

**RESOLUTION NO. R-24-\_\_**

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF BEL AIRE, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS TO FINANCE ACQUIRING LAND, AND EQUIPPING AND CONSTRUCTING BUILDINGS FOR USE IN INDUSTRIAL, MANUFACTURING, WAREHOUSE, DISTRIBUTION, FLEX AND/OR OFFICE PURPOSES TO BE LOCATED IMMEDIATELY NORTHEAST OF THE INTERSECTION OF 53<sup>RD</sup> STREET NORTH AND WEBB ROAD IN THE CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS

**WHEREAS**, the City of Bel Aire, Kansas (the “Issuer”) desires to promote, stimulate and develop the general economic welfare and prosperity of the City of Bel Aire, 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 a principal amount not to exceed \$105,000,000 be authorized and issued, in one or more series, to provide funds to pay the costs of acquiring land and constructing and equipping approximately five (5) buildings of approximately 912,925 total square feet for use in industrial, manufacturing, warehouse, distribution, flex and/or office purposes, to be located within the corporate limits of the Issuer immediately northeast of the intersection of 53<sup>rd</sup> Street North and Webb Road (the “Project”), and to be leased by the Issuer to Aspen Funds LLC, a Kansas limited liability company, or another legal entity to be formed by the principals of Aspen Funds LLC (the “Tenant”).

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF BEL AIRE, 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 Acquire Project; Intent to Issue Bonds.** The Issuer is hereby authorized to proceed with the Project and to issue its revenue bonds, in one or more series, in a principal amount not to exceed \$105,000,000 (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 or Trust Indenture, Site Lease, Project 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 (the “Purchaser”), which sale shall be the responsibility of the Tenant and not the Issuer; (d) the receipt of the approving legal opinion of Gilmore & Bell, P.C. (“Bond Counsel”) in a form acceptable to the Issuer, the Tenant and the Purchaser; (e) the obtaining of all necessary governmental approvals to the issuance of the Bonds; (f) the commitment to and payment by the Tenant or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the Issuer 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 (g) the execution and delivery by the Tenant of an agreement for payment in lieu of taxes.

Section 4. **Property Tax Exemption and Payment in Lieu of Taxes.** The Issuer hereby determines that pursuant to the provisions of K.S.A. 79-201a *Twenty-Fourth*, the Project, and each portion thereof, if financed by a separate series of Bonds, to the extent purchased or constructed with the proceeds of Bonds, should be exempt from payment of ad valorem property taxes for ten years commencing with the year following the year in which the applicable series of Bonds are issued, provided proper application is made therefor with respect to each series of Bonds; 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; and (b) for the uses restricted pursuant to the provisions of K.S.A. 79-201a, *Second* and *Twenty-Fourth*. In making such determination, the Governing Body of the Issuer has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. 12-1749d. The Tenant is responsible for preparing such applications and providing the same to the Issuer for its review and submission to the State Board of Tax Appeals. The tax exemption approved hereby is subject to the execution and delivery by the Tenant of a separate agreement for payment in lieu of taxes for each portion of the Project financed by a separate series of Bonds, which agreements will provide for no payment in lieu of taxes for the first five calendar years following the issuance of each series of Bonds, and a 25% payment in lieu of taxes for the sixth through tenth calendar years following the issuance of each series of Bonds.

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 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with the Project, or each portion thereof, financed with proceeds of Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefor. 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 Issuer.** 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 Bonds. Proceeds of Bonds may be used to reimburse the Tenant for such expenditures. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the Issuer from the Project and not from any other fund or source. The Issuer 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 Issuer shall have no liability to the Tenant.

Section 7. **Further Action.** The Clerk is hereby authorized to deliver an executed copy of this Resolution to the Tenant. The Mayor, Clerk, City Manager and other officials and employees of the Issuer, including the Issuer’s counsel 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) cooperation 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; and (b) execution on behalf of the Issuer 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.

Section 8. **Effective Date.** This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until December 31, 2034, unless extended by affirmative vote of a majority of the Governing Body.

**ADOPTED** by the Governing Body of the City of Bel Aire, Kansas on April 16, 2024.

[SEAL]

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Mayor

Attest:

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Clerk

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the Issuer adopted by the Governing Body on April 16, 2024, as the same appears of record in my office.

DATED: April 16, 2024.

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Clerk

**EXCERPT OF MINUTES OF A MEETING  
OF THE GOVERNING BODY OF  
THE CITY OF BEL AIRE, KANSAS  
HELD ON APRIL 16, 2024**

The Governing Body met in regular session at the usual meeting place in the City on April 16, 2024, at 7:00 p. 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.

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(Other Proceedings)

Among other business, in accordance with a notice published on April 4, 2024, in the *The Ark Valley News*, a public hearing was held by the Governing Body relating to the proposed issuance of Taxable Industrial Revenue Bonds (Aspen Funds LLC) in a principal amount not to exceed \$105,000,000 (the "Bonds") and regarding an exemption from ad valorem taxation of property constructed or purchased with the proceeds of such Bonds. All interested persons were afforded an opportunity to present their views on the issuance of the Bonds, the location and nature of the Project to be financed with the proceeds of the Bonds and the exemption from ad valorem taxation. Thereupon, the public hearing was closed.

Thereupon, there was presented a Resolution entitled:

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF BEL AIRE, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS TO FINANCE ACQUIRING LAND, AND EQUIPPING AND CONSTRUCTING BUILDINGS FOR USE IN INDUSTRIAL, MANUFACTURING, WAREHOUSE, DISTRIBUTION, FLEX AND/OR OFFICE PURPOSES TO BE LOCATED IMMEDIATELY NORTHEAST OF THE INTERSECTION OF 53<sup>RD</sup> STREET NORTH AND WEBB ROAD IN THE CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS

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

Aye: \_\_\_\_\_.

Nay: \_\_\_\_\_.

Thereupon, the Mayor declared the Resolution duly adopted and the Resolution was then duly numbered Resolution No. R-24-[\_\_] and was signed by the Mayor and attested by the Clerk.

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(Other Proceedings)

On motion duly made, seconded and carried, the meeting hereupon adjourned.

**CERTIFICATE**

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

[SEAL]

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Clerk