

ORDINANCE NO. 50-173

**OF THE
CITY OF WICHITA, KANSAS**

**AUTHORIZING THE ISSUANCE OF
\$4,000,000 HEALTH CARE FACILITIES REVENUE BONDS
SERIES I, 2016
(AMERICAN BAPTIST ESTATES, INC.)**

(Published in *The Wichita Eagle*, on April 22, 2016)

ORDINANCE NO. 50-173

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS TO ISSUE ITS HEALTH CARE FACILITIES REVENUE BONDS, SERIES I, 2016 (AMERICAN BAPTIST ESTATES, INC.) FOR THE PURPOSE OF THE CONSTRUCTION, FURNISHING AND EQUIPPING OF ADDITIONS TO A CONTINUING CARE RETIREMENT FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS HAS FOUND AND DETERMINED:

A. 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.

B. Pursuant to Ordinance No. 49-413 of the Issuer adopted December 18, 2012 and a Trust Indenture dated as of December 1, 2012 (the "Original Indenture") between the Issuer and Security Bank of Kansas City, Kansas City, Kansas, as successor to UMB Bank, N.A., as trustee (the "Trustee"), the Issuer has previously issued its Health Care Facilities Revenue Refunding Bonds, Series IX, 2012 (American Baptist Estates, Inc.) in the original principal amount of \$2,250,000 (the "2012 Bonds"), for the purpose of refinancing the costs of the construction, furnishing and equipping of assisted living apartments at a continuing care retirement facility (the "2008 Project").

C. The 2008 Project was leased to American Baptist Estates, Inc., a Kansas nonprofit corporation (the "Tenant"), pursuant to the provisions of a certain Lease dated as of December 1, 2012 between the Issuer and the Tenant (the "Original Lease").

D. The Issuer's governing body has determined 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 Health Care Facilities Revenue Bonds, Series I, 2016 (American Baptist Estates, Inc.) in the aggregate principal amount of \$4,000,000 (the "2016 Bonds"), for the purpose of financing the costs of the demolition of existing structures and the construction, furnishing and equipping of independent living apartments at the Tenant's continuing care retirement facility (the "2016 Project"), as more fully described in the Supplemental Indenture and in the Supplemental Lease hereinafter authorized.

E. The Issuer's governing body finds that it is necessary and desirable in connection with the issuance of the 2016 Bonds to execute and deliver the following documents (collectively, the "Bond Documents"):

(i) Supplemental Trust Indenture No. 1 dated as of April 1, 2016 with the Trustee (the "Supplemental Indenture"), amending and supplementing the Original Indenture (as supplemented and amended, the "Indenture"), prescribing the terms and conditions of issuing and securing the 2016 Bonds;

(ii) Supplemental Lease No. 1 dated as of April 1, 2016 (the "Supplemental Lease") with the Tenant, amending and supplementing the Original Lease (as supplemented and amended, the

“Lease”), under which the Issuer will construct, furnish and equip the 2016 Project and continue to lease the 2008 Project and the 2016 Project (collectively, the “Project”) to the Tenant in consideration of Basic Rent and other payments;

(iii) Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the 2016 Bonds by the Issuer to Reidl First Securities Company of Kansas, Wichita, Kansas (the “Purchaser”), and

(iv) Tax Compliance Agreement among the Issuer, the Tenant and the Trustee.

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

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

Section 2. **Authority to Cause the 2016 Project to be Constructed, Furnished and Equipped.** The City shall cause the 2016 Project to be constructed, furnished and equipped in the manner and as more particularly described in the Supplemental Indenture and the Supplemental Lease hereinafter authorized.

Section 3. **Authorization of and Security for the Bonds.** The Issuer is authorized and directed to issue the 2016 Bonds, to be designated " City of Wichita Kansas Health Care Facilities Revenue Bonds, Series I, 2016 (American Baptist Estates, Inc.)" in the aggregate principal amount of \$4,000,000, for the purpose of providing funds to pay the costs of the construction, furnishing and equipping of the 2016 Project. The 2016 Bonds will be dated and bear interest, will mature and be payable at such times, will be in such forms, will be subject to redemption and payment prior to maturity, and will be issued according to the provisions, covenants and agreements in the Indenture. The 2016 Bonds will be special limited obligations of the Issuer payable solely from the Trust Estate under the Indenture, including revenues derived from the Lease of the Project. The 2016 Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer, and will not be payable in any manner by taxation.

Section 4. **Authorization of Supplemental Indenture.** The Issuer is hereby authorized to enter into the Supplemental Indenture with the Trustee in the form approved in this Ordinance. The Issuer will pledge the Trust Estate described in the Indenture to the Trustee for the benefit of the owners of the 2016 Bonds on the terms and conditions set forth in the Indenture.

Section 5. **Authorization of Supplemental Lease.** The Issuer is authorized to enter into the Supplemental Lease with the Tenant in the form approved in this Ordinance. The Issuer shall cause the 2016 Project to be acquired and leased by the Issuer to the Tenant pursuant to and in accordance with the provisions of the Lease.

Section 6. **Approval of Form of Guaranty Agreement.** The form of Guaranty Agreement pursuant to which the Tenant, as guarantor, guarantees to the Trustee, for the benefit of the owners of the 2016 Bonds, the full and prompt payment of the 2016 Bonds and interest thereon, is hereby approved.

Section 7. **Authorization of Bond Purchase Agreement.** The Issuer is authorized to sell the 2016 Bonds to the Purchaser, according to the terms and provisions of the Bond Purchase Agreement in the form approved in this Ordinance.

Section 8. **Execution of Bonds and Bond Documents.** The Mayor of the Issuer is authorized and directed to execute the 2016 Bonds and deliver them to the Trustee for authentication on behalf of the Issuer

in the manner provided by the Act and in the Indenture. The Mayor, or member of the Issuer's governing body authorized by law to exercise the powers and duties of the Mayor in the Mayor's absence, is further authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to final passage of this Ordinance, with such corrections or amendments as the Mayor or other person lawfully acting in the absence of the Mayor may approve, which approval shall be evidenced by his or her signature. The authorized signatory may sign and deliver all other documents, certificates or instruments as may be necessary or desirable to carry out the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the 2016 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 corporate seal.

Section 9. **Pledge of the Project and Net Lease Rentals.** The Issuer hereby pledges the Project, including the 2016 Project, and the net earnings generated under the Lease to the payment of the 2016 Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the 2016 Bonds are paid or deemed to have been paid under the Indenture.

Section 10. **Authority To Correct Errors, Etc.** The Mayor or member of the Issuer's governing body authorized to exercise the powers and duties of the Mayor in the Mayor's absence, the City Clerk and any Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed which may be necessary to correct errors or omissions therein or to conform the same to the other provisions of said instruments or to the provisions of this Ordinance.

Section 11. **Further Authority.** The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates 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 Series I, 2016 Bonds and the Bond Documents.

Section 12. **Effective Date.** This Ordinance shall take effect after its final passage by the governing body of the Issuer and publication once in the Issuer's official newspaper.

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PASSED by the governing body of the Issuer on April 19, 2016 and **SIGNED** by the Mayor.

(SEAL)

Jeff Longwell, Mayor

ATTEST:

Karen Sublette, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, Director of Law and City Attorney

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CERTIFICATE

I hereby certify that the attached copy is a true and correct copy of Ordinance No. ____ of the City of Wichita, Kansas duly passed by the governing body, signed by the Mayor and published in the official City newspaper on the respective dates stated in this ordinance, and that the signed original of such Ordinance is on file in my office.

[SEAL]

Karen Sublette, City Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON APRIL 12, 2016**

The governing body of the City of Wichita, Kansas 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 4, 2016, in the *Wichita Eagle*, a public hearing was held by the governing body relating to the proposed issuance of \$4,000,000 principal amount of Health Care Facility Revenue Bonds, Series I, 2016 (American Baptist Estates, Inc.). 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 for first reading an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS TO ISSUE ITS HEALTH CARE FACILITIES REVENUE BONDS, SERIES I, 2016 (AMERICAN BAPTIST ESTATES, INC.) FOR THE PURPOSE OF THE CONSTRUCTION, FURNISHING AND EQUIPPING OF ADDITIONS TO A CONTINUING CARE RETIREMENT FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

Thereupon, Councilmember _____ moved that said Ordinance be passed. The motion was seconded by Councilmember _____. Said Ordinance was duly read and considered, and upon being put, the motion for the passage upon first reading of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Aye:

Nay:

* * * * *

(Other Proceedings)

* * * * *

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body 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

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON APRIL 19, 2016**

The governing body of the City of Wichita, Kansas 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)

Thereupon, there was presented for second reading on the governing body's consent agenda an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS TO ISSUE ITS HEALTH CARE FACILITIES REVENUE BONDS, SERIES I, 2016 (AMERICAN BAPTIST ESTATES, INC.) FOR THE PURPOSE OF THE CONSTRUCTION, FURNISHING AND EQUIPPING OF ADDITIONS TO A CONTINUING CARE RETIREMENT FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

Thereupon, Councilmember _____ moved that the consent agenda be passed. The motion was seconded by Councilmember _____. The motion that the consent agenda be passed, including final passage of said Ordinance, was carried by the vote of the governing body, the vote being as follows:

Aye:

Nay:

Thereupon, the Ordinance was then duly numbered Ordinance No. 50-[___], was signed by the Mayor and attested by the Clerk, and the Ordinance was directed to be published one time in the official newspaper of the City.

(Other Proceedings)

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body 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