

RESOLUTION NO. 7210

RESOLUTION DETERMINING THE INTENT OF THE CITY OF LAWRENCE, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN ONE OR MORE SERIES IN THE APPROXIMATE AGGREGATE AMOUNT OF \$31,000,000 TO FINANCE THE COSTS OF ACQUIRING, CONSTRUCTING AND EQUIPPING MULTIPLE FACILITIES FOR THE BENEFIT OF VANTRUST REAL ESTATE, LLC, AND ITS SUCCESSORS AND ASSIGNS (MASTER RESOLUTION)

WHEREAS, the City of Lawrence, Kansas (the “City”), desires to promote, stimulate and develop the general welfare and economic prosperity of the City and its inhabitants and thereby to further promote, stimulate and develop the general welfare and economic prosperity of the State of Kansas; and

WHEREAS, the City is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the “Act”), to issue industrial revenue bonds to pay the cost of certain facilities (as defined in the Act) for the purposes set forth in the Act, and to lease such facilities to private persons, firms or corporations; and

WHEREAS, VanTrust Real Estate, LLC, a Delaware limited liability company, or its successors or assigns (collectively, the “Company”), has submitted to the City an Application for the Issuance of Industrial Revenue Bonds (the “Application”) requesting that the City finance the cost of acquiring, constructing and equipping one or more facilities as more fully described in the Application (each, a “Project” and collectively, the “Projects”) through the issuance of its industrial revenue bonds in one or more series (collectively, the “Bonds”), the aggregate principal amount of all series of the Bonds to be approximately \$31,000,000, and to lease the Projects to the Company, in accordance with the Act; and

WHEREAS, it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that the City finance the costs of each Project by the issuance of the Bonds in one or more series under the Act, the aggregate principal amount of all series of the Bonds to be approximately \$31,000,000, each series of the Bonds to be payable solely out of rentals, revenues and receipts derived from the lease of the applicable Project by the City to the Company.

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

Section 1. Approval of Projects. The Governing Body of the City hereby finds and determines that the acquiring, constructing and equipping of the Projects will promote the general welfare and economic prosperity of the City of Lawrence, Kansas, and the issuance of the Bonds in one or more series to pay the costs of the Projects will be in furtherance of the public purposes set forth in the Act. The Projects shall be located generally north of 23rd Street near O’Connell Road in the City of Lawrence, Kansas, as further described in the Application.

Section 2. Intent to Issue Bonds. The Governing Body of the City hereby determines and declares the intent of the City to acquire, construct and equip the Projects out of the proceeds of the Bonds of the City in one or more series, the aggregate principal amount of all series of the Bonds to be approximately \$31,000,000, to be issued pursuant to the Act.

Section 3. Provision for the Bonds. Subject to the conditions of this Resolution, the City will (i) issue the Bonds in one or more series to pay the costs of acquiring, constructing and equipping each Project, with such maturities, interest rates, redemption terms and other provisions as may be determined by ordinance of the City; (ii) provide for the lease (with an option to purchase) of each Project to the Company; and (iii) to effect the foregoing, adopt such resolutions and ordinances and authorize the execution and delivery of such instruments and the taking of such action as may be necessary or advisable for the authorization and issuance of the Bonds by the City and take or cause to be taken such other action as may be required to implement the aforesaid.

Section 4. Conditions to Issuance. The issuance of the Bonds and the execution and delivery of any documents related to the Bonds are subject to: (i) obtaining any necessary governmental approvals; (ii) agreement by the City, the Company and the purchaser of each series of the Bonds upon (a) mutually acceptable terms for the Bonds and for the sale and delivery thereof, and (b) mutually acceptable terms and conditions of any documents related to the issuance of each series of the Bonds and each Project; (iii) the Company's compliance with the City's policy relating to the issuance of industrial revenue bonds and provision of ad valorem property tax abatement; (iv) the receipt and approval by the City of appropriate applications for the issuance of each series of the Bonds, (v) the adoption of an Ordinance authorizing the issuance of each series of the Bonds; and (vi) the lease agreement with the Company for each Project shall contain the following provision:

The Company agrees to allow representatives and agents of the City to inspect all books and records, invoices and other financial information related to the sales tax exemption in connection with the Bonds. The Company agrees that the sales tax exemption shall only apply to labor, construction materials and personal property purchased with the proceeds of the Bonds and located at the Project.

Section 5. Sale of the Bonds. The sale of each series of the Bonds shall be the responsibility of the Company; provided, however, arrangements for the sale of each series of the Bonds shall be acceptable to the City.

Section 6. Ad Valorem Tax Abatement. In consideration of the Company's decision to acquire, construct and equip the Projects, the City hereby agrees to take all appropriate action to request the Kansas Board of Tax Appeals to approve a 100% ad valorem property tax abatement (not including special assessments) for all real property financed with the proceeds of the Bonds.

In consideration of the City's agreement to request 100% ad valorem property tax abatement, the Company will agree to make payments in lieu of tax to the City during the term of the abatement for each Project. The City and the Company shall enter into a Performance Agreement in substantially the form approved by the Governing Body for each Project. Each Project financed with the proceeds of a series of the Bonds shall be entitled to a separate 10-year ad valorem property tax abatement, with the first year of the abatement being the year beginning on the January 1 following the year the series of Bonds associated with such Project is issued. The amount of payments in lieu of taxes for each Project will be set forth in the applicable Performance Agreement, and such amounts will be subject to adjustment in accordance with such Performance Agreement. It is anticipated that the annual payment in lieu of tax will be approximately 50% of the ad valorem taxes unless the Project is constructed to LEED Silver equivalent or higher in which case the annual payment in lieu of tax will be approximately 30% of the ad valorem taxes. The payment in lieu of tax payment will include an annual inflation increase during the term. In the event the parties cannot agree on a mutually satisfactory payment in lieu of tax payment, then the payment in lieu payment will be the applicable 50% or 30% payment.

Section 7. Limited Obligations of the City. Each series of the Bonds and the interest thereon shall be special, limited obligations of the City payable solely out of the amounts derived by the City under a Lease Agreement with respect to such series of Bonds and as provided herein and are secured by a transfer, pledge and assignment of and a grant of a security interest in the trust estate to the bond trustee for such series of Bonds and in favor of the owners of such series of Bonds, all as provided in the applicable Bond Indenture. The Bonds shall not constitute a general obligation of the City, the State or of any other political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the City, the State or of any other political subdivision thereof and shall not be payable in any manner by taxation, but shall be payable solely from the funds provided for as provided in the Bond Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the State or any other political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment.

Section 8. Required Disclosure. Any disclosure document prepared in connection with the placement or offering of any series of the Bonds shall contain substantially the following disclaimer:

NONE OF THE INFORMATION IN THIS OFFICIAL STATEMENT, OTHER THAN WITH RESPECT TO INFORMATION CONCERNING THE CITY CONTAINED UNDER THE CAPTIONS "THE CITY" AND "LITIGATION - THE CITY" HEREIN, HAS BEEN SUPPLIED OR VERIFIED BY THE CITY, AND THE CITY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

Section 9. Authorization to Proceed. The Company is hereby authorized to proceed with the acquiring, constructing and equipping of the Projects, including the necessary planning and engineering for the Projects and entering into of contracts and purchase orders in connection therewith, and to advance such funds as may be necessary to accomplish such purposes, and, to the extent permitted by law and upon compliance with the other requirements of this Resolution, the City will reimburse the Company for all expenditures paid or incurred therefor out of the proceeds of the Bonds.

Section 10. No Reliance on Resolution. Kansas law provides that the City may only issue each series of the Bonds by adoption of an Ordinance. The City has not yet adopted an Ordinance for any series of the Bonds. This Resolution only evidences the intent of the current Governing Body to issue the Bonds for the Projects. The Company should not construe the adoption of this Resolution as a promise or guarantee that the Ordinance for any series of Bonds will be issued or that any Project will be approved.

Section 11. Termination of Resolution. This Resolution shall terminate if the Company fails to commence construction of any Project in accordance with the provisions of Section 4.02 of the Land Transfer and Development Agreement between the City and the Company. The City, upon the request of the Company, may extend such time period in its sole discretion.

Section 12. Benefit of Resolution. This Resolution will inure to the benefit of the City and the Company. The Company may, with the prior written consent of the City, assign all or a portion of its interest in this Resolution to another entity, and such assignee will be entitled to the benefits of the portion of this Resolution assigned and the proceedings related hereto.

Section 13. Further Action. Counsel to the City and Gilmore & Bell, P.C., Bond Counsel for the City, together with the officers and employees of the City, are hereby authorized to work with the purchaser of each series of the bonds, the Company, their respective counsel and others, to prepare for submission to and final action by the City all documents necessary to effect the authorization, issuance and sale of the bonds and other actions contemplated hereunder.

Section 14. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

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ADOPTED by the Governing Body on July 11, 2017.

SIGNED by the Mayor on July 11, 2017.

CITY OF LAWRENCE, KANSAS

By: _____
Leslie Soden, Mayor

[SEAL]

ATTEST:

Sherri Riedemann, City Clerk