

(Published in *The Ottawa Herald* on November 3, 2018)

ORDINANCE NO. 903

AN ORDINANCE AUTHORIZING THE CITY OF WELLSVILLE, KANSAS TO ISSUE ITS (I) TAXABLE INDUSTRIAL REVENUE BONDS, SERIES A, 2018 (DT PROPERTY, LLC), IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$2,895,000 (II) TAXABLE INDUSTRIAL REVENUE BONDS, SERIES A, 2018 (DT PROPERTY, LLC), IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$658,000 AND (III) SUBORDINATED TAXABLE INDUSTRIAL REVENUE BONDS, SERIES C, 2018 (DT PROPERTY, LLC), IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$1,247,000 FOR THE PURPOSES OF (A) PURCHASING, ACQUIRING, CONSTRUCTING, FURNISHING, AND EQUIPPING A MANUFACTURING FACILITY LOCATED IN THE CITY OF WELLSVILLE, KANSAS, AND (B) PAYING CERTAIN COSTS OF ISSUANCE; AUTHORIZING THE EXECUTION OF A TRUST INDENTURE BY AND BETWEEN THE ISSUER AND SECURITY BANK OF KANSAS CITY, KANSAS CITY, KANSAS, AS TRUSTEE; AUTHORIZING THE ISSUER TO LEASE THE PROJECT TO DT PROPERTY, LLC; AUTHORIZING EXECUTION OF A LEASE AGREEMENT BETWEEN THE ISSUER AND DT PROPERTY, LLC; APPROVING THE FORM OF A GUARANTY AGREEMENT; APPROVING THE FORM OF AN ADDITIONAL GUARANTY AGREEMENT; APPROVING THE FORM OF AN INDIVIDUAL GUARANTY AGREEMENT; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BY AND BETWEEN THE ISSUER, DT PROPERTY, LLC, SELECT STEEL FABRICATION, LLC, AND THE KANSAS STATE BANK, AS PURCHASER OF THE SERIES A, 2018 BONDS AND SERIES B, 2018 BONDS; AND AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BY AND BETWEEN THE ISSUER AND DT PROPERTY, LLC, AS PURCHASER OF THE SERIES C, 2018 BONDS.

WHEREAS, the City of Wellsville, Kansas (the "Issuer") is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to issue revenue bonds to pay the cost of certain facilities, as such term is defined in the Act, for the purposes set forth in the Act, and to lease and otherwise dispose of such facilities to any person, firm or corporation; and

WHEREAS, the Issuer has heretofore and does hereby find and determine 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 (i) Taxable Industrial Revenue Bonds, Series A, 2018 (DT Property, LLC), to be dated as of their issuance and delivery, in the aggregate principal amount of not to exceed \$2,895,000 (the "Series A, 2018 Bonds"), (ii) Taxable Industrial Revenue Bonds, Series B, 2018 (DT Property, LLC), to be dated as of their issuance and delivery, in the aggregate principal amount of not to exceed \$658,000 (the "Series B, 2018 Bonds") and (iii) Subordinated Taxable Industrial Revenue Bonds, Series C, 2018 (DT Property, LLC), to be dated as of their issuance and delivery, in the aggregate principal amount of not to exceed \$1,247,000

(the "Series C, 2018 Bonds") for the purpose of paying the costs of purchasing, acquiring, constructing, furnishing and equipping a manufacturing facility (the "Project") and paying certain costs of issuance associated with said bonds; and

WHEREAS, the Series A, 2018 Bonds, Series B, 2018 Bonds, and Series C, 2018 Bonds (collectively, the "2018 Bonds") and the interest thereon shall not constitute an indebtedness of the Issuer, within the meaning of any constitutional provision or statutory limitation, shall not constitute nor give rise to a pecuniary liability by the Issuer, nor shall any 2018 Bond or the interest thereon be a charge against the general credit or taxing powers of the Issuer. The 2018 Bonds are not general obligations of the Issuer and are payable solely and only from certain fees, rentals, revenues and other amounts derived by the Issuer pursuant to the Lease and, under certain circumstances, from the proceeds of the 2018 Bonds and insurance and condemnation awards; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of said 2018 Bonds (i) to execute and deliver a Trust Indenture, dated as of November 1, 2018 (the "Indenture"), by and between the Issuer and Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the "Trustee"), for the purpose of issuing and securing the 2018 Bonds as provided therein; and (ii) execute and deliver a Lease Agreement, dated as of November 1, 2018 (the "Lease"), by and between the Issuer, as landlord, and DT Property, LLC, as Tenant (the "Tenant"), for the purpose of leasing the Project to the Tenant in consideration for payments of Basic Rent, Additional Rent and other charges provided for therein; and to execute such other documents and agreements in connection with the issuance of the 2018 Bonds as hereinafter provided.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WELLSVILLE, KANSAS AS FOLLOWS:

Section 1. Definition of Terms. All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the recitals hereto and the Indenture and Lease hereinafter authorized and defined.

Section 2. Authorization of the Project. The governing body of the Issuer hereby declares that the Project, if in being, would promote the welfare of the City of Wellsville, Kansas, and the Issuer is hereby authorized to provide for the acquisition, construction, furnishing, and equipping of the Project in accordance with the provisions of the Indenture, all as provided herein and the Indenture and Lease hereinafter authorized.

Section 3. Authorization of and Security for the 2018 Bonds. There is hereby authorized and directed to be issued three series of revenue bonds to be designated (i) "City of Wellsville, Kansas, Taxable Industrial Revenue Bonds, Series A, 2018 (DT Property, LLC)," in the aggregate principal amount of not to exceed \$2,895,000, (ii) "City of Wellsville, Kansas, Taxable Industrial Revenue Bonds, Series B, 2018 (DT Property, LLC)," in the aggregate principal amount of not to exceed \$658,000, and (iii) "City of Wellsville, Kansas, Subordinated Taxable Industrial Revenue Bonds, Series C, 2018 (DT Property, LLC)," in the aggregate principal amount of not to exceed \$1,247,000 for the purpose of financing the costs of the Project and paying certain costs of issuance.

The 2018 Bonds shall be issued in such amounts and shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The Series A, 2018 Bonds and the Series B, 2018 Bonds shall be on a parity with, and equal in priority to, one another and with any Additional Bonds which may be issued on a like parity within the meaning and pursuant to the terms and provision of the Indenture herein defined. The Series C, 2018 Bonds shall be subordinated to the Series A, 2018 Bonds and Series B, 2018 Bonds (the "Priority Bonds") and on a parity with, and equal in priority to any Additional Bonds which may be issued on a like parity within the meaning and pursuant to the terms and provision of the Indenture. The 2018 Bonds shall be special limited obligations of the Issuer payable solely from the revenues derived by the Issuer pursuant to the Lease, or otherwise in connection with the Project. The 2018 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the Issuer within the meaning of any constitutional or statutory provision and shall not be payable in any manner from tax revenues.

Section 4. Authorization of Indenture. The Issuer is hereby authorized to enter into the Indenture (as defined above), under which the Issuer shall pledge and assign to the Trustee, for the benefit of the holders of the 2018 Bonds, the Trust Estate created thereby, all upon the terms and conditions set forth in the Indenture.

Section 5. Lease of Project. The Issuer shall cause the Project to be acquired, purchased, constructed, furnished, and equipped and shall lease the Project to the Tenant, pursuant to and in accordance with the terms and provisions of the Lease (as defined above). The Issuer is hereby authorized to enter into the Lease.

Section 6. Approval of the Form of Guaranty Agreement. The form of Guaranty Agreement, dated as of November 1, 2018 (the "Guaranty Agreement"), pursuant to which the Tenant guarantees to the Trustee, for the benefit of the Owners of the Priority Bonds and, the full and prompt payment of the principal of, redemption premium, if any, and interest on the Priority Bonds, is hereby approved.

Section 7. Approval of the Form of Additional Guaranty Agreement. The form of Additional Guaranty Agreement, dated as of November 1, 2018 (the "Additional Guaranty Agreement"), pursuant to which Select Steel Fabrication, LLC (the "Additional Guarantor") guarantees to the Trustee, for the benefit of the Owners of the Priority Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the Priority Bonds, is hereby approved.

Section 8. Approval of the Form of Individual Guaranty Agreement. The form of Individual Guaranty Agreement, dated as of November 1, 2018 (the "Individual Guaranty Agreement"), pursuant to which William J. Thompson, Kimber I. Thompson, Chase C. Doherty and Teresa D. Doherty (collectively, the "Individual Guarantors") guarantee to the Trustee, for the benefit of the Owners of the Priority Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the Priority Bonds, is hereby approved.

Section 9. Authorization of Bond Purchase Agreements. The Priority Bonds shall be sold and delivered pursuant to and in accordance with the terms and provisions of a Bond Purchase Agreement, dated as of November 1, 2018 (the "Priority Bond Purchase Agreement"), by and between the Issuer, the Tenant, the Additional Guarantor, the Individual Guarantors, and The Kansas State Bank, Ottawa, Kansas, as Purchaser for the Priority Bonds.

The Series C, 2018 Bonds shall be sold and delivered pursuant to and in accordance with the terms and provisions of a Bond Purchase Agreement, dated as of November 1, 2018 (the "Series C Bond Purchase Agreement"), by and between the Issuer, the Tenant, and DT Property, LLC, as the Purchaser of the Series C, 2018 Bonds.

The Priority Bond Purchase Agreement and the Series C, 2018 Bond Purchase Agreement are collectively referred to herein as the "Bond Purchase Agreements."

Section 10. Execution of 2018 Bonds and Related Agreements and Documents. The Mayor is hereby authorized and directed to execute the 2018 Bonds and deliver same to the Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor is authorized and directed to execute and deliver the Indenture, the Lease, and the Bond Purchase Agreements for and on behalf of and as the act and deed of the Issuer in substantially the forms as they are presented today with such minor corrections or amendments thereto as the Mayor shall approve (after consultation with the Bond Counsel), which approval shall be evidenced by his or her execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance (including, but not limited to, a notice of the proposed issuance of such Bonds with the Kansas Board of Tax Appeals pursuant to K.S.A. 12-1744a and agreement for payment in lieu of taxes.) The City Clerk or any Deputy City Clerk of the Issuer are hereby authorized and directed to attest the execution of the 2018 Bonds, the Indenture, the Lease, and the Bond Purchase Agreements and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 11. Pledge of the Project. The Issuer hereby pledges the Project and the net earnings therefrom to the payment of the 2018 Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the 2018 Bonds and any Additional Bonds issued under the Indenture shall be deemed to have been paid within the meaning of the Indenture.

Section 12. Further Authority. The Issuer shall, and the officers, agents and employees of the Issuer are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the 2018 Bonds, the Indenture, the Lease, and the Bond Purchase Agreements, all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 13. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the Issuer and publication once in the official newspaper of the Issuer.

PASSED, ADOPTED AND APPROVED by the Governing Body of the City of Wellsville, Kansas this 31st day of October, 2018.

CITY OF WELLSVILLE, KANSAS

[seal]

By /s/William Lytle
William Lytle, Mayor

ATTEST:

By /s/Tammy Jones
Tammy Jones, City Clerk

APPROVED AS TO FORM:

TRIPLETT WOOLF GARRETSON, LLC

By /s/Andrew N. Kovar
Andrew N. Kovar, Bond Counsel to the City