

## **RESOLUTION NO. 21-1026**

**RESOLUTION CONSENTING TO THE ASSIGNMENT OF THE BENEFITS OF RESOLUTION NO. 08-1068 FROM K H JENSEN, LLC TO SCANNELL PROPERTIES #476 LLC AND DETERMINING THE INTENT OF THE CITY OF OLATHE, KANSAS TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN THE AMOUNT NOT TO EXCEED \$33,850,000 TO FINANCE THE COSTS OF ACQUIRING, CONSTRUCTING AND EQUIPPING AN INDUSTRIAL FACILITY FOR THE BENEFIT OF SCANNELL PROPERTIES #476 LLC AND ITS SUCCESSORS AND ASSIGNS.**

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**WHEREAS**, the City of Olathe, Kansas (the “Issuer”), desires to promote, stimulate and develop the general welfare and economic prosperity of the Issuer and its inhabitants and thereby to further promote, stimulate and develop the general welfare and economic prosperity of the State of Kansas; and

**WHEREAS**, the Issuer is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the “Act”), to issue industrial revenue bonds to pay the cost of certain facilities (as defined in the Act) for the purposes set forth in the Act, and to lease such facilities to private persons, firms or corporations; and

**WHEREAS**, the Issuer previously adopted Resolution No. 08-1068 (the “Original Resolution”) determining the intent of the Issuer to issue its industrial revenue bonds, in one or more series, the aggregate amount of all series not to exceed \$119,308,000, to finance the costs of acquiring, constructing, and equipping one or more facilities for the benefit of K H Jensen, LLC, a Kansas limited liability company (the “Assignor”); and

**WHEREAS**, pursuant to the Original Resolution, the Issuer previously issued its industrial revenue bonds in the aggregate principal amount of \$63,372,000, consisting of its \$33,372,000 Industrial Revenue Bonds (I-35 Logistics Park Building B Project), Series 2013, and its \$30,000,000 Industrial Revenue Bonds (I-35 Logistics Park Building C Project), Series 2018; and

**WHEREAS**, Section 12 of the Original Resolution permits the Assignor, with the prior written consent of the Issuer, to assign its interest in the Original Resolution to another entity, thereby conferring on such entity the benefits of the Original Resolution and the proceedings related thereto; and

**WHEREAS**, the Assignor desires to assign its interest in the Original Resolution to Scannell Properties #476 LLC, an Indiana limited liability company, including any successors in interest (collectively, the “Company”); and

**WHEREAS**, the Company has submitted to the Issuer an application for the issuance of industrial revenue bonds (the “Application”) requesting that the Issuer finance the cost of acquiring, constructing and equipping an approximately 567,840 square foot industrial facility, as more fully described in the Application (the “Project”) through the issuance of its industrial revenue bonds in the principal amount not to exceed \$33,850,000 (collectively, the “Bonds”), and to lease the Project to the Company in accordance with the Act; and

**WHEREAS**, it is hereby found and determined to be advisable and in the interest and for the welfare of the Issuer and its inhabitants that the Issuer finance the costs of the Project by the issuance of the Bonds under the Act, the principal amount of the Bonds not to exceed \$33,850,000, each series of Bonds

to be payable solely out of rentals, revenues and receipts derived from the lease of the Project by the Issuer to the Company.

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

**Section 1. Assignment of the Original Resolution.** The governing body of the Issuer hereby consents to the assignment of the Assignor's interest in the Original Resolution to the Company. The Issuer agrees that the Company will now be entitled to the benefits of the Original Resolution to the same extent and on the same terms as the Assignor.

**Section 2. Approval of Project.** The governing body of the Issuer hereby finds and determines that the acquiring, constructing and equipping of the Project will promote the general welfare and economic prosperity of the Issuer and the issuance of the Bonds to pay the costs of the Project will be in furtherance of the public purposes set forth in the Act. The Project shall be located at the I-35 Logistics Park in the City of Olathe, Kansas, as further described in the Application.

**Section 3. Intent to Issue Bonds.** The governing body of the Issuer hereby determines and declares the intent of the Issuer to acquire, construct and equip the Project out of the proceeds of the Bonds of the Issuer in the principal amount not to exceed \$33,850,000, to be issued pursuant to the Act.

**Section 4. Ad Valorem Tax Abatement.** In consideration of the Company's decision to acquire, construct and equip the Project, the Issuer hereby agrees to take all appropriate action to request the Kansas Board of Tax Appeals to approve a 100% ad valorem property tax abatement (not including special assessments and taxes that may not be abated by the Issuer under Kansas law) for all property (including real property, building improvements, machinery and equipment) financed with the proceeds of the Bonds.

In consideration of the Issuer's agreement to request such 100% abatement, the Company will agree to make payments in lieu of tax as follows:

<u>Year*</u>	<u>Approximate Percentage of Payments in Lieu</u>
1	50%
2	50%
3	50%
4	50%
5	50%
6	50%
7	50%
8	50%
9	50%
10	50%

\* Year refers to the first full calendar year following the issuance of the applicable series of Bonds.

provided, however, any agreed upon valuation for determining the amount of such payment in lieu of tax and any property for which the Issuer shall determine the payment in lieu of tax shall be in excess of that shown above, shall be set forth in the performance based tax agreement executed by the Issuer and the Company. The Project shall be entitled to a 10-year tax abatement, with the first year of the abatement being the year

beginning on the January 1 following the year the Bonds are issued. The foregoing percentages are subject to adjustment in accordance with the performance based tax abatement agreement for the Project.

**Section 5. Provision for the Bonds.** Subject to the conditions of this Resolution, the Issuer expresses its intent to (i) issue the Bonds in one or more series to pay the costs of acquiring, constructing and equipping the Project, with such maturities, interest rates, redemption terms and other provisions as may be determined by ordinance of the Issuer; (ii) provide for the lease (with an option to purchase) of the Project to the Company; and (iii) to effect the foregoing, adopt such resolutions and ordinances and authorize the execution and delivery of such instruments and the taking of such action as may be necessary or advisable for the authorization and issuance of each series of Bonds by the Issuer and take or cause to be taken such other action as may be required to implement the aforesaid.

**Section 6. Conditions to Issuance.** The issuance of the Bonds and the execution and delivery of any documents related to the Bonds are subject to: (i) obtaining any necessary governmental approvals (including, but not limited to, approval of a final site development plan in accordance with the City's Unified Development Ordinance); (ii) agreement by the Issuer, the Company and the purchaser of the Bonds upon (a) mutually acceptable terms for the Bonds and for the sale and delivery thereof, and (b) mutually acceptable terms and conditions of any documents related to the issuance of the Bonds and the Project; (iii) the Company's compliance with the Issuer's policies relating to the issuance of industrial revenue bonds and ad valorem tax abatement (including, but not limited to, Section 2.B. of City Council Policy F-5 (Industrial Revenue Bond and Tax Abatement Policy), which section provides, in part, that "[p]rojects must utilize construction materials and provide an architectural design that exceeds the minimum requirements set forth in the City's Unified Development Ordinance"); (iv) the passage and publication of an Ordinance authorizing the issuance of the Bonds; and (v) Company's payment of all of the costs of issuance related to the issuance of the Bonds.

**Section 7. Sale of the Bonds.** The sale of each series of Bonds shall be the sole responsibility of the Company; provided, however, arrangements for the sale of each series of Bonds shall be acceptable to the Issuer.

**Section 8. Limited Obligations of the Issuer.** Each series of Bonds and the interest thereon shall be special, limited obligations of the Issuer payable solely out of the amounts derived by the Issuer under a Lease Agreement with respect to such series of Bonds and as provided herein and are secured by a transfer, pledge and assignment of and a grant of a security interest in the trust estate to the bond trustee for such series of Bonds and in favor of the owners of such series of Bonds, all as provided in the respective Bond Indenture. Each series of Bonds shall not constitute a general obligation of the Issuer, the State or of any other political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the Issuer, the State or of any other political subdivision thereof and shall not be payable in any manner by taxation, but shall be payable solely from the funds provided for as provided in the respective Bond Indenture. The issuance of each series of Bonds shall not, directly, indirectly or contingently, obligate the Issuer, the State or any other political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment.

**Section 9. Required Disclosure.** Any disclosure document prepared in connection with the placement or offering of any series of Bonds shall contain substantially the following disclaimer:

NONE OF THE INFORMATION IN THIS OFFICIAL STATEMENT, OTHER THAN WITH RESPECT TO INFORMATION CONCERNING THE ISSUER CONTAINED UNDER THE CAPTIONS "THE ISSUER" AND "LITIGATION - THE ISSUER" HEREIN, HAS BEEN SUPPLIED OR VERIFIED BY THE ISSUER, AND THE ISSUER

MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

**Section 10. Authorization to Proceed.** The Company is hereby authorized to proceed with the acquiring, constructing and equipping of the Project, including the necessary planning and engineering for the Project and entering into of contracts and purchase orders in connection therewith, and to advance such funds as may be necessary to accomplish such purposes, and, to the extent permitted by law and upon compliance with the other requirements of this Resolution, the Issuer will reimburse the Company for all expenditures paid or incurred therefor out of the proceeds of the Bonds.

**Section 11. No Reliance on Resolution.** Kansas law provides that the Issuer may only issue the Bonds by passage of an Ordinance and compliance with other state law requirements. The Issuer has not yet passed an Ordinance for the Bonds. This Resolution only evidences the intent of the current governing body to issue the Bonds for the Project. The Company should not construe the adoption of this Resolution as a promise or guarantee that the Ordinance for the Bonds will be passed or that the Project will be approved.

**Section 12. Termination of Resolution.** This Resolution shall terminate three years from the date of the adoption of this Resolution unless (i) the Bonds have been issued for the Project or (ii) a building permit has been issued by the Issuer for the Project. The Issuer, upon the written request of the Company, may extend this time period.

**Section 13. Benefit of Resolution.** This Resolution will inure to the benefit of the Issuer and the Company. The Issuer may, at the prior written request of the Company, assign all or a portion of the Company's interest in this Resolution to another entity, and such assignee will be entitled to the benefits of the portion of this Resolution assigned and the proceedings related hereto.

**Section 14. Further Action.** Counsel to the Issuer and Gilmore & Bell, P.C., Bond Counsel for the Issuer, together with the officers and employees of the Issuer, are hereby authorized to work with the purchaser of each series of Bonds, the Company, their respective counsel and others, to prepare for submission to and final action by the Issuer all documents necessary to effect the authorization, issuance and sale of each series of Bonds and other actions contemplated hereunder.

**Section 15. Effective Date.** This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the Issuer.

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**ADOPTED** this 20<sup>th</sup> day of April, 2021.

**CITY OF OLATHE, KANSAS**

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

[SEAL]

ATTEST:

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

Resolution  
Scannell Properties #476 LLC