

## RESOLUTION NO. 2115

**A RESOLUTION DECLARING THE INTENT OF THE CITY OF GARDNER, KANSAS, TO ISSUE INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW) IN ONE OR MORE SERIES IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$97,000,000 FOR THE PURPOSE OF FINANCING A PORTION OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF ONE OR MORE PHASES OF A MULTIFAMILY APARTMENT PROJECT WITHIN THE CITY (UNIVERSITY PARK APARTMENTS).**

**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, purchase, construct, furnish, and equip certain facilities (as defined in the Act) for the stated statutory purposes, to enter into leases or 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**, Austin Park, LLC, a Kansas limited liability company (the “Company”), has requested that the City issue its industrial revenue bonds (taxable under federal law), in one or more series, in the aggregate principal amount not to exceed \$97,000,000 (the “Bonds”), to finance a portion of the cost of the acquisition, construction, and equipping of a multifamily apartment and townhome project, including buildings, improvements, and equipment (collectively, the “Master Project”), to be located on approximately 35.5 acres at the northwest corner of 167<sup>th</sup> Street and White Drive within the City, and to lease such separate phases of the Master Project to the Company, 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 and the health of the citizens thereof;

**WHEREAS**, the Master Project is not yet under construction but is expected to be completed in two phases (each, a “Phase”); and

**WHEREAS**, subject to the provisions of **Section 3** of this Resolution, the City desires to finance a portion of the cost of acquiring, constructing, and equipping each Phase by the issuance of the Bonds pursuant to the Act, said Bonds to be payable solely out of the rentals, revenues and receipts derived from the lease of such Phase to the Company, or its assigns as approved by the City, from the City.

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

**SECTION 1.** Subject to the provisions of **Section 3** of this Resolution, it is hereby found and declared that the issuance of the Bonds by the City for the purpose of financing a portion of the cost of the proposed Master Project to be leased to the Company, or its assigns as approved by the City, will promote, stimulate, and develop the general economic welfare and prosperity of the City and its environs and the health of the citizens thereof as well as further promoting, stimulating, and developing the general economic welfare and prosperity of the State of Kansas and the health of the citizens thereof.

**SECTION 2.** Subject to the provisions of **Section 3** of this Resolution, the Governing Body of the City hereby determines and declares the intent of the City to assist the Company, or its assigns as approved by the City, in completing the Master Project through the issuance of Bonds of the City to finance each Phase, such Bonds to be issued in one or more series in the aggregate principal amount not to exceed \$97,000,000, all in accordance with the Act.

**SECTION 3.** Notwithstanding this Resolution of Intent of the City to issue industrial revenue bonds (taxable under federal law), in one or more series, in the aggregate principal amount not to exceed \$97,000,000, issuance of the Bonds by the City is expressly subject to presentation, completion and final approval by the Governing Body of the City, of each of the following conditions:

- (a) Adoption of a supplemental Resolution of Intent by the Governing Body of the City for each Phase acquired, constructed, and equipped with the proceeds of the Bonds;
- (b) Satisfactory negotiation of a lease agreement, trust indenture, ordinance, and other documents necessary for the issuance of each series of the Bonds;
- (c) The Company obtaining all necessary permits and complying with all necessary regulatory approvals and with the City ordinances;
- (d) Successful private placement of each series of the Bonds or other purchase method approved by the City;
- (e) Approval of each series of the Bonds by the City's Bond Counsel, Kutak Rock LLP, and approval of certain legal matters pertaining to the Bonds by counsel to the Company, or its assigns as approved by the City;
- (f) Adequate security for the payment of each series of the Bonds;
- (g) The Company constructing and completing each Phase of the Master Project in accordance with the Final Development Plan for University Park Apartments approved by the City's Planning Commission on August 22, 2022, including any stipulations of the Planning Commission relating to such approval, together with the amenities as described on the attached *Exhibit A*; and
- (h) The Company's agreement not to sell or transfer all or any portion of the Master Project without the City's prior written consent until the later of:
  - (i) The completion of all the improvements comprising the Master Project; and
  - (ii) The maturity date of the Bonds.

The City hereby reserves the right to rescind this Resolution of Intent if the conditions specified in this **Section 3** are not, in the sole judgment of the City, satisfied, or upon change of federal or state law or regulations affecting the City's issuing authority.

If the Bonds are not issued for any reason, including noncompliance with the conditions of this **Section 3**, the City shall not be subject to any liability, whatsoever, to the Company, or its assigns.

**SECTION 4.** Subject to the conditions and prior approvals of **Section 3**, the Company is hereby authorized to proceed with all matters necessary to accomplish the purposes expressed in this Resolution.

**SECTION 5.** This Resolution shall terminate in the event the Company fails to commence construction of the first Phase, comprised of the buildings, improvements, and amenities reflected on **Exhibit A**, prior to June 1, 2023. Further, and notwithstanding anything herein to the contrary, no Bonds shall be issued for any part of any subsequent Phase which commences construction after January 1, 2025.

**SECTION 6.** The Mayor, City Council, City Administrator, Finance Director, Community Development Director, City Attorney, and Bond Counsel are hereby directed to take such action as they deem necessary in cooperation with all persons involved with the financing of the Master Project in order to present the necessary documents to the Governing Body of the City for final action. In connection therewith, Bond Counsel for the City is directed to work with the Company and its counsel, and all others necessary, to accomplish the purpose as set forth herein.

**SECTION 7.** This Resolution shall take effect and be in full force from and after the date on which it is adopted.

*[Remainder of Page Intentionally Left Blank]*

**ADOPTED** by the Governing Body of the City of Gardner, Kansas, on October 17, 2022.

**CITY OF GARDNER, KANSAS**

(Seal)

\_\_\_\_\_  
/s/  
Mayor

ATTEST:

\_\_\_\_\_  
/s/  
City Clerk

**EXHIBIT A  
MASTER PROJECT PHASES**

<b>PHASE</b>	<b>BUILDINGS AND IMPROVEMENTS</b>	<b>AMENITIES</b>
Phase One	<ul style="list-style-type: none"> <li>• 5 apartment buildings</li> <li>• 568 apartment parking spaces (in total)</li> <li>• Clubhouse</li> <li>• Pool and pool house</li> </ul>	<ul style="list-style-type: none"> <li>• 247 apartment garage spaces               <ul style="list-style-type: none"> <li>○ 115 tuck-under garages (20% of spaces)</li> <li>○ 132 detached garage spaces (23% of spaces)</li> </ul> </li> <li>• Approx. 10,000 sf clubhouse, including:               <ul style="list-style-type: none"> <li>○ 2-story indoor-outdoor space</li> <li>○ Extensive fitness area with private class opportunities</li> <li>○ Co-working café/space for remote work with conference room</li> <li>○ Secure package delivery rooms</li> <li>○ Bicycle maintenance facility</li> <li>○ Demonstration kitchen for community events or private parties</li> <li>○ Sport court</li> <li>○ Dog wash/grooming area</li> </ul> </li> <li>• Approx. 2,324 linear feet of internal walking paths, which will be 8 feet wide, ADA accessible, and built to City trail construction specifications, together with the balance of the public sidewalk and trail improvements required adjacent to the property</li> <li>• Stormwater management elements, as part of the site and landscape design, to meet best management practices for addressing stormwater quantity and quality per the APWA Manual of Best Management Practices for Stormwater Quality and City policies and regulations as well as approved building and site construction plans</li> <li>• Children’s play area, including a central, multi-function structure, a separate swing structure, up to three other, smaller play structures such as a spinning disc or teeter-totter, seating, and shade provision, incorporating inclusive play elements and accessibility to the play area</li> <li>• Approx. 1,800 sf swimming pool with pool house, including zero-depth entry, shallow ledge sun deck, and accessible entry by mechanical lift, together with outdoor grill area, fire pit and poolside cabanas</li> <li>• Approx. 8,000 sf dog park</li> <li>• Trash compactor and recycling facilities in lieu of dumpsters</li> </ul>

<b>PHASE</b>	<b>BUILDINGS AND IMPROVEMENTS</b>	<b>AMENITIES</b>
Phase Two	<ul style="list-style-type: none"> <li>• 4 apartment buildings</li> <li>• 8 townhome buildings</li> <li>• 367 apartment parking spaces (in total)</li> <li>• 128 townhome parking spaces (in total)</li> </ul>	<ul style="list-style-type: none"> <li>• 136 apartment garage spaces <ul style="list-style-type: none"> <li>○ 88 tuck-under garages (23% of spaces)</li> <li>○ 48 detached garage spaces (13% of spaces)</li> </ul> </li> <li>• 64 townhome garage spaces (50% of spaces)</li> <li>• Approx. 1,019 linear feet of internal walking paths, which will be 8 feet wide, ADA accessible, and built to City trail construction specifications, together with the balance of the public sidewalk and trail improvements required adjacent to the property</li> <li>• Stormwater management elements, as part of the site and landscape design, to meet best management practices for addressing stormwater quantity and quality per the APWA Manual of Best Management Practices for Stormwater Quality and City policies and regulations as well as approved building and site construction plans</li> <li>• Outdoor meeting area with picnic tables, charcoal “park style” grills, and a covered grilling cabana</li> </ul>