

RESOLUTION NO. 092319-2

OF THE

GOVERNING BODY

OF THE

CITY OF ABILENE, KANSAS

RELATING TO THE INTENT TO ISSUE
NOT TO EXCEED
\$10,000,000
INDUSTRIAL REVENUE BONDS
(THE GARFIELD SENIOR LIVING PROJECT)

RESOLUTION NO. 092319-2

A RESOLUTION STATING THE INTENT OF THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS TO ISSUE INDUSTRIAL REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$10,000,000, TO BE ISSUED IN TWO OR MORE PHASES, TO PAY COSTS OF ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING COMMERCIAL FACILITIES WITHIN THE CITY AND FURTHER STATING THE INTENT OF THE CITY TO ISSUE BONDS FOR THE FIRST PHASE OF THE PROJECT (THE GARFIELD SENIOR LIVING PROJECT).

WHEREAS, the governing body of the City of Abilene, Kansas (the "City") desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and

WHEREAS, pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the "Act"), and all other acts amending or supplementing the Act, the City is authorized to issue revenue bonds of the City to pay costs of certain facilities (as defined in the Act) and to lease such facilities to private persons, firms or corporations; and

WHEREAS, The Garfield, LLC, a Kansas limited liability company (the "Tenant"), has asked the City to provide for the issuance of certain industrial revenue bonds in an amount not to exceed \$10,000,000 (the "Bonds") pursuant to the Act, to pay costs of the anticipated purchase, renovation, remodeling, construction, furnishing and equipping of a multi-phased senior independent living facility, in and adjacent to the historic Garfield Elementary School in the City, located at 300 NW 7th St, Abilene, Kansas (the "Master Project"), to be leased to the Tenant by the City for purposes of the bond financing; and

WHEREAS, the Master Project is planned to be constructed in phases with the first phase consisting of the renovation and rehabilitation of the Garfield School building into 19 senior living independent units and related amenities ("Phase 1 Project") and a future expansion of the facility on a site east of the Garfield School building ("Phase 2 Project"); and

WHEREAS, the City has found it advisable, in the interest and for the welfare of the City and its inhabitants for the City to issue the Bonds under the Act, with the Bonds to be paid solely out of rentals, revenues, and receipts derived from the lease of each phase of the Master Project to the Tenant; and

WHEREAS, the Tenant has not asked the City to consider granting an exemption from ad valorem taxes for the Phase 1 Project as authorized and provided in K.S.A. 79-201a *Second*, but is requesting that the City apply for a retailers' sale tax project exemption certificate for the Phase 1 Project; and

WHEREAS, the City adopted Resolution No. 042318-1 on April 23, 2018 stating its intention to issue the Bonds for the Master Project and that Resolution expired and is considered

repealed by its terms because construction on the Master Project or issuance of Bonds for the Master Project had not begun within 9 months of the date of Resolution No. 042318-1; and

WHEREAS, the Tenant has advised the City that the Master Project will proceed and requested the City adopt this Resolution to replace the now expired and repealed Resolution No 042318-1.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

SECTION 1. Approval of Master Project and Phase 1 Project. The City finds and determines the Master Project will promote, stimulate and develop the general economic welfare and prosperity of the City and the State of Kansas through the promotion and advancement of physical and mental health and commercial development of the City and the issuance of the Bonds to pay costs of the Master Project and the Phase 1 Project will further the public purposes set forth in the Act.

SECTION 2. Intent to Issue Bonds. The City determines and declares the intent of the City to assist the Tenant in completing the Master Project through issuance of the Bonds of the City to finance each phase of the Master Project, with the Bonds to be issued from time to time, in one or more series, in an aggregate principal amount of not to exceed \$10,000,000 for the purposes of purchasing, acquiring, constructing, renovating, furnishing and equipping the Master Project, all subject to the limitations, conditions and requirements of the Act and this Resolution. Bonds issued for the Phase 1 Project are expected to be issued in the principal amount of \$4,500,000.

SECTION 3. Issuance of Bonds; Conditions to Issuance. Subject to the conditions of this Resolution the City will (a) issue its Bonds in one or more series to pay costs of acquiring, constructing, improving, furnishing and equipping each Master Project phase, with the Bonds having maturities, interest rates, redemption terms and other provisions as are determined by an ordinance of the City, (b) provide for the lease (with an option to purchase) of each phase of the Master Project to the Tenant; and (c) adopt such resolutions and ordinances and authorize the execution and delivery of documents and the taking of actions as may be necessary or advisable for authorization and issuance of the Bonds by the City, and (d) take or cause to be taken any other action as is required to implement this Resolution.

The issuance of the Bonds and execution and delivery of any documents relating to the Bonds are subject to: (1) obtaining the legislative approval and publication of an ordinance or ordinances of the City authorizing issuance of the Bonds in one or more series; (2) obtaining any necessary governmental approvals; (3) agreement by the City, the Tenant and the purchaser of the Bonds upon (a) mutually acceptable terms for each series of Bonds and for the sale and delivery of each series of Bonds, (b) mutually accepted terms and conditions of any documents related to issuance of each series of Bonds and each phase of the Master Project, including but not limited to a lease agreement and other agreements relating to security for and payment of Bonds, the terms of which shall be in compliance with the Act and mutually satisfactory to the City and the Tenant, (c) the repayment to the City for all expenses incurred in connection with the Bonds, and (d) the successful negotiation and sale of the Bonds, which sale shall be the responsibility of the Tenant and not the City; (4) agreement by

the City and the Tenant on mutually acceptable terms and conditions relating to any tax exemptions or other incentives available to each phase of the Master Project; (5) the commitment by Tenant to pay and the payment of all expenses of the City related to issuance of the Bonds and the Master Project, including all legal fees and expenses of Bond Counsel relating to the issuance of the Bonds; (6) compliance with the City's policies and procedures and requirements of the Act relating to industrial revenue bonds and tax exemption incentives, including, but not limited to, adoption of a separate resolution of intent for issuance of Bonds for subsequent phases of the Master Project phase for which a series of Bonds is issued; (7) each resolution of intent relating to a the Phase 2 Project or another Master Project phase shall identify an expiration date for the issuance of Bonds and commencement of the terms of any requested tax exemption or other incentive related to the specific Master Project phase.

SECTION 4. Sale of Bonds; Authority to Proceed. The sale of the Bonds shall be the responsibility of the Tenant but arrangements for the sale of the Bonds are subject to the City's approval. The Tenant is authorized to proceed with acquisition and completion of the Master Project and particularly, the Phase 1 Project, (provided all other City approvals and permits are obtained) and to advance such funds as are necessary to accomplish such purposes, and to the extent permitted by law, the City will reimburse the Tenant for such expenditures from proceeds of the Bonds, when and if issued. Notwithstanding the authorization in the preceding sentence, the Tenant proceeds at its own risk and if, for any reason, Bonds are not issued, the City will have no liability to the Tenant for any reason. The Act provides the City may only issue each series of Bonds by adopting an ordinance authorizing that series of Bonds and providing for the terms and details of that series of Bonds. The Act further provides the City may only approve an ad valorem tax exemption after completion of a costs benefit analysis, a public hearing, and issuance of industrial revenue bonds to pay costs of the property that is the subject of the tax exemption. The City has not yet adopted an ordinance, authorized any series of Bonds for the Master Project or completed the necessary steps to approve a tax exemption, if any, for the property financed by the Bonds. This Resolution only evidences the intent of the City to issue Bonds for the Master Project and the Phase 1 Project, and to apply for or seek an extension of a project exemption certificate for retailers' sales tax applicable to the Phase 1 Project. The Tenant has not asked the City to consider ad valorem property tax exemption on the Phase 1 Project. Any request for ad valorem tax exemption for future phases of the Master Project will be subject to the notice and hearing requirements of the Act, and will be described in a resolution of intent for any future phase.

SECTION 5. Limited Obligations. Each series of Bonds and the interest payable on such Bonds shall be special and limited obligations of the City, payable solely from the rents, revenues and receipts derived by the City from the lease of each Master Project phase to the Tenant or the Tenant's assignee as authorized by this Resolution. The Bonds shall not be a general obligation of the City, the state of Kansas or any political subdivision thereof, shall not constitute a pledge of the full faith and credit of the City, the State of Kansas or any other political subdivision thereof and shall not be payable in any manner from taxation.

SECTION 6. Termination; Policy Waiver. This Resolution terminates and shall be considered repealed in the event the Tenant does not issue the first series of the Bonds for Phase 1 of the Master Project or begin construction of the Phase 1 Project within nine (9) months of the effective date of this Resolution. The City further waives the public hearings on a resolution of intent provided for in Resolution No. 032904-1, Section 5, and, pursuant to Section 11 of the same

Resolution, finds that such waiver is in the public interest in order to accommodate the Tenant's compelling interest in an accelerated financing and construction schedule for the Phase 1 Project.

SECTION 7. Further Action. The Mayor, City Clerk, Triplett Woolf Garretson, LLC, the City's Bond Counsel, and City staff are authorized and directed to take all such other actions not inconsistent with this Resolution as may be appropriate or desirable to accomplish the purposes contemplated by this Resolution, including but not limited to, (1) execution on behalf of the City of an appropriate notices of proposed issuance of such Bonds with the Kansas State Board of Tax Appeals pursuant to K.S.A. 12-1744a, if required, (2), if required, providing applicable notices of public hearings with respect to the proposed issuance of such Bonds in accordance with K.S.A. 12-1749c or K.S.A. 12-1749d, (3) seeking a retailers' sales tax exemption certificate for the construction and equipping each phase of the Master Project, and (4) requesting any necessary approvals of issuance of the Bonds as required by the Act or laws of the State of Kansas.

SECTION 8. Effective Date. This Resolution shall become effective upon its approval and adoption by the governing body of the City of Abilene, Kansas.

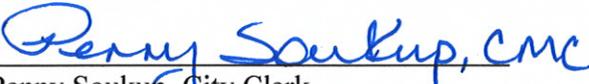
[Remainder of Page Intentionally Left Blank]

ADOPTED AND APPROVED by the governing body of the City of Abilene, Kansas on September 23, 2019.



CITY OF ABILENE, KANSAS

By 
Timothy Shafer, Mayor

By 
Penny Soukup, City Clerk