ORDINANCE NO. 7623

AN ORDINANCE INTRODUCED BY MAYOR JOAN WAGON N
AUTHORIZING THE CITY OF TOPEKA, KANSAS, TO
ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS,
SERIES B2000, (PAYLESS SHOESOURCE DISTRIBUT-
TION, INC., PROJECT) IN THE MAXIMUM PRINCIP-
AL AMOUNT OF $10,393,000 FOR THE PURPOSE OF
PURCHASING, ACQUIRING, CONSTRUCTING, RECON-
STRUCTING, IMPROVING, REMODELING, EQUIPPING
AND INSTALLING CERTAIN FACILITIES; AUTHORIZ-
ING EXECUTION OF A TRUST INDENTURE BY AND
BETWEEN THE CITY AND UMB BANK, N.A., IN THE
CITY OF KANSAS CITY, MISSOURI, AS TRUSTEE;
AUTHORIZING THE CITY TO LEASE SAID PROJECT
TO PAYLESS SHOESOURCE DISTRIBUTION, INC.;
AND AUTHORIZING EXECUTION OF A LEASE BY AND
BETWEEN SAID CITY AND PAYLESS SHOESOURCE
DISTRIBUTION, INC.

WHEREAS, the City of Topeka, Kansas, (the "City") is auth-
ized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended, (the
"Act") to acquire, construct, improve and equip certain facili-
ties (as defined in the Act) for commercial, industrial and
manufacturing purposes, and to enter into leases and lease-pur-
chase agreements with any person, 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 City has, pursuant to both the Act and Ordin-
able No. 16380, as passed and approved by the Council of the
City on November 5, 1991, and published as required by law (the
"1991 Ordinance"), issued its Industrial Revenue Bonds, Series
1991, (Payless ShoeSource Distribution Center Project) dated
November 1, 1991, in the aggregate principal amount of
$37,600,000, and outstanding as of December 1, 2000, in the
principal amount of $3,760,000 for the purpose of acquiring
certain real property and constructing, purchasing and install-
ing a commercial facility thereon (the "1991 Facility") and has
leased the 1991 Facility to Payless ShoeSource, Inc., a Missouri
corporation, ("Payless") pursuant to the terms and conditions of
a Lease, dated November 1, 1991, entered into by and between the
City and Payless; and

WHEREAS, the City has, pursuant to the Act and Ordinance
No. 17129, as passed and approved by the Council of the City on
June 24, 1997, and published as required by law, and amended by
Ordinance No. 17159 of the City, passed, approved and published
as required by law, (the "1997 Ordinance"), issued its Industri-
al Revenue Bonds, Series A1997, (Payless ShoeSource Distribu-
tion, Inc. Project) dated August 1, 1997, in the principal
amount of $4,225,000 and outstanding as of December 1, 2000, in
the principal amount of $2,965,000, for the purpose of acquir-
ing, constructing and purchasing certain building improvements,
fixtures, machinery and equipment (the "1997 Facility") to be
installed on and in the 1991 Facility, and has leased the 1997
Facility to Payless ShoeSource Distribution, Inc., a Kansas
corporation, (the "Tenant") pursuant to the terms and conditions
of a Lease dated as of August 1, 1997, entered into by and
between the City and Tenant; and

WHEREAS, the City has, pursuant to the Act and Ordinance
No. 17427, as passed and approved by the governing body of the
City on November 16, 1999, and published as required by law,
issued its Taxable Industrial Revenue Bonds, Series A1999,
(Payless ShoeSource Distribution, Inc. Project) dated October 1,
1999, in the principal amount of $3,844,000 and outstanding as of December 1, 2000, in the principal amount of $3,455,000, for the purpose of acquiring, constructing and purchasing certain building improvements, fixtures, machinery and equipment (the "1999 Facility") to be installed on and in the 1991 Facility and 1997 Facility and has leased the 1999 Facility to the Tenant pursuant to a Lease dated as of October 1, 1999, entered into by and between the City and Tenant; and

WHEREAS, Payless and the Tenant now wish to extend and improve the 1991 Facility, the 1997 Facility and the 1999 Facility by the purchase, construction and installation of building additions, fixtures, improvements, machinery and equipment (said additions, fixtures, improvements, machinery and equipment being herein referred to as the "B2000 Project"); and

WHEREAS, pursuant to Section 209 of the Trust Indenture dated as of November 1, 1991, between the City and the trustee designated therein (the "1991 Indenture") and Section 209 of the Trust Indenture dated as of August 1, 1997, between the City and the trustee designated therein (the "1997 Indenture") the City may issue additional bonds for the purpose of financing the extensions and improvements to the 1991 Facility, the 1997 Facility and the 1999 Facility; and

WHEREAS, in accordance with the provisions of Section 209 of the 1991 Indenture and Section 209 of the 1997 Indenture, the City may pledge the 1991 Facility, the 1997 Facility, the 1999 Facility and the B2000 Project and the net earnings therefrom to
the payment of such additional series of industrial revenue bonds and interest thereon; and

WHEREAS, the City has heretofore and does hereby find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the City and the State of Kansas that the City issue its Taxable Industrial Revenue Bonds, Series B2000 (Payless ShoeSource Distribution, Inc., Project), dated the date of issuance, in the maximum principal amount of $10,393,000 (the "Series B2000 Bonds"), for the purpose of paying the costs of acquiring, constructing, improving and equipping the B2000 Project as more fully described in the Indenture and in the Lease hereinafter authorized and which B2000 Project shall be leased by the City to the Tenant; and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with the issuance of said Series B2000 Bonds to execute and deliver a Trust Indenture dated as of December 1, 2000, (the "Indenture") with UMB Bank, n.a., Kansas City, Missouri, as Trustee, (the "Trustee") for the purpose of issuing and securing the Series B2000 Bonds as provided therein, and to enter into a Lease dated as of December 1, 2000, (the "Lease") with the Tenant, pursuant to which the City shall cause the B2000 Project to be purchased, acquired, constructed and leased to the Tenant in consideration of payments of Basic Rent, Additional Rent and other charges provided for therein.
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY
OF TOPEKA, KANSAS:

Section 1. Definition of Terms. That all capitalized terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Indenture and/or the Lease herein authorized.

Section 2. Authority to Cause the Project to be Purchased and Constructed. That the City is hereby authorized to cause the B2000 Project to be purchased, acquired, constructed and installed, all in the manner and as more particularly described in the Indenture and/or the Lease hereinafter authorized.

Section 3. Authorization of and Security for the Bonds. That there is hereby authorized and directed to be issued a series of industrial revenue bonds to be designated "City of Topeka, Kansas, Taxable Industrial Revenue Bonds, Series B2000 (Payless ShoeSource Distribution, Inc., Project)" in the maximum principal amount of $10,393,000 (the "Series B2000 Bonds") for the purpose of providing funds to pay the cost of acquiring, constructing, improving and equipping the B2000 Project. The Series B2000 Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such form, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued as prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The Series B2000 Bonds shall be special limited obligations of the City, payable solely from the revenues derived by the City pursuant to the Lease, or otherwise in connection with
the B2000 Project. The Series B2000 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the City within the meaning of a constitutional or statutory provision and shall not be payable in any manner from tax reve-

Section 4. Authorization of Indenture. That the City is hereby authorized to enter into the Indenture dated as of December 1, 2000, by and between the City and UMB Bank, n.a., Kansas City, Missouri, as Trustee, under which the City shall pledge and assign to the Trustee, for the benefit of the owner(s) of the Series B2000 Bonds, the Trust Estate created thereby, all upon the terms and conditions set forth in said Indenture.

Section 5. Lease of the Project. That the City shall cause the B2000 Project to be purchased, acquired, constructed and installed and leased by the City to the Tenant pursuant to and in accordance with the provisions of the Lease dated as of December 1, 2000, by and between the City and the Tenant and shall otherwise observe and perform or cause to be observed and performed the agreements set forth in the Lease.

Section 6. Execution of Bonds and Agreements. That the Mayor of the City of Topeka, Kansas, is hereby authorized and directed to execute the Series B2000 Bonds and deliver the same to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Inden-
ture. The Mayor is hereby further authorized and directed to execute and deliver the Indenture and the Lease for and on be-

half of and as the act and deed of the City with such correc-
tions or amendments thereto as the Mayor shall approve, which approval shall be evidenced by her 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 City are hereby authorized and directed to attest the execution of the Series B2000 Bonds, the Indenture, the Lease 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 7. **Pledge of the B2000 Project.** That the City hereby pledges the B2000 Project to the payment of the Series B2000 Bonds in accordance with K.S.A. 12-1744 and pursuant to the terms and conditions as set forth in the Indenture. The lien created by such pledge shall be discharged when the Series B2000 Bonds shall be deemed to have been paid within the meaning of the Indenture.

Section 8. **Further Authority.** That the City shall, and the officers, agents and employees of the City 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 City with respect to the Series B2000 Bonds, the Indenture and the Lease, all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.
Section 9. Effective Date. That this Ordinance shall take effect and be in force from and after its passage and publication in the official newspaper of the City.

PASSED and approved by the Council of the City of Topeka, Kansas, this 19th day of December, 2000.

ATTEST:

CITY OF TOPEKA, KANSAS

(Seal)

CAPITAL CITY INCORPORATED

FEB. 14, 1857

SEAL OF TOPEKA

KANSAS

(Seal)

CITY ATTORNEY'S OFFICE

APPROVED AS TO FORM & LEGALITY

DEC. 7 2000