

RESOLUTION NO. 16-026

OF THE

CITY OF WICHITA, KANSAS

RELATING TO:

NOT TO EXCEED \$3,000,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES II-A, 2005
(CAP CARPET, INC. PROJECT)

\$1,000,000
SUBORDINATED TAXABLE INDUSTRIAL REVENUE BONDS
SERIES II-B, 2005
(CAP CARPET, INC. PROJECT)

RESOLUTION NO. 16-026

A RESOLUTION OF THE CITY OF WICHITA, KANSAS APPROVING THE SALE OF A CERTAIN PROJECT FINANCED WITH THE PROCEEDS OF REVENUE BONDS OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF (1) A SPECIAL WARRANTY DEED, (2) A BILL OF SALE, (3) A TERMINATION AND RELEASE OF LEASE AND SUBLEASE, AND (4) A SATISFACTION, DISCHARGE AND RELEASE OF INDENTURE.

WHEREAS, the City of Wichita, Kansas is a municipal corporation and city of the first class organized under the laws of the State of Kansas (the "Issuer"); and

WHEREAS, the Issuer is authorized pursuant to K.S.A. 12-1740 *et seq.* to issue its revenue bonds for the purpose of paying all or any portion of the cost of purchasing, acquiring, constructing and equipping facilities for commercial, hospital and recreational purposes and to enter into leases with any person, firm or corporation for such facilities; and

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series II-A, 2005 (CAP Carpet, Inc. Project) in the original aggregate amount of not to exceed \$3,000,000 and Subordinated Taxable Industrial Revenue Bonds, Series II-B, 2005 (CAP Carpet, Inc. Project) in the original aggregate amount of \$1,000,000 (collectively, the "Bonds"), of which none remain Outstanding, for the purpose of constructing, improving and equipping a corporate office and warehouse distribution facility located in the City of Wichita, Kansas (the "Project"); and

WHEREAS, in connection with the issuance of the Bonds, the Project was leased by the Issuer to Ridge Plaza Ventures, LLC, a Kansas limited liability company (the "Tenant"), pursuant to a certain Lease Agreement, dated as of April 1, 2005 (the "Lease"), and subleased by the Tenant to CAP Carpet, Inc. (the "Sublessee") pursuant to a certain Sublease Agreement, dated as of April 1, 2005; and

WHEREAS, the Bonds were payable from the Trust Estate created pursuant to a certain Trust Indenture, dated as of April 1, 2005 (the "Indenture"), by and between the Issuer and Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the "Trustee"), which Trust Estate included a pledge of the Project and revenue received from the fees charged and Basic Rent received pursuant to the Lease; and

WHEREAS, the payment of the principal of and interest on the Bonds was guaranteed by the Tenant and CAP Carpet, Inc. pursuant to the terms of a certain Guaranty Agreement, dated as of April 1, 2005; and

WHEREAS, the payment of the principal of and interest on the Bonds was further guaranteed by Lavone J. Pirner, Jane R. Pirner, Aaron J. Pirner, and Angela K. Pirner pursuant to the terms of a certain Individual Guaranty Agreement, dated as of April 1, 2005; and

WHEREAS, Section 16.1 of the Lease provides for the purchase of the Project by the Tenant upon the proper exercise of the Tenant's option to purchase and the payment (pursuant to Section 16.2) to the Trustee of the full amount necessary and incidental to the retirement and defeasance of the Bonds, plus the payment to the Issuer of \$1,000; and

WHEREAS, all of the principal of and interest on the Bonds have been paid in full upon their respective maturity dates; and

WHEREAS, the Tenant has provided notice of its election to purchase the Project on or about February 9, 2016 (the "Closing Date"); and

WHEREAS, the Issuer finds it necessary to authorize the execution and delivery of (1) a Special Warranty Deed, (2) Bill of Sale, (3) Termination and Release of Lease and Sublease, and (4) Satisfaction, Release and Discharge of Indenture in connection with the exercise by the Tenant of its option to purchase the Project.

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

Section 1. Definition of Terms. All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Lease and Indenture.

Section 2. Sale of the Project. The Issuer is hereby authorized to convey the Project to the Tenant upon satisfaction of the conditions contained in the Lease, and upon receipt by the Issuer of the \$1,000 to which it is entitled pursuant to Section 16.2 of the Lease. Issuer hereby acknowledges proper notice of the Tenant's exercise of its option to purchase the Project or otherwise waives any additional notice requirements under the Lease.

Section 3. Authorization of Special Warranty Deed. The Issuer is hereby authorized to execute and deliver its Special Warranty Deed (the "Special Warranty Deed") for the real property portions of the Project to the Tenant, upon satisfaction of the conditions contained in the Lease and set forth in Section 2 hereof, and in substantially the same form as the deed before the governing body on this date.

Section 4. Authorization of Bill of Sale. The Issuer is hereby authorized to execute and deliver its Bill of Sale (the "Bill of Sale") for the personal property portions of the Project to the Tenant, upon satisfaction of the conditions contained in the Lease and set forth in Section 2 hereof, and in substantially the same form as the Bill of Sale before the governing body on this date.

Section 5. Authorization of Termination and Release of Lease and Sublease. The Issuer is hereby authorized to execute and deliver a Termination and Release of Lease and Sublease (the "Lease Termination") by and between the Tenant, the Issuer, the Sublessee, and the Trustee, upon satisfaction of the conditions contained in the Lease and set forth in Section 2 hereof, and in substantially the same form as the Lease Termination before the governing body on this date.

Section 6. Authorization of Satisfaction, Release and Discharge of Indenture. The Issuer is hereby authorized to execute and deliver a Satisfaction, Release and Discharge of Indenture (the “Indenture Release”) by and between the Issuer and the Trustee, upon satisfaction of the conditions contained in the Lease and set forth in Section 2 hereof, and in substantially the same form as the Indenture Release before the governing body on this date.

Section 7. Execution of Documents. The Mayor of the Issuer is hereby authorized and directed to execute the Special Warranty Deed, Bill of Sale, Lease Termination and Indenture Release for and on behalf of and as the act and deed of the Issuer in substantially the forms as they are presented today with such minor corrections or amendments thereto as the Mayor of the governing body of the Issuer shall 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 Resolution, including specifically any applicable UCC Termination Statements. The City Clerk or any Deputy City Clerk of the Issuer are hereby authorized and directed to attest the execution of the Special Warranty Deed, Bill of Sale, Lease Termination and Indenture Release, on behalf of the Issuer and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 8. Delivery of Documents. The Special Warranty Deed, Bill of Sale, Lease Termination and Indenture Release shall be delivered by the Mayor, City Clerk or other appropriate staff member of the Issuer concurrently upon the satisfaction of the requirements set forth in the Lease and in Section 2 of this Resolution. Prior escrow delivery of the aforesaid documents may be made to Tenant’s Counsel or upon the establishment of proper escrow arrangements for escrow of the Special Warranty Deed, Bill of Sale, Lease Termination and Indenture Release with a licensed title company having offices within Sedgwick County, Kansas, which title company expressly agrees to release such documents only upon written evidence of the satisfaction of the requirements of the Lease, Indenture and Section 2 of this Resolution.

Section 9. Further Authority. The Issuer shall, and 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 and comply with the provisions of this Resolution and to carry out, comply with and perform the duties of the Issuer with respect to the Special Warranty Deed, Bill of Sale, Lease Termination and Indenture Release and the early redemption, satisfaction and discharge of the Bonds, all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 10. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the governing body of the Issuer.

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PASSED, ADOPTED AND APPROVED by the governing body of the City of Wichita, Kansas this 2nd day of February, 2016.

CITY OF WICHITA, KANSAS

[seal]

By _____
Jeff Longwell, Mayor

ATTEST:

By _____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By _____
Jennifer Magaña, City Attorney