

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ERLANGER, KENTUCKY, AUTHORIZING THE EXECUTION OF AN ASSIGNMENT OF AGREEMENT OF LEASE FROM ECC BLDG 3, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO 660 ERLANGER ROAD, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RELATED TO ITS \$22,000,000 MAXIMUM PRINCIPAL AMOUNT TAXABLE INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2018B (ERLANGER COMMERCE CENTER PROJECT) (THE "BONDS"), AND AUTHORIZING OTHER DOCUMENTS RELATED TO THE TRANSFER OF THE LEASE AND BONDS, INCLUDING, BUT NOT LIMITED TO THE EXECUTION OF AMENDMENTS TO CERTAIN DOCUMENTS, INCLUDING A FIRST AMENDMENT TO TRUST INDENTURE, A FIRST AMENDMENT TO THE AGREEMENT OF LEASE OR AN AMENDED AND RESTATED AGREEMENT OF LEASE, AN AMENDED AND RESTATED HOME OFFICE PAYMENT AGREEMENT, AN AGREEMENT IN LIEU OF TAXES, AND DIRECTIONS TO THE TRUSTEE TO TRANSFER TO BONDS TO 660 ERLANGER ROAD, LLC, AND AUTHORIZING THE EXECUTION OF A LEASEHOLD MORTGAGE WITH A FEE JOINDER RELATED TO A MORTGAGE GRANTED BY 660 ERLANGER ROAD, LLC TO ITS LENDER, AND OTHER DOCUMENTS RELATED THERETO.

WHEREAS, the City of Erlanger, Kentucky (the "City") previously delivered its \$22,000,000 Maximum Aggregate Principal Amount Taxable Industrial Building Revenue Bonds, Series 2018B (the Erlanger Commerce Center Project) (the "Bonds") of which \$19,471,000 of the authorized amount have been issued through the execution of Bond R-1, with an issuance date of August 23, 2018; and

WHEREAS, ECC BLDG 3, LLC, a Delaware limited liability company, ("ECC3") is the holder and owner of 100% of the Bonds; and

WHEREAS, the Bonds were issued subject to the terms of an Agreement of Lease between the City and ECC3, dated August 23, 2018 (the "Lease"), and recorded in ORC 6487, Page 164 of the records of the Kenton County Clerk at Covington, Kentucky, and the Bonds were secured by a Trust Indenture between the City and The Huntington National Bank (the "Trustee"), dated August 23, 2018; and

WHEREAS, ECC3 has entered into a purchase contract to transfer its interest in the Lease and Bonds to 660 Erlanger Road, LLC, a Delaware limited liability company ("660 Erlanger"); and

WHEREAS, in furtherance of the transfer of the Lease and Bonds to 660 Erlanger, ECC3 and 660 Erlanger have requested the City authorize the execution of certain documents, and amend certain documents related to the Bonds and Lease, including an Assignment of

Agreement of Lease, a First Amendment to Trust Indenture, a First Amendment to the Agreement of Lease or An Amended and Restated Agreement of Lease, and an Amended and Restated Home Office Payment Agreement, an Agreement In Lieu of Taxes, and directions to the Trustee to issue a new Bonds to replace Bond R-1, being Bond R-2, in the name of 660 Erlanger; and

WHEREAS, related to its purchase of the Lease and Bonds from ECC3, 660 Erlanger may need to the City to execute a leasehold mortgage related to the property subject to the Lease, along with a fee joinder to 660 Erlanger's lender, along certain other lender related documents (the 'Lender Documents').

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ERLANGER, KENTUCKY AS FOLLOWS:

SECTION I

1. That nothing herein shall extend the maturity date of the Bonds or the Lease.
2. That the City hereby approves the transfer of the Lease and Bonds from ECC3 to 660 Erlanger, and the execution of an Assignment of Agreement of Lease.
3. That (i) the First Amendment to Trust Indenture, (ii) the First Amendment to the Agreement of Lease or An Amended and Restated Agreement of Lease, (iii) an Agreement In Lieu of Taxes and (iv) an Amended and the Amended Restated Home Office Payment Agreement, and other related documents (collectively the "Bond Documents"), are hereby accepted and approved, and authorized for execution by the City.
4. That the Mayor is hereby authorized to execute and deliver on behalf of the City documents required to transfer the Bonds to 660 Erlanger, including directions to the Trustee to transfer Bond R-1 to 660 Erlanger, and to cancel Bond R-1 and issue a new Bond R-2 to 660 Erlanger.
5. That the City approves the execution of any reasonable Lender Documents to effectuate the purposes of this Resolution, and the amendment of the Bond Documents, including, but not limited to, an assignment of the Bond Documents, estoppel certificates, and the execution of a fee mortgage or a joinder to a leasehold mortgage, assignment of rents and leases, etc., on condition that any such Lender Documents provided that the City shall have no obligation to the payment of any loan or other obligations related thereto.

6. That the Mayor and City Clerk are hereby authorized and directed to execute the Assignment of Agreement of Lease, the Bond Documents and the Lender Documents, on behalf of the City and to execute all necessary documents, instruments and obligations of the City in order to effectively carry out the intent and purpose of this Resolution and of the Bond Documents and the Lender Documents, all without expense to the City. Copies of the Assignment of Agreement of Lease, the Bond Documents and the Lender Documents shall be made part of this Resolution the same as if copied in full herein, and such copies shall be filed in the records of the City with this Resolution at the time of their execution and delivery.

7. That the approval of the Assignment of Agreement of Lease and the Bond Documents to 660 Erlanger and the Lender Documents by the City shall be evidenced by the passage of this Resolution and by the furnishing of a certified copy of same to ECC3 and 660 Erlanger.

8. If any section, paragraph, clause or provision of this Resolution shall be ruled by any court of competent jurisdiction to be invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions hereof.

9. To the extent any ordinances, orders, resolutions or parts thereof may be in conflict, the provisions of this Resolution shall prevail

SECTION II

That this Resolution shall be signed by the Mayor, attested to by the City Clerk, recorded and be effective upon adoption

INTRODUCED, SECONDED, READ AND ADOPTED AT A DULY CONVENED MEETING OF THE CITY COUNCIL OF THE CITY OF ERLANGER, KENTUCKY, held on the ____ day of _____, 2022, on the same occasion signed in open session by the Mayor as evidence of his approval, ordered to be filed and recorded as required by law, and declared to be in full force and effect according to law.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of Erlanger, Kentucky, and as such City Clerk, I further certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by the City Council of said City at a duly convened meeting held on the ____ day of _____, 2022, signed by the Mayor, duly filed and recorded in my office, all as appears from the official records of said City in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this ____ day of _____, 2022.

CITY CLERK

(SEAL)