

ORDINANCE NO. B-3292

AN ORDINANCE AUTHORIZING THE CITY OF OVERLAND PARK, KANSAS, TO ISSUE ITS FEDERALLY TAXABLE PRIVATE ACTIVITY REVENUE BONDS, SERIES 2020, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$17,000,000 FOR THE PURPOSE OF FINANCING CONSTRUCTION MATERIALS, EQUIPMENT AND FURNISHINGS OF A MULTI-FAMILY COMMERCIAL FACILITY AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS (GALLERIA 115 MULTI-FAMILY NORTH EDRB PROJECT).

WHEREAS, the City of Overland Park, Kansas (the “Issuer” and the “City”), is authorized by K.S.A. 12-1740 *et seq.*, as amended (the “Act”), to acquire, construct, improve and equip certain facilities (as defined in the Act) for the stated statutory purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities and to issue revenue bonds for the purpose of paying the costs of such facilities; and

WHEREAS, pursuant to the 115th and Nall Development Agreement (the “Original Development Agreement”) between the City and 115 Land Investors, LLC, a Kansas limited liability company (the “115LI”), approved by the Governing Body of the City on December 18, 2017, as amended by the First Amendment thereto by and among the City, 115LI, Lenexa Logistics 5, LLC, a Kansas limited liability company (“LL5”), BK-GMF II, SPE, LLC, a Kansas limited liability company (“BKGGMF”), GMF II, LLC, a Kansas limited liability company (“GMF”), BMG 115 Investors, LLC, a Kansas limited liability company (“BMG”), effective as of August 27, 2018, as amended by the Second Amendment thereto among the Issuer, 115LI, LL5, BKGGMF, GMF, BMG and Galleria 115 Investors, LLC, a Kansas limited liability company (“Galleria 115”, and together with 115LI, LL5, BKGGMF, GMF, BMG, the “Developer), effective as of September 17, 2018, as further amended by a Third Amendment thereto among the Issuer and the Developer effective as of December 16, 2019, (the Original Development Agreement as amended, the “Development Agreement”), the City agreed to consider issuing federally taxable private activity revenue bonds related to the commercial development on property generally located at the northwest corner of West 115th Street and Nall Avenue and further described in the Development Agreement (the “Project Site”) within the City; and

WHEREAS, pursuant to Resolution No. 4453 of the City, adopted on September 17, 2018, as amended by Resolution No. 4453, A, adopted on September 9, 2019, the Governing Body of the City determined its intent to issue its federally taxable private activity revenue bonds in the principal amount not to exceed \$17,000,000 for the purposes of financing construction materials, equipment, and furnishings of a multi-family commercial facility on the Project Site, including and buildings and improvements (collectively, the “Project Improvements” and together with the Project Site, the “Project”), in order to enable an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment, and furnishings related to the Project, and to lease the Project to the Developer; and

WHEREAS, pursuant to Acknowledgment of Affiliate Assignment and Assumption Agreement dated as of June 4, 2020, the Developer partially assigned its rights related to the Project to HB Galleria SPE, LLC, a Delaware limited liability company (the “Company”); and

WHEREAS, the Issuer has found and does 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 Federally Taxable Private Activity Revenue Bonds, Series 2020 (Galleria 115 Multi-Family North EDRB Project), in the principal amount not to exceed \$17,000,000 (the “Bonds”), to finance the costs of construction materials, equipment and furnishings of the Project and authorizing the Issuer to lease the Project (as more fully described in the Indenture, the Base Lease and in the Lease hereinafter authorized) to the Company; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds to execute and deliver (i) a Trust Indenture (the “Indenture”), with BOKF, N.A., Kansas City, Missouri, as Trustee (the “Trustee”), prescribing the terms and conditions of issuing and securing the Bonds; (ii) a Base Lease Agreement (the “Base Lease”) pursuant to which the Issuer will lease from the Company certain interest in the real property on which the Project Improvements are located; (iii) a Lease (the “Lease”), between the Issuer and the Company, pursuant to which the Issuer shall lease back the Project to the Company, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of, premium, if any, and interest on the Bonds as the same become due; and (iv) a Bond Purchase Agreement providing for the sale of the Bonds by the Issuer to the Company, as the purchaser (collectively, the “Bond Documents”);

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

Section 1. Authority to Cause the Project to be Constructed, Equipped and Furnished. The Issuer is hereby authorized to cause the Project to be constructed, equipped and furnished all in the manner and as more particularly described in the Indenture, the Base Lease and the Lease herein authorized.

Section 2. Authorization of and Security for the Bonds. The Issuer is hereby authorized and directed to issue the Bonds, to be designated “City of Overland Park, Kansas, Federally Taxable Private Activity Revenue Bonds, Series 2020 (Galleria 115 Multi-Family North EDRB Project)” in the principal amount not to exceed \$17,000,000 (the “Bonds”), for the purpose of financing construction materials, equipment and furnishings of the Project. The Bonds 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 Bonds shall be special limited obligations of the Issuer payable solely from the trust estate established under the Indenture, including revenues from the lease of the Project to the Company. The Bonds shall not be general obligations of the Issuer, nor constitute a pledge of the full faith and credit of the Issuer and shall not be payable in any manner by taxation.

Section 3. Execution of Bonds and Bond Documents. The Mayor or Acting Mayor of the Issuer is hereby authorized and directed to execute the Bonds and deliver them to the Trustee

for authentication on behalf of, and as the act and deed of the Issuer, in the manner provided in the Indenture. The Mayor or Acting Mayor is further authorized and directed to execute and deliver the Bond Documents on behalf of, and as the act and deed of the Issuer, in substantially the forms on file in the office of the City Clerk, with such corrections or amendments thereto as the Mayor or Acting Mayor may approve, which approval shall be evidenced by execution thereof, and to execute 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 and the Bond Documents. The City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's official seal.

Section 4. Pledge of the Project and Net Earnings. The Issuer hereby pledges the Issuer's leasehold interest in the Project and the net earnings generated under the Lease to the payment of the Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Bonds shall be deemed to have been paid within the meaning of the Indenture.

Section 5. Further Authority. The officials, 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 the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Bonds and the Bond Documents as necessary to give effect to the transactions contemplated in this Ordinance and in the Bond Documents.

Section 6. Effective Date. This Ordinance shall take effect from and after its final passage by the Governing Body of the Issuer, signature by the Mayor or Acting Mayor and publication once in the official newspaper of the Issuer.

PASSED by the City Council this 6th day of July, 2020.

APPROVED by the Mayor this 6th day of July, 2020.

CITY OF OVERLAND PARK, KANSAS

By: /s/ Carl Gerlach
Carl Gerlach
Mayor

(SEAL)

ATTEST:

By: /s/ Elizabeth Kelley
Elizabeth Kelley
City Clerk

APPROVED AS TO FORM:

By: /s/ Michael Koss
Michael Koss
Senior Assistant City Attorney

APPROVED AS TO FORM:

By: /s/ Joseph D. Serrano
Joseph D. Serrano, Kutak Rock LLP
Bond Counsel