

RESOLUTION NO. 2134

A RESOLUTION AUTHORIZING EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL TRUST INDENTURE, THE SALE AND CONVEYANCE OF THE PROJECT, AND THE EXECUTION OF A RELEASE OF LEASES, AND FURTHER AUTHORIZING CERTAIN ADDITIONAL RELATED ACTIONS IN CONNECTION WITH THE CITY'S NOT TO EXCEED \$9,300,000 INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2023 (TALLGRASS APARTMENTS, PHASE TWO).

WHEREAS, the City of Gardner, Kansas (the "City") passed Ordinance No. 2772 on June 20, 2023 (the "Ordinance"), authorizing the issuance of its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2023 (Tallgrass Apartments, Phase Two) (the "Bonds"), in the principal amount not to exceed \$9,300,000, pursuant to a Trust Indenture dated as of June 1, 2023 (the "Original Indenture"), between the City and Security Bank of Kansas City, as trustee (the "Trustee"), for the purpose of financing a portion of the costs of acquiring, constructing, and equipping Phase Two of a multifamily development (the "Project"), as further described in the Original Indenture;

WHEREAS, in connection with the issuance of the Bonds, the City acquired a leasehold interest in certain real property from Tallgrass Apartments, LLC, a Kansas limited liability company (the "Company"), pursuant to a Base Lease Agreement dated as of June 1, 2023 (the "Base Lease");

WHEREAS, the City leased the Project to the Company pursuant to a Lease dated as of June 1, 2023 (the "Lease"), between the City and the Company;

WHEREAS, the City assigned certain of its interest in the Base Lease and Lease to the Trustee pursuant to an Assignment of Leases dated as of June 1, 2023;

WHEREAS, capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Original Indenture;

WHEREAS, pursuant to Section 5.6 of the Lease, the Company was to have completed the Project and completed its final requisition to the Trustee for the reimbursement of Project Costs on or prior to the Completion Date;

WHEREAS, the Original Indenture defines the "Completion Date" to be not later than December 31, 2023;

WHEREAS, the Company completed the Project prior to December 31, 2023, but did not complete the final requisition to the Trustee prior to such date;

WHEREAS, the Company desires to amend the Original Indenture to modify the definition of "Completion Date," and Sections 1102 and 1103 of the Original Indenture authorize the City and the Trustee to amend the Original Indenture with the consent of the Company and the owner of 100% of the outstanding Bonds;

WHEREAS, pursuant to Article XI of the Original Indenture, any such amendment of the Original Indenture requires the consent of the Bondowner (as herein defined), the Company, the City, and the Trustee; and

WHEREAS, the Company is the owner (the “Bondowner”) of 100% of the outstanding Bonds;

WHEREAS, the Company and the Trustee have or will consent to the requested amendment to the Original Indenture;

WHEREAS, the Governing Body of the City deems it advisable to approve an amendment of the Original Indenture and to enter into a First Supplemental Trust Indenture (the “Supplemental Indenture”);

WHEREAS, in connection with such amendment, the City is willing to waive the notices specified in the Original Indenture;

WHEREAS, the Bonds mature on June 1, 2026;

WHEREAS, pursuant to Section 17.1 of the Lease, the Company has the right and option to purchase the City’s leasehold interest in the Project by giving written notice to the City of the Company’s election to exercise its option and specifying the date (the “Closing Date”), which date must neither be earlier than 30 days nor later than 180 days after the notice is given;

WHEREAS, pursuant to the Lease, the City is required to terminate the Base Lease and the Lease and release all of its interest in the Project to the Company upon adequate notice once the Bonds have been fully paid and all other obligations and duties of the Company under the Lease have been performed and satisfied;

WHEREAS, the Company has requested that the City waive the notice period and be permitted to exercise its option to purchase the Project on or around January 18, 2024;

WHEREAS, the City is willing to waive the notice specified in the Lease, and to set the Closing Date of the purchase of the Project when the Bonds are paid in full, and the Trustee has indicated it is also willing to waive such notice;

WHEREAS, the Company is the owner of 100% of the outstanding Bonds, and has represented that it is willing to waive the notice requirement provided in the Original Indenture for redemption of the Bonds; and

WHEREAS, the Governing Body of the City finds and determines that it is necessary and desirable for the City to enter into certain documents and take certain other actions and approve the execution of certain other documents as herein provided to convey the Project to the Company once the Bonds have been fully paid and all other requirements of the Lease relating to the exercise of the purchase option have been satisfied;

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

Section 1. Acknowledgment and Approval. The City hereby acknowledges and approves the Company’s request to execute and deliver the Supplemental Indenture to amend the definition of “Completion Date” under the Original Indenture, acknowledges and approves the Company’s request to exercise the option to purchase the Project pursuant to the Lease, and agrees to waive the notice provisions of Section 17.1 of the Lease and to set the Closing Date on or around January 18, 2024.

Section 2. Conveyance. The City hereby approves the sale and conveyance of the City’s leasehold interest in the Project, as provided in the Lease; provided, however, that prior to such sale and conveyance, the City shall have received the \$1,000.00 purchase price as provided in the Lease, a certificate of the Trustee that the Bonds have been paid in full, and confirmation by Kutak Rock LLP, the City’s Bond Counsel, that all other requirements of the Lease relating to the exercise of the purchase option have been satisfied, including, but not limited to, payment of any fees and expenses of the City’s Bond Counsel in connection with the transaction.

Section 3. Authorization and Execution of Documents. The Mayor is hereby authorized and directed to execute and deliver the Supplemental Indenture, a Release of Leases, and such other documents, certificates, and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution (collectively, the “Release Documents”) (copies of said documents shall be filed in the records of the City) for and on behalf of and as the act and deed of the City, subject to the confirmation by Kutak Rock LLP, the City’s Bond Counsel, that the conditions set forth herein have been satisfied. The Interim City Clerk is hereby authorized and directed to attest to and affix the seal of the City to the Release Documents.

Section 4. Further Authority. The City shall, and the officers and agents of the City 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 Resolution and to carry out, comply with, and perform the duties of the City with respect to the Release Documents.

Section 5. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the Governing Body of the City.

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ADOPTED by the Governing Body of the City of Gardner, Kansas, on January 16, 2024.

CITY OF GARDNER, KANSAS

/s/

Mayor

(Seal)

Attest:

/s/

Interim City Clerk