

ORDINANCE NO. B-3254, A

AN ORDINANCE AUTHORIZING THE CITY OF OVERLAND PARK, KANSAS, TO ISSUE ITS FEDERALLY TAXABLE PRIVATE ACTIVITY REVENUE BONDS, SERIES 2021 (JACK STACK, LLC PROJECT), IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$789,690 FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF CONSTRUCTION MATERIALS, EQUIPMENT, LABOR AND FURNISHINGS OF A COMMERCIAL DEVELOPMENT AND RELATED IMPROVEMENTS; AUTHORIZING THE CITY TO ENTER INTO A FIRST SUPPLEMENTAL TRUST INDENTURE WITH THE TRUSTEE; AUTHORIZING THE CITY TO ENTER INTO A FIRST SUPPLEMENTAL LEASE WITH J-DOR REAL ESTATE, LLC; AND AUTHORIZING AND APPROVING THE EXECUTION OF CERTAIN OTHER DOCUMENTS AND THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS (JACK STACK EDRB PROJECT).

WHEREAS, the City of Overland Park, Kansas (the “City and the “Issuer”), is authorized and empowered pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to acquire, purchase and construct certain facilities (as defined in the Act) for the stated statutory purposes, to enter into lease or lease-purchase agreements with any person, firm or corporation for said facilities, and to issue revenue bonds for the purpose of paying the cost of such facilities; and

WHEREAS, pursuant to the Act, the Issuer has heretofore issued its Federally Taxable Private Activity Revenue Bonds, Series 2019 (Jack Stack EDRB Project) (the “Series 2019 Bonds”), in the original principal amount of \$3,600,000 for the purpose of financing the acquisition of construction materials, equipment, labor and furnishings of a commercial development (the “Improvements”), and authorizing the Issuer to lease the Original Project (as more fully described in the Original Indenture, the Base Lease Agreement and the Original Lease hereinafter described) to J-DOR Real Estate, LLC, a Kansas limited liability company (the “Company”); and

WHEREAS, the Series 2019 Bonds were issued pursuant to the terms and conditions of the Trust Indenture dated as of July 1, 2019 (the “Original Indenture”), between the Issuer and BOKF, N.A., Overland Park, Kansas, as trustee for the Series 2019 Bonds (the “Trustee”); and

WHEREAS, the Issuer leased the Original Project from the Company pursuant to the terms and conditions of the Base Lease Agreement dated as of July 1, 2019 (the “Base Lease”), between the Company and the Issuer, and the Issuer leased the Original Project back to the Company pursuant to the terms and conditions of the Lease dated as of July 1, 2019 (the “Original Lease”), between the Issuer, as lessor, and the Company, as lessee, and the Issuer consented to the sublease of the Original Project from the Company to JA-DEL, Inc., a Missouri corporation; and

WHEREAS, the Company has requested that the Issuer issue additional bonds for the purpose of financing additional Improvements (the “Additional Improvements,” together with the Original Project, collectively, the “Project”) to the Original Project and authorizing the Issuer to lease the Additional Improvements, along with the Original Project, to the Company; and

WHEREAS, pursuant to **Section 209** of the Original Indenture, the Issuer is authorized to issue Additional Bonds (as defined in the Original Indenture) and to execute and deliver one or more supplemental indentures and one or more supplemental lease agreements in connection with the issuance of such Additional Bonds in accordance with the terms thereof; and

WHEREAS, the Issuer has found and does now 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 Additional Bonds designated Federally Taxable Private Activity Revenue Bonds, Series 2021 (Jack Stack EDRB Project) (the “Series 2021 Bonds”), in the principal amount not to exceed \$789,690, to be issued for the purpose of financing the Additional Improvements to the Original Project and authorizing the Issuer to lease the Additional Improvements to the Company; and

WHEREAS, the issuance of the Series 2021 Bonds will enable an exemption on sales taxes levied by Kansas governmental entities for construction materials and equipment purchased with the proceeds of such Bonds; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Series 2021 Bonds that the Issuer enter into certain documents, and that the Issuer take certain other actions and approve the execution of certain other documents as herein provided;

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

Section 1. Authority To Cause the Additional Improvements To Be Constructed, Improved and Renovated. The Issuer is hereby authorized to cause the Additional Improvements to be constructed, improved and renovated all in the manner and as more particularly described in the Indenture and the Lease (as such terms are defined below).

Section 2. Authorization of and Security for the Series 2021 Bonds. The Issuer is hereby authorized and directed to issue the Series 2021 Bonds in the principal amount not to exceed \$789,690 for the purpose of providing funds to pay or reimburse the cost of the Additional Improvements and may pay the costs of issuance of the Series 2021 Bonds. The Series 2021 Bonds shall be issued and secured pursuant to the herein authorized Indenture and shall bear such dates, shall mature at such times, shall be in such denominations, shall bear interest at such rates, shall be in such forms, shall be subject to redemption, purchase and other terms and conditions, and shall be issued in such manner, subject to such provisions, covenants and agreements, as are set forth in the Indenture. The Series 2021 Bonds shall be special limited obligations of the Issuer payable solely out of the rents, revenues and receipts derived by the Issuer from the Project, and the Project and the net earnings derived by the Issuer from the Project shall be pledged and assigned to the Trustee as security for payment of the Series 2021 Bonds as provided in the Indenture.

Section 3. Authorization of Documents. The Issuer is hereby authorized to enter into or approve the following documents (collectively, the “Issuer Documents”), in substantially the forms presented to and reviewed by the Governing Body of the Issuer at this meeting (copies of

which documents shall be filed in the records of the Issuer) with such changes therein as shall be approved by the officials of the Issuer executing such documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

(a) First Supplemental Trust Indenture dated as of the date set forth therein (the "First Supplemental Indenture"), amending and supplementing the Original Indenture (collectively, the "Indenture"), between the Issuer and the Trustee, pursuant to which the Series 2021 Bonds shall be issued and the Issuer shall pledge the Additional Improvements and assign the rents, revenues and receipts received pursuant to the Lease to the Trustee for the benefit of and security of the holders of the Series 2021 Bonds upon the terms and conditions as set forth in said Indenture;

(b) First Supplemental Lease dated as of the date set forth therein (the "First Supplemental Lease"), amending and supplementing the Original Lease (collectively, the "Lease"), between the Issuer and the Company under which the Issuer will agree to use the proceeds derived from the sale of the Series 2021 Bonds for the purpose of financing a portion of the cost of the Additional Improvements and to lease the Additional Improvements to the Company, and the Company will agree to make payments in amounts sufficient to provide for the payment of the principal of, redemption premium, if any, and interest on the Series 2021 Bonds as the same become due; and

(c) Bond Purchase Agreement dated as of the date set forth therein, between the Issuer and Company, as purchaser.

Section 4. Execution of the Series 2021 Bonds and Issuer Documents. The Mayor is hereby authorized and directed to execute the Series 2021 Bonds by manual or facsimile signature and to deliver the Series 2021 Bonds 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 hereby authorized and directed to execute and deliver the Issuer Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the Issuer. The City Clerk is hereby authorized and directed to attest to and affix the seal of the Issuer to the Series 2021 Bonds, the Issuer Documents 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 5. Pledge of the Project and Net Earning. The Issuer hereby pledges the Project and the net revenues generated under the Lease to the payment of the Series 2021 Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Series 2021 Bonds shall be deemed to be paid within the meaning of the Indenture.

Section 6. Further Authority. The Issuer shall, and the officials, staff and agents of the Issuer and Kutak Rock LLP, Bond Counsel, 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 intent of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the Series 2021 Bonds and the Issuer Documents.

Section 7. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Governing Body of the City and publication in an official City newspaper.

PASSED by the City Council this 21st day of December, 2020.

APPROVED by the Mayor this 21st day of December, 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