

APPROVAL OF ISSUANCE OF RECOVERY ZONE FACILITY BONDS FOR THE GARDEN GROVE GALLERIA PROJECT

August 24, 2010

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In order for all or a portion of the Bonds to qualify as tax-exempt bonds, the City Council must conduct a public hearing pursuant to TEFRA that provides members of the community an opportunity to speak in favor of, or against the use of tax exempt bonds for the financing of a proposed project. Prior to a TEFRA hearing, reasonable notice must be provided to members of the community. Notice of public hearing with respect to execution of delivery of tax-exempt bonds to finance the Project was published fourteen (14) days prior to tonight's TERFRA hearing.

FINANCIAL IMPACT

- There is no financial impact to the City's general fund. Debt service is to be paid by the private borrower, Garden Grove Galleria, LLC pursuant to a loan agreement to be entered into between Garden Grove Galleria, LLC and the City.

RECOMMENDATION

Staff recommends that the City Council

- Conduct the public hearing and adopt the Resolution approving the City or affiliated entity entering into a loan agreement in a principal amount not to exceed \$4,794,000 of the City's RZFB allocation and lending the proceeds of such loan to Garden Grove Galleria, LLC.

Kathleen McCall Angel



By: Kathleen McCall Angel
Economic Development Specialist

Attachment: Resolution

Approved for Agenda Listing

Matthew Fertal

**Matthew Fertal
City Manager**

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING THE CITY OR AFFILIATED ENTITY ENTERING INTO A LOAN IN A PRINCIPAL AMOUNT NOT TO EXCEED \$4,794,000 AND LENDING THE PROCEEDS OF SUCH LOAN TO GARDEN GROVE GALLERIA, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND ALLOCATING AN AMOUNT NOT TO EXCEED \$4,794,000 OF THE GARDEN GROVE RECOVERY ZONE FACILITY BOND REALLOCATION FOR THE BENEFIT OF THE PROJECT TO BE FINANCED PURSUANT TO SUCH LOAN.

NOW, THEREFORE, the City Council of the City of Garden Grove does hereby resolve, determine, and order as follows:

Section 1. The City Council hereby finds, determines and declares as follows:

Pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA) and applicable state law, the City of Garden Grove (the "City") has designated a "Recovery Zone" within the City by Resolution (Garden Grove Recovery Zone).

Pursuant to ARRA, among the tax incentives conferred on the City is the ability to issue tax-exempt recovery zone facility bonds in amounts not exceeding the available allocation thereof, to make a Loan to qualifying business borrowers to finance the cost of certain commercial, uses qualifying as "recovery zone property" to be used by a "qualified business" as that term is defined in ARRA and applicable regulations and provisions of the Internal Revenue Code of 1986, as amended (collectively the Code).

The City received a Recovery Zone Facilities Bond allocation from the Department of Treasury of \$4,794,000 and because the City was not able to utilize any of this allocation, the City voluntarily waived the full amount of their allocation. Counties or large municipalities (population of more than 100,000) that voluntarily waived their award of allocation by the Department of Treasury in the ARRA will have first priority in the reallocation application process may request up to their waived amount without competition. The City is in the process of preparing the required documentation to apply for the reallocation of the full amount waived.

Garden Grove Galleria, LLC, a California limited liability company, (Applicant), requested that the City issue its revenue bond in an amount equal to the City's reallocation award and enter into a loan agreement pursuant to applicable law, to finance the construction of an eight story building located at 10080 Garden Grove Boulevard to consist of 126,510 square feet of commercial tenant space and 66 residential condominiums.

The City Council in evaluating the Project has relied upon the written facts and information represented by the Applicant as well as any comments made before the City Council in conjunction with the Public Hearing on this matter.

The Bond must be approved by the City Council to satisfy the public approval requirements of Section 147(f) of the Code.

It is intended that this Resolution shall constitute the approval of the Project and the Bond as required by Section 147(f) of the Code.

The City Council is the elected legislative body of the City and is the applicable elected representatives required to approve the execution and delivery of the Bond under Section 147(f) of the Code.

Pursuant to Section 147(f) of the Code, prior to their execution and delivery, private activity bonds are required to be approved by the "applicable elected representative" of the governmental units on whose behalf such obligations are expected to be issued and by a governmental unit having jurisdiction over the entire area in which any facility financed by such obligations is to be located, after a Public Hearing held following reasonable public notice.

There has been published, at least 14 days prior to the date thereof, in a newspaper of general circulation within the City, a notice that a Public Hearing regarding the Bond and the loan of the proceeds to the Applicant would be held by the City Council on August 24, 2010.

Such public hearing has been conducted by the City Council, at which time an opportunity was provided to interested parties to present arguments both for and against the issuance of the Bond.

Section 2. The City Council hereby finds and determines that the Project will provide significant public benefits to residents of the Garden Grove Recovery Zone.

Section 3. The City Council hereby approves the Project and the issuance of obligations (Bond) to finance on a tax-exempt basis the costs of the Project, which Bond and interest thereon shall be paid from revenues received by the Issuer from the Applicant pursuant to a Loan Agreement. This Resolution shall constitute both "host" and "issuer" approval of the Bond within the meaning of Section 147(f) of the Code.

Section 4. The City is hereby designated as issuer in an amount of the available allocation equal to \$4,794,000 consisting of the City's full reallocation or such lesser amount as may be represented by the Bond. Such reallocation may only be used by such issuer for the Project, as specifically described herein and represented by the Applicant. No further transfer of the Allocation set forth herein to any other governmental unit in the State except the City is authorized hereby.

Section 5. All actions heretofore taken by the officers, employees, and agents of the City with respect to the approval of the Bond are hereby approved and ratified, and the officers and employees of the City and their authorized deputies and agents are hereby authorized and directed, jointly and severally, to do any and all things to execute and deliver any and all certificates and documents

which they, bond counsel and the City Attorney may deem necessary or advisable to consummate the issuance of the Bond and the loan of the proceeds to the Applicant and otherwise effectuate the purposes of this Resolution.

Section 6. Neither the faith and credit nor the taxing power of the State, the City, or any political subdivision of the State, is pledged to the payment of the principal of, premium, if any, or interest on the Bond, nor is the State or any political subdivision of the State, in any manner obligated to make any appropriation for such payment.

Section 7. This Resolution shall take effect from and after its adoption.