

RESOLUTION NO. 1996

A RESOLUTION CONSENTING TO A LEASEHOLD MORTGAGE IN CONNECTION WITH A COMMERCIAL FACILITY FINANCED WITH THE CITY'S INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2009 (US INDUSTRIAL REIT II).

WHEREAS, the City of Gardner, Kansas (the "**City**"), has previously issued its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2009 (US INDUSTRIAL REIT II) (the "**Bonds**"); and

WHEREAS, the proceeds of the Bonds were used to finance the acquisition, construction and equipping of a commercial facility known as the Coleman Distribution Center consisting of a building containing approximately 1,107,000 rentable square feet on an approximately 50.972 acre tract of land located adjacent to the New Century Airport and north of Old 56 Highway (the "**Project**"), which Project was originally leased by the City to US INDUSTRIAL REIT II, a Texas real estate investment trust (the "**Original Tenant**"), pursuant to a Lease dated as of November 1, 2009 (the "**Lease**"); and

WHEREAS, pursuant to Section 9.2 of the Lease, the Original Tenant mortgaged its leasehold interest in the Lease to Compass Bank pursuant to a Mortgage, Leasehold Mortgage, Assignment of Rents and Security Agreement dated December 15, 2009 (the "**Original Leasehold Mortgage**"); and

WHEREAS, pursuant to a Master Leasehold Assignment and Assumption of Lease effective as of August 16, 2012, (the "**Assignment**"), between the Original Tenant and RT MIDWEST COMMERCE I, LLC, a Delaware limited liability company (the "**Company**"), the Original Tenant assigned all of its rights, duties, interests and obligations under the Original Lease to the Company, and the Company assumed all of the covenants, agreements, obligations and liabilities of the Original Tenant under the Original Lease; and

WHEREAS, in connection with the Assignment, the Original Leasehold Mortgage was released; and

WHEREAS, the Company has indicated to the City its intent to obtain a mortgage loan (the "**Loan**") from Citibank, N.A. (together with any lenders that may from time to time be party to the Loan, together with their respective successors and assigns, "**Lender**"), which Loan is or will be evidenced by one or more notes and secured by a leasehold mortgage (the "**Leasehold Mortgage**") upon the Company's leasehold estate in the Project, and has requested the City's consent to the Company's grant of the Leasehold Mortgage to the Lender for the purpose of securing the Loan; and

WHEREAS, pursuant to Section 9.2 of the Lease, the Company may mortgage its interest in the Lease with the prior written consent of the City; and

WHEREAS, under the terms of the Lease, the mortgage of the Company's interest in the Lease does not relieve the Company of its liability to perform its duties and obligations under the Lease.

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

Section 1. The City hereby consents to the Company's grant of the Leasehold Mortgage for the purposes herein described. The Mayor, City Clerk or other officers or agents of the City are authorized to execute such other documents as may be necessary in connection with the City's consent provided such documents are consistent with the intent of this Resolution.

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

ADOPTED by the Governing Body of the City of Gardner on October 1, 2018.

CITY OF GARDNER, KANSAS

/s/

Steve Shute, Mayor

(Seal)

ATTEST:

/s/

Amy Nasta, City Clerk

APPROVED AS TO FORM:

/s/

Joe Serrano, Bond Counsel