

RESOLUTION NO. 1965

A RESOLUTION DECLARING THE INTENT OF THE CITY OF GARDNER, KANSAS, TO ISSUE INDUSTRIAL REVENUE BONDS IN THE APPROXIMATE PRINCIPAL AMOUNT OF \$14,000,000 FOR THE PURPOSE OF FINANCING A PORTION OF THE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A HOTEL WITHIN THE CITY AND TO GRANT PROPERTY TAX EXEMPTION (HAMPTON INN).

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, construct 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, Gardner Hospitality LLC, a Kansas limited liability company (together with its assigns, as approved by the City, the “Company”), has requested the City issue its industrial revenue bonds in the approximate principal amount of \$14,000,000 to finance a portion of the costs of acquiring, constructing and equipping of an approximately 52,500 square foot, 84-unit new hotel, including real estate (the “Project Site”), buildings, improvements and equipment (collectively, the “Project Improvements”), generally located west of the intersection of Interstate 35 and 175th Street within the City, 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 Project Site and the Project Improvements are herein collectively referred to as the “Project”;

WHEREAS, the City will lease the Project to the Company;

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 the Project by the issuance of its industrial revenue bonds in the approximate principal amount of \$14,000,000 pursuant to the Act, said bonds to be payable solely out of the rentals, revenues and receipts derived from the lease of the Project to the Company from the City;

WHEREAS, the Company has also requested that the City consider granting an exemption from ad valorem taxes for the Project in accordance with K.S.A. 79-201a *Second* and has indicated its intent to make payments in lieu of taxes upon terms to be mutually agreed to by the City and the Company; and

WHEREAS, pursuant to K.S.A. 12-1749d, the City has caused a cost benefit analysis to be prepared, has on this date conducted a public hearing on the granting of an exemption from ad valorem taxes in accordance with K.S.A. 79-201a *Second*, has published notice of such public hearing not less than seven days prior to the hearing in the official City newspaper and has provided

notice of the public hearing to the governing bodies of Johnson County, Kansas, and Unified School District No. 231;

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 Industrial Revenue Bonds (Taxable Under Federal Law), Series 2018 (Hampton Inn), in the approximate principal amount of \$14,000,000 (the “Bonds”), by the City for the purpose of financing a portion of the cost of the proposed Project to be leased to the Company 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 intends to authorize the issuance of the Bonds, to be issued pursuant to the Act and all necessary regulatory approvals, and upon the conditions more fully set forth in **Section 3** hereof.

Section 3. Notwithstanding this Resolution of intent of the City to issue the Bonds, the issuance of the Bonds is expressly subject to presentation, completion and final approval by the Governing Body of the City of each of the conditions set forth in subparagraphs (a) through (e) below. In addition, the issuance of such Bonds is also conditioned on and subject to the reservations of rights set forth in subparagraphs (f) and (g) below:

(a) Satisfactory negotiation and approval of lease agreement, trust indenture, ordinance and other documents necessary for the issuance of the Bonds, including a payment in lieu of tax agreement by and between the City and the Company, wherein the Company agrees to pay such portion of the ad valorem taxes that would otherwise be payable on the portion of Project acquired with the proceeds of the Bonds as set forth in that certain Developer’s Agreement between the City and the Company (the “Developer’s Agreement”), in substantially the form on file in the office of the City Clerk as of the date hereof;

(b) Obtaining of all necessary zoning and building permits and compliance with all necessary regulatory approvals and with the City ordinances;

(c) Successful private placement of the Bonds or other purchase method approved by the City;

(d) Approval of the Bonds by Bond Counsel, Kutak Rock LLP, and approval of certain legal matters pertaining to the Bonds by counsel to the Company;

(e) Adequate security for the payment of the Bonds;

(f) 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;
and

(g) 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.

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 such purposes set forth in this Resolution.

Section 5. The Mayor, City Council, City Administrator, Finance Director, Bond Counsel, City Attorney and other officers, employees and representatives of the City are hereby directed to take such action as they deem necessary in cooperation with all persons involved with the financing of the Project in order to present the necessary documents to the Governing Body of the City for final action. In connection therewith, Bond Counsel is directed to work with the Company and its counsel, and all others necessary, to accomplish the purpose as set forth herein.

Section 6. The City and the Company expect to incur expenses in connection with the acquisition, construction and equipping of the Project prior to the issuance of the Bonds. The City and the Company hereby reasonably expect to reimburse certain of such expenditures in connection with the Project from the proceeds of the Bonds.

Section 7. This Resolution shall take effect and be in full force on the date it is adopted. This Resolution shall be of no effect and shall be null and void (a) in the event the Developer's Agreement is not executed by the City and the Company within 60 days from the date hereof, or (b) after December 31, 2018, in the event the Bonds have not been issued by such date.

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ADOPTED by the Governing Body of the City of Gardner, Kansas, on March 20, 2017.

CITY OF GARDNER, KANSAS

By *[Signature]*
Mayor



(Seal)

Attest:

[Signature]
City Clerk