ORDINANCE NO. 18247

AN ORDINANCE INTRODUCED BY MAYOR JAMES A. MCCLINTON AUTHORIZING THE CITY OF TOPEKA, KANSAS, TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES A2004, (PAYLESS SHOESOURCE WORLDWIDE, INC., PROJECT) IN THE PRINCIPAL AMOUNT OF $10,000,000 FOR THE PURPOSE OF PURCHASING, ACQUIRING, CONSTRUCTING, RECONSTRUCTING, IMPROVING, REMODELING, EQUIPPING AND INSTALLING CERTAIN FACILITIES; AUTHORIZING EXECUTION OF A SECOND SUPPLEMENTAL 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 WORLDWIDE, INC.; AND AUTHORIZING EXECUTION OF A SECOND SUPPLEMENTAL LEASE AGREEMENT BY AND BETWEEN SAID CITY AND PAYLESS SHOESOURCE WORLDWIDE, INC.

WHEREAS, the City of Topeka, Kansas, (the "City") is authorized by K.S.A. 12-1740 to 12-1749a, inclusive, as amended, (the "Act") to acquire, construct, improve 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 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 in accordance with the Act adopted and approved November 14, 2000, its Resolution No. 7102 (the "Resolution of Intent") expressing its intention to issue in one or more series industrial revenue bonds of the City in the maximum principal amount of $110,000,000 to finance the acquisition, construction, furnishing and equipping of certain facilities to be leased to Payless ShoeSource, Inc., a Missouri corporation, and/or Payless ShoeSource Distribution, Inc., a Kansas corporation; and

WHEREAS, the City has, pursuant to the Act and Ordinance No. 17622, as passed and approved by the governing body of the City on December 19, 2000, and published as required by
law, issued its Taxable Industrial Revenue Bonds, Series A2000, (Payless ShoeSource, Inc., Project) (the "Series A2000 Bonds") dated December 1, 2000, in the principal amount of $10,563,000, for the purpose of acquiring, constructing and purchasing certain building improvements, fixtures, machinery and equipment (the "A2000 Facility") all as more fully described in the Trust Indenture dated as of December 1, 2000, by and between the City and the trustee designated therein (the "Trust Indenture") and has leased the A2000 Facility to Payless ShoeSource, Inc. pursuant to a Lease dated December 1, 2000, (the "Lease") entered into by and between the City and Payless ShoeSource, Inc.; and

WHEREAS, the City has, pursuant to the Act and Ordinance No. 17623, as passed and approved by the governing body of the City on December 19, 2000, and published as required by law, issued its Taxable Industrial Revenue Bonds, Series B2000, (Payless ShoeSource Distribution, Inc. Project) (the "Series B2000 Bonds") dated December 1, 2000, in the principal amount of $10,393,000, for the purpose of acquiring, constructing and purchasing certain building improvements, fixtures, machinery and equipment all as more fully described in a trust indenture dated as of December 1, 2000, between the City and the trustee designated therein; and

WHEREAS, the City has, pursuant to the Act and Ordinance No. 17897, as passed and approved by the governing body of the City on September 24, 2002, and published as required by law, issued its Taxable Industrial Revenue Bonds, Series A2002, (Payless ShoeSource, Inc., Project) (the "Series A2002 Bonds") dated October 1, 2002, in the principal amount of $14,000,000, for the purpose of acquiring, constructing and purchasing certain building improvements, fixtures, machinery and equipment (the "A2002 Facility") all as more fully described in the First Supplemental Indenture dated as of October 1, 2002, by and between the City and the trustee designated therein (the "First Supplemental Indenture") and has leased the A2002 Facility to Payless ShoeSource, Inc. pursuant to a First Supplemental Lease Agreement dated October 1, 2002, (the "First Supplemental Lease Agreement") entered into by and between the City and Payless ShoeSource, Inc.; and
WHEREAS, Payless ShoeSource Worldwide, Inc., a Kansas corporation, the assignee of Payless ShoeSource, Inc., a Missouri corporation and Payless ShoeSource Distribution, Inc., a Kansas corporation (collectively, the “Tenant”) now wishes to acquire, purchase, construct and install further building additions, fixtures, improvements, machinery and equipment in completion of and in addition to the A2000 Facility and A2002 Facility (said additions, fixtures, improvements, machinery and equipment being herein referred to as the "A2004 Project"); and

WHEREAS, in accordance with Section 201 of the Trust Indenture, the maximum principal amount of Bonds and Additional Bonds that may be issued thereunder is $110,000,000; and

WHEREAS, the City has heretofore issued its Series A2000 Bonds, Series B2000 Bonds and Series A2002 Bonds in the aggregate principal amount of $34,956,000; and

WHEREAS, the balance of issue authority presently available to the City in accordance with the limitations contained in both the Resolution of Intent and Section 201 of the Trust Indenture is $75,044,000 which is derived by deducting the aggregate principal amount of the Series A2000 Bonds, Series B2000 Bonds and Series A2002 Bonds as hereinbefore described as issued in the principal amount of $34,956,000 from $110,000,000 as required by both the Resolution of Intent and Section 201 of the Trust Indenture; and

WHEREAS, pursuant to Section 209 of the Trust Indenture, the City may issue additional bonds for the purpose of acquiring and financing further improvements in completion of and in addition to the A2000 Facility; and

WHEREAS, in accordance with and subject to the provisions of Section 209 of the A2000 Indenture, the City may pledge the A2000 Facility and the A2002 Project and the net earnings therefrom to the payment of such additional 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 A2004 (Payless ShoeSource Worldwide, Inc., Project), dated June 1, 2004, in the
principal amount of $10,000,000 (the "Series A2004 Bonds"), for the purpose of paying the costs of acquiring, constructing, improving and equipping the A2004 Project as more fully described in the Second Supplemental Indenture and in the Second Supplemental Lease Agreement hereinafter authorized and which A2004 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 A2004 Bonds to execute and deliver a Second Supplemental Indenture dated as of June 1, 2004, (the "Second Supplemental Indenture") with UMB Bank, n.a., Kansas City, Missouri, as Trustee, (the "Trustee") for the purpose of issuing and further securing the Series A2004 Bonds as provided therein, and to enter into a Second Supplemental Lease Agreement dated as of June 1, 2004, (the "Second Supplemental Lease Agreement") with the Tenant, pursuant to which the City shall cause the A2004 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 Trust Indenture, the First Supplemental Indenture, the Second Supplemental Indenture, the Lease, the First Supplemental Lease Agreement and/or the Second Supplemental Lease Agreement herein authorized.

Section 2. Authority to Cause the Project to be Purchased and Constructed. That the City is hereby authorized to cause the A2004 Project to be purchased, acquired, constructed and installed, all in the manner and as more particularly described in the Second Supplemental Indenture and/or the Second Supplemental Lease Agreement 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 A2004 (Payless ShoeSource Worldwide, Inc., Project)" in the principal amount of $10,000,000 (the "Series A2004 Bonds") for the purpose of
providing funds to pay the cost of acquiring, constructing, improving and equipping the A2004 Project. The Series A2004 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 Trust Indenture, the First Supplemental Indenture and the Second Supplemental Indenture. The Series A2004 Bonds shall be special limited obligations of the City, payable solely from the revenues derived by the City pursuant to the Lease, the First Supplemental Lease Agreement and the Second Supplemental Lease Agreement, or otherwise in connection with the A2004 Project. The Series A2004 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 revenues.

Section 4. Authorization of Second Supplemental Indenture. That the City is hereby authorized to enter into the Second Supplemental Indenture dated as of June 1, 2004, 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 A2004 Bonds, the Trust Estate created thereby, all upon the terms and conditions set forth in the Trust Indenture, the First Supplemental Indenture and said Second Supplemental Indenture.

Section 5. Lease of the Project. That the City shall cause the A2004 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, the First Supplemental Lease Agreement, and Second Supplemental Lease Agreement dated as of June 1, 2004, 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, the First Supplemental Lease Agreement and the Second Supplemental Lease Agreement.

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 A2004 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 Second Supplemental Indenture. The Mayor is hereby further
authorized and directed to execute and deliver the Second Supplemental Indenture and the
Second Supplemental Lease Agreement for and on behalf of and as the act and deed of the City
with such corrections or amendments thereto as the 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 Ordin-
nance. The City Clerk or the Deputy City Clerk of the City are hereby authorized and directed to
attest the execution of the Series A2004 Bonds, the Second Supplemental Indenture, the Second
Supplemental Lease Agreement 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 A2004 Project. That in accordance with and subject to Section
209 of the Trust Indenture, the City hereby pledges the A2004 Project to the payment of the
Series A2004 Bonds in accordance with K.S.A. 12-1744 and pursuant to the terms and
conditions as set forth in the Second Supplemental Indenture. The lien created by such pledge
shall be discharged when the Series A2004 Bonds shall be deemed to have been paid within the
meaning of the Second Supplemental 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 A2004 Bonds, the Trust Indenture, the First Supplemental
Indenture, the Second Supplemental Indenture, the Lease, the First Supplemental Lease
Agreement and the Second Supplemental Lease Agreement, 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 City Council this 25th day of May, 2004.

CITY OF TOPEKA, KANSAS

ATTEST:

Iris E. Walker, City Clerk

James A. McClinton, Mayor

Iris E. Walker, City Clerk

(SEAL)

APPROVED AS TO FORM & LEGALITY

MAY 11 2004
CITY ATTORNEY'S OFFICE