

## **RESOLUTION NO. 2048**

**A RESOLUTION AUTHORIZING THE CITY OF GARDNER, KANSAS, TO EXECUTE A SPECIAL WARRANTY DEED, A RELEASE OF REAL ESTATE AND OTHER RELEASE DOCUMENTS AND TO TAKE CERTAIN OTHER ACTIONS TO EFFECT THE OPTION TO PURCHASE THE PROJECT PURSUANT TO THE LEASE AGREEMENT IN CONNECTION WITH THE CITY'S NOT TO EXCEED \$52,000,000 INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2009 (US INDUSTRIAL REIT II).**

**WHEREAS**, the City of Gardner, Kansas (the "City"), is authorized pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the "Act"), to acquire, purchase, construct and equip certain facilities (as defined in the Act), and to issue industrial revenue bonds for the purpose of paying the cost of such facilities, and to lease such facilities to private persons, firms or corporations;

**WHEREAS**, the City passed Ordinance No. 2332 on November 16, 2009, authorizing the issuance of its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2009 (US Industrial REIT II), in the aggregate principal amount not to exceed \$52,000,000 (the "Bonds"), pursuant to a Trust Indenture dated as of November 1, 2009 (the "Indenture"), by and between the City and Wells Fargo Bank, National Association, as trustee (the "Trustee"), for the purpose of providing funds to finance the acquisition, construction and improvement of a commercial facility located within the City, including real estate, buildings and improvements (the "Project");

**WHEREAS**, the City leased the Project to US Industrial REIT II, a Texas real estate investment trust (the "Original Tenant"), pursuant to the terms of a Lease dated as of November 1, 2009 (the "Lease"), between the City and the Original Tenant, and the Original Tenant subleased the Project to The Coleman Company, Inc., or an affiliate, pursuant to a separate sublease;

**WHEREAS**, the Original Tenant assigned its interest in the Lease to RT Midwest Commerce I, LLC, a Delaware limited liability company (the "Tenant"), pursuant to a Master Leasehold Assignment and Assumption of Lease effective as of August 16, 2012;

**WHEREAS**, the Trustee and Company have represented that the Bonds have been paid and that there are no Bonds currently outstanding;

**WHEREAS**, the Tenant has delivered notice to the City on or prior to the date hereof, and pursuant to Section 17.1 of the Lease, indicating the exercise of the Tenant's right and option to purchase the Project, requesting the specific date that such option is to be exercised (the "Closing Date") and further requesting a waiver of the 30-day notice preceding the Closing Date required under the Lease;

**WHEREAS**, pursuant to the Lease, the City is required to convey the Project to the Tenant once all obligations and duties of the Tenant under the Lease have been performed and satisfied;

**WHEREAS**, the City is willing to waive the notice specified in the Lease, and the Trustee has indicated it is also willing to waive such notice; and

**WHEREAS**, the Governing Body of the City finds and determines that it is necessary and desirable for the City to enter into certain documents and take certain other actions and approve the execution of certain other documents as herein provided to convey to the Tenant the Project once all requirements of the Lease relating to the exercise of the purchase option have been satisfied;

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

**SECTION 1. Acknowledgment and Approval.** The City hereby acknowledges and approves the Tenant’s request to exercise its option to purchase the Project pursuant to the Lease, and agrees to waive the notice provisions of Section 17.1 of the Lease and to set the Closing Date at such date as agreed by the parties.

**SECTION 2. Conveyance.** The City hereby approves the sale and conveyance of the Project, as provided in the Lease; provided, however, that prior to such sale and conveyance, the City shall have received the \$1,000 purchase price and shall have confirmed satisfaction of all obligations of the Tenant under the Lease.

**SECTION 3. Authorization and Execution of Documents.** The Mayor is hereby authorized and directed to execute and deliver a Special Warranty Deed, a Release of Real Estate and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution (the “Release Documents”) (copies of said documents shall be filed in the records of the City) for and on behalf of and as the act and deed of the City, subject to the confirmation by Kutak Rock LLP, the City’s Bond Counsel, that the conditions set forth herein have been satisfied, including, but not limited to, payment of any fees and expenses of the City’s Bond Counsel in connection with the transaction. The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to the Release Documents.

**SECTION 4. Further Authority.** The City shall, and the officers and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with respect to the Release Documents.

**SECTION 5. Effective Date.** This Resolution shall take effect and be in full force from and after its adoption by the Governing Body of the City.

*[remainder of page left blank intentionally]*

**ADOPTED** by the Governing Body of the City of Gardner, Kansas, on February 17, 2020.

**CITY OF GARDNER, KANSAS**

(Seal)

\_\_\_\_\_/s/\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
City Clerk