

ORDINANCE NO. **BG2022 - 47**

ORDINANCE RELATED TO WKU GATEWAY TO DOWNTOWN BOWLING GREEN TIF
DEVELOPMENT AREA AND PARKING GARAGE

ORDINANCE APPROVING AMENDED AND
RESTATED GENERAL OBLIGATION LEASE
AGREEMENT WITH WARREN COUNTY
DOWNTOWN ECONOMIC DEVELOPMENT
AUTHORITY, INC., AND APPROVING A MUTUAL
RELEASE AND SETTLEMENT AGREEMENT WITH
MANHATTAN CAPITAL BG, LLC

WHEREAS, the City of Bowling Green, Kentucky (“City”) established and later expanded the WKU Gateway To Downtown Bowling Green Development Area (“Development Area”) for the purpose of promoting a mixed use development within a numerous block area site in Warren County (“County”) and in the downtown area of the City, which connects Western Kentucky University to the City’s downtown (“Project”); and,

WHEREAS, subsequent to the establishment of the Development Area by the City, the County established the Warren County Downtown Economic Development Authority, Inc. (“Authority”) as its agency, instrumentality and constituted authority to be responsible for oversight, administration and implementation of the Project in the Development Area; and,

WHEREAS, the City, County and Authority authorized and entered into an Interlocal Cooperation Agreement (“Interlocal Agreement”) to provide for the financing, design, construction and installation of a Baseball Park and parking garage (“Parking Garage Facility”) within the Development Area and the operation and maintenance of the Baseball Park and Parking Garage Facility after their construction; and,

WHEREAS, the City, County and Authority authorized and entered into an Agreement on Sharing of Revenues (“Revenue Sharing Agreement”) with respect to the sharing and pledge of Incremental Revenues in the Project area; and,

(Ordinance No. BG2022 - 47)

WHEREAS, the County constructed the Parking Garage Facility in Block 6 of the Development Area and, in 2012, issued industrial building revenue bonds for the construction of a portion of the wrap (“Wrap”) for the Parking Garage Facility, with the Wrap consisting of retail, restaurant and office space; and,

WHEREAS, the Authority and County reached an agreement pursuant to which Manhattan Capital BG, LLC (“MC”) would operate and finalize the construction of the Wrap; and,

WHEREAS, in 2016, the County issued Kentucky Taxable Industrial Building Revenue Bonds (Downtown Development Project), Series 2016, dated January 27, 2016, in the original principal amount of \$30,000,000 (“Bonds”) to refinance the prior industrial building revenue bonds; and,

WHEREAS, the County, as the owner of the Project, as defined in the Trust Indenture by and between the County and the Trustee, dated January 27, 2016 (“Indenture”) and the County, as the issuer of the Bonds, entered into an Agreement of Lease with MC whereby MC leased the Project from the County (“WRAP Lease”); and,

WHEREAS, the Project is located adjacent, and contiguous, to the Parking Garage Facility, being a part of the real property conveyed to the Warren County Downtown Economic Development Authority, Inc. (“Authority”) from Bowling Green SPE, Inc. by deed dated November 1, 2011, and of record in Deed Book 1,029, Page 872 in the Warren County Court Clerk’s Office; and,

WHEREAS, the Authority, as owner of the Parking Garage Facility, leased the Parking Garage Facility to the County pursuant to a Contract, Lease Agreement, and Option, dated November 1, 2011 (“Contract, Lease Agreement, and Option”); and,

WHEREAS, the County and MC, in connection with the Project and the WRAP Lease, executed and entered into the Parking Garage Lease Agreement dated January 27, 2016 (“Parking Garage Lease”) whereby the County subleased its leasehold interest in the Parking Garage Facility to MC; and,

(Ordinance No. BG2022 - 47)

WHEREAS, the City, on November 17, 2015, adopted Ordinance No. BG2015-41, authorizing and approving a General Obligation Sublease Agreement by and between the City, as lessee, and MC, as lessor, dated as of January 27, 2016 (“2016 General Obligation Sublease”); and,

WHEREAS, pursuant to the 2016 General Obligation Sublease, the City, for the purpose of assisting in economic development in the WKU Gateway to Downtown Bowling Green TIF Development Area and for the issuance of the Bonds, leased the Parking Garage and pledged the rent payments due thereunder to Old National Wealth Management, as trustee for the Bonds (“Trustee”); and,

WHEREAS, the rent payment obligations due under the 2016 General Obligation Sublease are a general obligation of the City to which the full faith, credit, revenue, and taxes of the City are pledged to the payment thereof; and,

WHEREAS, the 2016 General Obligation Sublease, and the general obligation rent payments due thereunder, were assigned to the Trustee for the benefit of the holders of the Bonds; and,

WHEREAS, pursuant to a Mutual Release and Settlement Agreement by and between the County and MC, the County has repossessed the Project and the Parking Garage Lease has been terminated; and,

WHEREAS, the Contract, Lease Agreement, and Option has been terminated; and,

WHEREAS, the Authority has leased the Project from the County pursuant to an Agreement of Lease by and between the Authority, as lessee and the County as lessor (“Authority Lease”); and,

WHEREAS, the Bonds are still outstanding; and,

WHEREAS, the City desires to continue to lease the Parking Garage, to reaffirm its general obligation pledge of rent payments to the payment of debt service, principal, interest, and premium, if any, due on the Bonds; and,

WHEREAS, the County conveyed Weldon Peete Park (“Park”) to the Authority, the Authority leased the Park to the City and the City subleased the Park to the County (“Weldon Peete Park Lease”)

(Ordinance No. BG2022 - 47)

with the lease payments equal to any lease payments made by the City under the 2016 General Obligation Sublease; and,

WHEREAS, as a result of the Mutual Release and Settlement Agreement, the County's repossession of the Project pursuant to the WRAP Lease, the termination of the Parking Garage Lease, and the County and the Authority entering into the Authority Lease, the City desires to amend and restate its continuing general obligation pledge to lease the Parking Garage Facility, from the Authority; and,

WHEREAS, for the purpose of evidencing the City's continued general obligation pledge and assignment to the Trustee, for the benefit of the holders of the Bonds, the City desires to approve the Amended and Restated General Obligation Lease Agreement ("G.O. Lease Agreement"), attached hereto and made a part hereof as **Exhibit "A"**; and,

WHEREAS, as part of transactions relating to the G.O. Lease Agreement, the City and MC desire to enter into the Mutual Release and Settlement Agreement for the 2016 General Obligation Sublease ("Mutual Release"), substantially in the form attached hereto and made a part hereof as **Exhibit "B"**.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. The Amended and Restated General Obligation Lease Agreement ("G.O. Lease Agreement") by and between the City and the Authority, a copy of which is attached hereto as **Exhibit "A"** and made a part of this Ordinance as if copied in full herein, is hereby approved in substantially the form as attached, with such amendments as may be required to comply with this Ordinance and approved by the City Attorney.

2. The Mayor and all other appropriate City officials are authorized and directed to execute the G.O. Lease Agreement, together with any and all necessary closing documents, and all other documents necessary to carry out the transactions, contemplated by the G.O. Lease Agreement and the assignment of the G.O. Lease Agreement, together with all rent payments due thereunder, to the Trustee

(Ordinance No. BG2022 - 47)

for the benefit of the holders of the Bonds:

3. The obligation of the City created by the G.O. Lease Agreement shall be a full general obligation of the City to which the full faith, credit, revenue, and taxes of the City are hereby pledged for the prompt payment of any Rent, as defined in the G.O. Lease Agreement, due thereunder. During the term of the G.O. Lease Agreement, there shall be levied on all taxable property within the City, in addition to all other taxes, without limitation as to rate or amount, a direct tax annually in an amount sufficient to pay the Rent, when and as due; provided, however, that in each year to the extent that other taxes and revenues of the City are available for the payment of the Rent and are appropriated for such purpose, the amount of such direct tax upon all of the taxable property within the City shall be reduced by the amount of such other taxes and revenues so available and appropriated. The funds derived from said tax levy hereby required or other available taxes and revenues shall be placed in the Sinking Fund of the City and, together with interest collected on the same, are irrevocably pledged for the payment of the Bonds, including the Rent, when as the same fall due.

4. Notwithstanding anything herein to the contrary, the City's general obligation pledge, as set forth in Section 3 of Ordinance No. BG2015-41 and Section 9 of the 2016 General Obligation Sublease, shall continue to be enforceable against the City, in accordance with the provisions of the 2016 General Obligation Sublease, except as may be amended and restated by this Ordinance. It is the intent of the City that nothing in this Ordinance shall release the City from its obligations under the 2016 General Obligation Sublease and the pledge of the full faith, credit, revenue, and taxes of the City to the payment of Rent, as defined therein, as it relates to any payment of Rent under the 2016 General Obligation Sublease. The assignment of the 2016 General Obligation Sublease, and the Rent due thereunder, to the Trustee shall continue in full force and effect, as to any payments of Rent due under or pursuant to the 2016 General Obligation Sublease.

(Ordinance No. BG2022 - 47)

5. In order to secure the payment of the debt service, principal, interest, and premium, if any, due on the Bonds and in accordance with the Authority's obligations under the WRAP Lease, all payments to be made by the City under the G.O. Lease Agreement shall be assigned to the Trustee, for the benefit of the holders of the Bonds. The City hereby consents to the assignment of the Rent due under the G.O. Lease Agreement to the Trustee as security for the payment of debt service, principal, interest, and premium, if any, due on the Bonds and agrees that all payments to be made by the City under the G.O. Lease Agreement shall be paid directly to the Trustee. The City further agrees its obligation to make rent payments hereunder shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, counterclaim, or recoupment arising out of any breach hereof by the Authority or any obligation owed by the Authority to the City.

6. The Mutual Release, a copy of which is attached hereto as Exhibit "B" and made a part of this Ordinance as if copied in full herein, is hereby approved in substantially the form as attached, with such amendments as may be required to comply with this Ordinance and approved by the City Attorney.

7. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

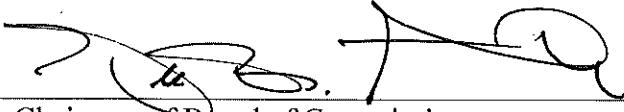
8. Ordinance BG2015-41 shall remain in full force and effect, except as amended hereby. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

9. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on September 13, 2022, and given final reading on September 20, 2022, and said Ordinance shall be in full force and effect upon signature, recordation and publication in

(Ordinance No. BG2022 - 47)

summary pursuant to KRS Chapter 424.

ADOPTED: September 20, 2022

APPROVED: 
Mayor, Chairman of Board of Commissioners

ATTEST: 
City Clerk

SPONSORED BY: Jeffery B. Meisel, City Manager