

RESOLUTION NO. 24-1047

A RESOLUTION CONSENTING TO THE DELIVERY OF (1) AN ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT AND RELATED BOND DOCUMENTS IN CONNECTION WITH THE CITY'S TAXABLE INDUSTRIAL REVENUE BONDS (BUILDER'S STONE & MASONRY INC. PROJECT), SERIES 2017; AND (2) AN ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENTS AND RELATED BOND DOCUMENTS IN CONNECTION WITH THE CITY'S TAXABLE INDUSTRIAL REVENUE BONDS (ACE PROPERTIES LLC - LOT 1 PROJECT), SERIES 2018

WHEREAS, the City of Olathe, Kansas (the "City") is a duly organized and existing municipal corporation under the laws of the State of Kansas; and

WHEREAS, the City has issued its Taxable Industrial Revenue Bonds (Builder's Stone & Masonry Inc. Project), Series 2017, in the aggregate maximum principal amount of \$5,100,000 (the "Series 2017 Bonds"), pursuant to a Trust Indenture dated as of October 1, 2017, by and between the City and UMB Bank, N.A. (the "Trustee"), for the purpose of acquiring real property and acquiring, constructing, installing and equipping an approximately 50,400 square foot industrial facility, including land, buildings, structures, improvements, fixtures, machinery and equipment generally located at 665 N. Lindenwood Drive, Olathe, Kansas; and

WHEREAS, the City base leased such project from Builder's Stone & Masonry Inc., a Kansas corporation ("BSM") pursuant to a Base Lease Agreement dated as of October 1, 2017 (the "2017 Base Lease Agreement"), between BSM and the City, and simultaneously leased its interest in the Project to BSM pursuant to a Lease Agreement dated as of October 1, 2017 (the "2017 Lease Agreement"), by and between the City and BSM; and

WHEREAS, the City and BSM entered into a Performance Agreement dated as of October 1, 2017 relating to the Series 2017 Bonds (the "2017 Performance Agreement"); and

WHEREAS, the City, the Trustee, and BSM entered into various other documents relating to the Series 2017 Bonds, a complete set of which are contained in the Transcript of proceedings relating to the issuance of the Series 2017 Bonds; and

WHEREAS, the City has issued its Taxable Industrial Revenue Bonds (Ace Properties LLC - Lot 1 Project), Series 2018, in the aggregate maximum principal amount of \$2,100,000, (the "Series 2018 Bonds," together with the Series 2017 Bonds, the "Bonds"), pursuant to a Trust Indenture dated as of December 1, 2018, by and between the City and the Trustee, for the purpose of acquiring real property and acquiring, constructing, installing and equipping an industrial facility, including land, buildings, structures, improvements, fixtures, machinery and equipment generally located at 623 N. Lindenwood Drive, Olathe, Kansas; and

WHEREAS, the City base leased such project from Ace Properties LLC, a Kansas limited liability company ("Ace Properties") pursuant to a Base Lease Agreement dated as of December 1, 2018, between Ace Properties and the City, and simultaneously leased the project to Ace Properties pursuant to a Lease Agreement dated as of December 1, 2018 (the "2018 Lease Agreement"), by and between the City and Ace Properties; and

WHEREAS, the City and Ace Properties entered into a Performance Agreement dated as of December 1, 2018 relating to the Series 2018 Bonds (the "2018 Performance Agreement"); and

WHEREAS, the City, the Trustee, and Ace Properties entered into various other documents relating to the Series 2018 Bonds, a complete set of which are contained in the Transcript of proceedings relating to the issuance of the Series 2018 Bonds; and

WHEREAS, pursuant to an Assignment and Assumption of Lease Agreement and Related Bond Documents dated as of March 1, 2019, among BSM, the City, and Double T Enterprises, LLC, a Kansas limited liability company (“Assignor”), BSM transferred to Assignor all of its right, title, and interest to the Series 2017 Bonds and all related documents; and

WHEREAS, pursuant to an Assignment and Assumption of Lease Agreements and Related Bond Documents dated as of March 1, 2019, among Ace Properties, the City, and Assignor, Ace Properties transferred to Assignor all of its right, title, and interest to the Series 2018 Bonds and all related documents; and

WHEREAS, Assignor is selling all of its right, title and interest in the project financed with the Series 2017 Bonds to **LINDENWOOD OLATHE HOLDINGS, LLC**, a Kansas limited liability company, **KANSAS CITY ROAD HOLDINGS, LLC**, a Kansas limited liability company, and **RBP HOLDINGS, LLC – 158TH OLATHE SERIES**, a Kansas limited liability company (collectively, the “Assignee”), and assigning its interest in the Series 2017 Bonds and the documents relating thereto pursuant to an Assignment and Assumption of Lease Agreement and Related Bond Documents among the City, Assignor, and Assignee (the “Series 2017 Assignment and Assumption Agreement”); and

WHEREAS, Assignor is selling all of its right, title and interest in the project financed with the Series 2018 Bonds to the Assignee, and assigning its interest in the Series 2018 Bonds and the documents relating thereto pursuant to an Assignment and Assumption of Lease Agreement and Related Bond Documents among the City, Assignor, and Assignee (the “Series 2018 Assignment and Assumption Agreement,” and together with the Series 2017 Assignment and Assumption Agreement, the “Assignment and Assumption Agreements”); and

WHEREAS, the City desires to authorize the execution and delivery of the Assignment and Assumption Agreements and any related and necessary documents.

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

Section 1. Approval of Assignment and Assumption Agreements. The Governing Body of the City hereby approves the Assignment and Assumption Agreements in substantially the form presented to and reviewed by the City at this meeting (copies of which shall be filed in the records of the City), and unconditionally consents to the assignments provided for therein. The Mayor (or, in the Mayor’s absence, the Mayor Pro Tem) is hereby authorized to execute and deliver such documents with such changes therein as shall be approved by the officials of the City executing such documents, such officials’ signatures thereon being conclusive evidence of their approval and the City’s approval thereof.

Section 2. Further Authority. The Mayor is hereby authorized and directed to execute and deliver the Assignment and Assumption Agreements in substantially the same form as presented to the Governing Body on this date, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution (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. The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to the aforementioned documents and such

other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 3. Effective Date. This Resolution shall take effect and be in full force and effect from and after its adoption by the Governing Body of the City.

ADOPTED by the Governing Body of the City of Olathe, Kansas, this 3rd day of September, 2024.

CITY OF OLATHE, KANSAS

By: _____
John Bacon, Mayor

[SEAL]

ATTEST:

Brenda Swearingian, City Clerk