

RESOLUTION NO. 2099

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 \$48,000,000 FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF A MULTIFAMILY APARTMENT PROJECT WITHIN THE CITY (NEW TRAILS MULTIFAMILY).

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, New Trails Multifamily, 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 \$48,000,000, to finance the costs of acquiring, constructing, and equipping a multifamily apartment project comprised of approximately 288 units, including land, buildings, improvements, and equipment (the “Project,” as described and depicted on the Treadway Apartments Preliminary Plat and Site Plan, together with all exhibits presented to the public, approved by the City’s Planning Commission on July 26, 2021), generally located at the southeast corner of 175th Street and Interstate 35 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, 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;

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;

WHEREAS, the Company has also requested that the City consider granting an exemption from ad valorem taxes for the Project in accordance with K.S.A. 79-201a *Second* or *Twenty-Fourth* and has indicated its intent to make payments in lieu of taxes upon terms to be mutually agreed to by the City and the Company;

WHEREAS, the City has caused a cost benefit analysis to be prepared in connection with its consideration of ad valorem property tax abatement on the Project, which cost benefit analysis includes an analysis of the effect on revenues of the State of Kansas;

WHEREAS, on January 18, 2022, the City held a public hearing and provided notice thereof as required by K.S.A. 12-1749c and 12-1749d, as amended; and

WHEREAS, the City finds and determines that it is necessary and desirable in connection with the issuance of the Bonds to approve the form of a Payment in Lieu of Tax Agreement (the “PILOT Agreement”) between the City and the Company wherein the Company agrees to make certain payments in lieu of taxes in consideration of the City issuing the Bonds and applying for a property tax exemption on the Project;

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 \$48,000,000 (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 the First Amended and Restated Development Agreement dated October 19, 2020, by and between the City and Grata Development, LLC, as the same may be amended from time to time, and 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 City ordinances including, without limitation, the terms and conditions of that certain Treadway Apartments Preliminary Plat and Site Plan, together with all exhibits presented to the public, approved by the City’s Planning Commission on July 26, 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; and
- (e) Adequate security for the payment of the Bonds.

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 PILOT Agreement is hereby approved in substantially the form on file in the office of the City Clerk, with such corrections or amendments thereto as the Mayor, upon recommendation of Bond Counsel and the City Attorney, may approve as evidenced by his execution thereof. The City intends that pursuant to the provisions of K.S.A. 79-201a *Second* or *Twenty-Fourth*, the Project be exempt from ad valorem property taxes for ten years commencing the year following the year in which the Bonds are issued in accordance with the terms of the PILOT Agreement and this Resolution. Subject to the issuance of the Bonds, proper application for an exemption being made to the Kansas Board of Tax Appeals and approval of such application by the Kansas Board of Tax Appeals, the City further determines that the Project shall be exempt from such taxes for 10 years, commencing in the year after the Bonds are issued, provided any annual payment in lieu of taxes due under the PILOT Agreement has been made and that the further terms and conditions of the PILOT Agreement are met. In making such determination the Governing Body of the City has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. 12-1749d. The Company is responsible for preparing such application and providing the same to the City for its review and submission.

SECTION 6. 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 7. 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 8. 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.

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ADOPTED by the Governing Body of the City of Gardner, Kansas, on January 18, 2022.

CITY OF GARDNER, KANSAS

(Seal)

/s/
Mayor

ATTEST:

/s/
City Clerk