

RESOLUTION NO. 247

A RESOLUTION AUTHORIZING SALE AND CONVEYANCE OF CERTAIN LAND OWNED BY THE CITY OF COLUMBUS, KANSAS TO ACE ELECTRICAL ACQUISITION, L.L.C., AND AUTHORIZING RELEASE OF SUCH LAND AS A PART OF THE SECURITY FOR THE CITY'S INDUSTRIAL REVENUE BONDS, SERIES 1997 AND SERIES 1998 (ACE ELECTRIC ACQUISITION, L.L.C.)

WHEREAS, the City of Columbus, Kansas (the "City") has previously issued its Industrial Revenue Bonds, Series 1997 dated December 1, 1997 and Series 1998 dated August 1, 1998 (the "Bonds") in the aggregate principal amount of \$8,000,000 to finance the cost of acquiring and renovation a manufacturing facility (the "Project") and leased to Ace Electrical Acquisition, L.L.C., a Kansas limited liability company (the "Tenant"), pursuant to a Lease Purchase Agreement dated as of October 15, 1996 between the City and the tenant) the "Lease"); and

WHEREAS, the Tenant desires to have released an unimproved parcel of land subject to the Lease (the "Released Parcel") and is not in default under the Lease; and

WHEREAS, the Issuer, the Trustee and the Tenant have entered into Supplemental Trust Indenture No. 3 dated April 1, 1999 the form of which has been exhibited to and approved by the governing body of the City, releasing the Released Parcel from the pledge of the trust estate pursuant to the Trust Indenture, which form of Supplemental Trust Indenture is hereby approved;

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF COLUMBUS, KANSAS:

Section 1. The Mayor and City Clerk are authorized and directed to execute and deliver a special warranty deed substantially in the form set forth on Exhibit A and Supplemental Trust Indenture No. 3 is substantially in the form set forth in Exhibit B attached hereto, transferring title to the Released Parcel to the Tenant and releasing the Released Parcel from the pledge of the trust estate under the Trust Indenture. Such deed shall be delivered to the Trustee for delivery to the Tenant upon execution and delivery by the Tenant of its consent to the Supplemental Indenture and payment of the purchase price of the Release Parcel. The Mayor and City Clerk are hereby further authorized and directed to execute a Release of Lease, substantially in the form attached hereto as Exhibit C, and deliver same to the Trustee for delivery on the Closing Date.

Section 2. The Mayor and City Clerk are hereby further authorized and directed to sign such other instruments and certificates as shall be necessary and desirable in connection with this Resolution, and are hereby further authorized to take such further actions as may be necessary to accomplish the purposes of this Resolution.

Section 3. The Trustee is hereby directed to take all action necessary to accomplish the purpose of this Resolution.

ADOPTED by the governing body of the City of Columbus, Kansas this 5th day of April, 1999.

CITY OF COLUMBUS, KANSAS

By: Anda Wawell
Mayor

[SEAL]

Attest:

By: Kay Thomas
City Clerk

EXHIBIT A**SPECIAL WARRANTY DEED**

THIS INDENTURE, made April 5, 1999 between the City of Columbus, Kansas, a municipal corporation, as Grantor, and Ace Electrical Acquisition, L.L.C., as Grantee;

WITNESSETH, that said Grantor, in furtherance of the terms of a certain Lease dated as of December 30, 1997 between Grantor and Ace Electrical Acquisition, L.L.C., and as authorized by a Resolution duly adopted by the governing body of the City of Columbus, Kansas and by these presents does hereby convey to Grantee, its successors and assigns, the real estate in Cherokee County, Kansas described in *Exhibit A* attached hereto

for the sum of \$10.00 and other valuable consideration;

TO HAVE AND TO HOLD, the premises described, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in any way appertaining, to Grantee and to its successors and assigns forever; and Grantor hereby covenants that the premises are free and clear of all encumbrances whatsoever, except (a) those to which the title was subject on the date of conveyance to Grantor, or to which title became subject with Grantee's written consent, or which resulted from any failure of Grantee to perform any of its covenants or obligations under the Lease from Grantor referred to above, (b) taxes and assessments, general and special, if any, and (c) the rights, titles and interests of any party having condemned or attempting to condemn title to, or the use for a limited period of, all or any part of the premises conveyed; and that it will warrant and defend the title to the premises to Grantee and Grantee's successors and assigns forever against the lawful claims and demands of anyone claiming by, through or under it.

IN WITNESS WHEREOF, Grantor has executed this deed and affixed its corporate seal on the day and year first above written.

(SEAL)

ATTEST:

CITY OF COLUMBUS, KANSAS,
a municipal corporation

Kay Thomas
Kay Thomas, City Clerk

Anita Davolt
Anita Davolt, Mayor

STATE OF KANSAS)
) SS:
 COUNTY OF CHEROKEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 1999 by Anita Davolt, Mayor, and Kay Thomas, City Clerk, respectively, of the City of Columbus, Kansas, a municipal corporation incorporated as a city of the second class of the State of Kansas, on behalf of said corporation.

 Notary Public

My appointment expires:

EXHIBIT A

A portion of the Southeast quarter of the Southeast quarter of Section 13, Township 33 South, Range 23 East of the sixth principal meridian, Cherokee County, Kansas according to the United States government survey thereof, bounded and described as follows: beginning at a point on the East line of said Southeast quarter, said point being a distance of 141.50 feet North of the Southeast corner of said Southeast quarter; thence West and parallel with the South line of said Southeast quarter a distance of 60.47 feet to the West line of the highway right-of-way and the true point of beginning of the following described tract; thence continuing West and parallel with said South line a distance of 144.84 feet to the East right-of-way line of the railroad; thence Northwesterly along said railroad right-of-way line a distance of 341.51 feet; thence North and parallel with said East line of the Southeast quarter a distance of 99.39 feet; thence East and parallel with said South line a distance of 431.99 feet to said West highway right-of-way line; thence South along said right-of-way a distance of 280.00 feet to the true point of beginning. This tract contains 2.19 acres more or less.

Also, an easement for ingress and egress over and across an existing driveway, said easement beginning at the Northeast corner of the above described property, thence West a distance of 431.99 feet; thence North a distance of 40 feet; thence East a distance of 431.99 feet; thence South a distance of 40 feet to the point of beginning.

EXHIBIT B**SUPPLEMENTAL INDENTURE NO. 3**

THIS SUPPLEMENTAL INDENTURE NO. 3, is made and entered into as of April 1, 1999, between THE CITY OF COLUMBUS, KANSAS, a municipal corporation (the "Issuer") and CENTRAL BANK AND TRUST CO., Hutchinson, Kansas, a state banking corporation (the "Trustee").

Recitals

A. The Issuer and the Trustee are parties to a Indenture ("Indenture"), dated as of December 1, 1997, providing for the issuing and securing of the Issuer's Industrial Revenue Bonds, Series 1997 (Ace Electrical Acquisition, L.L.C.), in the principal amount of \$4,500,000 (the "Series 1997 Bonds") for the purpose of paying a part of the costs of acquiring and renovating certain manufacturing facilities (the "Project") located within the corporate limits of the Issuer and authorizing the Issuer to lease the Project to Ace Electrical Acquisition, L.L.C. (the "Tenant"). The Indenture has been amended and supplemented by Supplemental Indenture No. 1 dated as of August 1, 1998, providing for the issuing and securing of the Issuer's Industrial Revenue Bonds, Series 1998 (Ace Electrical Acquisition, L.L.C.) in the original principal amount of \$3,500,000 (the "Series 1998 Bonds") on a parity of lien basis with the Series 1997 Bonds. The Series 1997 Bonds and the Series 1998 Bonds are hereinafter collectively referred to as the "Bonds."

B. A part of the real property containing approximately 2.19 acres and made part of the Trust Estate under the Indenture is described in *Exhibit A* and is vacant (the "Vacant Land").

D. The Issuer, as lessor, leased to the Tenant, as lessee, the Vacant Land (as well as other land) pursuant to the terms of the Lease dated as of December 1, 1997 (the "Lease") entered into between the Issuer and the Tenant in connection with the issuance of the Bonds. The property subject to the Lease and Basic Rent generated under the Lease have been pledged by the Issuer as security for the Bonds.

E. The Tenant has no current or reasonably foreseeable future need for the Vacant Land, and desires to sell it. The Tenant has obtained a market value appraisal of the Vacant Land from Allen D. McColm, showing the estimated market value of the Vacant Land to be \$42,400.

F. The Tenant has requested that the Issuer and the Trustee enter into this Supplemental Indenture releasing the Vacant Land from the Trust Estate on the conditions set forth herein, and authorizing the Issuer to convey the Vacant Land to the Tenant.

G. Because of the relatively small value of the Vacant Land, and its unimportance to operation of the Project by the Tenant and generation of revenue from the Project by the Tenant, the Issuer and the Trustee have concluded that amending the Indenture as set forth in this Supplemental Indenture will not materially adversely affect the rights of the Owners of the Bonds, and thus consent of Owners of the Bonds to this Supplemental Indenture is not necessary.

H. Pursuant to Section 1102(b) of the Indenture, the parties desire to amend the Indenture as provided herein.

Agreement

In consideration of the foregoing recitals, the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Capitalized Terms. All capitalized terms not otherwise defined shall have the same meanings as in the Indenture.

2. Ratification of Indenture and Lease. The Issuer, the Trustee, and the Tenant each acknowledges and confirms that the Indenture and the Lease are in full force and effect as of the date hereof and that none of them knows of the existence of any default under either the Indenture or the Lease.

3. Release of Vacant Land. The Issuer and the Trustee hereby agree to release and except the Vacant Land (the "Released Parcel") from the Trust Estate under the Indenture. This release of the Released Parcel from the terms of the Indenture is made in accordance with Section 1102(b) of the Indenture. The Issuer and the Trustee acknowledge that the purpose of this release is to permit the Tenant to obtain title to the Release Parcel, to the Tenant can sell it to an unrelated third party purchaser. The Trustee and the Issuer shall hereafter have no interest in the Released Parcel. Except as expressly amended herein, the terms of the Indenture, as heretofore amended and supplemented by Supplemental Indenture No. 1 shall remain unchanged and in full force and effect.

4. Disposition of Proceeds of Sale. Upon completion of the sale of the Vacant Land by the Tenant, the Issuer shall cause to be delivered to the Tenant its special warranty deed conveying fee simple title to the Vacant Land to the Tenant, subject to the matters listed in

Section 17.3 of the Lease. Simultaneously with delivery of the deed, the Tenant will cause to be delivered to the Trustee all of the net sale proceeds of the Vacant Land. The Trustee will deposit such sale proceeds in the Bond Reserve Account created pursuant to the Indenture, and the Bond Reserve Requirement will thereafter be enlarged to include such net sale proceeds. Such proceeds will be held and invested by the Trustee as a part of the Bond Reserve Account until such time as the Series 1998 Bonds become subject to optional redemption. The Trustee will then effect a partial redemption of the Series 1997 and Series 1998 Bonds, on a prorata basis, to use as many of the net sale proceeds as possible.

5. Consent of the Tenant. The Tenant hereby consents to the release of the Released Parcel on the conditions stated herein, agrees with the other findings and agreements set forth herein, and acknowledges that, except as expressly amended herein, the Indenture and all related documents shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be executed.

CITY OF COLUMBUS, KANSAS

By Anita Davolt
Anita Davolt, Mayor

CENTRAL BANK AND TRUST CO.

By _____, as Trustee
Authorized Officer

ACE ELECTRICAL ACQUISITION, L.L.C.

By _____
Denis M. Desmond, President

EXHIBIT C**RELEASE OF LEASE**

WHEREAS, the City of Columbus, Kansas (the "City") has heretofore entered into a Lease dated as of December 30, 1997 (the "Lease") between the City and Ace Electrical Acquisition, L.L.C. (the "Tenant"), notice of which is recorded in Book 78 at page 205-207 in the office of the Cherokee County Register of Deeds; and

WHEREAS, the City assigned its interest in the Lease to Central Bank and Trust Co., acting as trustee for the City and others for purpose of enforcement of the Tenant's covenants under the Lease; and

WHEREAS, the governing body of the City has Resolution authorized conveyance of a part of the land described in the Lease (the "Released Parcel") from the City to the Tenant and its release from the property made subject to the Lease;

THEREFORE, the property described in the attached *Exhibit A* is hereby released from any claim of the City and the Trustee under the Lease.

CITY OF COLUMBUS, KANSAS

By: Anita Davolt
Anita Davolt, Mayor

(SEAL)

ATTEST:

By: Kay Thomas
Kay Thomas, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF CHEROKEE)

The foregoing instrument was acknowledged before me this ___ day of _____, 1999 by Anita Davolt, Mayor, and Kay Thomas, City Clerk, respectively of the City of Columbus, Kansas, a municipal corporation incorporated as a city of the second class of the State of Kansas, on behalf of said corporation.

By: _____
Notary Public

My appointment expires:

CENTRAL BANK AND TRUST CO.

By: _____
Name: _____
Title: _____

STATE OF KANSAS)
) SS:
COUNTY OF RENO)

This instrument was acknowledged before me this ____ day of _____, 1999 by _____ as _____ and trust officer of Central Bank and Trust Co., a state banking corporation.

(SEAL)

Notary Public

My appointment expires:
