

**ORDINANCE NO. TDD - 2872**

AN ORDINANCE AUTHORIZING THE CITY OF OVERLAND PARK, KANSAS, TO ISSUE ITS TRANSPORTATION DEVELOPMENT DISTRICT SALES TAX REVENUE BONDS, SERIES 2010 (OAK PARK MALL PROJECT), IN THE PRINCIPAL AMOUNT OF \$\_\_\_\_\_, FOR THE PURPOSE OF FINANCING THE CONSTRUCTION OF CERTAIN TRANSPORTATION RELATED IMPROVEMENTS WITHIN THE OAK PARK MALL TRANSPORTATION DEVELOPMENT DISTRICT, TO FUND A DEBT SERVICE RESERVE FUND AND TO PAY CERTAIN COSTS RELATING TO THE ISSUANCE OF THE BONDS; AUTHORIZING THE ISSUER TO ENTER INTO A TRUST INDENTURE WITH UMB BANK, N.A., AS TRUSTEE; AUTHORIZING AND APPROVING THE EXECUTION OF CERTAIN OTHER DOCUMENTS; AND APPROVING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS;

**WHEREAS**, pursuant to K.S.A. 12-17,140 through 12-17,149, as amended (the "Act"), the Governing Body of the City of Overland Park, Kansas (the "Issuer"), did receive on August 15, 2007, a petition (the "Petition") requesting the creation of a transportation development district for the hereinafter described project signed by the owners of all of the land area within the proposed district; and

**WHEREAS**, pursuant to the Act, the Governing Body of the Issuer adopted Resolution No. 3620 on September 17, 2007, creating the transportation development district described therein (the "Oak Park Mall TDD") and authorizing and providing for the hereinafter defined Project; and

**WHEREAS**, pursuant to the Act, the Issuer is authorized and empowered to issue its Transportation Development District Sales Tax Revenue Bonds, Series 2010 (Oak Park Mall Project) (the "Bonds"), in the principal amount of \$\_\_\_\_\_ to provide funds to (i) finance the construction of certain transportation development district projects as more particularly described in the Petition (collectively, the "Project") within the Oak Park Mall TDD, (ii) fund a debt service reserve fund and (iii) pay certain costs relating to issuance of the Bonds; and

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

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

**Section 1. Authorization for the Issuance of Bonds.** The Issuer is hereby authorized to provide for the issuance of the Bonds for the purpose of providing funds to (i) finance the construction of the Project, (ii) fund a debt service reserve fund and (iii) pay certain costs

relating to issuance of the Bonds, all in the manner and as more particularly described in the herein authorized Indenture.

**Section 2. Authorization of Security and for the Bonds.** The Issuer is hereby authorized to issue and sell the Bonds in accordance with the provisions, restrictions and limitations of the Act. The Bonds and the interest thereon shall be payable solely from a pledge of the revenues received from the imposition of a transportation development district sales tax in the amount of one-half of one percent (.5%) (the “TDD Sales Tax”) on the selling of tangible personal property at retail or rendering or furnishing of taxable services taxable pursuant to the provisions of the Act within the Oak Park Mall TDD. The Bonds shall not be general obligations of the Issuer, shall not give rise to a charge against the Issuer’s general credit or taxing powers or be payable out of any funds or properties other than the TDD Sales Tax.

**Section 3 Terms of the Bonds.** The Bonds shall be issued and secured pursuant to the herein authorized Indenture and shall bear such dates, shall be in such denominations, shall be in such form, and shall be issued in such manner, subject to such provisions, covenants and agreements, as are set forth in the Indenture.

**Section 4. Authorization of Documents.** The Issuer is hereby authorized to enter into 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) Trust Indenture dated as of May 1, 2010 (the “Indenture”), by and between the Issuer and UMB Bank, N.A., as trustee (the “Trustee”); and
- (b) Bond Purchase Agreement by and between the Issuer and Oppenheimer & Co., Inc., the underwriter for the Bonds (the “Underwriter”); and
- (c) Tax Compliance Agreement by and among the Issuer, the Oak Park Mall, LLC and the Trustee; and
- (d) Continuing Disclosure Agreement by and between the Issuer and UMB Bank, N.A., as Dissemination Agent.

**Section 5. Execution of the Bonds and Documents.** The Mayor is hereby authorized and directed to execute the Bonds by manual or facsimile signature and to deliver the 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 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 6. Final Official Statement.** The Preliminary Official Statement dated April 1, 2010, is hereby ratified and approved, and the final Official Statement is hereby authorized and approved by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The Mayor is hereby authorized to execute the final Official Statement as so supplemented, amended and completed, and the use and public distribution of the Official Statement by the Underwriter in connection with the reoffering of the Bonds is hereby authorized. The Mayor is hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

For the purpose of enabling the Underwriter to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, the Issuer hereby deems the information regarding the Issuer contained in the Preliminary Official Statement to be "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1), and the appropriate officers of the Issuer are hereby authorized, if requested, to provide the Underwriter a letter or certification to such effect and to take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Underwriter to comply with the requirement of such Rule.

The Issuer agrees to provide to the Underwriter within seven business days of the date of the sale of the Bonds sufficient copies of the final Official Statement to enable the Underwriter to comply with the requirements of Rule 15c2-12(b)(4) of the Securities and Exchange Commission and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 7. Further Authority.** The Issuer shall, and the officials 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 Bonds and the Issuer Documents.

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

**THIS ORDINANCE** passed by the Governing Body of the City of Overland Park, Kansas, this \_\_\_\_ day of April, 2010.

**CITY OF OVERLAND PARK, KANSAS**

By: \_\_\_\_\_  
Carl Gerlach  
Mayor

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Marian Cook  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Robert J. Watson  
City Attorney