

[Published in The Topeka Metro News on July 14, 2006]

ORDINANCE NO. 18671

AN ORDINANCE INTRODUCED BY CITY MANAGER NORTON N. BONAPARTE, JR. AUTHORIZING THE ISSUANCE OF FULL FAITH AND CREDIT TAX INCREMENT BONDS, SERIES 2006-A (COLLEGE HILL REDEVELOPMENT) IN THE MAXIMUM PRINCIPAL AMOUNT OF \$5,840,000 OF THE CITY OF TOPEKA, KANSAS, FOR THE PURPOSE OF PAYING CERTAIN REDEVELOPMENT PROJECT COSTS IN CONNECTION WITH THE REDEVELOPMENT PLAN; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

WHEREAS, the City of Topeka, Kansas (the "City"), is a first class city organized and existing under the constitution and laws of the State of Kansas; and

WHEREAS, the City has the authority to adopt tax increment financing pursuant to the Kansas Tax Increment Redevelopment Act, constituting sections K.S.A. 12-1770 *et seq.*, as amended (the "Act"); and

WHEREAS, the Redevelopment Area (as defined herein) has been found by the governing body of the City to be a "blighted area" and eligible for redevelopment under the Act; and

WHEREAS, Resolution No. 7741 of the City adopted January 10, 2006, called for the governing body of the City to hold a public hearing concerning the establishment of a redevelopment district pursuant to the Act on February 14, 2006; and

WHEREAS, notice of the public hearing was given as required by law; and

WHEREAS, the public hearing by the City regarding the proposed redevelopment district was held and closed on February 14, 2006; and

WHEREAS, on February 14, 2006, the City adopted Ordinance No. 18566 establishing a redevelopment district pursuant to the Act (the "Redevelopment District") encompassing the property located between SW 13th and SW 17th and SW Washburn to SW Lane (the "Redevelopment Area") a copy of which ordinance was delivered to the Board of County Commissioners of Shawnee County, Kansas, (the "County") and the Board of Education of Unified School District of 501 ("USD 501"); and

WHEREAS, neither the County or USD 501 adopted a resolution within 30 days of the conclusion of the City's public hearing held and closed February 14, 2006, regarding the proposed redevelopment district finding that the establishment of such district would have an adverse effect on the County or USD 501; and

1 **WHEREAS**, a proposed plan for redevelopment within the Redevelopment District (the
2 "Redevelopment Plan") has been presented to the City for consideration in accordance with the
3 requirements of the Act; and
4

5 **WHEREAS**, the City Planning Commission on February 27, 2006, found that the
6 proposed Redevelopment Plan conformed to the City's comprehensive plan as required by the
7 Act; and
8

9 **WHEREAS**, Resolution No. 7759 adopted February 28, 2006, called for the governing
10 body of the City to hold a public hearing concerning the adoption of the Redevelopment Plan
11 pursuant to the Act on April 4, 2006; and
12

13 **WHEREAS**, Resolution No. 7759 also stated that the City proposed to issue its full faith
14 and credit tax increment bonds to finance all or part of the costs of the City's portion of the
15 Redevelopment Plan; and
16

17 **WHEREAS**, a copy of Resolution No. 7759 was mailed in accordance with law to the
18 County, USD 501 and the owners and occupants of land within the proposed redevelopment
19 project area; and
20

21 **WHEREAS**, notice of the public hearing was given as required by law; and
22

23 **WHEREAS**, the public hearing by the City regarding the Redevelopment Plan was held
24 and closed on April 4, 2006; and
25

26 **WHEREAS**, on April 4, 2006, the City adopted Ordinance No. 18604 adopting the
27 Redevelopment Plan; and
28

29 **WHEREAS**, a sufficient protest in opposition to the City's issuance of full faith and
30 credit tax increment bonds was not received by the City Clerk within 60 days following the
31 completion of the public hearing held April 4, 2006; and
32

33 **WHEREAS**, the City has determined that it is necessary and desirable, to adopt this
34 Ordinance in order to issue its Full Faith and Credit Tax Increment Bonds, Series 2006-A
35 (College Hill Redevelopment) (the "Bonds"), in the maximum aggregate principal amount of
36 \$5,840,000 to pay a portion of the Redevelopment Project Costs (as hereinafter defined), fund a
37 debt service reserve fund, fund capitalized interest on the Bonds and pay the costs of issuing the
38 Bonds;
39

40 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
41 **TOPEKA, SHAWNEE COUNTY, KANSAS, AS FOLLOWS:**
42

43 **Section 1. Definitions of Words and Terms.** In addition to words and terms defined
44 elsewhere in this Ordinance, the following capitalized words and terms as used in this Ordinance
45 shall have the following meanings:
46

1 **"Redevelopment Project Costs"** means those costs as defined in K.S.A. § 12-1770a(q),
2 that may be paid through tax increment financing and which the City has agreed to pay as
3 Reimbursable Expenditures under the Redevelopment Agreement (as hereinafter defined) and
4 such other redevelopment project costs allowed under the Redevelopment Plan.
5

6 **"College Hill Tax Increment Fund"** means the College Hill Tax Increment Fund of the
7 City created for the Incremental Tax Revenues (as defined in the Indenture) of the
8 Redevelopment District.
9

10 **Section 2. Authorization of the Bonds.** The City is hereby authorized to issue and sell
11 the Bonds in the original aggregate principal amount of not to exceed \$5,840,000, the proceeds
12 of which will be used to pay the Redevelopment Project Costs, fund capitalized interest on the
13 Bonds and pay certain issuance costs related to the Bonds. The Bonds shall be issued and
14 secured pursuant to the herein authorized Indenture and shall bear such dates, shall be in such
15 denominations, shall be in such forms, shall mature on the dates and in the principal amounts,
16 shall bear interest at rates not to exceed 5.75% per annum and shall be subject to redemption on
17 the dates and in the principal amounts as provided in the Indenture, and shall have such other
18 terms and provisions, shall be issued, executed, authenticated and delivered in such manner and
19 shall be subject to such provisions, covenants and agreements, as are set forth in the Indenture.
20

21 **Section 3. Security for the Bonds.** The Bonds and the interest thereon shall be payable
22 (except to the extent paid out of Bond proceeds or the income from the temporary investment
23 thereof and under certain circumstances from insurance proceeds and condemnation awards)
24 first from the Incremental Tax Revenues and other payments derived by the City under the
25 Redevelopment Agreement (except for fees and expenses payable to the City, the City's right to
26 indemnification as set forth in the Redevelopment Agreement and as otherwise expressly set
27 forth therein) and a pledge of the City's full faith and credit to use its ad valorem taxing authority
28 for the payment thereof in the event the Incremental Tax Revenues are not sufficient. In
29 accordance with the City's pledge of its full faith and credit to the payment of the Bonds, the
30 City hereby covenants and agrees to levy ad valorem taxes, which may be levied without
31 limitation upon all the taxable property, real and personal, within the territorial limits of the City,
32 as necessary to pay the principal of and interest on the Bonds as the same become due at maturity
33 or upon earlier redemption. The Bonds and interest thereon shall not be deemed to constitute a
34 debt or liability of the State of Kansas within the meaning of any state constitutional provision or
35 statutory limitation and shall not constitute a pledge of the full faith and credit of the State of
36 Kansas but shall be payable solely from the funds provided for in the Indenture. The issuance of
37 the Bonds shall not, directly, indirectly or contingently, obligate the State of Kansas to levy any
38 form of taxation therefor or to make any appropriation for their payment.
39

40 **Section 4. Authorization and Approval of Documents.** The following documents are
41 hereby approved in substantially the forms presented to and reviewed by the City at this meeting
42 (copies of which documents shall be filed in the records of the City), and the City is hereby
43 authorized to execute and deliver each of such documents to which the City is a party (the "City
44 Documents") with such changes therein as shall be approved by the officer or officers of the City
45 executing such documents, such officers' signatures thereon being conclusive evidence of their
46 approval and the City's approval thereof:

1
2 (a) Bond Trust Indenture dated as of the date stated therein (the "Indenture"),
3 between the City and U.S. Bank National Association, St. Louis, Missouri, as trustee (the
4 "Trustee");

5
6 (b) Continuing Disclosure Agreement dated as of the date stated therein (the
7 "Continuing Disclosure Agreement"); and

8
9 (c) Tax Compliance Agreement dated as of the date stated therein (the "Tax
10 Compliance Agreement") between the City and the Trustee.

11
12 **Section 5. Approval of Use of Official Statement.** The City hereby approves the use of
13 the Preliminary Official Statement, from which a final Official Statement shall be drafted
14 (collectively, the "Official Statement"), in connection with the sale of the Bonds, in substantially
15 the form presented to the City (a copy of which Official Statement shall be filed in the official
16 records of the City) with such changes therein as shall be necessary to provide for the execution
17 of such document by the Developer.

18
19 The Official Statement and the distribution thereof by the Original Purchaser are hereby
20 approved for use in connection with the sales of the Bonds. The City has not participated in the
21 preparation of the Official Statement and has not verified the accuracy of the information therein,
22 other than information respecting the City. Accordingly, the approval of the Official Statement
23 does not constitute approval by the City of all information contained therein or a representation
24 by the City as to the completeness or accuracy of the information contained therein. For the
25 purpose of enabling the Official Statement to comply with the requirements of Rule 15c2-
26 12(b)(1) of the Securities and Exchange Commission (the "Rule"), the City hereby deems the
27 information regarding the City contained in the Official Statement to be "final" as of its date,
28 except for the omission of such information as is permitted by the Rule, and the appropriate
29 officials of the City are hereby authorized, if requested, to provide the Original Purchaser a letter
30 or certification to such effect and to take such other actions or execute such other documents as
31 such officials in their reasonable judgment deem necessary to enable the Original Purchaser to
32 comply with the requirements of such Rule.

33
34 **Section 6. Execution of Bonds and Documents.** The Mayor of the City is hereby
35 authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for
36 authentication for and on behalf of and as the act and deed of the City in the manner provided in
37 the Indenture. The Mayor of the City is hereby authorized and directed to execute the City
38 Documents and such other documents, certificates and instruments as may be necessary or
39 desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as
40 the act and deed of the City. The Clerk of the City is hereby authorized and directed to attest to
41 and affix the seal of the City to the Bonds, the City Documents and such other documents,
42 certificates and instruments as may be necessary.

43
44 **Section 7. Tax Covenants.** The City covenants and agrees that (a) it will comply with
45 all applicable provisions of the Code, including *Sections 103* and *141* through *150*, necessary to
46 maintain the exclusion from federal gross income of the interest on the Bonds; and (b) it will not

1 use or permit the use of any proceeds of Bonds or any other funds of the City, nor take or permit
2 any other action, or fail to take any action, which would adversely affect the exclusion from
3 federal gross income of the interest on the Bonds. The City will also adopt such other ordinances
4 or resolutions and take such other actions as may be necessary to comply with the Code and with
5 other applicable future law, in order to ensure that the interest on the Bonds will remain excluded
6 from federal gross income, to the extent any such actions can be taken by the City.
7

8 **Section 8. Further Authority.** The City shall, and the officers, employees and agents of
9 the City are hereby authorized and directed to, take such action, expend such funds and execute
10 such other documents, certificates and instruments as may be necessary or desirable to carry out
11 and comply with the intent of this Ordinance, and to carry out, comply with and perform the
12 duties of the City with respect to the Bonds and the City Documents, including, but not limited
13 to, agreements with respect to the investment of funds held under the Indenture.
14

15 **Section 9. Governing Law.** This Ordinance and the Bonds shall be governed by and
16 construed in accordance with the applicable laws of the State.
17

18 **Section 10. Effective Date.** This Ordinance shall take effect and be in full force from
19 and after its passage by the governing body of the City and publication in the official City
20 newspaper.
21

22 (REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK)
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PASSED and approved by the City Council on July 11, 2006.

CITY OF TOPEKA, KANSAS

(SEAL)

/s/ William W. Bunten

William W. Bunten, Mayor

ATTEST:

/s/ Iris E. Walker

Iris E. Walker, City Clerk

I, IRIS E. WALKER, City Clerk of the City of Topeka, Shawnee County, Kansas, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 18671 adopted and approved by the City Council on July 11, 2006.

/s/ Iris E. Walker

Iris E. Walker, City Clerk