

ORDINANCE NO. ____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY; AUTHORIZING THE SALE OF THE BONDS AND THE APPROVAL OF A BOND PURCHASE AGREEMENT AND PAYMENT IN LIEU OF TAXES AGREEMENTS IN CONNECTION THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING AND PRESCRIBING CERTAIN MATTERS PERTAINING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION, AND EQUIPMENT THEREOF, AND THE FINANCING THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF LEASE AGREEMENTS RELATING TO THE PROJECT; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock, Arkansas (the “City”) is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, each as amended from time to time (collectively, the “Act”), to own, acquire, construct, equip, and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

WHEREAS, Lowe’s Inc. or its affiliate (“Lowe’s”) and The Cubes at Little Rock LLC or its affiliate (“Cubes,” and collectively with Lowe’s, the “Companies”) have evidenced their interest in acquiring, constructing, and equipping an industrial facility in the City if permanent financing can be provided through the issuance of bonds under the authority of the Act; and

WHEREAS, the City has agreed to cooperate with the Companies in the acquisition, construction, and equipment of an industrial facility related to the operations of Lowe’s in the City and to finance the acquisition of leasehold rights and/or real estate, construction of buildings, infrastructure and improvements, and acquisition and installation of equipment for the warehousing and distribution of home improvement products and materials located on an approximately 115-acre site located at 13101 Highway 70, North Little Rock, Arkansas in the Tulip Farms Addition that is east of the Galloway exit on Interstate 40 East, south of Barton Road and north of State Highway 70 (the “Project”); and

WHEREAS, to provide permanent financing of the Project costs, including necessary costs and expenditures incidental thereto and the cost of the issuance of bonds, the City will issue multiple series of its taxable industrial development revenue bonds under the provisions of the Act designated “City of North Little Rock, Arkansas Taxable Industrial Development Revenue Bonds (Lowe’s Project), Series 20__” (the “Lowe’s Bonds”) and “City of North Little Rock, Arkansas Taxable Industrial Development Revenue Bonds (Cubes Project), Series 20__,” in the aggregate

principal amount of not to exceed One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00) (the “Cubes Bonds,” and collectively with the Lowe’s Bonds, the “Bonds”); and

WHEREAS, the Bonds will be issued pursuant to the provisions of a Trust Indenture (the “Trust Indenture”) to be entered into between the City and a trustee to be selected upon the mutual agreement of the City and the Companies (the “Trustee”); and

WHEREAS, the City and Lowe’s intend to enter into a Lease Agreement (the “Lowe’s Lease Agreement”) relating to the personal property, equipment, leasehold improvements, infrastructure, and fixtures constituting a portion of the Project, which contemplates that a portion of the Project will be leased to Lowe’s, with an option to purchase for a nominal price, and the rental payments therefor together with other moneys available shall be sufficient to pay debt service on the Lowe’s Bonds and all related costs; and

WHEREAS, the City and Cubes intend to enter into a Lease Agreement (the “Cubes Lease Agreement”) relating to the real property, fixtures, infrastructure, personal property, equipment and improvements constituting a portion of the Project, which contemplates that a portion of the Project will be leased to Cubes, with an option to purchase for a nominal price, and the rental payments therefor together with other moneys available shall be sufficient to pay debt service on the Cubes Bonds and all related costs; and

WHEREAS, to induce the City to proceed with the issuance of the Lowe’s Bonds for the purpose indicated, which will inure to the benefit of Lowe’s, the City and Lowe’s will enter into a Payment in Lieu of Taxes Agreement (“Lowe’s PILOT Agreement”) in substantially the form presented at this meeting which provides 65% ad valorem tax abatement for a period of 30 years; and

WHEREAS, to induce the City to proceed with the issuance of the Cubes Bonds for the purpose indicated, which will inure to the benefit of Cubes, the City and Cubes will enter into a Payment in Lieu of Taxes Agreement (“Cubes PILOT Agreement”) in substantially the form presented at this meeting which provides 65% ad valorem tax abatement for a period of 30 years; and

WHEREAS, the City and the Companies caused a form of a notice of public hearing to be published on September 25, 2023 in the *Arkansas Democrat-Gazette*, and the City hereby ratifies the publication and form of notice published; and

WHEREAS, an open public hearing on the question of the issuance of the Bonds was held before the City Council on October 10, 2023 and having heard all persons desiring to be heard in the matter, the City has taken under advisement the comments and statements of such persons, and declared the public hearing duly closed; and

WHEREAS, the City proposes to sell the Cubes Bonds and the Lowe’s Bonds to affiliates of the respective Companies (collectively, the “Purchasers”) pursuant to a Bond Purchase Agreement by and between the City and the Purchasers; and

WHEREAS, Lowe's and Cubes, respectively, may obtain independent loans from one or more lenders secured by liens on, or security interests in, title to all or part of the Project granted pursuant to various agreements, instruments and documents; and

WHEREAS, the City acknowledges and consents to all liens and encumbrances on, security interests in, and rights to, the title to the Project granted by Lowe's or Cubes, respectively, and acknowledges that Lowe's and Cubes' respective interests in the Project may be transferred to the City subject to such liens, encumbrances and security interests, if any, and such acknowledgement and consent may be evidenced through the execution of a Recognition of Prior Interests, Nondisturbance and Attornment Agreement between the City, Lowe's, and the lenders of Lowe's (or such lenders' agents) benefitting from such lien, encumbrance or security interest (the "Lowe's RNA Agreement") and a Recognition of Prior Interests, Nondisturbance and Attornment Agreement between the City, Cubes, and the lenders of Cubes (or such lenders' agents) benefitting from such lien, encumbrance or security interest (the "Cubes RNA Agreement"); and

WHEREAS, copies of the herein described Bond Purchase Agreement, Trust Indenture, Lowe's Lease Agreement, Cubes Lease Agreement, Lowe's RNA Agreement, Cubes RNA Agreement, Lowe's PILOT Agreement, and Cubes PILOT Agreement have been presented to and are before this meeting and a copy of each are on file with the City Clerk and available for inspection by any interested person; and

WHEREAS, the City believes the completion of the Project may be useful in providing additional employment opportunities and will provide other benefits to and be in the best interest of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the following are hereby authorized and directed:

- (a) The Bonds shall be issued in one or more series in an aggregate principal amount of not to exceed One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00), and the Bonds shall be sold to the Purchasers for a price of par plus the costs of issuance upon the terms and conditions set forth in the Bond Purchase Agreement.
- (b) The execution and delivery of the Lowe's PILOT Agreement and the Cubes PILOT Agreement by the Mayor and City Clerk on behalf of the City, in substantially the form submitted to this meeting is hereby authorized and directed, with such changes as shall be approved by such persons executing the documents, their execution constituting conclusive evidence of such approval. Executed copies of the Lowe's PILOT Agreement and the Cubes PILOT Agreement shall be filed in the City Clerk's office.
- (c) The acquisition, construction, and equipment of the Project, and, in connection therewith to the extent convenient or necessary, the execution of any necessary architectural, engineering, or construction contracts or the acceptance of an

assignment of any such contracts previously executed by the Companies for the construction and equipment of the Project on behalf of the City is hereby authorized and directed.

SECTION 2: That the issuance of the Bonds in the total principal amount of not to exceed \$150,000,000.00 is hereby authorized. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall bear interest (at a rate or rates) and shall be subject to redemption prior to maturity, all upon the terms and conditions to be set forth in the Trust Indenture.

That to further prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed (when requested to do so by the Companies) to execute and acknowledge the Trust Indenture; the City Clerk is hereby authorized and directed to execute and acknowledge the Trust Indenture and to affix the seal of the City thereto; and the Mayor and City Clerk are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee and the Companies in order to complete the Trust Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, with their execution constituting conclusive evidence of such approval.

SECTION 3: That the execution and delivery of the Lowe's Lease Agreement and the Cubes Lease Agreement are hereby authorized and directed, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Lowe's Lease Agreement and the Cubes Lease Agreement for and on behalf of the City. The Lowe's Lease Agreement and the Cubes Lease Agreement are hereby approved in substantially the forms submitted to this meeting, and the Mayor is hereby authorized to confer with Lowe's and Cubes, respectively, in order to complete the Lowe's Lease Agreement and the Cubes Lease Agreement in substantially the forms submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution constituting conclusive evidence of such approval.

SECTION 4: That the execution and delivery of the Bond Purchase Agreement are hereby authorized and directed, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Bond Purchase Agreement for and on behalf of the City. The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Purchasers in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution constituting conclusive evidence of such approval.

SECTION 5: That, if either or both Companies determine that such agreements are required by its lenders, the execution and delivery of the Lowe's RNA Agreement and the Cubes RNA Agreement are hereby authorized and directed. The Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Lowe's RNA Agreement and the Cubes RNA Agreement for and on behalf of the City. The Lowe's RNA Agreement and the Cubes RNA Agreement are hereby approved in substantially the forms submitted to this meeting, and the

Mayor is hereby authorized to confer with Lowe's, Cubes and lenders of Lowe's and Cubes (or such lenders' agents) in order to complete the Lowe's RNA Agreement and the Cubes RNA Agreement in substantially the forms submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

SECTION 6: That the Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect (i) the execution of the Lowe's Lease Agreement; (ii) the performance of the City's obligations under the Lowe's Lease Agreement; (iii) the execution of the Cubes Lease Agreement; (iv) the performance of the City's obligations under the Cubes Lease Agreement; (v) the execution and delivery of the Trust Indenture; (vi) the performance of all obligations of the City under and pursuant to the Trust Indenture; (vii) the execution and delivery of the Bonds; (viii) the execution and delivery of the Lowe's PILOT Agreement; (ix) the performance of the City's obligations under the Lowe's PILOT Agreement; (x) the execution and delivery of the Cubes PILOT Agreement; (xi) the performance of the City's obligations under the Cubes PILOT Agreement; (xii) the execution and delivery of the Bond Purchase Agreement; (xiii) the performance of the City's obligations under the Bond Purchase Agreement; (xiv) the execution and delivery of the Lowe's RNA Agreement; (xv) the performance of the City's obligations under the Lowe's RNA Agreement; (xvi) the execution and delivery of the Cubes RNA Agreement; (xvii) the performance of the City's obligations under the Cubes RNA Agreement; and (xviii) the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, in connection with the issuance of the Bonds and in connection with on-going rights and obligations that arise after issuance and prior to maturity of the Bonds, to execute all papers, documents, certificates, and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof, including, but not limited to, the execution of one or more Home Office Payment Agreements, Memorandums of Lease, Delivery Instructions and/or other closing certificates.

SECTION 7: That the Project involves the acquisition, construction, and equipment of a complex industrial project, requiring highly specialized work and specialized types of machinery and equipment. In compliance with Ark. Code. Ann. § 14-164-204, it has been and is hereby determined by the City Council that competitive bidding be, and the same is hereby, waived as to this particular industrial project. This action is taken by the City Council pursuant to applicable laws of the State of Arkansas.

SECTION 8: That all actions heretofore taken by the City, the Companies, and the Purchasers in connection with the issuance, offer and sale of the Bonds and the development and completion of the Project are hereby in all respects ratified and approved.

SECTION 9: In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 10: That all ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 11: That there is hereby found and declared to be an immediate need for the securing and developing of substantial industrial operations in order to provide additional employment, alleviate unemployment, and otherwise benefit the public health, safety, and welfare of the City and the inhabitants thereof, and the issuance of the Bonds authorized hereby and the taking of the other action authorized herein are immediately necessary in connection with the securing and developing of substantial industrial operations and deriving the public benefits referred to above. It is therefore, declared that an emergency exists and this Ordinance, being necessary for the immediate preservation of the public health, safety, and welfare, shall be in force and take effect immediately upon and after its passage.

PASSED:

APPROVED:

Mayor Terry C. Hartwick

SPONSOR:

TERRY C. Hartwick
Mayor Terry C. Hartwick

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields
Amy Beckman Fields, City Attorney

FORMATTED BY THE OFFICE OF THE CITY ATTORNEY

FILED	11:27	A.M.	_____	P.M.
By	Amy Fields CA			
DATE	11/21/23			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	_____			