

## **RESOLUTION NO. 8029**

**A RESOLUTION INTRODUCED BY CITY MANAGER NORTON N. BONAPARTE, JR. CONCERNING TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 1987A (VOLUME SHOE CORPORATION COMPUTER FACILITY PROJECT) AND AUTHORIZING THE CITY OF TOPEKA, KANSAS, TO CONVEY TITLE OF THE FACILITY TO PAYLESS SHOESOURCE WORLDWIDE, INC.**

**WHEREAS**, the City of Topeka, Kansas, (the "City") has pursuant to both K.S.A. 12-1740 to 12-1749a, both inclusive, as amended, (the "Act") and its Ordinance No. 15853 passed and approved December 29, 1987, and published as required by law, (the "Ordinance") issued its Taxable Industrial Revenue Bonds, Series 1987A (Volume Shoe Corporation Computer Facility Project) dated December 1, 1987, in the aggregate principal amount of \$12,500,000 (the "Bonds"); and

**WHEREAS**, the proceeds of the Bonds financed the acquisition, improvement and equipping of certain real property to be used for commercial purposes (the "Facility") which was leased to Volume Shoe Corporation (the "Tenant"), a Missouri corporation, the predecessor in interest to Payless ShoeSource Worldwide, Inc. ("Payless"), a Kansas corporation, pursuant to the terms and conditions of a Lease Agreement dated as of December 1, 1987, (the "Lease") by and between the City as landlord thereunder and the Tenant, all pursuant to the Ordinance; and

**WHEREAS**, Payless has represented to the City that all of the outstanding Bonds have been paid and discharged, and, as a result, the pledge of the Facility and the revenues under the Indenture and all other rights granted thereby have ceased and are of no further force and/or effect; and

**WHEREAS**, in furtherance of Payless' representation to the City that the Bonds have been paid and discharged, Payless is willing to enter into an agreement with the City (the "Indemnification Agreement") under which Payless will be responsible for any damages incurred by the City that are directly attributable to Payless' failure to have fully satisfied the Bonds; and

**WHEREAS**, the lien of the Bonds having been paid and discharged, Payless, as Tenant's successor-in-interest, has notified the City that it wishes to exercise its option to purchase the Facility and, in notifying the City of its wish to exercise its option pursuant to the Lease, that the City transfer its interest in the Facility to Payless in accordance with the terms and conditions of Article XVII of the Lease, specifically Sections 17.1, 17.2 and 17.3 thereof; and

**WHEREAS**, the City is authorized to waive its rights under the Lease to any prior notice from the Tenant regarding the closing date of the transfer of its interest in the Facility to the Tenant; and

**WHEREAS**, Payless having represented to the City that the Lease has been fully satisfied and that it has tendered the full purchase price thereunder for the Facility, the City is willing to execute and deliver to Payless both its Special Warranty Deed and its Bill of Sale, as the same may be required, conveying title (as described therein) to the Facility to Payless, and to also execute the Indemnification Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TOPEKA, SHAWNEE COUNTY, KANSAS, AS FOLLOWS:**

**Section 1.** That the Mayor is hereby authorized to execute (and the City Clerk or Deputy City Clerk are hereby authorized to both attest any such signature and seal) (i) such deed, bill of sale, instruments and any other documents necessary to convey and transfer title of the Facility to Payless in accordance with Article XVII of the Lease, and (ii) the Indemnification Agreement.

**Section 2.** That this Resolution shall be of force and effect immediately upon its adoption and approval.

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**ADOPTED** by the Council of the City of Topeka, Kansas, this 8th day of January, 2008.

CITY OF TOPEKA, KANSAS

ATTEST:

\_\_\_\_\_  
William W. Bunten, Mayor

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Brenda Younger, City Clerk

(SEAL)

**I, BRENDA YOUNGER**, City Clerk of the City of Topeka, Shawnee County, Kansas, do hereby certify that the above and foregoing is a true and correct copy of Resolution No. 8029 adopted and approved by the City Council on January 8, 2008.

(SEAL)

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Brenda Younger, City Clerk