

BILL NO. 16-164

AN ORDINANCE AUTHORIZING THE DELIVERY OF CERTAIN ASSIGNMENT, AMENDMENT AND OTHER DOCUMENTS RELATED TO THE CITY'S TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (RESIDENCES AT NEW LONGVIEW PROJECT), SERIES 2014, TO RECOGNIZE THE SALE OF THE PROJECT AND THE RELATED ASSIGNMENT OF THE BONDS AND CERTAIN BOND DOCUMENTS AND TO MAKE OTHER CONFORMING MODIFICATIONS TO THE BOND DOCUMENTS.

WHEREAS, the City of Lee's Summit, Missouri (the "City") is authorized and empowered under the Article VI, Section 27(b) of the Missouri Constitution, as amended, Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended, and the City Charter, as amended (collectively the "Act"), to issue its revenue bonds for the purpose of providing funds to purchase, construct, extend and improve certain manufacturing, commercial, warehousing and industrial development projects and to lease or otherwise dispose of such projects to private persons or corporations upon such terms and provisions as the City deems advisable; and,

WHEREAS, pursuant to the Act, the governing body of the City passed Ordinance No. 7448 (the "Ordinance") on April 3, 2014, authorizing the issuance of its Taxable Industrial Development Revenue Bonds (Residences at New Longview Project), Series 2014, in the maximum aggregate principal amount not to exceed \$35,000,000 (the "Bonds"), for the purpose of improving certain real property located generally at Kessler Drive and Longview Road in the City (the "Project Site"), including the construction and improvement of a commercial facility on the Project Site (the "Project Improvements," and together with the Project Site, collectively referred to herein as the "Project"), for the Company; and,

WHEREAS, pursuant to the Ordinance, the City (i) entered into a Trust Indenture dated as of April 1, 2014 (the "Indenture") with BOKF, N.A., as trustee for the Bonds (the "Trustee"), to issue and secure the Bonds, (ii) entered into a Lease Agreement dated as of April 1, 2014 (the "Lease") with the Company, pursuant to which the City, as lessor, acquired title to the Project and leased the Project to the Company in consideration of rentals which will be sufficient to pay the principal of and interest on the Bonds (a memorandum of which was recorded in the Office of the Recorder of Deeds for Jackson County, Missouri (the "Recorder's Office") on April 29, 2014 as Instrument No. 2014E0033901 (the "Lease Memorandum"), which Lease Memorandum was re-recorded on December 23, 2014 as Instrument No. 2014E0106339, to correct the legal description attached thereto), (iii) entered into a Bond Purchase Agreement dated as of April 1, 2014 (the "Bond Purchase Agreement"), with the Company, as purchaser of the Bonds, and (iv) entered into a Performance Agreement dated as of April 1, 2014 (the "Performance Agreement," and together with the Indenture, the Lease and the Bond Purchase Agreement, collectively referred to herein as the "Bond Documents"), with the Company (a memorandum of which was recorded in the Recorder's Office on April 29, 2014, as Document No. 2014E0033902 (the "Performance Agreement Memorandum")); and,

WHEREAS, the Company has determined to sell the Project to JVM Residences Apartments, LLC, a Delaware limited liability company ("JVM"); and,

WHEREAS, the Company desires to assign to JVM and JVM wishes to assume from the Company, all of the Company's rights, benefits, privileges, and obligations under the Lease Agreement and the Performance Agreement; and,

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WHEREAS, the Company has requested that the City consent to (i) the sale of the Project to JVM, and (ii) the assignment of the Bonds and the Bond Documents, as applicable, to JVM; and,

WHEREAS, the City and the Company now desire to (i) memorialize the sale and assignment as set forth above and (ii) amend the Bond Documents to make conforming changes thereto.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. Authorization of Certain Documents. That in order to memorialize the sale of the Project, the assignment of the Bonds and the applicable Bond Documents, and the amendment of the Bond Documents to make conforming changes thereto, the City is hereby authorized to enter into the following documents (the "Amendment Documents"), in substantially the forms presented to and reviewed by the City Council of the City (copies of which, upon execution, will be filed in the office of the City Clerk), with such changes therein as shall be approved by the officers of the City executing said documents, such officers' signatures thereon being conclusive evidence of their approval thereof:

- (a) First Supplemental Trust Indenture dated the date set forth therein, between the City and the Trustee;
- (b) Amended Memorandum of Lease dated the date set forth therein, between the City and Company, which amends the Lease Memorandum;
- (c) Amended Memorandum of Performance Agreement dated the date set forth therein, between the City and Company, which amends the Performance Agreement Memorandum;
- (d) Assignment, Assumption and Amendment of Lease Agreement and City Consent dated the date set forth therein, between the Company and JVM, and consented to by the City;
- (e) Assignment, Assumption and Amendment of Performance Agreement and City Consent dated the date set forth therein, between the Company and JVM, and consented to by the City; and
- (f) Estoppel Certificate, Agreement and Consent dated the date set forth therein, delivered by the City.

SECTION 2. Execution of Documents. That the Mayor, the City Manager and the Director of Finance of the City are hereby authorized and directed to execute the Amendment 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 City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds and the Amendment 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.

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SECTION 3. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to execute such other documents, certificates and instruments and take such actions 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 City with respect to the Amendment Documents.

SECTION 4. Governing Law. That this Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

SECTION 5. Effective Date. This Ordinance shall take effect and be in full force from and after its passage and adoption by the City Council and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2016.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED by the Mayor of said City this _____ day of _____, 2016.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*