

RESOLUTION NO. 1974

A RESOLUTION DETERMINING THE INTENT OF THE CITY OF GARDNER, KANSAS, TO ISSUE INDUSTRIAL REVENUE BONDS IN THE PRINCIPAL AMOUNT OF APPROXIMATELY \$38,000,000 TO PAY A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING AND IMPROVING A COMMERCIAL FACILITY WITHIN THE CITY AND TO GRANT PROPERTY TAX EXEMPTION AND AUTHORIZING THE EXECUTION OF A PILOT AGREEMENT (MIDWEST COMMERCE CENTER).

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

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;

WHEREAS, pursuant to Resolution No. 1763 of the City adopted on December 15, 2008, as amended by Resolution No. 1973 of the City adopted on September 18, 2017 (as amended, the “Master Resolution of Intent”), the Governing Body of the City expressed its intent to issue up to \$160,000,000 principal amount of industrial revenue bonds under the Act for the purpose of acquiring, constructing, improving and equipping one or more commercial or warehouse facilities at the Midwest Commerce Center (the “Master Project” as further described in the Master Resolution of Intent) and leased to US Industrial REIT II, a Texas real estate investment trust (together with its affiliates, successors, and assigns, the “Company”), subject to the conditions set forth in the Master Resolution of Intent;

WHEREAS, the City has previously issued its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2009 (US Industrial REIT II), in the principal amount of \$47,100,000 (the “Series 2009 Bonds”) to finance the construction of a commercial warehouse (the “First Project”) leased by the City to RT Midwest Commerce I, LLC, a Delaware limited liability company, as successor to the Company, pursuant to a Lease dated as of November 1, 2009;

WHEREAS, after accounting for the issuance of the Series 2009 Bonds, authorization under the Master Resolution of Intent currently remains for the issuance of additional industrial revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$112,900,000;

WHEREAS, the Company has requested the City issue an additional series of industrial revenue bonds in the approximate principal amount of \$38,000,000 (the “Series 2018 Bonds”) to finance a portion of the cost of acquiring, constructing, and improving a commercial warehouse, manufacturing facility, call center, and related improvements at the Midwest Commerce Center, located at 17001 Mercury Street, northeast of the intersection of Mercury Street and Industrial

Bypass, within the City (the “Second Project”) to be leased by the City to the Company or its approved successors, assigns, or subtenants;

WHEREAS, it is found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that the City issue its Series 2018 Bonds under the Act in an aggregate principal amount of approximately \$38,000,000, such Series 2018 Bonds to be payable solely out of rentals, revenues and receipts derived from the lease of the Second Project by the City to the Company;

WHEREAS, the Company has also requested that the City consider granting an exemption from ad valorem taxes for the Second Project in accordance with K.S.A. 79-201a *Twenty-Fourth* 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;

WHEREAS, the City has prepared an analysis of the costs and benefits of an exemption from ad valorem taxes pursuant to K.S.A. 79-201a *Second* or *Twenty-Fourth* for the Second Project and held a public hearing on such exemption after providing notice of such hearing as required by K.S.A. 12-1749c and 12-1749d, as amended; and

WHEREAS, in consideration of the City’s issuance of the Series 2018 Bonds and for granting an exemption from ad valorem property taxation for the portion of the Second Project financed with the Series 2018 Bonds, the Company has agreed to make certain payments in lieu of taxes and meet certain other requirements as set forth in a Payment in Lieu of Tax Agreement (the “PILOT Agreement” as herein further described);

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

Section 1. Approval of Second Project. Subject to the provisions in Section 3 of this Resolution, the Governing Body of the City finds and determines that the acquisition, construction, and improvement of the Second Project will promote, stimulate and develop the general welfare and economic prosperity of the City through the promotion and advancement of physical or mental health, industrial, commercial, agricultural, natural resources or recreation development of the City and the issuance of the City’s Series 2018 Bonds to pay such costs will be in furtherance of the public purposes set forth in the Act.

Section 2. Intent to Issue Bonds. Subject to the provisions in Section 3 of this Resolution, the Governing Body of the City determines and declares the intent of the City to acquire, construct and improve a portion of the Second Project using the proceeds of the Series 2018 Bonds all in accordance with the Act.

Section 3. Conditions to Issuance. Notwithstanding this Resolution of intent of the City to issue the Series 2018 Bonds, the issuance of the Series 2018 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 and is also conditioned on and subject to

the reservations of rights set forth in subparagraphs (f) and (g):

- (a) Satisfactory negotiation and approval of a base lease, lease agreement, trust indenture, ordinance and other documents necessary for the issuance of the Series 2018 Bonds;
- (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 Series 2018 Bonds or other purchase method approved by the City;
- (d) Approval of the Series 2018 Bonds by Bond Counsel, Kutak Rock LLP, and approval of certain legal matters pertaining to the Series 2018 Bonds by counsel to the Company;
- (e) Adequate security for the payment of the Series 2018 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 Series 2018 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. Sale of the Bonds/Authority to Proceed. The sale of the Series 2018 Bonds shall be the responsibility of the Company. Subject to the provisions in Section 3 of this Resolution, the Company is authorized to proceed with the acquisition and completion of the Second Project and to advance such funds as may be necessary to accomplish such purposes, and to the extent permitted by law, the City shall reimburse the Company for such expenditures out of the proceeds of the Series 2018 Bonds, when and if issued. Notwithstanding such authorization, the Company proceeds at its own risk and if for any reason, the Series 2018 Bonds are not issued, the City shall have no liability to the Company for any reason.

Section 5. Tax Exemption; Payment in Lieu of Taxes. The City hereby determines that pursuant to the provisions of K.S.A. 79-201a *Second* or *Twenty-Fourth*, the portion of the Second Project acquired, constructed, and improved with the proceeds of the Series 2018 Bonds are eligible for exemption from ad valorem property taxes for ten years commencing the year following the year in which the Series 2018 Bonds are issued, provided proper application is made therefor. The City further determines that the Second Project shall be exempt from such taxes for 10 years, commencing in the year after the Series 2018 Bonds are issued, subject to an annual payment in lieu of taxes and other terms and conditions of the PILOT Agreement. In making such determination the Governing Body of the City has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. 12-1749d. Such determination of tax exemption is conditioned on the issuance by the Board of Tax Appeals of an order exempting the Second Project

from ad valorem taxation in accordance with Kansas law, including K.S.A. 79-201a *et seq.* or K.S.A. 74-50-115. The Company is responsible for preparing such application and providing the same to the City for its review and submission.

Section 6. Execution of PILOT Agreement. The Mayor is further authorized and directed to execute and deliver the PILOT Agreement on behalf of, and as the act and deed of, the City in substantially the form on file in the office of the City Clerk, with such corrections or amendments thereto as the Mayor may approve, which approval shall be evidenced by his execution thereof. The City Clerk is hereby authorized and directed to attest the execution of the PILOT Agreement under the City's official seal.

Section 7. Further Action. Kutak Rock LLP, Bond Counsel for the City, and officers and employees of the City, are authorized to work with the purchaser of the Series 2018 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 Series 2018 Bonds and other actions contemplated hereunder.

Section 8. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City and remain in effect until December 31, 2018.

[Remainder of Page Intentionally Left Blank]

ADOPTED by the Governing Body of the City of Gardner, Kansas, on October 16, 2017.

CITY OF GARDNER, KANSAS

By _____ /s/
Mayor

(Seal)

Attest:
_____/s/

City Clerk