

## **RESOLUTION NO. 7211**

### **RESOLUTION DETERMINING THE INTENT OF THE CITY OF LAWRENCE, KANSAS, TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS IN THE AMOUNT NOT TO EXCEED \$10,200,000 TO FINANCE THE COSTS OF ACQUIRING, CONSTRUCTING AND EQUIPPING AN INDUSTRIAL FACILITY FOR THE BENEFIT OF VANTRUST REAL ESTATE, LLC AND ITS SUCCESSORS AND ASSIGNS (BUILDING #1)**

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**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 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 an approximately 152,000 square foot industrial building as more fully described in the Application (the “Project”) through the issuance of its industrial revenue bonds in the principal amount not to exceed \$10,200,000 (the “Bonds”), and to lease the Project to VanTrust Real Estate, LLC, a Delaware limited liability company, or its successors and assigns (collectively, 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 the Project by the issuance of the Bonds under the Act in the principal amount not to exceed \$10,200,000, the Bonds to be payable solely out of rentals, revenues and receipts derived from the lease of the 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 Project.** The Governing Body of the City hereby finds and determines that the acquiring, constructing and equipping of the Project will promote the general welfare and economic prosperity of the City of Lawrence, Kansas, and the issuance of the Bonds to pay the costs of the Project will be in furtherance of the public purposes set forth in the Act. The Project shall be located 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 Project out of the proceeds of the Bonds of the City in the principal amount not to exceed \$10,200,000 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 to pay the costs of acquiring, constructing and equipping the 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 the 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 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 the Bonds and the Project; (iii) the Company's compliance with the City's policies relating to the issuance of industrial revenue bonds and ad valorem tax abatement; (iv) the passage of an Ordinance authorizing the issuance of the Bonds; and (v) the lease agreement with the Company shall contain the following provision:

The Company agrees to allow representatives and agents of the Issuer 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 the Bonds shall be the responsibility of the Company; provided, however, arrangements for the sale 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 Project, 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 property (including real property, building improvements, machinery and equipment) financed with the proceeds of the bonds.

The City and the Company shall enter into a Performance Agreement for the Bonds in a form approved by the Governing Body of the City. The Project financed with the proceeds of the Bonds shall be entitled to a 10-year tax abatement, with the first year of the abatement being the year beginning on the January 1 following the year such Bonds are issued by the City.

In consideration of the City's agreement to request 100% ad valorem property tax abatement, the Company will agree to make an annual payment in lieu of tax to the City during the term of the 10-year abatement for the Bonds for the Project as set forth in the Performance Agreement. 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.

**Section 7. Limited Obligations of the City.** 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 the 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 the Bonds and in favor of the owners of the Bonds, all as provided in the 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 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 Project, including the necessary planning and engineering for the Project 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 Company may be reimbursed 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 the Bonds by adoption of an Ordinance and compliance with other state law requirements. The City has not yet adopted an Ordinance for the Bonds. This Resolution only evidences the intent of the current Governing Body to issue the Bonds for the Project. The Company should not construe the adoption of this Resolution as a promise or guarantee that the Ordinance for the Bonds will be issued or that the Project will be approved.

**Section 11. Termination of Resolution.** This Resolution shall terminate if the Company fails to commence construction of the 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 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.

(SEAL)

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Leslie Soden, Mayor

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Sherri Riedemann, City Clerk