



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
August 26, 2021

Department Administration

Director Approval Kelly Passauer

AGENDA ITEM Consider adopting a resolution approving the form of Supplemental Bond Agreement No. 1, amending and supplementing a certain bond agreement entered into in connection with the issuance of taxable industrial revenue bonds, Series 2016A and Series 2016B, Montgomery County Assisted Living Project.

SUMMARY RECOMMENDATION Adopt the resolution and authorize the Mayor to sign.

BACKGROUND In 2016, the City of Independence issued its Taxable Industrial Revenue Bonds, Series 2016A and Series 2016B (Montgomery County Assisted Living Project) for the purpose of financing the construction of an assisted living facility leased to Montgomery County Assisted Living, LLC (the “Tenant”). Community National Bank (the “Bank”) purchased and remains the sole owner of the Series 2016A Bonds, which will mature in 2038. The Tenant and the Bank have negotiated modifications to the interest rate provisions of the Series 2016A Bonds in order to reduce the debt service requirements for the Tenant. The proposed modifications require consent of the City, as issuer of the Bonds. Approval of the modifications will not affect the property tax exemption granted, or the liability, debt limit, or credit rating of the City.

SUGGESTED MOTION I move to adopt a resolution approving the form of Supplemental Bond Agreement No. 1, amending and supplementing a certain bond agreement entered into in connection with the issuance of taxable industrial revenue bonds, Series 2016A and Series 2016B, Montgomery County Assisted Living Project.

SUPPORTING DOCUMENTS

1. Resolution
2. Supplemental Bond Agreement No. 1

RESOLUTION NO. 2021-[__]

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF INDEPENDENCE, KANSAS APPROVING THE FORM OF SUPPLEMENTAL BOND AGREEMENT NO. 1, AMENDING AND SUPPLEMENTING A CERTAIN BOND AGREEMENT ENTERED INTO IN CONNECTION WITH THE ISSUANCE BY THE CITY OF ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2016A AND SERIES 2016B (MONTGOMERY COUNTY ASSISTED LIVING PROJECT); AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Independence, Kansas (the “City”) is authorized by the Kansas Economic Development Revenue Bond Act, as amended, as codified in K.S.A. 12-1740 *et seq.* (the “Act”), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities; and

WHEREAS, pursuant to Ordinance No. 4226 of the City approved August 11, 2016 (the “Ordinance”) and a Bond Agreement dated as of the Issue Date of the Bonds (the “Bond Agreement”), between the City, Community National Bank & Trust, Chanute, Kansas (the “Bank”) and Montgomery County Assisted Living, LLC, a Kansas limited liability company (the “Tenant”), the City previously issued its Taxable Industrial Revenue Bonds, Series 2016A in the aggregate principal amount not to exceed \$1,700,000 (the “Series A Bonds”) and its Taxable Industrial Revenue Bonds, Series 2016B in the aggregate principal amount not to exceed \$4,910,000 (the “Series B Bonds” and collectively with the Series A Bonds, the “Bonds”), for the purpose of acquiring, constructing, furnishing and equipping an assisted living facility (the “Project”); and

WHEREAS, the Tenant and the Bank have proposed certain amendments to the Bond Agreement and the Series A Bonds; and

WHEREAS, the governing body of the City hereby finds and determines that it is necessary and desirable that the City approve the proposed change to the Bond Agreement and the Series A Bonds, and take certain other actions and approve the execution of certain other documents as herein provided.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF INDEPENDENCE, KANSAS:

Section 1. Approval of Form of Supplemental Bond Agreement No. 1. The form of Supplemental Bond Agreement No. 1 to be entered into between the City, the Bank and the Tenant is hereby approved in substantially the form presented to the governing body concurrently with this Resolution.

Section 2. Execution of Documents. The Mayor of the City is hereby authorized and directed to execute and deliver Supplemental Bond Agreement No. 1 and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, 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 Supplemental Bond Agreement No. 1 and such other documents, certificates and instruments as may be necessary.

Section 3. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action and execute such other documents, deeds, agreements, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and the transactions contemplated herein.

Section 4. Effective Date. This Resolution shall take effect from and after its adoption by a majority of the governing body of the City.

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ADOPTED by the Governing Body of the City of Independence, Kansas on August 26, 2021.

CITY OF INDEPENDENCE, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

By: _____
City Clerk

SUPPLEMENTAL BOND AGREEMENT NO. 1

THIS SUPPLEMENTAL BOND AGREEMENT NO. 1, is made and entered into as of August 27, 2021 by and between **THE CITY OF INDEPENDENCE, KANSAS**, a municipal corporation (“City”), **COMMUNITY NATIONAL BANK & TRUST**, a banking corporation or association organized under the laws of the United States of America or one of the states thereof, having a commercial banking office in Chanute, Kansas (“Bank”) and **MONTGOMERY COUNTY ASSISTED LIVING, LLC**, a Kansas limited liability company (the “Tenant”).

Recitals

A. The City, Bank and Tenant are parties to a Bond Agreement dated as of the Issue Date of the Bonds (the “Bond Agreement”), authorizing the City to issue its Taxable Industrial Revenue Bonds, Series 2016A (Montgomery County Assisted Living Project), in an aggregate principal amount not to exceed \$1,700,000 (the “Series A Bonds”) and its Taxable Industrial Revenue Bonds, Series 2016B (Montgomery County Assisted Living Project), in an aggregate principal amount not to exceed \$4,910,000 (the “Series B Bonds” and collectively with the Series A Bonds, the “Bonds”), for the purpose of acquiring, constructing, furnishing and equipping of a certain assisted living facility (the “Project”).

B. The City has leased the Project to the Tenant pursuant to the terms of a Lease dated as of the Issue Date of the Bonds (the “Lease”).

C. The Bank is the owner of 100% of the aggregate principal amount of all Outstanding Series A Bonds as of the date hereof.

D. Pursuant to *Section 8* of the Bond Agreement, the parties desire to amend and supplement the Bond Agreement as provided herein.

Agreement

NOW, THEREFORE, 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 Bond Agreement.

2. *Ratification of Bond Agreement and Lease.* The City, the Bank and the Tenant each acknowledges and confirms that the Bond Agreement 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 Bond Agreement or the Lease.

3. *Amendment to Series A Bond.*

A. The definition of “Initial Rate” contained on the Series A Bond certificate is hereby amended and replaced to read in its entirety as follows:

The “Initial Rate” shall mean (i) for all applicable periods prior to September 1, 2021, a rate of interest per annum equal to 4.50%; and (ii) for all applicable periods from and after September 1, 2021, a rate of interest per annum equal 3.98%.

B. The definition of “Adjustable Rate” contained on the Series A Bond certificate is hereby amended and replaced to read in its entirety as follows:

The “Adjustable Rate” shall mean a rate of interest per annum equal to the New York prime commercial lending rate as published in the *Wall Street Journal*, plus 25 basis points; provided, however, the Adjustable Rate shall not be less than 3.98% per annum.

Except as expressly amended herein, the terms of the Bond Agreement shall remain unchanged and in full force and effect.

4. *Reference in Bonds to Supplemental Bond Agreement.* The Issuer and the Bank shall authenticate and deliver a replacement Series A Bond certificate to account for the matters provided for in this Supplemental Bond Agreement No. 1.

5. *Consent of the Bondowner.* The Bank hereby represents and warrants that it is the Owner of 100% of the aggregate principal amount of all Outstanding Series A Bonds as of the date hereof. The Bank hereby approves the form of and consents to the amendments set forth in this Supplemental Bond Agreement No. 1.

6. *Effect of Supplemental Bond Agreement No. 1.* Except as expressly amended herein, the terms of the Bond Agreement shall remain unchanged and in full force and effect. Upon the execution of this Supplemental Bond Agreement No. 1, the Bond Agreement shall be modified in accordance herewith and the Supplemental Bond Agreement No. 1 shall form a part of the Bond Agreement for all purposes; and every Owner of the Bonds theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

[remainder of this page left blank intentionally]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Bond Agreement No. 1 to be executed.

CITY OF INDEPENDENCE, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

By: _____
City Clerk

**COMMUNITY NATIONAL BANK & TRUST,
Chanute, Kansas**

By: _____
Name: _____
Title: _____

**MONTGOMERY COUNTY ASSISTED
LIVING, LLC**

By: _____
Name: _____
Title: _____