

RESOLUTION NO. 22-116

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MANUFACTURING OR COMMERCIAL FACILITY TO BE LOCATED IN THE ENVIRONS OF SAID CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State of Kansas (the "State"); and

WHEREAS, the City Council (the "Governing Body") of the City desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the City is authorized to issue revenue bonds for such purposes; and

WHEREAS, the Governing Body determines it to be advisable and in the interest and for the welfare of the City and its inhabitants that revenue bonds of the City be authorized and issued, in one or more series, for the purpose of providing funds to finance the cost of a facility for manufacturing, aircraft modification, fit-out, aircraft conversions and repair (the "Project") to be located in the environs of the City and to be leased by the City to Air Capital Flight Line, LLC (the "Tenant") and subleased to a subtenant to be determined (the "Subtenant").

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

Section 1. Public Purpose. The Governing Body hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the City and its environs, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State.

Section 2. Authorization to Acquire Project; Intent to Issue Bonds. The City is hereby authorized to proceed with the acquisition, construction and equipping of the Project and to issue its revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$10,000,000 (collectively, the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

Section 3. Conditions to Issuance of Bonds. The issuance of the Bonds is subject to: (a) the Tenant's and Subtenant's written acceptance of a Letter of Intent containing the City's conditions to the issuance of the Bonds (the "Letter of Intent") in accordance with the City of Wichita/Sedgwick County Economic Development Guidelines (the "Guidelines"); (b) the successful negotiation and sale of the Bonds to a purchaser or purchasers to be determined by the Tenant and Subtenant and acceptable to the City (the

"Purchaser"), which sale shall be the responsibility of the Tenant and Subtenant 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 Tenant and Subtenant and the Purchaser; (d) the obtaining of all necessary governmental approvals to the issuance of the Bonds; and (e) the commitment to and payment by the Tenant, Subtenant 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) the execution and delivery by the Tenant, with approval of the Subtenant, of an agreement for payment in lieu of taxes referenced in **Section 4** hereof.

Section 4. Property Tax Exemption. The Governing Body hereby determines, that pursuant to the provisions of K.S.A. 79-201a, the Project, to the extent purchased or constructed with the proceeds of the Bonds, should be eligible for an exemption from payment of ad valorem property taxes for a period up to ten calendar years commencing with the year following the year in which the Bonds are issued, provided proper application is made therefor; and further provided no exemption may be granted from the ad valorem property tax levied: (a) by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto; (b) for the uses restricted pursuant to the provisions of K.S.A. 79-201a, *Second* and *Twenty-Fourth*; and (c) for real estate on which the Project is located.

Based on the application by the Tenant for the Project to be constructed under the City's Speculative Industrial/Flex Buildings (the "Speculative Building Program"), the Governing Body hereby conditionally approves a 95% ad valorem property tax exemption on the Bond-financed property not excluded in the prior sentence of this section, for a five year term, with a 50% ad valorem property tax exemption for an additional five year term to be considered thereafter, at the discretion of the Governing Body, all subject to the Tenant's ongoing compliance with the Guidelines and the Speculative Building Program.

In the event the Tenant enters into a sublease on or before December 31, 2022 with a Subtenant who will employ full-time equivalent employees being paid wages that would make the Project eligible under the Guidelines for a larger percentage of an ad valorem property tax exemption, and the Subtenant agrees to and signs the Letter of Intent dated April 19, 2022 between the City and the Tenant, the Governing Body conditionally approves the percentage of ad valorem property tax exemption on the Bond-financed property consistent with the Guidelines.

Prior to making a determination on an ad valorem property tax exemption, the Governing Body has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by the Act.

Section 5. Sales Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly K.S.A. 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and 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 and compliance with State Department of Revenue procedures and guidelines. In the event that the Bonds are not issued for any reason, the Tenant 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 6. Reliance by Tenant; Limited Liability of City. It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the

Bonds; provided that such expenditures incurred prior to the issuance of the Bonds are at the risk of the Tenant and Subtenant that the Bonds will actually be issued. Proceeds of Bonds may be used to reimburse the Tenant for such expenditures made not more than 60 days prior to the date this Resolution is adopted. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the City from the Project and not from any other fund or source. The City shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the City shall have no liability to the Tenant or Subtenant.

Section 7. Execution and Delivery of Documents. The Mayor is hereby authorized to execute the Letter of Intent, and the City Clerk is authorized to deliver executed copies of this Resolution and the Letter of Intent to the Tenant and Subtenant. After compliance with the provisions of the Letter of Intent by the Tenant and Subtenant has been demonstrated, the Mayor and City Clerk are authorized to execute a bond purchase agreement with the Purchaser and the Tenant and Subtenant for the sale of the Bonds in a form satisfactory to the City Attorney and Bond Counsel.

Section 8. Further Action. The Mayor, City Clerk and other officials, employees and agents of the City, including the City Attorney and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) 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; and (b) cooperate with the Tenant in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property.

Section 9. Effective Date. This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until December 31, 2023, unless extended by affirmative vote of a majority of the Governing Body.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

ADOPTED by the City Council of the City of Wichita, Kansas, on April 19, 2022.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, Director of Law and
City Attorney

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution adopted by the City Council of the City of Wichita, Kansas on April 19, 2022, as the same appears of record in my office.

DATED: April 19, 2022.

Karen Sublett, City Clerk

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON APRIL 19, 2022**

The City Council (the "Governing Body") of the City of Wichita, Kansas (the "City") met in regular session at the usual meeting place in the City, at 9:00 a.m., the following members being present and participating, to-wit:

Absent: .

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

Among other business, in accordance with notice published on April 8, 2022, in the *Wichita Eagle*, a public hearing was held by the Governing Body relating to the proposed issuance of not to exceed \$10,000,000 principal amount of Taxable Industrial Revenue Bonds (Building 165N Project) (the "Bonds"). All interested persons were afforded an opportunity to present their views on the issuance of the Bonds and the location and nature of the Project to be financed with the proceeds of the Bonds. Thereupon, the public hearing was closed.

Thereupon, there was presented a Resolution entitled:

**A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA,
KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE
INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE
ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MANUFACTURING
OR COMMERCIAL FACILITY TO BE LOCATED IN THE ENVIRONS OF SAID
CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.**

Thereupon, [] moved that said Resolution be adopted. The motion was seconded by []. Said Resolution was duly read and considered, and upon being put, the motion for the adoption of said Resolution was carried by the vote of the Governing Body, the vote being as follows:

Aye:

Nay:

Thereupon, the Resolution was then duly numbered Resolution No. 21-[], and was signed by the Mayor and attested by the Clerk.

(Other Proceedings)

* * * * *

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the City Council of the City of Wichita, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

Karen Sublett, City Clerk