

ORDINANCE NO. 51-750

AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WICHITA, KANSAS AND WICHITA RIVERFRONT LP AND EPC REAL ESTATE GROUP LLC, AS DEVELOPER; AUTHORIZING THE EXECUTION OF OTHER DOCUMENTS RELATED THERETO; AND AUTHORIZING THE ISSUANCE OF BONDS TO FINANCE CERTAIN COSTS RELATED THERETO.

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation duly organized and validly existing under the laws of the State of Kansas as a city of the first class; and

WHEREAS, the City and Wichita Riverfront LP, a Delaware limited partnership, and EPC Real Estate Group LLC, a Kansas limited liability company (collectively, the “Developer”) have negotiated the terms of a Phase One Development Agreement, dated as of April 29, 2022 (the “Development Agreement”) and certain other documents relating to the development and construction of a mixed hotel, office, retail, and commercial development north of the intersection of McLean Boulevard and Maple Street in the vicinity of the Riverfront Stadium (collectively, the “Project”); and

WHEREAS, the construction of the Project will stimulate and foster economic development in the City and its environs in order to enhance and provide for the general and economic development and welfare of the City and its citizens, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State; and

WHEREAS, pursuant to the Constitution, particularly Article 12, Section 5 thereof, and statutes of the State of Kansas, particularly of K.S.A. 12-101 *et seq.*, as amended (collectively, the “Home Rule Act”), K.S.A. 12-1740 *et seq.* (the “IRB Act”), and K.S.A. 13-1017, as amended by Charter Ordinance No. 228 of the City, the Governing Body hereby finds and determines that it is necessary and desirable and in the interest and for the general economic welfare of the City and its inhabitants, that the City: (a) enter into the Development Agreement; and (b) authorize the issuance of bonds of the City, in one or more series, pursuant to the IRB Act, all as described in and in the amounts set forth in the Development Agreement (the “Bonds”); and

WHEREAS, the Governing Body hereby further finds and determines that it is necessary and advisable and in the interest of the public health, safety and welfare, including economic development, of the City, to authorize by home rule ordinance the execution of the Development Agreement and other related documents and authorize the issuance of the Bonds to provide funds to pay a portion of the costs of the Project.

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

Section 1. Economic Development. The Governing Body hereby finds and determines that the Project will stimulate and foster economic development in the City and its environs in order to enhance and provide for the general and economic development and welfare of the City and its citizens and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State.

Section 2. Project Documents. The Development Agreement is hereby approved in substantially the form presented to the Governing Body with such alterations, changes or additions as may be approved by the City Manager and as to form by the City Attorney. The Mayor or Vice Mayor of the City is hereby authorized and directed to execute the Development Agreement and such other documents, statements, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and as described in the Development Agreement (together with the Development Agreement, collectively, the “Project Documents”) in such final form as are approved by the City Manager, or designate, and as to form by the City Attorney, and the execution or taking of such actions shall be conclusive evidence of such form, necessity or advisability. The City Clerk or any Deputy City Clerk is hereby authorized to attest to and affix the seal of the City to the Project Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this

Section 3. IRB Financing Authorization. The City is hereby authorized to proceed with the acquisition, construction and equipping of a portion of the Project and to issue its industrial revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$40,000,000 (the “Bonds”) to pay the costs thereof as more particularly set forth in the Development Agreement, subject to satisfaction of the conditions of issuance set forth herein. The issuance of the Bonds is subject to: (a) the Developer’s or authorized assignees’ (collectively, the “Developer”) written acceptance of a Letter of Intent containing the City’s conditions to the issuance of the Bonds in accordance with the City’s Economic Development Incentive Policy (the “Letter of Intent”); (b) the successful negotiation and sale of the Bonds to a purchaser or purchasers to be determined by the Developer and acceptable to the City (the “Purchaser”), which sale shall be the responsibility of the Developer and not the City; (c) the receipt of the approving legal opinion of Gilmore & Bell, P.C. (“Bond Counsel”) in form acceptable to the City, the Developer and the Purchaser; (d) the obtaining of all necessary governmental approvals to the issuance of the Bonds; (e) the commitment to and payment by the Developer or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the City and the City Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals; and (f) compliance with other provisions of the Development Agreement. The Mayor is hereby authorized to execute the Letter of Intent, and the City Clerk is authorized to deliver executed copies of this Ordinance and the Letter of Intent to the Developer. After the Developer has demonstrated compliance with the provisions of the Letter of Intent and the Development Agreement, the Mayor and City Clerk are authorized to execute a bond purchase agreement with the Purchaser and the Developer for the sale of the Bonds in a form satisfactory to the City Attorney and Bond Counsel.

Section 4. Sales Tax Exemption. The Governing Body hereby further determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the “Sales Tax Act”), particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the portion of the Project financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore. In the event that the Bonds are not issued for any reason, the Developer will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

Section 5. Further Authority. The City shall, and the officers, employees and agents of the City, including the City Attorney and Bond Counsel, are hereby authorized and directed to take such action, expend such funds and execute such other documents, certificates and instruments, as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with respect to the Project Documents including, but not limited to: (a) cooperate with the Developer in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property; and (b) execution on behalf of the City of

the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act.

Section 6. Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication of a summary thereof one time in the official City newspaper.

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PASSED by not less than two-thirds vote of the City Council of the City of Wichita, Kansas, on April 26, 2022.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, Director of Law and
City Attorney

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