

ORDINANCE NO. 49-661

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS, SERIES I, 2014 (LUX BUILDING, LLC) (TAXABLE UNDER FEDERAL LAW) AND SUBORDINATED INDUSTRIAL REVENUE BONDS, SERIES II, 2014 (LUX BUILDING, LLC) (TAXABLE UNDER FEDERAL LAW) IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$14,450,000 FOR THE PURPOSE OF CONSTRUCTING AND ACQUIRING A COMMERCIAL FACILITY; AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

WHEREAS, the City of Wichita, Kansas (the “Issuer”), is authorized by K.S.A. 12-1740 *et seq.*, as amended (the “Act”), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities; and

WHEREAS, the Issuer has found and does find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its industrial revenue bonds in the aggregate principal amount of not to exceed \$14,450,000 (the “Bonds” as further described in this Ordinance), for the purpose of paying the costs of constructing and acquiring a commercial facility (the “Project”) as more fully described in the Indenture (as herein defined); and

WHEREAS, to provide for the financing of the Project, the owner of the Project, LUX Building, LLC, a Kansas limited liability company (the “Tenant”), will lease the Project to the Issuer pursuant to a Base Lease (as herein defined) and the Issuer will lease the Project back to the Tenant pursuant to a Lease (as herein defined); and

WHEREAS, the Bonds and the interest thereon shall not be a general obligation of the Issuer, shall not be payable in any manner by taxation and shall be payable solely from the trust estate established under the Indenture, including revenues from the Lease of the Project; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds to execute and deliver (i) a Base Lease Agreement dated as of February 1, 2014 (the “Base Lease”), with the Tenant in consideration of the acquisition of leasehold rights by the Issuer as provided for therein; (ii) a Trust Indenture dated as of February 1, 2014 (the “Indenture”), with The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), prescribing the terms and conditions of issuing and securing the Bonds; (iii) a Lease dated as of February 1, 2014 (the “Lease”), with the Tenant in consideration of payments of Basic Rent and other payments provided for therein; (iv) a Bond Placement Agreement providing for the sale of the Series I, 2014 Bonds (as herein defined) by the Issuer to INTRUST Bank, N.A. (the “Series I, 2014 BPA”); (v) a Bond Placement Agreement providing for the sale of the

Series II, 2014 Bonds (as herein defined) by the Issuer to the Tenant (the “Series II, 2014 BPA”); and (vi) an Administrative Service Fee Agreement between the City and the Tenant (the “Agreement”) (the Base Lease, the Indenture, the Lease, the Series I, 2014 BPA, the Series II, 2014 BPA and the Agreement are referred to collectively herein as the “Bond Documents”);

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Authority to Cause the Project to be Constructed and Acquired. The Governing Body of the Issuer hereby declares that the Project, if in being, would promote the welfare of the Issuer, and the Issuer is hereby authorized to cause the Project to be constructed and acquired all in the manner and as more particularly described in the Indenture, the Base Lease and the Lease hereinafter authorized.

Section 2. Authorization of and Security for the Bonds. The Issuer is hereby authorized and directed to issue the Bonds in the aggregate principal amount of not to exceed \$14,450,000, to be designated “City of Wichita, Kansas, Industrial Revenue Bonds, Series I, 2014 (LUX Building, LLC) (Taxable Under Federal Law)” (the “Series I, 2014 Bonds”) and “City of Wichita, Kansas, Subordinated Industrial Revenue Bonds, Series II, 2014 (LUX Building, LLC) (Taxable Under Federal Law)” (the “Series II, 2014 Bonds”). The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The Bonds shall be special limited obligations of the Issuer payable solely from the trust estate established under the Indenture, including revenues from the Lease of the Project. The Bonds shall not be general obligations of the Issuer, nor constitute a pledge of the full faith and credit of the Issuer and shall not be payable in any manner by taxation.

Section 3. Lease of the Project. The Issuer lease the Project from the Tenant pursuant to and in accordance with the provisions of the Base Lease in the form approved herein and shall cause the Project to be leased back to the Tenant pursuant to and in accordance with the provisions of the Lease in the form approved herein.

Section 4. Execution of Bonds and Bond Documents. The Mayor of the Issuer is hereby authorized and directed to execute the Bonds and deliver them to the Trustee for authentication on behalf of, and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor is further authorized and directed to execute and deliver the Bond Documents on behalf of, and as the act and deed of the Issuer in substantially the forms presented for review prior to final passage of this Ordinance, with such minor corrections or amendments thereto as the Mayor may approve, which approval shall be evidenced by his execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or any Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer’s official seal.

Section 5. Pledge of Net Revenues. The Issuer hereby pledges the net revenues generated under the Lease to the payment of the Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Bonds shall be deemed to have been paid within the meaning of the Indenture.

Section 6. Approval of the Guaranty Agreement. The form of Guaranty Agreement dated as of February 1, 2014, pursuant to which the Tenant, Eyster LB LLC, Eyster Opportunity Trust, and Eyster LLC, each, as a Guarantor, guarantees to the Trustee, for the benefit of the owners of the Series I, 2014 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the Series I, 2014 Bonds.

Section 7. Further Authority. The officers, agents and employees of the Issuer are hereby authorized and directed to take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Bonds and the Bond Documents as necessary to give effect to the transactions contemplated in this Ordinance and in the Bond Documents.

Section 8. Effective Date. This Ordinance shall take effect from and after its final passage by the Governing Body of the Issuer, signature by the Mayor and publication once in the official newspaper of the Issuer.

[Remainder of Page Intentionally Left Blank]

PASSED by the Governing Body of the City of Wichita, Kansas, and approved by the Mayor on February 11, 2014.

CITY OF WICHITA, KANSAS

(Seal)

By _____
Carl Brewer, Mayor

Attest:

By _____
Karen Sublett, City Clerk

Approved as to form:

By _____
Gary E. Rebenstorf, City Attorney