

RESOLUTION NO. 2084

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 \$37,900,000 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 (TALLGRASS 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, Tallgrass Apartments, 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 \$37,900,000 (the “Bonds”), to finance a portion of the cost of the acquisition, construction, and equipping of one or more phases of a multifamily apartment project, including buildings, improvements, and equipment (collectively, the “Master Project”), to be located on approximately 43 acres at the northwest corner of Moonlight Road and University 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 first phase of the Master Project (“Phase One”) is currently under construction and will not be financed with the Bonds, but the second, third, and fourth phases of the Master Project (respectively, “Phase Two,” “Phase Three,” and “Phase Four,” and collectively, the “Subsequent Phases”) are not yet under construction; 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 Subsequent 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 Subsequent 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 Subsequent Phase, such Bonds to be issued in one or more series in the aggregate principal amount not to exceed \$37,900,000, 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 \$37,900,000, 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 Subsequent 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 the amenities corresponding to Phase One and to each Subsequent Phase of the Master Project as reflected 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 Phase Two, comprised of the buildings, improvements, and amenities reflected on *Exhibit A*, prior to January 1, 2022. 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, 2024.

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.

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ADOPTED by the Governing Body of the City of Gardner, Kansas, on June 7, 2021.

CITY OF GARDNER, KANSAS

(Seal)

/s/

Mayor

ATTEST:

/s/

City Clerk

**EXHIBIT A
MASTER PROJECT PHASES**

PHASE	BUILDINGS AND IMPROVEMENTS	AMENITIES
Phase One	<ul style="list-style-type: none"> • 10 apartment buildings • 1 maintenance shop • 1 fitness center • 1 clubhouse/pool • 5 garage structures 	<ul style="list-style-type: none"> • 5 garage structures at 6 stalls each • 24 bike rack spaces • Approx. 3,300 sf clubhouse • Approx. 1,500 sf pool • Approx. 4,800 sf pool deck • 1 designated play area • 2 civic recreation areas • 1 BBQ location • Approx. 2,500 sf fitness building with workout stations, TVs, 2 bathrooms, and approx. 140 parcel pickup lockers • 4 benches on City sidewalks or trails
Phase Two	<ul style="list-style-type: none"> • 7 apartment buildings • 2 townhome buildings • 5 garage structures 	<ul style="list-style-type: none"> • 5 garage structures at 6 stalls each • 18 bike rack spaces • 1 designated play area • 2 civic recreation areas • 1 BBQ location • Approx. 1,400 lf of 5-foot wide trail • 1 bench on City sidewalks or trails • Approx. 2,000 sf sport court for basketball and pickleball
Phase Three	<ul style="list-style-type: none"> • 5 apartment buildings • 4 garage structures • 1 pool/bathhouse 	<ul style="list-style-type: none"> • 4 garage structures at 6 stalls each • 18 bike rack spaces • 1 civic recreation area • Approx. 550 lf of 5-foot wide trail • 1 bench on City sidewalks or trails • Approx. 1,500 sf pool with bathhouse
Phase Four	<ul style="list-style-type: none"> • 9 apartment buildings • 5 garage structures 	<ul style="list-style-type: none"> • 5 garage structures at 6 stalls each • 42 bike rack spaces • 4 civic recreation areas • 1 BBQ location • Approx. 1,550 lf of 5-foot wide trail • 2 benches on City sidewalks or trails • 1 bike repair station • Approx. 2,500 sf fenced dog park