

ORDINANCE NO. B-3268, A

AN ORDINANCE AUTHORIZING MODIFICATIONS TO BOND DOCUMENTS RELATING TO THE AUTHORIZATION OF THE CITY OF OVERLAND PARK, KANSAS, FEDERALLY TAXABLE PRIVATE ACTIVITY REVENUE BONDS, SERIES 2019, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$40,002,000 FOR A HOSPITAL EXPANSION PROJECT (MENORAH MEDICAL CENTER 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 Resolution No. 4494 of the City, adopted on January 28, 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 \$40,002,000 for the purposes of financing construction materials, equipment, labor and furnishings of a three story hospital expansion, including real estate (the “Project Site”), and buildings and improvements (collectively, the “Project Improvements” and together with the Project Site, the “Project”), located on the Menorah Medical Center campus at 5721 W. 119th Street, within the City, in order to enable an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment, labor and furnishings related to the Project, and to lease the Project to Midwest Division – MMC, LLC, a Delaware limited liability company, doing business as Menorah Medical Center (the “Company”); and

WHEREAS, pursuant to Ordinance No. B-3268 of the City, passed on October 7, 2019, the Governing Body of the City determined that it was 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 2019 (Menorah Medical Center EDRB Project), in the principal amount not to exceed \$40,002,000 (the “Bonds”), to finance the costs of construction materials, equipment, labor and furnishings of the Project and authorized the Issuer to lease the Project (as more fully described in the Indenture, the Base Lease and in the Lease authorized in said Ordinance) to the Company; and

WHEREAS, the Issuer found and determined that it was 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., Overland Park, Kansas, 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 “Original Bond Documents”); and

WHEREAS, the Original Bond Documents incorrectly provide that the maturity of the Bonds is June 1, 2020, and the terms of the Base Lease and Lease expire on June 1, 2020; and

WHEREAS, the Company has represented that the Project will not be completed until 2023, and has requested that the Indenture, Base Lease, Lease and Bond Purchase Agreement (collectively, the “Modified Bond Documents”), be modified to reflect the maturity of the Bonds be June 1, 2024 and the terms of the Base Lease and Lease expire on June 1, 2024;

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

Section 1. Authorization of Modified Bond Documents. The modifications as provided in the Modified Bond Documents are hereby authorized.

Section 2. Execution of Modified Bond Documents. The Mayor of the Issuer is authorized and directed to execute and deliver the Modified 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 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 Modified Bond Documents. The City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Modified 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 3. Ratification of Ordinance No. B-3268. Except as provided in this Ordinance, Ordinance No. B-3268 is hereby ratified.

Section 4. Effective Date. This Ordinance shall take effect from and after its final passage by the Governing Body of the Issuer, signature by the Mayor and publication once in the official newspaper of the Issuer.

PASSED by the City Council this 21st day of October, 2019.

APPROVED by the Mayor this 21st day of October, 2019.

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