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ORDINANCE NO. 19619

AN ORDINANCE INTRODUCED BY ACTING CITY MANAGER DANIEL R. STANLEY, AUTHORIZING THE CITY OF TOPEKA, KANSAS, TO ISSUE ITS ECONOMIC DEVELOPMENT REFUNDING REVENUE BONDS, SERIES 2011A (YMCA PROJECT) IN THE MAXIMUM PRINCIPAL AMOUNT OF \$7,065,000 FOR THE PURPOSES OF REFUNDING CERTAIN OF THE CITY'S OUTSTANDING ECONOMIC DEVELOPMENT REVENUE BONDS ISSUED TO FINANCE THE CONSTRUCTION, FURNISHING AND EQUIPPING OF A NEW 38,000 SQUARE FOOT RECREATIONAL HEALTH CENTER IN THE CITY; AUTHORIZING EXECUTION OF A TRUST INDENTURE BY AND BETWEEN THE CITY AND COREFIRST BANK & TRUST IN THE CITY OF TOPEKA, KANSAS, AS TRUSTEE; AUTHORIZING THE CITY TO LEASE SAID PROJECT TO THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF TOPEKA, KANSAS, A KANSAS NOT-FOR-PROFIT CORPORATION, AND AUTHORIZING EXECUTION OF A LEASE BY AND BETWEEN SAID CITY AND ASSOCIATION; AND AUTHORIZING THE EXECUTION OF THE BOND PURCHASE AGREEMENT FOR THE BONDS BY AND AMONG THE CITY, THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF TOPEKA, KANSAS AND GEORGE K. BAUM & COMPANY, KANSAS CITY, MISSOURI, AS UNDERWRITER OF THE BONDS.

WHEREAS, the City of Topeka, Kansas, (the "City") is authorized by K.S.A. 12-1740 to 12-1749c, inclusive, as amended (the "Act"), to both refund its outstanding revenue bonds and to acquire, construct and improve and equip certain facilities (as defined in the Act) for commercial, hospital, industrial, manufacturing and recreational purposes, and to enter into leases and lease-purchase agreements with any person, firm or corporation for said facilities, and to issue revenue bonds for the purposes of either paying the cost of providing any such facilities or refunding such bonds; and

WHEREAS, pursuant to its Ordinance No. 17532 passed and approved August 8, 2000, (the "Refunded Bond Ordinance") the City issued its Economic Development Revenue Bonds, Series 2000A (YMCA Project) dated August 1, 2000, in the principal amount of \$8,500,000 (the "Series 2000A Bonds") of which \$7,345,000 remains outstanding, for the purpose of (1) financing the construction, furnishing and equipping of a new 38,000 square foot recreational health center at S.W. 37th and Chelsea in the City of Topeka, Kansas, (2) fund a deposit to a debt service reserve fund for the Series 2000A Bonds, and (3) pay certain expenses in relation to the issuance of the Series 2000A Bonds (the "Project"); and

WHEREAS, the Project was leased to the Young Men's Christian Association of Topeka, Kansas, a Kansas not-for-profit corporation, (the "Association") pursuant to a certain lease agreement dated as of August 1, 2000, by and between the City (as Landlord) and the Association (the "Original Lease"); and

1 **WHEREAS**, in order to achieve certain financial benefits currently available, the
2 Association has requested that the City issue its Economic Development Refunding Revenue
3 Bonds, Series 2011A (YMCA) in the aggregate principal amount not exceeding \$7,065,000 for
4 the purpose of providing funds together with other funds of the Association to currently refund
5 the Series 2000A Bonds maturing (including term bond installments payable) on and after
6 September 1, 2012, (i.e., \$7,105,000) (the "Refunded Bonds") by providing for the early
7 redemption thereof, as provided in the Trust Indenture hereinafter authorized; and
8

9 **WHEREAS**, the City has heretofore and does hereby find and determine that it is
10 desirable in order to promote, stimulate and develop the general economic welfare and prosperity
11 of the City and the State of Kansas that the City issue its Economic Development Refunding
12 Revenue Bonds, Series 2011A (YMCA Project) dated the date of issuance and delivery thereof
13 in the maximum principal amount of \$7,065,000 (the "Series 2011A Bonds"), for the purposes
14 hereinbefore described; and
15

16 **WHEREAS**, the City further finds and determines that it is necessary and desirable in
17 connection with the issuance of the Series 2011A Bonds to execute and deliver a Trust Indenture
18 dated as of September 1, 2011, (the "Indenture"), with CoreFirst Bank & Trust, Topeka, Kansas,
19 as Trustee (the "Trustee"), for the purpose of issuing and securing the Series 2011A Bonds as
20 provided therein and to enter into a Lease dated as of September 1, 2011, (the "Lease") with the
21 Association as lessee thereunder pursuant to which the City shall cause the Project to continue to
22 be leased to the Association in consideration of payments of Basic Rent, Additional Rent and
23 other charges provided for therein.
24

25 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**
26 **CITY OF TOPEKA, SHAWNEE COUNTY, KANSAS:**
27

28 **Section 1. Definition of Terms.** That all terms and phrases not otherwise defined herein
29 shall have the respective meanings set forth in the Indenture herein authorized.
30

31 **Section 2. Authority to Cause the Refunding of the Refunded Bonds.** That the City is
32 hereby authorized to provide for refunding and redemption of the Refunded Bonds in accordance
33 with the provisions of both the Refunded Bond Ordinance and the Indenture hereinafter
34 authorized.
35

36 **Section 3. Authorization of and Security for the Bonds.** That there is hereby authorized
37 and directed to be issued a series of economic development refunding revenue bonds to be
38 designated "City of Topeka, Kansas, Economic Development Refunding Revenue Bonds, Series
39 2011A (YMCA Project)" in the maximum principal amount of \$7,065,000 (the "Series 2011A
40 Bonds") for the purpose of providing funds to currently refund and redeem the Refunded Bonds.
41 The Series 2011A Bonds shall be dated and bear interest, shall mature and be payable at such
42 times, shall be in such forms, shall be subject to redemption and payment prior to the maturity
43 thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and
44 agreements set forth in the Indenture. The Series 2011A Bonds shall be special limited
45 obligations of the City payable solely from the revenues derived by the City pursuant to the
46 Lease, or otherwise in connection with the Project. The Series 2011A Bonds shall not be general

1 obligations of or constitute a pledge of the faith and credit of the City within the meaning of a
2 constitutional or statutory provision and shall not be payable in any manner from tax revenues.
3

4 **Section 4. Authorization of Indenture.** That the City is hereby authorized to enter into
5 the Indenture dated as of September 1, 2011, by and between the City and CoreFirst Bank &
6 Trust, Topeka, Kansas, as Trustee, under which the City shall pledge and assign to the Trustee,
7 for the benefit of the holders of the Series 2011A Bonds, the Trust Estate created thereby, all
8 upon the terms and conditions set forth in said Indenture.
9

10 **Section 5. Lease of the Project.** That the City shall continue to lease the Project to the
11 Association pursuant to and in accordance with the provisions of the Lease dated as of
12 September 1, 2011, by and between the City and the Association.
13

14 **Section 6. Approval of the Guaranty Agreement.** That the Guaranty Agreement
15 dated as of September 1, 2011, pursuant to which the Association and the other guarantors
16 named therein, if any, guarantee to the Trustee, for the benefit of the owners of the Series 2011A
17 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest
18 on the Series 2011A Bonds, is hereby approved.
19

20 **Section 7. Authorization of Bond Purchase Agreement.** That the Series 2011A Bonds
21 shall be sold and delivered to, upon the terms and subject to the provisions of the Bond Purchase
22 Agreement dated as of its date of execution by the parties thereto, by and between the City,
23 Association and George K. Baum & Company, Kansas City, Missouri, at a maximum principal
24 amount not to exceed \$7,065,000, a true interest cost not to exceed 7.0%, a final maturity not
25 later than September 1, 2032, and resulting in a new present value savings to the Association as a
26 result of the refunding of the Series 2000A Bonds..
27

28 **Section 8. Execution of Bonds and Agreements.** That the Mayor of the City is hereby
29 authorized and directed to execute the Series 2011A Bonds and deliver the same to the Trustee
30 for authentication for and on behalf of and as the act and deed of the City in the manner provided
31 in the Indenture. The Mayor is hereby further authorized and directed to execute and deliver the
32 Indenture, the Lease, and the Bond Purchase Agreement for and on behalf of and as the act and
33 deed of the City in substantially the forms presented today with such corrections or amendments
34 thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof,
35 and such other documents, certificates and instruments as may be necessary or desirable to carry
36 out and comply with the purposes and intent of this Ordinance. The City Clerk or the Deputy
37 City Clerk of the City are hereby authorized and directed to attest the execution of the Series
38 2011A Bonds, the Indenture, the Lease, and the Bond Purchase Agreement and such other
39 documents, certificates and instruments as may be necessary or desirable to carry out and comply
40 with the intent of this Ordinance.
41

42 **Section 9. Pledge of the Project.** That the City hereby pledges the Project to the
43 payment of the Series 2011A Bonds in accordance with K.S.A. 12-1744. The lien created by
44 such pledge shall be discharged when all of the Series 2011A Bonds shall be deemed to have
45 been paid within the meaning of the Indenture.
46

1 **Section 10.** Approval of Preliminary Official Statement and Official Statement. That
2 the Preliminary Official Statement, a copy of which has been submitted to and reviewed by the
3 Mayor on the date hereof, and the Official Statement, in substantially the form of the Preliminary
4 Official Statement, and the public distribution of the same by the underwriter is hereby approved.
5 The City has not participated in the preparation of the Preliminary Official Statement or the
6 Official Statement and has not verified the accuracy of the information therein. Accordingly,
7 such approvals do not constitute approval by the City of such information or a representation by
8 the City as to the completeness or accuracy of the information contained therein. In order to
9 enable the underwriter to comply with the requirements of Rule 15c2-12(b)(1) of the Securities
10 and Exchange Commission, the Mayor has deemed the information regarding the City contained
11 in the Preliminary Official Statement to be "final" as of its date, except for the omission of such
12 information as is permitted by Rule 15c2-12(b)(1), and the action of the Mayor in that regard is
13 hereby ratified and approved and the Mayor is hereby authorized, if requested, to take such other
14 actions or execute such other documents as the Mayor in his reasonable judgment deems
15 necessary to enable the Underwriter to comply with the requirements of such Rule.
16

17 **Section 11.** Further Authority. That the City shall, and the officers, agents and
18 employees of the City are hereby authorized and directed to, take such action and execute such
19 other documents, certificates and instruments as may be necessary or desirable to carry out and
20 comply with the provisions of this Ordinance and to carry out, comply with and perform the
21 duties of the City with respect to the Series 2011A Bonds, the Indenture and the Lease all as
22 necessary to carry out and give effect to the transaction contemplated hereby and thereby.
23

24 **Section 12.** Severability. If any section, paragraph, clause or provision of this Ordinance
25 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of
26 such section, paragraph, clause or provision shall not affect any remaining provisions of this
27 Ordinance.
28

29 **Section 13.** Effective Date. That this Ordinance shall take effect and be in force from
30 and after its passage and publication in the official newspaper of the City.

31 (REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK)
32

PASSED and approved by the Governing Body of the City of Topeka, Kansas, this 16th day of August, 2011.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

[SEAL]