

RESOLUTION NO. 05-09-24C

A RESOLUTION CONSENTING TO THE EXECUTION AND DELIVERY OF ESTOPPEL CERTIFICATES, CONSENTS TO COLLATERAL ASSIGNMENTS, AND SUBORDINATION AGREEMENTS IN CONNECTION WITH NINE LOGISTICS PARK PROJECTS

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 IV, LLC Project), Series 2014 (the “ELHC 4 Bonds”), in the aggregate maximum principal amount of \$25,000,000, pursuant to a Trust Indenture dated as of May 1, 2014, 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 574,111 sq. ft. warehouse and distribution facility, located at 18905 Kill Creek Road, Edgerton, Kansas (the “ELHC 4 Project”); and

WHEREAS, the ELHC 4 Project was leased by ELHC IV, LLC, a Kansas limited liability company (“ELHC 4”), to the City pursuant to a Base Lease Agreement dated as of May 1, 2014, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 4 and the City, and the Project was subleased by the City to ELHC 4 pursuant to a Lease Agreement dated as of May 1, 2014, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 4; and

WHEREAS, ELHC 4, with the consent of the City, assigned the ELHC 4 Bonds and the various bond documents to IPIV Kill Creek LLC, a Delaware limited liability company (the “IP 4”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC V, LLC Project), Series 2016 (the “ELHC 5 Bonds”), in the aggregate maximum principal amount of \$31,500,000, pursuant to a Trust Indenture dated as of April 1, 2016, between the City and BOKF, N.A., as successor trustee (“BOKF”), for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 653,000 sq. ft. warehouse and distribution facility, located at 31201 W. 187th Street, Edgerton, Kansas (the “ELHC 5 Project”); and

WHEREAS, the ELHC 5 Project was leased by ELHC V, LLC, a Kansas limited liability company (“ELHC 5”), to the City pursuant to a Base Lease Agreement dated as of April 1, 2016, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 5 and the City, and the ELHC 5 Project was subleased by the City to ELHC 5 pursuant to a Lease Agreement dated as of April 1, 2016, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 5; and

WHEREAS, ELHC 5, with the consent of the City, assigned the ELHC 5 Bonds and the various bond documents to IPV 187 Street LLC, a Delaware limited liability company (“IP 5”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XI, LLC Project), Series 2015 (the “ELHC 11 Bonds”), in the aggregate maximum principal amount of \$34,000,000, pursuant to a Trust Indenture dated as of February 1, 2015 (the “Indenture”), between the City and the Trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 765,160 sq. ft. warehouse and distribution facility, located at 30901 W. 191st Street, Edgerton, Kansas (the “ELHC 11 Project”); and

WHEREAS, the ELHC 11 Project was leased by ELHC XI, LLC, a Kansas limited liability company (“ELHC 11”), to the City pursuant to a Base Lease Agreement dated as of February 1, 2015, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 11 and the City, and the ELHC 11 Project was subleased by the City to ELHC 11 pursuant to a Lease Agreement dated as of February 1, 2015, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 11; and

WHEREAS, ELHC 11, with the consent of the City, assigned the ELHC 11 Bonds and the various bond documents to IPXI 191 Street LLC, a Delaware limited liability company (“IP 11”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XII, LLC Project), Series 2015 (the “ELHC 12 Bonds”), in the aggregate maximum principal amount of \$29,000,000, pursuant to a Trust Indenture dated as of February 1, 2015, between the City and the Trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 657,000 sq. ft. warehouse and distribution facility, located at 30801 W. 191st Street, Edgerton, Kansas (the “ELHC 12 Project”); and

WHEREAS, the ELHC 12 Project was leased by ELHC XII, LLC, a Kansas limited liability company (“ELHC 12”), to the City pursuant to a Base Lease Agreement dated as of February 1, 2015, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 12 and the City, and the ELHC 12 Project was subleased by the City to ELHC 12 pursuant to a Lease Agreement dated as of February 1, 2015, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and the Assignor; and

WHEREAS, ELHC 12, with the consent of the City, assigned the ELHC 12 Bonds and the various bond documents to IPXII 191 Street LLC, a Delaware limited liability company (“IP 12”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XIV, LLC Project), Series 2015 (the “ELHC 14 2015 Bonds”), in the aggregate maximum principal amount of \$38,000,000, pursuant to a Trust Indenture dated as of December 1, 2015, between the City and the Trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 822,500 sq. ft. warehouse and distribution

facility, located at 19451 and 19535 Waverly Road, Edgerton, Kansas (the “ELHC 14 Project”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XIV, LLC Project), Series 2016 (the “ELHC 14 2016 Bonds”), in the aggregate maximum principal amount of \$25,000,000, pursuant to a First Supplemental Trust Indenture dated as of September 1, 2016, between the City and the Trustee, for the purpose of completing the improving and equipping of the ELHC 14 Project; and

WHEREAS, the ELHC 14 Project was leased by ELHC XIV, LLC, a Kansas limited liability company (“ELHC 14”), to the City pursuant to a Base Lease Agreement dated as of December 1, 2015, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of September 1, 2016, and as further supplemented and amended by a Second Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 14 and the City, and the ELHC 14 Project was subleased by the City to ELHC 14 pursuant to a Lease Agreement dated as of December 1, 2015, as supplemented and amended by a First Supplemental Lease Agreement dated as of September 1, 2016, and as further supplemented and amended by a Second Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 14; and

WHEREAS, ELHC 14, with the consent of the City, assigned the ELHC 14 Bonds and the ELHC 16 Bonds and the various bond documents to IPXIV Waverly LLC, a Delaware limited liability company (“IP 14”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XV, LLC Project), Series 2016 (the “ELHC 15 Bonds”), in the aggregate maximum principal amount of \$25,200,000, pursuant to a Trust Indenture dated as of January 1, 2016 (the “Indenture”), between the City and the Trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 548,000 sq. ft. warehouse and distribution facility, located at 19351 Montrose Street, Edgerton, Kansas (the “ELHC 15 Project”); and

WHEREAS, the ELHC 15 Project was leased by ELHC XV, LLC, a Kansas limited liability company (“ELHC 15”), to the City pursuant to a Base Lease Agreement dated as of January 1, 2016, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC 15 and the City, and the Project was subleased by the City to ELHC 15 pursuant to a Lease Agreement dated as of January 1, 2016, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 15; and

WHEREAS, ELHC 15, with the consent of the City, assigned the ELHC 15 Bonds and the various bond documents to IPXV Montrose LLC, a Delaware limited liability company (“IP 15”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XXXI, LLC Project), Series 2016 (the “ELHC 31 Bonds”), in the aggregate maximum principal amount of \$26,500,000, pursuant to a Trust Indenture dated as of August 1, 2016, between the City and the Trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a

commercial project, consisting of an approximately 378,000 sq. ft. warehouse and distribution facility, located at 31800 W. 196th Street, Edgerton, Kansas (the “ELHC 31 Project”); and

WHEREAS, the ELHC 31 Project was leased by ELHC XXXI, LLC, a Kansas limited liability company (“ELHC 31”), to the City pursuant to a Base Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Base Lease Agreement dated as of May 1, 2017, between ELHC and the City, and the ELHC 31 Project was subleased by the City to ELHC 31 pursuant to a Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Lease Agreement dated as of May 1, 2017, between the City and ELHC 31; and

WHEREAS, ELHC 31, with the consent of the City, assigned the ELHC 31 Bonds and the various bond documents to IPXXXI 196 Street LLC, a Delaware limited liability company (“IP 31”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XXXII, LLC Project), Series 2016 (the “ELHC 32 Bonds”), in the aggregate maximum principal amount of \$38,250,000, pursuant to a Trust Indenture dated as of August 1, 2016, between the City and BOK, as successor trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 765,000 sq. ft. warehouse and distribution facility, located at 31450 W. 196th Street, Edgerton, Kansas (the “ELHC 32 Project”); and

WHEREAS, the ELHC 32 Project was leased by ELHC XXXII, LLC, a Kansas limited liability company (“ELHC 32”), to the City pursuant to a Base Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Base Lease Agreement, between ELHC 32 and the City, and the ELHC 32 Project was subleased by the City to ELHC 32 pursuant to a Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Lease Agreement, between the City and ELHC 32; and

WHEREAS, ELHC 32, with the consent of the City, assigned the ELHC 32 Bonds and the various bond documents to IPXXXII 196 Street LLC, a Delaware limited liability company (“IP 32”); and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XXXIII, LLC Project), Series 2016 (the “ELHC 33 Bonds”), in the aggregate maximum principal amount of \$46,350,000, pursuant to a Trust Indenture dated as of August 1, 2016, between the City and BOK, as successor trustee, for the purpose of acquiring, purchasing, improving, equipping and constructing a commercial project, consisting of an approximately 927,000 sq. ft. warehouse and distribution facility, located at 31100 W. 196th Street, Edgerton, Kansas (the “ELHC 33 Project”); and

WHEREAS, the ELHC 33 Project was leased by ELHC XXXIII, LLC, a Kansas limited liability company (“ELHC 33”), to the City pursuant to a Base Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Base Lease Agreement, between ELHC 33 and the City, and the ELHC 33 Project was subleased by the City to ELHC 33 pursuant to a Lease Agreement dated as of August 1, 2016, as supplemented and amended by a First Supplemental Lease Agreement, between the City and ELHC 33; and

WHEREAS, ELHC 33, with the consent of the City, assigned the ELHC 33 Bonds and the various bond documents to IPXXXIII 196 Street LLC, a Delaware limited liability company (“IP 33”); and

WHEREAS, IP 4 is refinancing the ELHC 4 Project with Massachusetts Mutual Life Insurance Company, a Massachusetts corporation (the “Lender”), and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 4 Project, and the City desires to approve such documents; and

WHEREAS, IP 5 is refinancing the ELHC 5 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 5 Project, and the City desires to approve such documents; and

WHEREAS, IP 11 is refinancing the ELHC 11 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 11 Project, and the City desires to approve such documents; and

WHEREAS, IP 12 is refinancing the ELHC 12 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 12 Project, and the City desires to approve such documents; and

WHEREAS, IP 14 is refinancing the ELHC 14 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 14 Project, and the City desires to approve such documents; and

WHEREAS, IP 15 is refinancing the ELHC 15 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 15 Project, and the City desires to approve such documents; and

WHEREAS, IP 31 is refinancing the ELHC 31 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 31 Project, and the City desires to approve such documents; and

WHEREAS, IP 32 is refinancing the ELHC 32 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 32 Project, and the City desires to approve such documents; and

WHEREAS, IP 33 is refinancing the ELHC 33 Project with the Lender, and, in connection with the refinancing, the Lender is requesting that the City deliver an estoppel certificate, a collateral assignment, and a subordination agreement with respect to the ELHC 33 Project, and the City desires to approve such documents.

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

Section 1. Authorization and Execution of Estoppel Certificates. The Governing Body hereby approves of the form of the Estoppel Certificate, in substantially the form attached to the item summary presented to and reviewed by the Governing Body of the City at this meeting (a copy of which documents, 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 following estoppel certificates (the “Estoppel Certificates”):

- a. Estoppel Certificate in favor of IP 4 and the Lender with respect to the ELHC 4 Project and the ELHC 4 Bonds;
- b. Estoppel Certificate in favor of IP 5 and the Lender with respect to the ELHC 5 Project and the ELHC 5 Bonds;
- c. Estoppel Certificate in favor of IP 11 and the Lender with respect to the ELHC 11 Project and the ELHC 11 Bonds;
- d. Estoppel Certificate in favor of IP 12 and the Lender with respect to the ELHC 12 Project and the ELHC 12 Bonds;
- e. Estoppel Certificate in favor of IP 14 and the Lender with respect to the ELHC 14 Project and the ELHC 14 2015 Bonds and the ELHC 14 2015 Bonds;
- f. Estoppel Certificate in favor of IP 15 and the Lender with respect to the ELHC 15 Project and the ELHC 15 Bonds;
- g. Estoppel Certificate in favor of IP 31 and the Lender with respect to the ELHC 31 Project and the ELHC 31 Bonds;
- h. Estoppel Certificate in favor of IP 32 and the Lender with respect to the ELHC 32 Project and the ELHC 32 Bonds; and
- i. Estoppel Certificate in favor of IP 33 and the Lender with respect to the ELHC 33 Project and the ELHC 33 Bonds;

The Estoppel Certificates shall be executed for and on behalf of and as the act and deed of the City, in substantially the form presented. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to each of the Estoppel Certificates.

Section 2. Authorization and Execution of Consent to Collateral Assignments. The Governing Body hereby approves of the form of the City Consent to Collateral Assignment of IRB Documents, in substantially the form attached to the item summary presented to and reviewed by the Governing Body of the City at this meeting (a copy of which documents, 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 following consents (the “Consents”):

- a. City Consent to Collateral Assignment of IRB Documents between IP 4 and the Lender with respect to the ELHC 4 Project and the ELHC 4 Bonds;
- b. City Consent to Collateral Assignment of IRB Documents between IP 5 and the Lender with respect to the ELHC 5 Project and the ELHC 5 Bonds;
- c. City Consent to Collateral Assignment of IRB Documents between IP 11 and the Lender with respect to the ELHC 11 Project and the ELHC 11 Bonds;
- d. City Consent to Collateral Assignment of IRB Documents between IP 12 and the Lender with respect to the ELHC 12 Project and the ELHC 12 Bonds;
- e. City Consent to Collateral Assignment of IRB Documents between IP 14 and the Lender with respect to the ELHC 14 Project and the ELHC 14 2015 Bonds and the ELHC 14 2016 Bonds;
- f. City Consent to Collateral Assignment of IRB Documents between IP 15 and the Lender with respect to the ELHC 15 Project and the ELHC 15 Bonds;
- g. City Consent to Collateral Assignment of IRB Documents between IP 31 and the Lender with respect to the ELHC 31 Project and the ELHC 31 Bonds;
- h. City Consent to Collateral Assignment of IRB Documents between IP 32 and the Lender with respect to the ELHC 32 Project and the ELHC 32 Bonds; and
- i. City Consent to Collateral Assignment of IRB Documents between IP 33 and the Lender with respect to the ELHC 33 Project and the ELHC 33 Bonds.

The Consents shall be executed for and on behalf of and as the act and deed of the City, in substantially the form presented. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to each of the Consents.

Section 3. Authorization and Execution of Subordination. The Governing Body hereby approves of the form of the Subordination/Attornment Agreement (the “Subordination”), in substantially the form attached to the item summary presented to and reviewed by the Governing Body of the City at this meeting (a copy of which documents, 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 following subordinations (the “Subordinations”):

- a. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 4 Project and the ELHC 4 Bonds;
- b. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 5 Project and the ELHC 5 Bonds;
- c. Subordination/Attornment Agreement from the City to the Lender with respect to the ELHC 11 Project and the ELHC 11 Bonds;

Approved as to form:

/s/
Scott W. Anderson, Bond Counsel

Estoppel, Collateral Assignment, Subordination Resolution
ELHC 4,5,11,12,14,15,31,32,33 Projects