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RESOLUTION NO. 9121

A RESOLUTION introduced by City Manager Brent Trout determining the advisability of issuing Industrial Revenue Bonds of the City of Topeka, Kansas for the purpose of financing the construction, reconstruction, renovation, improvement, equipping and furnishing of commercial facilities located in said city; and authorizing execution of related documents

WHEREAS, the City of Topeka, Kansas (the "Issuer") desires to promote, stimulate and develop the general economic welfare and prosperity of the City of Topeka, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; 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 Issuer is authorized to issue revenue bonds for such purposes, and it is hereby found and determined to be advisable and in the interest and for the welfare of the Issuer and its inhabitants that revenue bonds of the Issuer in the not to exceed principal amount of \$17,800,000 be authorized and issued, in one or more series, to provide funds to pay the costs of constructing, reconstructing, renovating, improving equipping and furnishing of multi-unit commercial buildings (the "Project") located in the Issuer and to be leased by the Issuer to 29th Street Partners, LLC, a Kansas limited liability company, or another legal entity to be formed by the principals of 29th Street Partners, LLC (the "Tenant").

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

Section 1. **Public Purpose.** The governing body of the Issuer hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the Issuer, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas.

Section 2. **Authorization to Undertake Project; Intent to Issue Bonds.** The Issuer is hereby authorized to proceed with the construction, reconstruction, renovation, improvement, equipping and furnishing of the Project and to issue its revenue bonds, in one or more series, in the not to exceed principal amount of \$17,800,000 (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 passage of an ordinance authorizing the issuance of the Bonds; (b) the successful negotiation of a Bond Agreement, Guaranty Agreement, Lease or other legal documents necessary to accomplish the issuance of the Bonds, the terms of which shall be in compliance with the Act and mutually satisfactory to the Issuer and the Tenant; (c) the successful negotiation and sale of the Bonds to a purchaser or purchasers yet to be determined; (d) the receipt of the approving legal

47 opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the Issuer, the Tenant and
48 the Bond purchaser; (e) the obtaining of all necessary governmental approvals to the issuance of
49 the Bonds; and (f) the commitment to and payment by the Tenant of all expenses relating to the
50 issuance of the Bonds, including, but not limited to: (i) expenses and fees of the Issuer, the Issuer's
51 City Attorney and the Issuer's Bond Counsel; (ii) any underwriting or placement fees and
52 expenses; and (iii) all recording and filing fees, including fees of the Kansas Board of Tax Appeals.

53
54 Section 4. **Notices.** The Clerk is hereby authorized and directed to publish an appropriate
55 notice of intent to issue the Bonds and to enter into a Lease with the Tenant pursuant to the
56 provisions of the Act.

57
58 Section 5. **Sales Tax Exemption.** The Governing Body hereby determines that pursuant
59 to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly 79-3606(b) and (d)
60 and other applicable laws, sales of tangible personal property or services purchased in connection
61 with construction of the Project and financed with proceeds of the Bonds are entitled to exemption
62 from the tax imposed by the Sales Tax Act; provided proper application is made therefore. In the
63 event that the Bonds are not issued for any reason, the Tenant will not be entitled to a sales tax
64 exemption under the terms of the Sales Tax Act and will remit to the State Department of
65 Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate
66 granted hereunder.

67
68 Section 6. **Reliance by Tenant; Limited Liability of Issuer.** It is contemplated that in
69 order to expedite the Project and realization of the benefits to be derived thereby, the Tenant may
70 incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the
71 issuance of the Bonds. Proceeds of Bonds may be used to reimburse the Tenant for such
72 expenditures made prior to the date this Resolution is adopted. The Bonds herein authorized and
73 all interest thereon shall be paid solely from the revenues to be received by the Issuer from the
74 Project and not from any other fund or source. The Issuer shall not be obligated on such Bonds in
75 any way, except as herein set out. In the event that the Bonds are not issued, the Issuer shall have
76 no liability to the Tenant.

77
78 Section 7. **Further Action.** The Clerk is hereby authorized to deliver an executed copy of
79 this Resolution to the Tenant. The Mayor, Clerk and other officials and employees of the Issuer,
80 including the Issuer's counsel and Bond Counsel, are hereby further authorized and directed to take
81 such other actions as may be appropriate or desirable to accomplish the purposes of this
82 Resolution, including, but not limited to: (a) cooperate with the Tenant in filing an application for
83 a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-
84 financed property; and (b) execution on behalf of the Issuer of the information statement regarding
85 the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the
86 Act.

87
88 Section 8. **Effective Date.** This resolution shall become effective upon adoption by the
89 Governing Body and shall remain in effect until December 31, 2022, unless extended by
90 affirmative vote of a majority of the Governing Body.

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92 [BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

93 **ADOPTED** by the governing body of the City of Topeka, Kansas, June 18, 2019.

94

95

96 [SEAL]

97

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99

Michelle De La Isla, Mayor

100

101 Attest:

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104

105

Brenda Younger, City Clerk

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CERTIFICATE

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111

112 I hereby certify that the above and foregoing is a true and correct copy of the Resolution
113 of the Issuer adopted by the governing body on June 18, 2019, as the same appears of record in
114 my office.

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116 DATED: _____ 2019.

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Brenda Younger, City Clerk

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