

RESOLUTION NO. 87 - 23

A RESOLUTION DECLARING THE INTENT OF THE CITY OF COLORADO SPRINGS, COLORADO TO ISSUE ITS MULTIFAMILY HOUSING REVENUE BONDS TO FINANCE THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF AN AFFORDABLE MULTIFAMILY HOUSING FACILITY KNOWN AS ROYAL PINE APARTMENTS.

WHEREAS, the City of Colorado Springs (the "City") is a municipal corporation duly organized and existing as a home-rule city under Article XX of the Constitution of the State of Colorado and the home rule charter of the City (the "Charter"); and

WHEREAS, the City is authorized by the County and Municipality Development Revenue Bond Act, constituting Article 3, Title 29, Colorado Revised Statutes, as amended (the "Act") and the Colorado Supplemental Public Securities Act, constituting Article 57, Title 11, Section 201 et seq., Colorado Revised Statutes, as amended (the "Supplemental Public Securities Act"), to finance and refinance one or more projects (which includes any land, building or other improvement and real and personal properties) to the end that residential facilities for low- and middle-income persons or families may be provided which promote the public health, welfare, safety, convenience and prosperity; and

WHEREAS, the City is further authorized by the Act and the Supplemental Public Securities Act to issue revenue bonds for the purpose of defraying the cost of financing any project, including the payment of principal and interest on such revenue bonds for not exceeding three years, the funding of any reserve funds which the City may deem advisable to establish in connection with the retirement of such revenue bonds or the maintenance of the project and all incidental expenses incurred in issuing such revenue bonds, and to secure payment of such revenue bonds as provided in the Act; and

WHEREAS, representatives of DBG Properties LLC, a New Mexico limited liability company, including any subsidiaries, affiliates, successors or assigns (such entity, together with one or more related affiliates or successors or assigns, are collectively referred to herein as the "Developer"), have met with officials of the City and have advised the City that a to-be-created entity, including any subsidiaries, affiliates, successors or assigns (but only if such subsidiaries, affiliates, successors or assigns are acceptable to the City) (the "Borrower") intends to acquire, construct, improve and equip an affordable multifamily housing facility, consisting of approximately 232 units containing complete residential facilities, and have proposed that the City issue its multifamily housing revenue bonds, in one or more series, to finance Royal Pine Apartments (or such other name as the Developer may elect for this property, the "Project"), which Project is located at 4150 Royal Pine Drive, Colorado Springs, Colorado 80920, within the boundaries of the City, to be owned and operated by the Borrower; and

WHEREAS, the Project constitutes a project under the Act, and the City wishes to declare its intention to authorize an issue of its multifamily housing revenue bonds, in one or more series (the "Bonds"), for the purpose of paying the cost of financing the Project, upon such terms and conditions as are contained herein; and

WHEREAS, the City has considered the Developer's Project proposal and, upon the expectation that the Project will provide more adequate residential rental housing for low- and middle-income persons and families within the City, the City wishes to declare its present intention to authorize the Bonds for the aforesaid purposes, all upon such terms and conditions as may be agreed upon by the City, Kutak Rock LLP ("Bond Counsel") and the Developer; and

WHEREAS, the City will enter into one or more loan agreements or other types of financing agreements (the "Financing Agreement") pursuant to which the City will loan the proceeds of the Bonds to the Borrower, or an affiliated entity thereof; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS, COLORADO, AS FOLLOWS:

Section 1. In order to benefit the residents of the City, the City hereby declares its intent to authorize the issuance, in one or more series, of the Bonds in an aggregate principal amount not to exceed \$40,000,000, which amount shall be determined by the City in a bond ordinance to be considered for adoption at another meeting.

Section 2. The Bonds shall be special, limited obligations of the City payable solely and secured by a pledge of revenues derived from and payable by the Borrower pursuant to the Financing Agreement with the City.

Section 3. The City Council of the City of Colorado Springs, Colorado (the "City Council") hereby finds, determines, recites and declares that the Bonds shall not constitute the debt or indebtedness of the City or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City, the State or any political subdivision of the State of Colorado (the "State"), within the meaning of any provision or limitation of the Constitution or statutes of the State or of the City Charter, and shall not constitute nor give rise to a pecuniary liability or financial obligation of the City or a charge against the City's general credit or taxing powers, or ever be deemed to be an obligation or agreement of any City Council member, officer, director, agent or employee of the City in such person's individual capacity, and none of such persons shall be subject to any personal liability in connection with the issuance of the Bonds, the Project or the provisions of this Resolution.

Section 4. The City Council hereby finds, determines, recites and declares that the issuance of the Bonds to finance the Project will promote the public purposes set forth in the Act, including, without limitation, assisting persons or families of low- and middle-income in obtaining decent, safe and sanitary housing.

Section 5. The City hereby awards the Project up to \$40,000,000 of its private activity bond volume cap allocation, not to exceed 52% of the eligible aggregate basis of the Project, which amount may be subject to certain adjustments by the City.

Section 6. In connection with the management and preservation of the City's private activity bond volume cap allocations, the City is hereby authorized to execute any Internal Revenue Service ("IRS") form and to enter into assignment agreements and delegation agreements with other Colorado "issuing authorities" as defined in Section 24-32-1703(12), Colorado Revised Statutes, as amended. The Chief Financial Officer of the City is hereby authorized and directed to execute any such IRS form and to execute and deliver any such assignment agreements or delegation agreements that are necessary to manage and preserve the City's private activity bond volume cap allocation.

Section 7. The City Council hereby finds, determines, recites and declares the City's intent that this Resolution constitute an official indication of the present intention of the City to issue the Bonds as herein provided, subject to: (a) the Borrower obtaining a commitment for the purchase of the Bonds on terms which are acceptable to the City and its Bond Counsel; (b) the delivery of an approving opinion of Bond Counsel to the City; (c) the delivery of a market study, appraisal, survey, title insurance, environmental audit and plans and specifications which are all acceptable to the City; (d) the Borrower obtaining sufficient debt and equity financing acceptable to the City; (e) the execution and delivery by the Borrower of indemnity agreements and agreements providing that the Borrower pay or reimburse the costs and expenses of the City, all to the satisfaction of the City; and (f) the adoption of a final bond ordinance by the City Council. The City's sole and absolute discretion to accept or not to accept items relating to the Project or additional financing therefor or relating to credit, security, sale or marketing aspects of the Bonds is intended for the protection of the City's interest, and any such acceptance shall not be construed to impose upon the City any duties to, nor to confer any rights against the City upon, any bondholders, investors or other third parties.

Section 8. No costs or expenses whether incurred by the City or any other party in connection with the issuance of the Bonds or the preparation or review of any documents by any legal or financial consultants retained in connection herewith shall be borne by the City. The City shall have the right to select and retain legal, financial and other consultants in connection with the proposed financing, and all fees, costs and expenses of such consultants, along with all other such costs and expenses shall be paid from the proceeds of the Bonds or otherwise borne by the Borrower regardless of whether the Bonds are issued. The City may require such deposits or advances as it deems desirable for such fees, costs and expenses, and may require reimbursement of any such fees, costs and expenses paid by the City.

Section 9. Subject to the terms and conditions of this Resolution, the City hereby desires to declare its official intent, pursuant to 26 C.F.R. § 1.150-2, to issue the Bonds and thereby permit the City and the Borrower to reimburse itself from proceeds of the Bonds for certain expenditures incurred in connection with the Project prior to issuance of the Bonds.

Section 10. All actions not inconsistent with the provisions of this Resolution heretofore taken by the City Council or any officer or employee of the City in furtherance of the issuance of the Bonds are hereby ratified, approved and confirmed.

Section 11. All prior acts, orders, resolutions, ordinances or parts thereof in conflict or inconsistent with this Resolution are hereby repealed to the extent of such conflict or inconsistency, except that this repealer shall not be construed to revive any act, order, resolution, ordinance, or part thereof, heretofore repealed.

Section 12. The agreements of the City set forth above are expressly conditioned upon the ability and willingness of the City to issue the Bonds as tax-exempt obligations under the Internal Revenue Code of 1986, as amended. Nothing contained in this Resolution shall be construed as requiring the City to issue the Bonds and the decision to issue the Bonds shall be in the complete discretion of the City.

Section 13. If any section, paragraph, clause or provision of this Resolution, with the exception of any section, paragraph, clause or provision limiting the City's financial obligation, shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this Resolution.

Section 14. This Resolution and all of the obligations of the City described herein shall terminate on August 1, 2024 (the "Expiration Date"); provided, however, the Chief Financial Officer of the City may extend the Expiration Date to a later date in their sole discretion.


Section 15. This Resolution shall take effect immediately upon its introduction and passage by the City Council.

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DATED at Colorado Springs, Colorado, this 13th day of June 2023.


Randy Helms, Council President

ATTEST:


Sarah B. Johnson, City Clerk

