

(Published in the *Abilene Reflector-Chronicle* on March 16, 2020)

ORDINANCE NO. 20-3386

AN ORDINANCE AUTHORIZING THE CITY OF ABILENE, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (THE GARFIELD, LLC) IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$4,000,000 TO FINANCE (1) PURCHASING, RENOVATING, CONSTRUCTING, EQUIPPING, AND FURNISHING A MULTI-PHASED SENIOR LIVING FACILITY AND ALL THINGS RELATED THERETO, AND (2) CERTAIN COSTS OF ISSUANCE OF SUCH BONDS; AUTHORIZING EXECUTION OF BOND DOCUMENTS RELATING TO ISSUANCE, PAYMENT AND PURCHASE OF THE 2020 BONDS.

WHEREAS, the City of Abilene, Kansas (the “Issuer”) is authorized by K.S.A. 12-1740, *et seq.*, as amended (the “Act”), to purchase, acquire, construct, improve, furnish, equip, and install certain facilities (as defined in the Act) for agricultural, commercial, hospital, industrial, natural resources, recreational development, and manufacturing purposes, and to enter into lease and 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 any such facilities; and

WHEREAS, the Issuer has found and here confirms its findings that it is desirable in order to promote, stimulate and develop the general economic welfare, health and prosperity of the Issuer and the State of Kansas that the Issuer issue its Taxable Industrial Revenue Bonds, Series 2020 (The Garfield, LLC) in the aggregate principal amount not to exceed \$4,000,000 (the “2020 Bonds”), for the purpose of (i) the first phase of purchasing, renovation, acquiring, constructing, furnishing and equipping a multi-phased senior independent living facility, located at 300 NW 7th St., in the City of Abilene (the “Project”), and (ii) paying certain costs of issuance of the 2020 Bonds; and

WHEREAS, the Project shall be leased by the Issuer to The Garfield, LLC , a Kansas limited liability company authorized to do business in the State of Kansas (the “Tenant”), pursuant to a Lease Agreement, dated as of March 26, 2020 (the “Lease”), by and between the Issuer and the Tenant; and

WHEREAS, the Tenant’s interest in the Project will be leased by the Tenant to the City pursuant to a Site Lease Agreement, dated as of March 26, 2020 (the “Site Lease”); and

WHEREAS, the 2020 Bonds and the interest thereon are not an indebtedness of the Issuer within the meaning of any constitutional provision or statutory limitation, shall not constitute nor give rise to a pecuniary liability of the Issuer, nor shall any 2020 Bond or the interest thereon be a charge against the general credit or taxing powers of the Issuer, but shall be payable solely from certain fees, rentals, revenues and other amounts derived by the Issuer pursuant to the Lease and, under certain circumstances, from the proceeds of the 2020 Bonds and insurance and condemnation awards; and

WHEREAS, the Issuer further finds in connection with issuance of the 2020 Bonds that it is necessary to authorize the execution and delivery of various Bond Documents, as described in this Ordinance.

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

Section 1. Definition of Terms. All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Indenture and the Lease (each as defined and authorized by this Ordinance).

Section 2. Authority for Project. The governing body of the Issuer declares that the Project (as defined above) will promote the welfare of the City of Abilene, Kansas. The Issuer is authorized to cause the Project to be purchased, renovated, acquired, constructed, equipped, furnished, and installed, all in the manner and as more particularly described in the Indenture and in the Lease (defined herein).

Section 3. Authorization and Security for the 2020 Bonds. The revenue bonds of the Issuer are authorized and directed to be issued in an aggregate amount not to exceed \$4,000,000, to be designated "City of Abilene, Kansas, Taxable Industrial Revenue Bonds, Series 2020 (The Garfield, LLC)" (the "2020 Bonds") for the purpose of financing the costs of (i) purchasing, renovating, acquiring, constructing, equipping and furnishing the Project, and (ii) paying certain costs of issuance of the 2020 Bonds.

The 2020 Bonds shall be issued in the form and subject to terms prescribed in the Indenture shall be subject to the provisions, covenants and agreements set forth in the Indenture. The 2020 Bonds are special limited obligations of the Issuer payable solely from certain revenues derived by the Issuer pursuant to the Lease and the Project shall be pledged and assigned to the Trustee as security for the 2020 Bonds, all as defined herein and further described in the Indenture. The 2020 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the Issuer within the meaning of any constitutional or statutory provision and shall not be payable in any manner from tax revenues.

Section 4. Authorization of Bond Documents. The Issuer is authorized to enter into and deliver the following documents (the "Bond Documents"):

A. A Trust Indenture, dated as of March 26, 2020 (the "Indenture"), by and between the Issuer and Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the "Trustee"), for the purpose of issuing and securing the 2020 Bonds as described therein and under which the Issuer pledges and assigns to the Trustee, for the benefit of the holders of the 2020 Bonds, the Trust Estate created by the Indenture; and

B. A Site Lease Agreement, dated as of March 26, 2020, by and between the Tenant, as lessor, and the Issuer as lessee, in which the Tenant leases its interests in the Project Site and the Project to the Issuer; and

C. A Lease Agreement, by and between the Issuer, as landlord, and the Tenant, as lessee, pursuant to which the Issuer causes the Project to be acquired, constructed, equipped, furnished, and leased to the Tenant in consideration of payments of Basic Rent, Additional Rent and other charges provided for therein; and

D. A Bond Purchase Agreement, dated as of March 26, 2020, providing that the 2020 Bonds shall be issued and sold to The Garfield, LLC, as Bond Purchaser (the “Purchaser”), subject to satisfaction of all conditions precedent to issuance of the 2020 Bonds and upon the terms and subject to the provisions and conditions of the Bond Purchase Agreement, by and among the Issuer, the Purchaser, and the Tenant; and

E. All other documents, certificates and instruments necessary to issue and secure the 2020 Bonds as described herein, and comply with and carry out the intent of this Ordinance and the other Bond Documents described above, as determined by the Issuer, upon advice of counsel. The Issuer here acknowledges and consents to a Direct Pay Agreement, dated as of March 26, 2020 by and among the Original Purchaser, the Trustee and the Tenant.

Section 5. Execution of 2020 Bonds and Bond Documents. The Issuer’s Mayor, or acting Mayor, is authorized and directed to execute each of the 2020 Bonds and deliver them to the Trustee for authentication on behalf of and as the act and deed of the Issuer as provided in the the Indenture. The Mayor, or acting Mayor, is further authorized and directed to execute and deliver the 2020 Bonds and Bond Documents on behalf of and as the act and deed of the Issuer, in substantially the form presented with this Ordinance, with such minor corrections or amendments as are approved by the Mayor or acting Mayor, in consultation with Bond Counsel, with such approval shall be evidenced by his/her execution thereof, and all other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk or acting City Clerk, is authorized and directed to attest the execution of the 2020 Bonds and the Bond Documents, and all other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 6. Pledge of the Project. The Issuer pledges the Project, and its net earnings from the Project to the payment of the 2020 Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the 2020 Bonds and any Additional Bonds issued under the Indenture are deemed paid within the meaning of the Indenture.

Section 7. Further Authority. The Issuer shall, and the officers, agents and employees of the Issuer are further authorized and directed to, take such action and prepare or execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the 2020 Bonds and the Bond Documents, all as necessary to carry out and give effect to the transactions contemplated by this Ordinance and the Bond Documents.

Section 8. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the Issuer and publication once in the official newspaper of the Issuer.

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PASSED AND APPROVED by the governing body of the City of Abilene, Kansas on March 9, 2020.

CITY OF ABILENE, KANSAS



By Chris Ostermann
Chris Ostermann, Mayor

By Penny Soukup, CMC
Penny Soukup, City Clerk, CMC