

RESOLUTION NO. 2076

A RESOLUTION AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH AN ASSIGNMENT AND ASSUMPTION OF THE BASE LEASE, LEASE, AND PILOT AGREEMENT, AND TRANSFER OF THE BONDS, RELATED TO THE CITY OF GARDNER, KANSAS, INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2018 (USIR II – GARDNER, LLC).

WHEREAS, the City of Gardner, Kansas (the “City”), has previously issued its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2018 (USIR II – Gardner, LLC), in the principal amount not to exceed \$38,000,000 (the “Bonds”), to finance the construction of a commercial warehouse, manufacturing facility, call center, and related improvements (the “Project”) pursuant to a Trust Indenture dated as of April 1, 2018 (the “Indenture”), between the City and Security Bank of Kansas City, Kansas City, Kansas (the “Trustee”);

WHEREAS, in connection with the issuance of the Bonds, the City and USIR II – Gardner, LLC, a Delaware limited liability company (the “Original Tenant”), entered into: (i) a Base Lease Agreement dated as of April 1, 2018 (the “Base Lease”), whereby the Original Tenant leases its interest in the Project to the City; (ii) a Lease Agreement dated as of April 1, 2018 (the “Lease”), whereby the City leases its interest in the Project back to the Original Tenant for rental payments sufficient to pay principal and interest on the Bonds; and (iii) a Payment in Lieu of Tax Agreement dated as of April 6, 2018 (the “PILOT Agreement”), providing for the abatement of certain ad valorem taxes on the Project in consideration of certain payments in lieu of taxes and other conditions;

WHEREAS, the Original Tenant is negotiating the sale of its fee interest in the Project to Mercury Street Industrial LLC, a Maryland limited liability company (the “New Tenant”), a wholly-owned subsidiary of Industrial Logistics Properties Trust, a Maryland real estate investment trust, and in connection with such sale, the Original Tenant has submitted a written request that the City consent to an Assignment and Assumption Agreement (the “Assignment”), by and between the Original Tenant and the New Tenant, wherein the Original Tenant will assign all of its rights, duties, interests, and obligations under the Base Lease, Lease, and PILOT Agreement to the Assignee, and the Assignee will assume all of the covenants, agreements, obligations and liabilities of the Original Tenant under the Base Lease, Lease, and PILOT Agreement, and the Original Tenant has further requested that the City release the Original Tenant from its duties and obligations under the Base Lease, Lease, and PILOT Agreement and consent to a transfer of the Bonds;

WHEREAS, Section 9.2 of the Lease and Section 10 of the PILOT Agreement provide that the Original Tenant may assign its interest in such documents with the prior written consent of the City;

WHEREAS, Section 9.3 of the Lease further provides that the Original Tenant may be fully released from its obligations under the Lease if there is filed with the Trustee, a document in which the New Tenant expressly assumes and agrees to perform all obligations of the Original Tenant under the Lease and the prior written consent to the assignment of the Lease by the City and the owners of 75% in aggregate principal amount of the outstanding Bonds;

WHEREAS, the Original Tenant has represented that the Project will continue to be subleased to ELC Distribution Center LLC, a Delaware limited liability company;

WHEREAS, Section 2.06 of the Indenture provides that the Bonds may be transferred to a “qualified institutional buyer” or “accredited investor” as such terms are defined in Rule 144A and Rule 501(a), respectively, under the Securities Act of 1933 upon the receipt of an assignment in a form satisfactory to the Trustee;

WHEREAS, in connection with the transfer of the Bonds, the New Tenant will provide an investor letter representing that it is either a qualified institutional buyer or an accredited investor, and the Trustee has accepted the form of an assignment of the Bonds; and

WHEREAS, the Governing Body of the City has determined it necessary and desirable to consent to the Assignment, to authorize the execution of certain documents in connection therewith, and to consent to the transfer of the Bonds in order to promote the economic development of the City;

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

Section 1. Subject to the conditions set forth herein, the City hereby consents to the assignment of Original Tenant’s interest in the Base Lease, the Lease, and the PILOT Agreement to the New Tenant and the transfer of the Bonds to the New Tenant. The Mayor, City Clerk or other officers or agents of the City are authorized to execute a Consent to the Assignment in substantially the form on file with the City Clerk, together with a First Supplemental Indenture between the City and the Trustee identifying the New Tenant as the Tenant under the Lease and the owner of the Bonds, and such officers are further authorized to execute such other documents as may be necessary in connection with the proposed assignment and the City’s consent provided such documents are consistent with the intent of this Resolution. Such executed documents shall not be effective until (a) the City’s Finance Director or Kutak Rock LLP, the City’s Bond Counsel, has received: (i) a copy of the executed Assignment in the form previously reviewed and approved by Bond Counsel; (ii) an opinion addressed to the City from counsel to the New Tenant in a form acceptable to Bond Counsel that, as of the date of the Assignment, the New Tenant is a duly organized limited liability company under the laws of the State of Maryland, is in good standing in the State of Maryland, has authority to do business in the State of Kansas, and has authority under Kansas law to operate the Project (as defined in the Lease), and that the Base Lease, Lease, and PILOT Agreement are legal, valid and binding obligations of the New Tenant enforceable in accordance with their terms; (iii) copies of property and liability insurance certificates demonstrating compliance with Article VI of the Lease; and (iv) a copy of the executed consent of

the owners of at least 75% of the aggregate principal amount of the outstanding Bonds to the Assignment, and (b) Bond Counsel has received payment by the Original Tenant or the New Tenant of their fees and expenses in connection with the assignment.

Section 2. This Resolution shall take effect and be in full force immediately after its adoption.

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ADOPTED by the Governing Body of the City of Gardner, Kansas, on December 21, 2020.

CITY OF GARDNER, KANSAS

(Seal)

_____/s/
Mayor

ATTEST:

_____/s/
City Clerk