

ORDINANCE NO. 2772

AN ORDINANCE AUTHORIZING THE CITY OF GARDNER, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2023 (TALLGRASS APARTMENTS, PHASE TWO), IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$9,300,000 FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, AND EQUIPPING PHASE TWO OF A MULTIFAMILY APARTMENT PROJECT WITHIN THE CITY AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

WHEREAS, the City of Gardner, Kansas (the “City”) is authorized by K.S.A. 12-1740 *et seq.*, as amended (the “Act”), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities;

WHEREAS, on June 7, 2021, the Governing Body of 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 (the “Bonds”), in one or more series, under the Act, for the purpose of financing a portion of the costs 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 the Master Project to Tallgrass Apartments, LLC, a Kansas limited liability company (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 (the “State”) and the health of the citizens thereof;

WHEREAS, the first phase of the Master Project was not financed with Bonds, but the Company desires the second, third, and fourth phases of the Master Project (respectively, “Phase Two,” “Phase Three,” and “Phase Four,” and collectively, the “Subsequent Phases”) be financed with Bonds and, when development of the Subsequent Phases moves forward, will request that the Governing Body of the City consider resolutions of intent to issue series of Bonds to finance each such Subsequent Phase of the Master Project;

WHEREAS, pursuant to Resolution No. 2094 of the City, adopted on October 4, 2021, as amended by Resolution No. 2116 of the City, adopted on October 17, 2022 (collectively, the “Resolution of Intent”), the Governing Body of the City indicated its intent to issue the principal amount of not to exceed \$12,540,000 of industrial revenue bonds pursuant to the Act, in order to finance a portion of the costs of acquiring, constructing, and equipping Phase Two of the Master Project (such phase, the “IRB 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;

WHEREAS, the Governing Body of the City now finds and determines that it is desirable in order to promote, stimulate, and develop the general economic welfare and prosperity of the City and the State that the City issue its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2023 (Tallgrass Apartments, Phase Two), in the principal amount not to exceed \$9,300,000 (the “Phase Two Bonds”), for the purpose of paying a portion of the costs of acquiring, constructing, and equipping the IRB Project and authorizing the City to lease and sublease the IRB Project as more fully described in the Indenture, the Base Lease, and the Lease hereinafter authorized; and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with the issuance of the Phase Two Bonds to execute and deliver: (i) a Trust Indenture (the “Indenture”), with Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the “Trustee”), prescribing the terms and conditions of issuing and securing the Phase Two Bonds; (ii) a Base Lease Agreement (the “Base Lease”), pursuant to which the City will lease the IRB Project from the Company; (iii) a Lease (the “Lease”), pursuant to which the City will lease back the IRB Project to the Company, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of, premium, if any, and interest on the Phase Two Bonds as the same become due; and (iv) a Bond Purchase Agreement providing for the sale of the Phase Two Bonds by the City to the Company (the Indenture, the Base Lease, the Lease, and the Bond Purchase Agreement are referred to collectively herein as the “Bond Documents”);

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

SECTION 1. Authority to Cause the IRB Project to be Acquired, Constructed, and Equipped. The City is hereby authorized to cause the IRB Project to be acquired, constructed, and equipped all in the manner and as more particularly described in the Indenture, the Base Lease, and the Lease hereinafter authorized.

SECTION 2. Authorization of and Security for the Phase Two Bonds. The City is hereby authorized and directed to issue the Phase Two Bonds in the principal amount not to exceed \$9,300,000 for the purpose of providing funds to pay a portion of the costs of acquiring, constructing, and equipping the IRB Project. The Phase Two Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants, and agreements set forth in the Indenture. The Phase Two Bonds shall be special limited obligations of the City payable solely from the trust estate established under the Indenture, including revenues from the lease of the IRB Project. The Phase Two Bonds shall not be general obligations of the City, nor constitute a pledge of the full faith and credit of the City and shall not be payable in any manner by taxation.

SECTION 3. Execution of Bonds and Phase Two Bond Documents. The Mayor or acting Mayor of the City is hereby authorized and directed to execute the Phase Two Bonds and deliver them to the Trustee for authentication on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor or acting Mayor is further authorized and directed to execute and deliver the Bond Documents on behalf of and as the act and deed of the City, in substantially the forms on file in the office of the City Clerk, with such corrections or

amendments thereto as the Mayor or acting Mayor may approve, which approval shall be evidenced by his or her execution thereof, and to execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance and the Bond Documents. The City Clerk is hereby authorized and directed to attest the execution of the Phase Two Bonds, the Bond Documents, and such other documents, certificates, and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the City's official seal.

SECTION 4. Pledge of the IRB Project and Net Earnings. The City hereby pledges the City's leasehold interest in the IRB Project and the net earnings generated under the Lease to the payment of the Phase Two Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Phase Two Bonds shall be deemed to be paid within the meaning of the Indenture.

SECTION 5. Further Authority. The officials, officers, agents, and employees of the City and Kutak Rock LLP, the City's 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 the provisions of this Ordinance and to carry out and perform the duties of the City with respect to the Phase Two Bonds and the Bond Documents as necessary to give effect to the transactions contemplated in this Ordinance and in the Bond Documents.

SECTION 6. Effective Date. This Ordinance shall take effect from and after its passage by the Governing Body of the City, approval by the Mayor, and publication once in the official newspaper of the City.

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PASSED by the Governing Body of the City of Gardner, Kansas, on June 20, 2023.

APPROVED by the Mayor on June 20, 2023.

CITY OF GARDNER, KANSAS

/s/

Mayor

{Seal}

ATTEST:

/s/

City Clerk