unified Development Code (UDC) defines this district as composed of certain uses that require extensive lot frontages, storage requirements, promote heavy traffic generation, extended hours (of) operations, and are customarily associated with intensive commercial use of land.

The list of permitted uses in the C-2 District includes all uses in the C-1 District, plus automobile sales (new and used), truck stops, car and truck washes, lumber yards, laboratory, medical and dental services, manufactured homes sales, motel, hotels and meeting facilities, automobile service and repair, automobile body shop, motorcycle sales and service, and trailer sales and rental. C-1 General Commercial District uses are the full range of indoor retail and service activities in addition to automobile service stations, taverns and bars, post office and above-retail (2nd story) residential uses. In addition, conditional uses in the C-2 District include communication towers, asphalt and concrete plants, RV, trailer and tent camps, and adult entertainment business.

Vicinity Map (subject property in red outline)



Infrastructure and Services:

- a. Homestead Lane, the nearest street to this property, is a recently constructed, paved street designed to support intermodal and logistics park traffic. Homestead Lane provides access to Interstate 35, adjacent to the south. The subject property could get access to Homestead by driveway through the property adjacent to the north, but it has no direct access to any street.
- b. The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane.
- c. The western one third of the property, about 5 acres, is located within the floodplain and floodway of a tributary of Bull Creek (please see Subject Property Illustration, above). Flood Plain Development Permits would be required to develop within this designated floodplain area.
- d. The property has access to gravity sewer main installed as part of the Big Bull Creek Wastewater Treatment Facility and Conveyance project.
- e. The property is located within the service area of Water District No. 7. A 2-inch water main is located along the east side of Homestead Lane, terminating about a third of a mile to the northeast. No water is currently available to the property.
- f. Police protection is provided by the Johnson County Sheriff's Department under contract with the City of Edgerton. Fire protection is provided by Johnson County Rural Fire District No. 1. A fire station is located in the City of Edgerton, approximately 2.5 miles to the west, by roads.

Property Zoning History

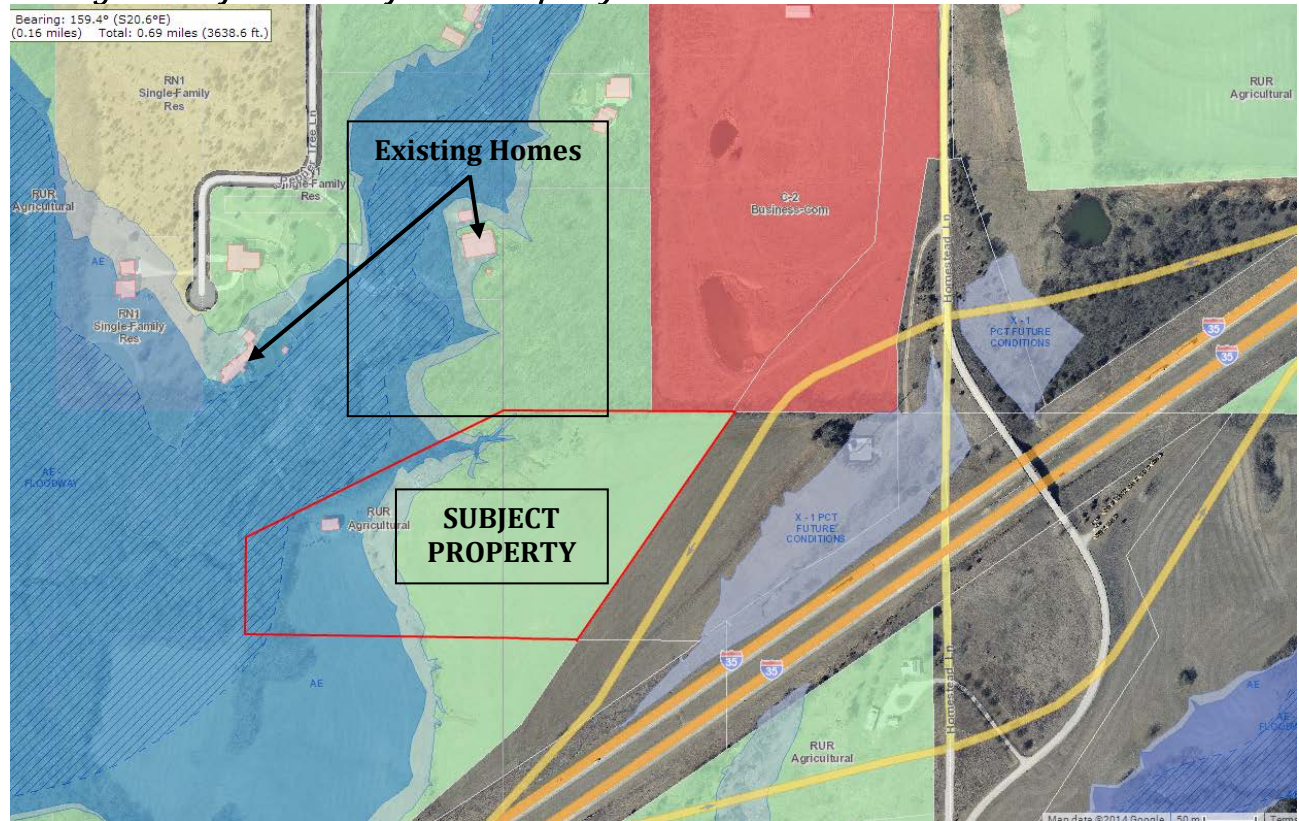
The subject property was recently annexed into the City of Edgerton on August 14, 2014, in anticipation of commercial development. Prior to that, the property was part of a larger parcel containing the single-family home immediately to the northwest, in unincorporated Johnson County, and zoned RUR, Rural District.

Staff Analysis

Staff has reviewed this rezoning application with respect to the Edgerton Unified Development Code, the laws in Kansas, and the “Golden Criteria” as established by the Supreme Court of Kansas in 1978. The following is staff’s review.

1. Need for the Proposed Change. The subject property has County RUR, Rural Zoning, which allows only agricultural, residential, and residential accessory uses. The anticipated uses of the property are highway service commercial. The C-2 Zoning District is the most compatible designation for these uses.
2. Magnitude of the Change. The existing County zoning is considered a holding designation due to the property’s location near other planned C-2 development. The property is vacant, with one farm building. The magnitude of change is not considered extreme or rare when property is being developed for its planned end use.

Zoning on Subject and Adjacent Property



3. Whether or not the change will bring harm to established property rights. The property most likely affected is the residentially zoned and used property owned by the applicant, adjacent to the northwest. The next nearest home is about 475 to the north

of this parcel. If rezoned C-2, as requested, a separate site plan review and approval will be required before building permits can be issued. As part of that review, with proper attention to buffering and setbacks, stormwater management and possibly transition of uses between the residences and the commercial uses, some of the possible harm to the residential uses to the north can be mitigated.

4. Effective use of Land. Commercial development at this location is an effective and efficient use of the property, which is near other C-2 zoned property and the I-35 interchange. Its location facilitates ease of use by highway and intermodal/logistics park traffic and concentrates traffic, noise, and activity in one location versus such uses being dispersed throughout the community.
5. The extent to which there is a need in the community for the uses allowed in the proposed zoning. Commercial uses at this location will provide useful resources to support and serve the BNSF intermodal and logistics park facilities to the north.
6. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space. The immediate area is in transition from rural to commercial, with the new I-35 interchange and other C-2 zoning adjacent. The area is primarily rural now, but with the interchange and the intermodal and logistics park developments to the north, the character of the area is changing significantly. However, the nearby regional parks and floodplains areas will generally remain undeveloped, acting as open space, which will help to retain some of the rural character of the area.
7. Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties. The proposed zoning is compatible with the planned future uses of adjacent C-2 zoned property to the north. At the time of site plan review, with proper attention to buffering, setbacks, and stormwater management, some of the possible harm to the residential uses to the northwest can be mitigated.
8. Suitability of the uses to which the property has been restricted under its existing zoning. The vacancy of the property is an indication that it may not be zoned to its highest potential use and other zoning should be considered. With the construction of the intermodal freight terminal and other logistics park uses to the north and existing C-2 zoning adjacent, the existing County zoning is no longer appropriate for this property. The best use of this property is commercial.
9. Length of time the subject property has remained vacant under the current zoning designation. Prior to annexation, the subject property was part of a larger parcel in residential and agricultural use in unincorporated Johnson County. This 15.14 acre part of the larger property was vacant for many years.
10. The extent to which the zoning amendment may detrimentally affect nearby property. As noted, as part of a future site plan review, with the proper attention to buffering, setbacks, and stormwater management, some of the possible harm to the residential uses to the northwest can be mitigated.

11. Consideration of rezoning applications requesting Planned Development Districts (PUD) for multifamily and non-residential uses should include architectural style, building materials, height, structural mass, siting, and lot coverage. This is not a request for a PUD.
12. The availability and adequacy of required utilities and services to serve the uses allowed in the proposed zoning. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services. Homestead Lane, the nearest road to the property, is a recently constructed, paved street designed to support intermodal and logistics park traffic. Utilities will be provided by the developer in conjunction with development of the property.
13. The extent to which the uses allowed in the proposed zoning would adversely affect the capacity or safety of that portion of the road network influenced by the uses, or present parking problems in the vicinity of the property. Homestead Lane is improved to a standard that can accommodate commercial traffic in the area. The developer will be required to comply with the City's UDC off-street parking requirements as part of the Site Plan review process.
14. The environmental impacts that the uses allowed in the proposed zoning would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm. The City will follow NPDES (stormwater management requirements) guidelines that require the developer to address runoff and water pollution mitigation measures as part of the development of the property. Mitigation of pollution in the form of air, noise, light, etc, will be addressed as part of a future site plan review process.
15. The economic impact on the community from the uses allowed in the proposed zoning. Very little commercial development exists in the City. Uses allowed in C-2, if built, have the potential to benefit City residents and the community in a positive way by providing needed services, jobs, and tax revenues.
16. The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial. There would be little gain to the public health, safety and welfare of the City of Edgerton if the zoning is denied. The City would be adversely impacted due to lost opportunity for jobs and tax revenue if commercial uses were to locate in another nearby community.
17. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton. The following is a relevant excerpt from the City's Comprehensive Land Use Plan.
***New Interchange on Interstate 35:** The City should take proactive steps to maximize the economic potential of I-35 and Homestead Lane. Areas around an interchange are often prominent locations for retail and commercial developments that provide substantial economic diversification to a City's land use and tax base.*

18. The recommendation of professional staff. See Recommendation below

RECOMMENDATION

City staff recommends **approval** of the proposed rezoning of the subject property from County RUR, Rural District to C-2, Heavy Service Commercial Zoning District with the following stipulations:

1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to issuance of building permits, the property shall be developed in accordance with a site plan reviewed and approved by the City.

ATTACHMENTS

Application for Rezoning No. RZ-08-12-2014

CITY OF EDGERTON, KANSAS

APPLICATION FOR REZONING

Please print or type

LOCATION OR ADDRESS OF SUBJECT PROPERTY: N/W corner of I-35 & Homestead Lane

PURPOSE FOR REZONING: Market for highest and best use.

REQUESTED REZONING CHANGE: FROM RUR TO C-2
(Current Zoning) (Proposed Zoning)

LEGAL DESCRIPTION: See Attached

CURRENT LAND USE: Agriculture

PROPERTY OWNER'S NAME(S): Larry S. Alsop Revocable Trust PHONE: 913-515-0598

COMPANY: _____ FAX: _____

MAILING ADDRESS: 20265 Peppertree Lane Edgerton KS 66021
STREET CITY STATE ZIP

APPLICANT/AGENT'S NAME(S): Tim Gates PHONE: 913-645-3579

COMPANY: Agnes Gates Realty FAX: 1-866-716-6972

MAILING ADDRESS: P.O. Box 4057 OP. KS 66204
STREET CITY STATE ZIP

ENGINEER/ARCHITECT'S NAME(S): Allenbrand-Drews PHONE: 913-764-1076

COMPANY: Bob Laxton FAX: 913-764-8635

MAILING ADDRESS: 122 N. Water Olathe KS 66061
STREET CITY STATE ZIP

SIGNATURE OF OWNER OR AGENT: Timothy S. Gates
If not signed by owner, authorization of agent must accompany this application.

FOR OFFICE USE ONLY

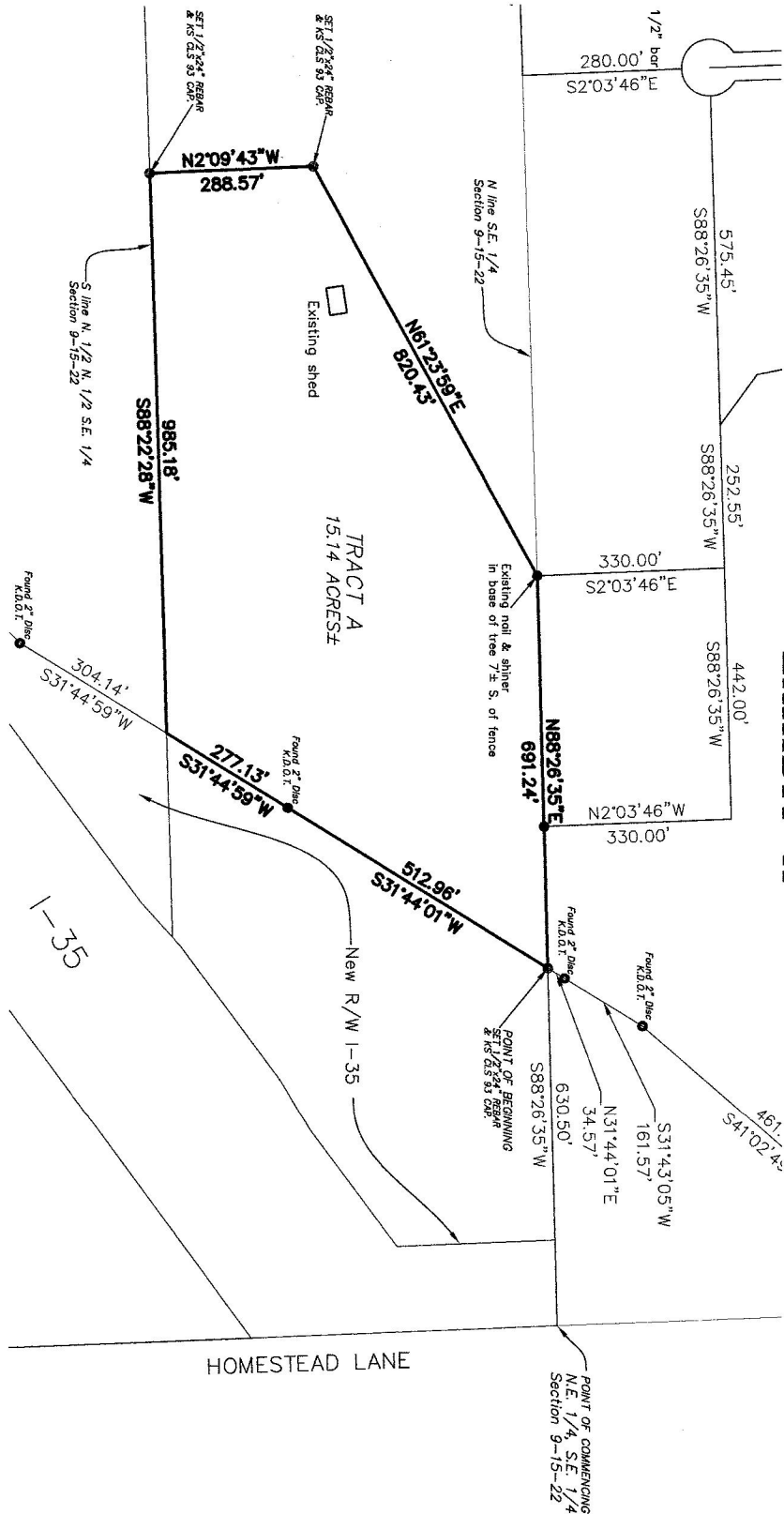
Case No.: RZ-_____ Amount of Fee Paid: \$_____ Date Fee Paid: _____

Received By: _____ Date of Hearing: _____

Alsup Legal Description

All that part of the Southeast Quarter of Section 09, Township 15 South, Range 22 East, Sixth Principal Meridian, Johnson County, Kansas described as follows; Commencing at the Northeast corner of the Southeast Quarter of said Section 09; thence South 88 degrees 26 minutes 35 seconds West along the North line of the Southeast Quarter of said Section 09, a distance of 630.50 feet to a point on the Northerly right of way line for Interstate 35 as now established; Thence South 31 degrees 44 minutes 01 seconds West along said highway right of way, a distance of 512.96 feet; thence South 31 degrees 44 minutes 59 seconds West along said highway right of way, a distance of 277.13 feet; thence South 88 degrees 22 minutes 28 seconds West, a distance of 985.18 feet; thence North 02 degrees 09 minutes 43 seconds West, a distance of 288.57 feet; thence North 61 degrees 23 minutes 59 seconds East, a distance of 820.43 feet to a point on the North line of the Southeast Quarter of said Section 09; thence North 88 degrees 26 minutes 35 seconds East along the North line of the Southeast Quarter of said Section 09, a distance of 691.24 feet to the point of beginning containing 659,710 square feet or 15.14 acres more or less.

EXHIBIT A



CIVIL ENGINEERS
LAND SURVEYORS - LAND PLANNERS

122 N. WATER STREET
OLATHE, KANSAS 66061
PHONE: (913) 764-1076
FAX: (913) 764-8635

14 W. PEORIA
PAOLA, KANSAS 66071
PHONE: (913) 557-1076
FAX: (913) 557-6904

DECLARATION OF OWNERSHIP

All Owners of Record Must File An Affidavit

Larry S. Alsup, Trustee, being duly sworn upon his/her oath, deposes and states that the Larry S. Alsup Revocable Trust is the legal owner of the subject property.

Larry S. Alsup

AUTHORIZATION OF AGENCY

Fill In If Applicant Is An Agent For Landowner Or Contract Purchaser

I, Larry S. Alsup, Trustee having filed Proof of Ownership Affidavit as the Legal Owner of the property declare that I have authorized Tim Gates of Agnes Gates Realty to file this Consent for Annexation and/or Rezoning Application on my behalf.

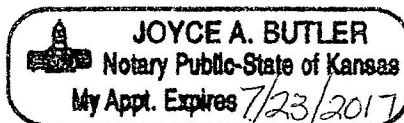
Larry S. Alsup

STATE OF KANSAS
COUNTY OF JOHNSON

Subscribed and sworn to before me this 24th day of October, 20 13.

Joyce Butler
Notary Public:

My Appointment Expires:



CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: September 25, 2014

Agenda Item: Assignment of ELHC I Project to Flexsteel

Subject: ELHC I, LLC Project

Summary:

The City issued \$25 million of industrial revenue bonds for the ELHC I Project on September 30, 2013 for the purpose of constructing and equipping a 500,000 sq. ft. warehouse and distribution facility (the "Project"). ELHC I, LLC ("ELHC") leased the Project to the City and the City subleased the project back to ELHC I.

Flexsteel Industries, Inc., a Minnesota corporation ("Flexsteel") desires to acquire the Project from ELHC in a 1031 exchange. In order to acquire the Project, ELHC must assign its interest in the Base Lease, the Lease Agreement, the Performance Agreement, the Origination Fee Agreement and all other Bond documents to Flexsteel. This assignment requires the consent of the City.

The Project will be assigned from ELHC to Flexsteel pursuant to the Assignment and Assumption of Bond Documents attached to the Resolution. The name of the Assignor is blank in this document because Flexsteel plans to create a new entity in the 1031 exchange to hold the ELHC Project.

Flexsteel is in the furniture and seating market.

Impact on Abatement:

The assignment from ELHC to Flexsteel will have no impact on the property tax abatement for the ELHC project. ELHC will be released from its obligations to make origination fee payments and PILOT payments. The entity created by Flexsteel will be responsible for making these payments going forward. If these payments are not made, the property tax abatement for this project can be cancelled.

RESOLUTION NO. 09-25-14A

A RESOLUTION CONSENTING TO THE ASSIGNMENT OF A BASE LEASE, LEASE AGREEMENT AND RELATED BOND DOCUMENTS IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (ELHC I, LLC PROJECT), SERIES 2013.

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

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC I, LLC Project), Series 2013 (the "Bonds"), in the aggregate maximum principal amount of \$25,000,000, pursuant to a Trust Indenture dated as of September 1, 2013 (the "Indenture"), by and between the City and UMB Bank, n.a., as trustee (the "Trustee"), for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 500,000 sq. ft. warehouse and distribution facility, to be located on approximately 30 acres of land at the northwest corner of 191st Street and Waverly Road in Edgerton, Kansas (the "Project"); and

WHEREAS, the Project was leased by ELHC I, LLC, a Kansas limited liability company ("Assignor") to the City pursuant to a Base Lease Agreement dated as of September 1, 2013 (the "Base Lease"), between the Assignor and the City, and the Project was subleased by the City to Assignor pursuant to a Lease Agreement dated as of September 1, 2013 (the "Lease Agreement"), between the City and the Assignor; and

WHEREAS, pursuant to **Section 6.2** of the Base Lease and **Section 13.1** of the Lease Agreement, the Assignor may assign the Lease Agreement only with the written consent of the City; and

WHEREAS, the Assignor is requesting the City's consent to the assignment of the Assignor's interest under the Base Lease, Lease Agreement, the Performance Agreement dated as of September 1, 2013 (the "Performance Agreement"), between the City and Assignor, the Origination Fee Agreement dated as of September 1, 2013 (the "Origination Fee Agreement"), between the City and the Assignor, and all other documents executed in connection with the Bonds that are included in the transcript of proceedings for the Bonds (collectively, the "Other Bond Documents"), to Flexsteel Industries, Inc., a Minnesota corporation, or an entity to be created by Flexsteel Industries, Inc. in connection with a 1031 exchange (the "Assignee"); and

WHEREAS, the City desires to consent to the assignment of the Assignor's interest under the Base Lease, Lease Agreement, Performance Agreement, Origination Fee Agreement and the Other Bond Documents to the Assignee.

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

Section 1. Consent to Assignment. The Governing Body of the City hereby consents to the assignment of the Base Lease, Lease Agreement, Performance Agreement, Origination Fee Agreement and the Other Bond Documents by the Assignor to the Assignee. The foregoing consents are contingent upon the satisfaction of all other requirements for assignments contained in the Lease Agreement.

Section 2. Authorization and Execution of Assignment. The Governing Body hereby approves of the form of the Assignment and Assumption of Bond Documents (the "Assignment") attached hereto as **Exhibit A**. The Mayor of the City is hereby authorized and directed to execute and deliver the consent to the Assignment 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 Assignment.

Section 3. Further Authority. The Mayor is hereby authorized and directed to execute and deliver such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, including an estoppel certificate (copies of said documents shall be filed in the records of the City) for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

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

ADOPTED this 25th day of September, 2014.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Scott Anderson, Bond Counsel

EXHIBIT A

ASSIGNMENT OF BOND DOCUMENTS

ASSIGNMENT AND ASSUMPTION OF BOND DOCUMENTS

THIS ASSIGNMENT AND ASSUMPTION OF BOND DOCUMENTS (the “**Assignment**”) entered into on September ____, 2014 (the “**Effective Date**”) is by and between **ELHC I, LLC**, a Kansas limited liability company (the “**Assignor**”) and _____, a _____ (the “**Assignee**”).

RECITALS

WHEREAS, the City of Edgerton, Kansas (the “**City**”) has previously issued its \$25,000,000 aggregate maximum principal amount of Industrial Revenue Bonds (ELHC I, LLC Project) Series 2013 (the “**Bonds**”) pursuant to a Trust Indenture dated as of September 1, 2013 (the “**Indenture**”), between the City and UMB Bank, n.a., as trustee (the “**Trustee**”), and used the proceeds of the Bonds to construct a Project (as defined in the Indenture);

WHEREAS, the Assignor leased the Project, which is located on and includes the land described on **Schedule 1** (the “**Real Property**”) to the City pursuant to the Base Lease Agreement dated as of September 1, 2013 (the “**Base Lease**”), between the Assignor and the City, a memorandum of which was recorded October 1, 2013, in Book 201310, Page 505;

WHEREAS, the City subleased the Project to the Assignor pursuant to a Lease Agreement dated as of September 1, 2013 (the “**Lease Agreement**”), between the City and the Assignor, a memorandum of which was recorded October 1, 2013, in Book 201310, Page 506;

WHEREAS, the City and Assignor entered into a Performance Agreement dated as of September 1, 2013 (the “**Performance Agreement**”) whereby the parties set forth the terms relating to tax abatement for the Project;

WHEREAS, the City and Assignor entered into an Origination Fee Agreement dated as of September 1, 2013 (the “**Origination Fee Agreement**”) whereby the Assignor agreed to make certain origination fee payments to the City over time;

WHEREAS, in addition to the Indenture, the Base Lease, the Lease Agreement, the Performance Agreement, and the Origination Fee Agreement, the City, the Assignor and the Trustee entered into various other documents relating to the Bonds which are included in the transcript for the Bonds (the “**Other Bond Documents**”);

WHEREAS, Assignor desires to assign and transfer to Assignee all of Assignor’s right, title, and interest in and to the Base Lease, the Lease Agreement, the Performance Agreement, the Origination Fee Agreement, the Bonds and the Other Bond Documents;

WHEREAS, Assignee desires to accept such assignment subject to the terms and conditions set forth below;

WHEREAS, the City and the Trustee desire to consent to such assignment and assumption.

AGREEMENT

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

1. **Assignment.** As of the Effective Date, Assignor hereby sells, transfers, conveys, assigns, and delivers to Assignee the following (collectively, the “**Assigned Interests**”):

- (a) The leasehold created under the Base Lease and the Lease Agreement, together with all of Assignor’s rights and interest under the Base Lease and the Lease Agreement, which demises the Project, the Real Property, and all of Assignor’s rights and interests in the Project, including without limitation the buildings, structures, improvements, fixtures, machinery, and equipment situated on the real estate and all of its additions, alterations, modifications, and improvements.
- (b) All of Assignor’s rights and interest under the Performance Agreement, the Origination Fee Agreement and the Other Bond Documents; and
- (c) All of Assignor’s rights and interest in the Bonds.

Assignor further agrees to execute any additional documents required for the transfer of the Bonds to Assignee as may be required by the Indenture.

2. **Assumption.** Assignee accepts all of the Assigned Interests assigned by Assignor in **Section 1** and assumes and agrees to pay, perform, and discharge promptly and fully when and as required all obligations and liabilities under the Base Lease, the Lease Agreement, the Performance Agreement and the Origination Fee Agreement that accrue on or after the Effective Date.

3. **Delivery of documents; representations.** Pursuant to **Section 13.1(a)** of the Lease Agreement, Assignor represents that all conditions precedent to the assignment have been satisfied. Assignor represents that there has been no damage or destruction to the Project that has not been repaired, restored, and replaced in accordance with the terms of the Lease Agreement.

4. **Consent and release.** Pursuant to **Section 13.1(a)** of the Lease Agreement, the City consents to the Assignment of the Base Lease, Lease Agreement, Performance Agreement, Origination Fee Agreement and the Other Bond Documents from Assignor to Assignee. Pursuant to **Section 206** of the Indenture, the City consents to the assignment and transfer of the Bonds from Assignor to Assignee. The City releases Assignor from all liability under the Base Lease, Lease Agreement, the Performance Agreement, the Origination Fee Agreement and the Other Bond Documents occurring on and after the Effective Date.

5. **Assignor’s Representation.** Assignor represents that Assignor has not transferred, sold, encumbered, or otherwise disposed of the Bonds nor has Assignor assigned the Lease or transferred or encumbered or otherwise disposed of its interest in the Project. Assignor further represents and warrants that Assignor is not aware of any default which exists on this date by it or the counterparty under the Base Lease, Lease Agreement, Performance Agreement, Origination Fee Agreement or the Other Bond Documents.

6. **Successors and Assigns.** This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

7. **Counterparts.** This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

8. **Governing law.** This Assignment shall be interpreted and construed under the laws of the State of Kansas, excluding any conflict of law or choice-of-law rules that might lead to the application of the internal laws of another jurisdiction.

9. **Recording.** Assignee shall submit this Assignment for recording in the Office of the Register of Deeds of Johnson County, Kansas on or about the Effective Date.

10. **Indemnity.** Assignor hereby indemnifies and holds Assignee harmless from and against all claims, demands, losses, damages, expenses and costs including, but not limited to, reasonable lawyer's fees and expenses actually incurred, arising out of or in connection with Assignor's failure to observe, perform and discharge each and every one of the covenants, obligations, and liabilities of the Assignor under the Base Lease, Lease Agreement, Performance Agreement, Origination Fee Agreement and the Other Bond Documents to be observed, performed, or discharged with respect to the period prior to the Effective Date. Assignee hereby indemnifies and holds Assignor harmless from and against all claims, demands, losses, damages, expenses, and costs including, but not limited to, reasonable lawyer's fees and expenses actually incurred, arising out of or in connection with Assignee's failure, from and after the date of this Assignment, to observe, perform, and discharge all covenants, obligations, and liabilities under the Base Lease, Lease Agreement, Performance Agreement and Origination Fee Agreement with respect to the period on and after the Effective Date.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives to execute this Assignment as of the Effective Date.

ASSIGNOR:

ELHC I, LLC
a Kansas limited liability company

By:_____

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of September, 2014, before me the undersigned, a Notary Public in and for the County and State aforesaid, came _____, Manager of ELHC I, LLC, a Kansas limited liability company, who is personally known to me to be such Manager, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said company, and such officer duly acknowledged the execution of the same to be the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

ASSIGNEE:

_____,
a Minnesota corporation

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF)
) SS.
COUNTY OF)

BE IT REMEMBERED, that on this ____ day of September, 2014, before me the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of _____, a _____ limited liability company, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said corporation, and such officer duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

CONSENT OF THE CITY OF EDGERTON, KANSAS

The City hereby acknowledges, consents and agrees to the execution and delivery of this Assignment and Assumption of Bond Documents dated September ___, 2014, between ELHC I, LLC, a Kansas limited liability company, and _____, a Minnesota corporation.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Donald Roberts
Mayor

ATTEST:

Janeice Rawles
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this _____ day of September, 2014, before me, a notary public in and for said county and state, came Donald Roberts, Mayor of the City of Edgerton, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and Janeice Rawles, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

CONSENT OF TRUSTEE

UMB Bank, n.a., as trustee, hereby acknowledges and consents to the execution and delivery of this Assignment and Assumption of Bond Documents dated September ____, 2014, between ELHC I, LLC, a Kansas limited liability company, and _____, a Minnesota corporation ("Assignee").

The Trustee represents and warrants to the City of Edgerton, Kansas, ELHC I, LLC and the Assignee that the Trustee has no knowledge of any default, monetary or otherwise, that has occurred under the terms of the Lease.

BOKE, NA

By: _____
Douglas Hare
Senior Vice President

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

On this ____ day of September, 2014, before me appeared Douglas Hare, a Senior Vice President of UMB, n.a., a national banking association, to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same on behalf of said national banking association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

SCHEDULE 1

LEGAL DESCRIPTION OF REAL PROPERTY

That part of the Southeast and Southwest Quarters of Section 34, Township 14 South, Range 22 East, in the City of Edgerton, Johnson County, Kansas, more particularly described as follows:

Commencing at the Southeast Corner of said Southwest Quarter; thence coincident with the South line of said Southwest Quarter, South $88^{\circ}10'27''$ West, 360.36 feet to the Southeast corner of a tract of land described as the J. A. Pearce Tract in the 1892 Re-Survey of said Section 34, said point also being the Southwest corner of the East 22 acres of said Southwest Quarter; thence coincident with the West line of said East 22 acres, said line also being the East line of said J.A. Pearce Tract, North $02^{\circ}16'32''$ West, 60.00 feet to a point on the North right-of-way line of 191st Street, as it now exists, said point being the Point of Beginning; thence continuing along said West line, North $02^{\circ}16'32''$ West, 1,133.01 feet; thence departing said West line, North $87^{\circ}43'28''$ East, 1,019.79 feet; thence parallel with the West line of said East 22 acres, South $02^{\circ}16'32''$ East, 1,140.74 feet to a point on the North right-of-way line of said 191st Street; thence coincident with said North right-of-way line, South $88^{\circ}09'02''$ West, 659.00 feet; thence continuing along said North right-of-way line South $88^{\circ}10'27''$ West, 360.82 feet to the Point of Beginning, containing 1,159,417 square feet, or 26.616 acres, more or less.

ESTOPPEL CERTIFICATE

TO: _____, a Minnesota corporation ("Purchaser")

RE: City of Edgerton, Kansas Industrial Revenue Bonds (ELHC I, LLC Project) Series 2013 (the "Bonds"); ELHC I, LLC Project, located at 31608 W. 191th Street, Edgerton, Johnson County, Kansas (the "Project")

DATE: _____, 2014 (the "Effective Date")

In connection with the proposed sale of the Project to Purchaser and (a) the associated assignment and assumption of (1) that certain Base Lease Agreement dated as of September 1, 2013 by and between ELHC I, LLC, a Kansas limited liability company ("Developer"), as Lessor, and the City of Edgerton, Kansas, a Kansas municipal corporation, as Lessee (the "City") (the "Base Lease"), (2) that certain Lease Agreement dated as of September 1, 2013 by and between the City, as Lessor, and Developer, as Lessee (the "Lease Agreement"), (3) the interest of Developer, if any, in and to that certain Trust Indenture dated as of September 1, 2013 between the City and UMB Bank, N.A., as trustee (the "Trustee") (the "Indenture"), (4) that certain Performance Agreement dated as of September 1, 2013 between the City and Developer (the "Performance Agreement"), and (5) that certain Origination Fee Agreement dated as of September 1, 2013 between the City and Developer (the "Origination Fee Agreement", and collectively with the Base Lease, the Lease Agreement, the Indenture, and the Performance Agreement, the "Documents"), and (b) the associated transfer to Purchaser of all outstanding Bonds (as defined in the Indenture), the City hereby certifies to Purchaser as follows:

1. The attached CD-ROM contains a true, correct, and complete copy of the Base Lease. The Base Lease has not been assigned, modified, supplemented, or amended in any way, except for those assignments, modifications, supplements, or amendments, if any, attached hereto. The Base Lease is in full force and effect.

2. The attached CD-ROM contains a true, correct, and complete copy of the Lease Agreement. The Lease Agreement has not been assigned, modified, supplemented, or amended in any way, except for those assignments, modifications, supplements, or amendments, if any, attached hereto. The Lease Agreement is in full force and effect.

3. The attached CD-ROM contains a true, correct, and complete copy of the Indenture. The Indenture has not been assigned, modified, supplemented, or amended in any way, except for those assignments, modifications, supplements, or amendments, if any, attached hereto. The Indenture is in full force and effect.

4. The attached CD-ROM contains a true, correct, and complete copy of the Performance Agreement. The Performance Agreement has not been assigned, modified, supplemented, or amended in any way, except for those assignments, modifications, supplements, or amendments, if any, attached hereto. The Performance Agreement is in full force and effect.

5. The attached CD-ROM contains a true, correct, and complete copy of the Origination Fee Agreement. The Origination Fee Agreement has not been assigned, modified, supplemented, or

amended in any way, except for those assignments, modifications, supplements, or amendments, if any, attached hereto. The Origination Fee Agreement is in full force and effect.

6. To the best of the City's actual knowledge, without any duty of inquiry, neither the City nor Developer is in default under the Documents, and no event has occurred and no condition exists that might constitute a default by the City or Developer under the Documents with the giving of notice or the passage of time, or would otherwise permit a termination or modification by the City under the Documents. As of the Effective Date, the City, to the best of the City's actual knowledge, without any duty of inquiry, has no claims or defenses against Developer or Purchaser arising out of the Documents, or in any way relating thereto.

7. The attached CD-ROM contains an opinion of SA Legal Advisors, LC, Bond Counsel to the City, which states that the portion of the Project financed with the proceeds of the Bonds is eligible to be exempt from ad valorem taxation subject to the limitations set forth in K.S.A. 79-201a and the Performance Agreement.

8. The City represents and warrants that it has all right, power, and authority to bind itself, and to execute and deliver this Consent and Estoppel Certificate.

IN WITNESS WHEREOF, the City has executed this Estoppel Certificate as of the Effective Date.

CITY OF EDGERTON, KANSAS

By: _____

Name: _____

Title: _____

EXHIBIT A

Base Lease Agreement

EXHIBIT B

Lease Agreement

EXHIBIT C

Indenture

EXHIBIT D

Performance Agreement

EXHIBIT E

Origination Fee Agreement