

RESOLUTION NO. 2094

A RESOLUTION DECLARING THE INTENT OF THE CITY OF GARDNER, KANSAS, TO ISSUE INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW) IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$12,540,000 FOR THE PURPOSE OF FINANCING A PORTION OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF PHASE TWO OF A MULTIFAMILY APARTMENT PROJECT WITHIN THE CITY (TALLGRASS APARTMENTS, PHASE TWO).

WHEREAS, the City of Gardner, Kansas (the "City"), is authorized and empowered pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the "Act"), to acquire, purchase, construct, improve, remodel, furnish, and equip certain facilities (as defined in the Act) for the stated statutory purposes, to enter into leases or 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 such facilities;

WHEREAS, Tallgrass Apartments, LLC, a Kansas limited liability company (the "Company"), has requested the City to issue its industrial revenue bonds (taxable under federal law) in the principal amount not to exceed \$12,540,000, to finance the costs of acquiring, constructing and equipping Phase Two of a multifamily apartment project, including buildings, improvements, and equipment (such phase, the "Project," as described and depicted on the Final Development Plan for Tallgrass, 2nd Plat, approved by the City's Planning Commission on September 27, 2021), generally located at the northwest corner of Moonlight Road and University Drive within the City, and to lease such Project to the Company, in order to promote, stimulate, and develop the general economic welfare and prosperity of the City and its environs and the health of the citizens thereof, and thereby to further promote, stimulate, and develop the general economic welfare and prosperity of the State of Kansas and the health of the citizens thereof;

WHEREAS, on June 7, 2021, the City approved Resolution No. 2084 (the "Master Resolution of Intent"), expressing its intent to issue up to \$37,900,000 principal amount of industrial revenue bonds (taxable under federal law) under the Act for the purpose of financing a portion of the cost of the acquisition, construction, and equipping of one or more phases of a multifamily apartment project, including buildings, improvements, and equipment (collectively, the "Master Project"), to be located on approximately 43 acres at the northwest corner of Moonlight Road and University Drive within the City, and to lease such separate phases of the Master Project to the Company;

WHEREAS, the Project represents the second phase of the improvements comprising the Master Project;

WHEREAS, subject to the provisions of **Section 3** of this Resolution, the City desires to finance the cost of acquiring, constructing and equipping the Project by the issuance of industrial revenue bonds (taxable under federal law) pursuant to the Act, said bonds to be payable solely out of the rentals, revenues and receipts derived from the lease of the Project to the Company; and

WHEREAS, the issuance of industrial revenue bonds will allow the Company to obtain a sales tax exemption on sales taxes levied by Kansas governmental entities for the purchase of construction materials related to the Project with proceeds of the bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS, AS FOLLOWS:

SECTION 1. Subject to the provisions of **Section 3** of this Resolution, it is hereby found and declared that the issuance of industrial revenue bonds (taxable under federal law) in the principal amount not to exceed \$12,540,000 (the “Bonds”) by the City for the purpose of financing the cost of the proposed Project to be leased by the City to the Company will promote, stimulate, and develop the general economic welfare and prosperity of the City and its environs and the health of the citizens thereof as well as further promoting, stimulating, and developing the general economic welfare and prosperity of the State of Kansas and the health of the citizens thereof.

SECTION 2. Subject to the provisions of **Section 3** of this Resolution, the Governing Body of the City hereby intends to authorize the issuance of the Bonds pursuant to the Act and all necessary regulatory approvals and upon the conditions more fully set forth in **Section 3** hereof.

SECTION 3. Notwithstanding this Resolution of Intent of the City to issue the Bonds, the issuance of the Bonds is expressly subject to presentation, completion, and final approval by the Governing Body of the City of each of the following conditions:

- (a) Satisfactory negotiation and approval of a base lease, lease agreement, trust indenture, bond ordinance, and other documents necessary for the issuance of the Bonds;
- (b) Obtaining all necessary permits and compliance with all necessary regulatory approvals and with the City ordinances including, without limitation, the terms and conditions of that certain Final Development Plan for Tallgrass, 2nd Plat, approved by the City’s Planning Commission on September 27, 2021;
- (c) Successful private placement of the Bonds or other purchase method approved by the City;
- (d) Approval of the Bonds by the City’s Bond Counsel, Kutak Rock LLP, and approval of certain legal matters pertaining to the Bonds by counsel to the Company;
- (e) Adequate security for the payment of the Bonds; and
- (f) The Company’s compliance with each of the conditions specified in **Section 3** of the Master Resolution of Intent to the extent applicable to Phase One and Phase Two of the Master Project, each as defined and described in the Master Resolution of Intent, with such conditions incorporated herein by this reference.

The City hereby reserves the right to rescind this Resolution of Intent if the conditions specified in this **Section 3** hereof are not, in the sole judgment of the City, satisfied, or upon change of federal or state law or regulations affecting the City’s issuing authority.

If the Bonds are not issued for any reason, including noncompliance with the conditions of this **Section 3**, the City shall not be subject to any liability, whatsoever, to the Company.

SECTION 4. Subject to the conditions and prior approvals of **Section 3**, the Company is hereby authorized to proceed with all matters necessary to accomplish the purposes set forth in this Resolution.

SECTION 5. The Mayor, City Council, City Administrator, Finance Director, Bond Counsel, and City Attorney are hereby directed to take such action as they deem necessary in cooperation with all persons involved with the financing of the Project in order to present the necessary documents to the Governing Body of the City for final action. Such officers and agents are authorized and directed to execute and file with the Kansas Department of Revenue an application for an exemption from sales tax for materials purchased for the Project with the Bond proceeds.

SECTION 6. The City and the Company expect to incur expenses in connection with the acquisition, construction, renovating, equipping, and furnishing of the Project prior to the issuance of the Bonds. The City and the Company reasonably expect to reimburse such expenditures in connection with the Project from the proceeds of the Bonds.

SECTION 7. This Resolution shall take effect and be in full force on the date it is adopted by the Governing Body of the City and signed by the Mayor. This Resolution shall be of no effect and shall be null and void on January 1, 2023, in the event the Bonds have not been issued by such date.

ADOPTED by the Governing Body of the City of Gardner, Kansas, on October 4, 2021.

CITY OF GARDNER, KANSAS

(Seal)

/s/ Steve Shute
Mayor

ATTEST:

/s/ Sharon Rose
City Clerk