

ORDINANCE NO. 2590

AN ORDINANCE OF THE CITY OF GARDNER, KANSAS, AUTHORIZING THE CITY TO ISSUE INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2018 (HAMPTON INN), IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$14,000,000, FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A COMMERCIAL FACILITY, 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 and empowered pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to acquire, construct and equip certain facilities (as defined in the Act) for the stated statutory purposes, to enter into lease and 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, the Governing Body of the City adopted Resolution No. 1965 on March 20, 2017 (the “Resolution of Intent”), indicating its intent to issue the principal amount of not to exceed \$14,000,000 of industrial revenue bonds (taxable under federal law) pursuant to the Act, to finance a portion of the costs of acquiring, constructing and equipping an approximately 84-room new hotel and adjoining meeting space, including real estate (the “Project Site”), buildings, improvements and equipment (collectively, the “Project Improvements”), generally located west of the intersection of Interstate 35 and 175th Street within the City, (collectively, the Project Site and Project Improvements are referred to herein as the “Project”), 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 City intends to lease the Project to Gardner Hospitality LLC, a Kansas limited liability company (the “Company”);

WHEREAS, the City has heretofore found and does now find and determine 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, Series 2018 (Hampton Inn) (the “Bonds”), in the principal amount not to exceed \$14,000,000, to be issued for the purpose of financing the acquisition, construction and equipping the Project, to be leased to the Company;

WHEREAS, the Company has requested, and the City has agreed, to amend that certain Developer’s Agreement dated as of March 23, 2017 (the “Developer’s Agreement”), by and between the City and the Company, in order to extend the time to complete construction of the Project as set forth therein; and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds and the amendment to the Developer’s Agreement that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided;

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

SECTION 1. Authorization for the Issuance of Bonds. The City is hereby authorized to provide for the issuance of the Bonds for the purpose of financing the acquisition, construction and equipping of the Project and paying of the costs of issuance of the Bonds, all in the manner and as more particularly described in the herein-defined Indenture and Lease.

SECTION 2. Authorization of and Security for the Bonds. The City is hereby authorized to issue and sell the Bonds for the purpose of providing funds to pay the cost of acquiring, constructing and equipping the Project and paying the costs of issuance of the Bonds. The Bonds shall be issued and secured pursuant to the herein authorized Indenture and shall bear such dates, shall mature at such times, shall be in such denominations, shall bear interest at such rates, shall be in such form, shall be subject to redemption, purchase and other terms and conditions, and shall be issued in such manner, subject to such provisions, covenants and agreements, as are set forth in the Indenture. The Bonds shall be payable solely out of the rents, revenues and receipts derived by the City from the Project, and the Project and the net earnings derived by the City from the Project shall be pledged and assigned to the herein-defined Trustee as security for payment of the Bonds as provided in the Indenture.

SECTION 3. Authorization of Documents. The City is hereby authorized to enter into the following documents (collectively, the “City Documents”), in substantially the forms presented to and reviewed by the Governing Body of the City, at this meeting (copies of which documents shall be filed in the records of the City) with such changes therein as shall be approved by the officials of the City executing such documents, such officials’ signatures thereon being conclusive evidence of their approval thereof:

(a) Trust Indenture dated as of December 1, 2018 (the “Indenture”), by and between the City and Security Bank of Kansas City, as trustee (the “Trustee”), pursuant to which the Bonds shall be issued and the City shall pledge the Project and assign the rents, revenues and receipts received pursuant to the Lease to the Trustee for the benefit of and security of the holders of the Bonds upon the terms and conditions as set forth in said form of Indenture;

(b) Lease dated as of December 1, 2018 (the “Lease”), by and between the City and the Company under which the City will agree to use the proceeds derived from the sale of the Bonds for the purpose of financing the costs of acquiring, constructing and equipping the Project and to lease the Project back to the Company, and the Company will agree to make payments in amounts sufficient to provide for the payment of the principal of, redemption premium, if any, and interest on the Bonds as the same become due;

(c) Bond Purchase Agreement dated as of December 1, 2018, providing for the sale of the Bonds by the City to the Company, as purchaser thereunder; and

(d) First Amendment to Developer’s Agreement dated as of November 5, 2018, extending the time to complete construction of the Project under the Developer’s Agreement.

SECTION 4. Execution of the Bonds and Documents. The Mayor is hereby authorized and directed to execute the Bonds by manual signature and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor is hereby authorized and directed to execute and deliver the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to the Bonds, the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION 5. Further Authority. The City shall, and the officials, employees and agents 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 and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents.

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

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PASSED by the Governing Body on November 5, 2018.

APPROVED by the Mayor on November 5, 2018.

CITY OF GARDNER, KANSAS

By: _____ /s/
Mayor

{Seal}

ATTEST:

_____/s/
City Clerk