

ORDINANCE NO. 48-575

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS, TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES IV, 2009 (THE COLEMAN COMPANY, INC.), IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$5,300,000 FOR THE PURPOSE OF PROVIDING FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP IMPROVEMENTS TO EXISTING FACILITIES LOCATED IN THE CITY OF MAIZE, KANSAS, AND THE CITY OF WICHITA, KANSAS; PRESCRIBING THE FORM AND AUTHORIZING EXECUTION OF A FIFTEENTH SUPPLEMENTAL TRUST INDENTURE BY AND BETWEEN THE CITY AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE, WITH RESPECT TO THE BONDS; PRESCRIBING THE FORM AND AUTHORIZING EXECUTION OF A FIFTEENTH SUPPLEMENTAL LEASE AGREEMENT BY AND BETWEEN THE CITY AND THE COLEMAN COMPANY, INC.; APPROVING THE FORM OF A GUARANTY AGREEMENT; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BY AND BETWEEN THE CITY AND THE COLEMAN COMPANY, INC., AS PURCHASER OF THE BONDS; AND AUTHORIZING EXECUTION OF A BILL OF SALE.

WHEREAS, the City of Wichita, Kansas (the “Issuer”) is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to acquire, renovate and equip certain facilities as defined in the Act) for commercial, industrial and manufacturing purposes, and to enter into leases and lease-purchase agreements with any persons, firm or corporation for said facilities, and to issue revenue bonds for the purpose of paying the cost of any such facilities; and

WHEREAS, the Issuer has heretofore determined that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Taxable Industrial Revenue Bonds for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to existing facilities located in the City of Wichita, Kansas and the City of Maize, Kansas (collectively, the “Project”); and

WHEREAS, the Issuer has, pursuant to K.S.A. 12-2901 *et seq.*, as amended (the “Interlocal Cooperation Act”), entered into an interlocal cooperation agreement with the City of Maize, Kansas (the “Participant”), for the purpose of acting as the Issuer of the Bonds, as hereinafter defined; and

WHEREAS, the Issuer has previously issued an initial series of its Taxable Industrial Revenue Bonds designated “City of Wichita, Kansas, Taxable Industrial Revenue Bonds, Series VIII, 1993 (The Coleman Company, Inc.) in the aggregate principal amount of \$10,036,800.00 (the “1993 Bonds”) for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to facilities located in the City of Maize, Kansas, and the City of Wichita, Kansas (collectively, the “1993 Project”); and

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series XVI, 1999 (The Coleman Company, Inc.) in the aggregate principal amount of \$5,211,281.50 (the “1999 Bonds”) for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to the 1993 Project (the “1999 Additions”); and

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series VII, 2000 (The Coleman Company, Inc.) in the aggregate principal amount of \$14,871,447.43 (the “2000 Bonds”) for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to the 1993 Project (the “2000 Additions”); and

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series XIV, 2001 (The Coleman Company, Inc.) in the aggregate principal amount of \$12,165,214.24 (the “2001 Bonds”) for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to the 1993 Project (the “2001 Additions”); and

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series IX, 2002 (The Coleman Company, Inc.) in the aggregate principal amount of \$13,519,041.38 (the “2002 Bonds”) for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to the 1993 Project (the “2002 Additions”); and

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series IX, 2004 (The Coleman Company, Inc.) in the aggregate principal amount of \$17,970,208.00 (the “2004 Bonds”) for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to the 1993 Project (the “2004 Additions”); and

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series VIII, 2005 (The Coleman Company, Inc.) in the aggregate principal amount of \$10,085,623.22 (the “2005 Bonds”) for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to the 1993 Project (the “2005 Additions”); and

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series VII, 2006 (The Coleman Company, Inc.) in the aggregate principal amount of \$5,498,669.78 (the “2006 Bonds”) for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to the 1993 Project (the “2006 Additions”); and

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series VIII, 2007 (The Coleman Company, Inc.) in the aggregate principal amount of \$23,862,092.81 (the “2007 Bonds”) for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to the 1993 Project (the “2007 Additions”); and

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series IX, 2008 (The Coleman Company, Inc.) in the aggregate principal amount of \$6,347,135.72 (the “2008 Bonds”) for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to the 1993 Project (the “2008 Additions”); and

WHEREAS, the Issuer has heretofore found and determined and does hereby find and determine that it is desirable that the Issuer issue its Taxable Industrial Revenue Bonds, Series IV, 2009 (The Coleman Company, Inc.) in the aggregate principal amount of not to exceed

\$5,300,000 (the “2009 Bonds”) for the purpose of purchasing, acquiring, constructing and equipping improvements and additions to facilities located in the City of Maize, Kansas, and the City of Wichita, Kansas (the “2009 Additions”) (the 1999 Additions, 2000 Additions, 2001 Additions, 2002 Additions, 2004 Additions, 2005 Additions, 2006 Additions, 2007 Additions, 2008 Additions and 2009 Additions being referred to herein collectively as the “Project”), said Project to be leased by the Issuer to The Coleman Company, Inc., as Tenant (the “Tenant”); and

WHEREAS, the 2009 Bonds and the interest thereon shall not constitute an indebtedness of the Issuer or the Participant within the meaning of any constitutional provision or statutory limitation, shall not constitute nor give rise to a pecuniary liability of the Issuer or the Participant, nor shall any 2009 Bond or the interest thereon be a charge against the general credit or taxing powers of either the Issuer or the Participant. The 2009 Bonds are not general obligations of the Issuer and are payable solely from certain fees, rentals, revenues and other amounts derived by the Issuer pursuant to the Lease (hereinafter defined) and, under certain circumstances, from the proceeds of the 2009 Bonds and insurance and condemnation awards; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the 2009 Bonds (1) to execute and deliver a Fifteenth Supplemental Trust Indenture dated as of December 1, 2009 (the “Fifteenth Supplemental Indenture”), which supplements and amends a certain Trust Indenture dated as of December 1, 1993 (the “1993 Indenture”), a Sixth Supplemental Trust Indenture dated as of December 1, 1999 (the “Sixth Supplemental Indenture”), a Seventh Supplemental Trust Indenture dated as of December 1, 2000 (the “Seventh Supplemental Indenture”), an Eighth Supplemental Trust Indenture dated as of December 1, 2001 (the “Eighth Supplemental Indenture”), a Ninth Supplemental Trust Indenture dated as of December 1, 2002 (the “Ninth Supplemental Indenture”), a Tenth Supplemental Indenture dated as of December 1, 2004 (the “Tenth Supplemental Indenture”), an Eleventh Supplemental Trust Indenture dated as of December 1, 2005 (the “Eleventh Supplemental Indenture”), a Twelfth Supplemental Indenture dated as of December 1, 2006 (the “Twelfth Supplemental Indenture”), a Thirteenth Supplemental Trust Indenture dated as of December 1, 2007 (the “Thirteenth Supplemental Indenture”), and a Fourteenth Supplemental Indenture dated as of December 1, 2008 (the “Fourteenth Supplemental Indenture”), all by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, as successor in interest to Boatmen’s National Bank (formerly Bank IV Kansas, National Association) (the “Trustee”) (the 1993 Indenture, the Sixth Supplemental Indenture, the Seventh Supplemental Indenture, the Eighth Supplemental Indenture, the Ninth Supplemental Indenture, the Tenth Supplemental Indenture, the Eleventh Supplemental Indenture, the Twelfth Supplemental Indenture, the Thirteenth Supplemental Indenture, the Fourteenth Supplemental Indenture, and the Fifteenth Supplemental Indenture, being hereinafter collectively referred to as the “Indenture”); and (2) to enter into a Fifteenth Supplemental Lease dated as of December 1, 2009 (the “Fifteenth Supplemental Lease”), which supplements and amends a certain Lease Agreement dated as of December 1, 1993 (the “1993 Lease”), a Sixth Supplemental Lease dated as of December 1, 1999 (the “Sixth Supplemental Lease”), all as amended by a First Amendment to Lease dated as of January 1, 2000 (the “Lease Amendment”), a Seventh Supplemental Lease dated as of December 1, 2000 (the “Seventh Supplemental Lease”), an Eighth Supplemental Lease dated as of December 1, 2001 (the “Eighth Supplemental

Lease”), a Ninth Supplemental Lease dated as of December 1, 2002 (the “Ninth Supplemental Lease”), a Tenth Supplemental Lease dated as of December 1, 2004 (the “Tenth Supplemental Lease”), an Eleventh Supplemental Lease dated as of December 1, 2005 (the “Eleventh Supplemental Lease”), a Twelfth Supplemental Lease dated as of December 1, 2006 (the “Twelfth Supplemental Lease”), a Thirteenth Supplemental Lease dated as of December 1, 2007 (the “Thirteenth Supplemental Lease”) and a Fourteenth Supplemental Lease dated as of December 1, 2008 (the “Fourteenth Supplemental Lease”), all by and between the Issuer and the Tenant, pursuant to which the Issuer shall cause the Project, including the 2009 Additions, to be leased to the Tenant in consideration of the rental payments, including payments of Fifteenth Supplemental Basic Rent, Fifteenth Supplemental Additional Rent and other charges provided for therein (the 1993 Lease, the Sixth Supplemental Lease, the Lease Amendment, the Seventh Supplemental Lease, the Eighth Supplemental Lease, the Ninth Supplemental Lease, the Tenth Supplemental Lease, the Eleventh Supplemental Lease, the Twelfth Supplemental Lease, the Thirteenth Supplemental Lease, the Fourteenth Supplemental Lease and the Fifteenth Supplemental Lease, being hereinafter collectively referred to as the “Lease”); and

WHEREAS, pursuant to the Indenture, the 2009 Bonds shall be equally and ratably secured and on a parity with the 1999 Bonds, the 2000 Bonds, 2001 Bonds, 2002 Bonds, the 2004 Bonds, the 2005 Bonds, the 2006 Bonds, the 2007 Bonds, the 2008 Bonds and any Additional Bonds (the 1999 Bonds, the 2000 Bonds, the 2001 Bonds, the 2002 Bonds, the 2004 Bonds, the 2005 Bonds, the 2006 Bonds, the 2007 Bonds, the 2008 Bonds, the 2009 Bonds and any Additional Bonds being hereinafter collectively referred to as the “Bonds”), subject to the Tenant’s rights to purchase and release allocable portions of the Project; and

WHEREAS, the Trustee has certified that the 1998 Bonds have been paid in full and no 1998 Bonds remain Outstanding; and

WHEREAS, the Company desires to exercise its option to purchase that portion of the Project financed with the 1998 Bonds; and

WHEREAS, the City hereby waives the notice provisions of the Fifth Supplemental Lease dated as of December 1, 1998 (the “Fifth Supplemental Lease”) with respect to the Company’s exercise of its option to purchase the 1998 Additions and finds and determines it necessary and desirable to execute a Bill of Sale conveying the 1998 Additions to the Company and to release the 1998 Additions from the Lease and from the Pledge of the Indenture.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AS FOLLOWS:

Section 1. Definition of Terms. All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Indenture and Lease.

Section 2. Authority to Cause the 2009 Additions to be Purchased, Acquired, Constructed and Installed. The governing body of the Issuer hereby declares that the Project, including the 2009 Additions, if in being, would promote the welfare of the City of Wichita, Kansas, or the City of Maize, Kansas, and the Issuer is hereby authorized to cause the

2009 Additions to be purchased, acquired, constructed and installed all in the manner and as more particularly described in the Indenture and in the Lease.

Section 3. Authorization of and Security for the 2009 Bonds. There is hereby specifically authorized and directed to be issued a series of the Issuer's industrial revenue bonds to be designated "City of Wichita, Kansas, Taxable Industrial Revenue Bonds, Series IV, 2009 (The Coleman Company, Inc.)," in an aggregate principal amount of not to exceed \$5,300,000 for the purpose of paying the cost of purchasing, acquiring, constructing and installing the 2009 Additions. The 2009 Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The 2009 Bonds shall be equally and ratably secured and on a parity with the 1999 Bonds, the 2000 Bonds, the 2001 Bonds, the 2002 Bonds, the 2004 Bonds, the 2005 Bonds, the 2006 Bonds, the 2007 Bonds, the 2008 Bonds and any Additional Bonds, subject to the Tenant's rights to purchase and release allocable portions of the Project. The 2009 Bonds shall be special limited obligations of the Issuer payable solely from the revenues derived by the Issuer pursuant to the Lease, or otherwise in connection with the Project. The 2009 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the Issuer within the meaning of any constitutional or statutory provision and shall not be payable in any manner from tax revenues. The 2009 Bonds shall be secured under the provisions of the Indenture and are authorized hereby.

Section 4. Authorization of Fifteenth Supplemental Indenture. The Issuer is hereby authorized to enter into the Fifteenth Supplemental Indenture dated as of December 1, 2009, by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as Trustee (the "Trustee"), under which the Issuer shall pledge and assign to the Trustee, for the benefit of the holders of the Bonds, including the 2009 Bonds, the Trust Estate created thereby all upon the terms and conditions set forth in the Indenture.

Section 5. Lease of the Project. The Issuer shall cause the Project, including the 2009 Additions, to be leased by the Issuer to the Tenant pursuant to and in accordance with the provisions of the Fifteenth Supplemental Lease dated as of December 1, 2009, by and between the Issuer and the Tenant, all upon the terms and conditions set forth in the Lease.

Section 6. Authorization of Bond Purchase Agreement. The 2009 Bonds shall be sold and delivered to The Coleman Company, Inc., upon the terms and subject to the provisions of the Bond Purchase Agreement herein authorized dated as of December 1, 2009 (the "Bond Purchase Agreement"), by and between the Issuer, and The Coleman Company, Inc., as Purchaser.

Section 7. Approval of Guaranty Agreement. The form of Guaranty Agreement, dated as of December 1, 2009, pursuant to which the Tenant guarantees to the Trustee, for the benefit of the Owners of the 2009 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the 2009 Bonds, is hereby approved.

Section 8. Authorization of Bill of Sale. The City is hereby authorized to deliver a Bill of Sale conveying the 1998 Additions from the City to the Tenant.

Section 9. Execution of 2009 Bonds and Agreements. The Mayor or Vice Mayor of the City of Wichita, Kansas, is hereby authorized and directed to execute the 2009 Bonds and deliver the same to the Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor or Vice Mayor is hereby further authorized and directed to execute and deliver the Fifteenth Supplemental Indenture, the Fifteenth Supplemental Lease, the Bond Purchase Agreement and the Bill of Sale for and on behalf of and as the act and deed of the Issuer with such minor corrections or amendments thereto as the Mayor or Vice Mayor shall approve, which approval shall be evidenced by his execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the 2009 Bonds, the Fifteenth Supplemental Indenture, the Fifteenth Supplemental Lease, the Bond Purchase Agreement and the Bill of Sale and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 10. Pledge of the Project. The Issuer hereby pledges its interest in the Project, including the 2009 Additions, to the payment of the 2009 Bonds and all of the Bonds Outstanding under the Indenture in accordance with K.S.A. 12-1744. The lien created by such pledge shall be subject to the Tenant's rights to purchase and release allocable portions of the Project under the Lease, and shall be discharged when all of the Bonds shall be deemed to have been paid within the meaning of the Indenture.

Section 11. Further Authority. The Issuer shall, and the officers, agents and employees of the Issuer are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the 2009 Bonds, the Bond Purchase Agreement, the Fifteenth Supplemental Indenture, the Fifteenth Supplemental Lease and the Bill of Sale all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 12. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the governing body of the Issuer and publication once in the official newspaper of the Issuer.

PASSED by the Governing Body of the City of Wichita, Kansas, and approved by the Mayor on December 15, 2009.

CITY OF WICHITA, KANSAS,
as Issuer

By: _____
Carl Brewer
Mayor

[SEAL]

ATTEST:

By: _____
Karen Sublett
City Clerk

Approved as to Form:

By: _____
Gary E. Rebenstorf
City Attorney