

## **RESOLUTION NO. 20-1048**

### **A RESOLUTION CONSENTING TO THE DELIVERY OF AN ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENTS AND RELATED BOND DOCUMENTS IN CONNECTION WITH THE CITY'S \$5,000,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS (BR CAPITAL, L.L.C. – PHASE I PROJECT), SERIES 2019.**

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**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 previously adopted Resolution No. 18-1049 on May 15, 2018 (the “Resolution”) expressing the City’s intent to issue up to \$17,000,000 of its industrial revenue bonds for the benefit of the Bedrock Concrete, L.L.C., predecessor in interest to the Assignor (as defined herein); and

**WHEREAS**, the City has issued its Taxable Industrial Revenue Bonds (BR Capital, L.L.C. – Phase I Project), Series 2019, in the aggregate maximum principal amount of \$5,000,000 (the “Bonds”), pursuant to a Trust Indenture dated as of May 1, 2019, by and between the City and UMB Bank, N.A., as trustee (the “Trustee”), for the purpose of acquiring, purchasing, constructing, installing, furnishing and equipping an approximately 37,440 square foot commercial facility, including land, buildings, structures, improvements, fixtures, machinery and equipment, located in the City (the “Project”); and

**WHEREAS**, the City base leased the Project from BR Capital, L.L.C., a Kansas limited liability company (“Assignor”) pursuant to a Base Lease Agreement dated as of May 1, 2019 (the “Base Lease Agreement”) between Assignor and the City, and simultaneously leased the Project to Assignor pursuant to a Lease Agreement dated as of May 1, 2019 (the “Lease Agreement”), by and between the City and Assignor; and

**WHEREAS**, the City and Assignor entered into a Performance Agreement dated as of May 1, 2019 (the “Performance Agreement”); and

**WHEREAS**, the City, the Trustee, and Assignor entered into various other documents relating to the Bonds (collectively, the “Other Bond Documents”), a complete set of which are contained in the Transcript of proceedings relating to the issuance of the Bonds; and

**WHEREAS**, Assignor is selling all of its right, title and interest in the Project to Foley Industries, Inc., a Kansas corporation (“Buyer”) and assigning its interest in the Resolution, the Bonds, the Base Lease Agreement, the Lease Agreement, the Performance Agreement, and the Other Bond Documents to Buyer pursuant to an Assignment and Assumption of Lease Agreements and Related Bond Documents among Assignor, Buyer, and the City (the “Assignment and Assumption Agreement”); and

**WHEREAS**, the City desires to authorize the execution and delivery of the Assignment and Assumption Agreement and to consent to the assignment provided for therein.

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

**Section 1. Approval of Assignment and Assumption Agreement.** The Governing Body of the City hereby approves the Assignment and Assumption Agreement 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 assignment provided for therein. The Mayor (or, in the Mayor's absence, the acting Mayor) is hereby authorized to execute and deliver such document 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 Agreement 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 document 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.

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**ADOPTED** by the Governing Body of the City of Olathe, Kansas, this 7<sup>th</sup> day of July, 2020.

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
City Clerk