



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
January 27, 2022

Department Administration

Director Approval *Kelly Passauer*

AGENDA ITEM Consider adopting a resolution approving the redemption and payment of the City's Taxable Industrial Revenue Bonds, Series 2016A (Montgomery County Assisted Living Project) and authorizing the City to consent to the assignment of certain documents in connection with its Taxable Industrial Revenue Bonds, Series 2016B (Montgomery County Assisted Living Project).

SUMMARY RECOMMENDATION Adopt the resolution and authorize the necessary signatures.

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 and the Tenant purchased and remains the sole owner of the Series 2016B Bonds. The Tenant desires to sell the Project to a new entity (Independence Senior Living, LLC), which will have some of the same investors as the original Tenant entity. As part of that process, the Tenant will pay off and retire the Series 2016A Bonds owned by the Bank. The Series 2016B Bonds will remain outstanding and be transferred to Independence Senior Living, LLC, and Independence Senior Living, LLC will also assume all rights and duties as "tenant" under the IRB documents. The Bank has consented to and is supportive of the proposed actions. The proposed actions require the City's consent and approval, as the issuer of the Bonds. Approval 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 authorizing the redemption and payment of its Taxable Industrial Revenue Bonds, Series 2016A (Montgomery County Assisted Living Project); and authorizing the City to consent to the assignment of certain documents in connection with its Taxable Industrial Revenue Bonds, Series 2016B (Montgomery County Assisted Living Project).

SUPPORTING DOCUMENTS

1. Resolution
2. Assignment and Assumption Agreement

RESOLUTION NO. 2022-002

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF INDEPENDENCE, KANSAS AUTHORIZING THE REDEMPTION AND PAYMENT OF ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2016A (MONTGOMERY COUNTY ASSISTED LIVING PROJECT); AND AUTHORIZING THE CITY TO CONSENT TO THE ASSIGNMENT OF CERTAIN DOCUMENTS IN CONNECTION WITH ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2016B (MONTGOMERY COUNTY ASSISTED LIVING PROJECT).

WHEREAS, the City of Independence, Kansas (the “City”) has issued its Taxable Industrial Revenue Bonds, Series 2016A (Montgomery County Assisted Living Project) in the aggregate principal amount of \$1,700,000 (the “Series A Bonds”) and its Taxable Industrial Revenue Bonds, Series 2016B (Montgomery County Assisted Living Project) in the aggregate principal amount of \$4,910,000 (the “Series B Bonds” and collectively with the Series A Bonds, the “Bonds”) pursuant to a Bond Agreement dated as of the Issue Date of the Bonds (the “Bond Agreement”), by and between the City and Community National Bank & Trust, as fiscal and paying agent (the “Bank”), to finance the costs of the acquisition, construction, and equipping of an assisted living facility (the “Project”); and

WHEREAS, the City leased the Project to Montgomery County Assisted Living, LLC, a Kansas limited liability company (“MCAL”), pursuant to a Lease dated as of the Issue Date of the Bonds between the City and MCAL (the “Lease”); and

WHEREAS, the City, the Bank, and MCAL 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, MCAL is selling all of its right, title, and interest in the Project to Independence Senior Living, LLC, a Kansas limited liability company (“ISL”); and

WHEREAS, MCAL desires to provide for the immediate payment of all outstanding Series A Bonds, the redemption premium and interest thereon accruing to a redemption date acceptable to the owners of the outstanding Series A Bonds (the “Redemption Date”), by depositing a sum sufficient for such purpose with the Bank; and

WHEREAS, MCAL has provided a written redemption notice to the owners of all outstanding Series A Bonds; and

WHEREAS, sufficient funds will be deposited with the Bank to accomplish the redemption of the Series A Bonds on the Redemption Date; and

WHEREAS, MCAL has proposed to assign its interest in the Series B Bonds, the Bond Agreement, the Lease, and the Other Bond Documents, to ISL pursuant to an Assignment and Assumption of Lease and Related Bond Documents among MCAL, ISL, the Bank, 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 assignments provided for therein;

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

Section 1. Redemption of Series A Bonds. The Mayor, City Clerk, and other agents and officials of the City, and the Bank are hereby directed to take all action necessary to accomplish the redemption of the outstanding Series A Bonds.

Section 2. 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 the Governing Body on this date, and consents to the assignment provided for therein. Notwithstanding such consent to said assignment, the City expressly reserves to itself and its assignees all rights and privileges accruing to it under the terms of the Lease. The Mayor is hereby authorized and directed 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 3. Further Authority. The Mayor is hereby authorized and directed to execute and deliver 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 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 4. Effective Date. This resolution shall take effect and be in full force immediately after its adoption by the governing body of the City.

[BALANCE OF PAGE INTENTIONALLY BLANK]

ADOPTED by the Governing Body of the City of Independence, Kansas on January 27, 2022.

CITY OF INDEPENDENCE, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

By: _____
City Clerk

ASSIGNMENT AND ASSUMPTION OF LEASE AND RELATED BOND DOCUMENTS

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AND RELATED BOND DOCUMENTS (this “Agreement”) is made and entered into as of February ___, 2022 (the “Effective Date”), among **MONTGOMERY COUNTY ASSISTED LIVING, LLC**, a Kansas limited liability company (“Assignor”), **INDEPENDENCE SENIOR LIVING, LLC**, a Kansas limited liability company (the “Assignee”), **COMMUNITY NATIONAL BANK & TRUST, N.A.**, a banking corporation or associate organized under the laws of the United States of America or one of the states thereof (the “Bank”), and the **CITY OF INDEPENDENCE, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the “City”) related to the property set forth on **Exhibit A**.

Recitals:

A. Pursuant to a Bond Agreement dated as of the Issue Date of the Bonds (the “Bond Agreement”), between the City, the Bank, as fiscal and paying agent and as owner of the Series A Bonds, and the Assignor, the City has previously issued its \$1,700,000 aggregate principal amount of Taxable Industrial Revenue Bonds, Series 2016A (Montgomery County Assisted Living Project) (the “Series A Bonds”) and its \$4,910,000 aggregate principal amount of Taxable Industrial Revenue Bonds, Series 2016B (Montgomery County Assisted Living Project) (the “Series B Bonds” and collectively with the Series A Bonds, the “Bonds”), and used the proceeds of the Bonds to construct a Project (as defined in the Bond Agreement).

B. The City leased the Project to the Assignor pursuant to a Lease dated as of the Issue Date of the Bonds (the “Lease”), and the Assignor and the City filed for record a Notice of Lease in the Office of the Register of Deeds of Montgomery County, Kansas, on November 2, 2016 at Book 654, Page 397-399.

C. The Assignor, the City and the Bank entered into various other documents relating to the Bonds, including an Assignment of Lease and Security Agreement which was recorded in the Office of the Register of Deeds of Montgomery County, Kansas, on November 2, 2016 at Book 654, Page 400-404, a complete set of which is contained in the Transcript of proceedings relating to the issuance of the Bonds (the “Transcript”).

D. Assignor desires to assign and to transfer to Assignee all of Assignor's right, title, and interest in, to and under the Bond Agreement, the Lease, the Series B Bonds, and any other instruments to which Assignor is a party with respect to the Bonds (collectively, the "IRB Documents").

E. Concurrently herewith:

(i) the Issuer, at the direction of Assignor, is redeeming all outstanding Series A Bonds; and

(ii) Assignor is conveying to Assignee all of Assignor's right, title and interest in and to the Project, as described on **Exhibit A**.

F. Assignee desires to accept such assignment and assume and agree to keep, perform and observe all of the terms, covenants, agreements and conditions contained in the IRB Documents on Assignor's part to be kept, performed and observed with respect to any fact, event or circumstance that first occurs from and after the Effective Date, subject to the terms, covenants and conditions contained herein and in the IRB Documents.

G. The Bank is willing to register the proposed assignment of the Series B Bonds from the Assignor to the Assignee without the requirement that the Assignor's signature be guaranteed by an eligible guarantor institution as defined by S.E.C. Rule 17 Ad-15 (17 C.F.R. 240. 17-Ad-15) so long as the Assignor's signature is notarized.

H. The Series B Bondowner has authorized the execution of a consent to the assignment of the IRB documents.

Agreement:

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, mutually agree as follows:

1. Representation. As of the Effective Date, Assignor and Assignee represent that Assignor has conveyed to Assignee its interest in the Project, including the buildings, structures, improvements, fixtures, machinery, and equipment situated on the Land and all additions, alterations, modifications, and improvements thereof.

2. Assignment. Assignor hereby assigns to Assignee all right, title and interest of Assignor in, to and under the IRB Documents, subject to the terms, covenants and conditions contained in the IRB Documents and this Agreement (the "Assigned Interests").

3. Assumption. Assignee, for itself and its successors and permitted assigns, does hereby accept the assignment of the Assigned Interests as of the Effective Date, and agrees to assume and perform, observe and discharge all of the obligations, terms, covenants and conditions to be performed or observed by Assignor under the IRB Documents which accrue on or after the Effective Date, including, but not limited to, the obligation to pay rent, additional rent and any other charges payable thereunder.

4. No Event of Default. The Assignor represents that there has been no damage or destruction to the Project that has not been repaired, restored and replaced in accordance with the terms of the Lease, and there has been no Event of Default (as defined and/or described in the Lease) under the terms of the Lease, and no conditions currently exist that with the passage of time would result in an Event of

Default. To the City's knowledge there has been no Event of Default (as defined and/or described in the Lease) under the terms of the Lease, and no conditions currently exist that with the passage of time would result in an Event of Default. The Lease has not been assigned, modified, or amended except as set forth herein.

5. Consent and Release. Pursuant to **Section 9.2** and **9.3** of the Lease, the Bank and the City hereby consent to the assignment of the IRB Documents from the Assignor to the Assignee. The Bank and the City hereby release the Assignor from all liability under the IRB Documents occurring on and after the Effective Date.

6. Waiver. The Bank, the City, the Assignor, and the Assignee hereby waive the requirement that the Assignor's signature be guaranteed by an eligible guarantor institution as defined by S.E.C. Rule 17 Ad-15 (17 C.F.R. 240. 17-Ad-15) for the proposed assignment of the Series B Bonds from the Assignor to the Assignee, so long as the Assignor's signature is notarized.

7. Notice Address. The Assignee represents that the notice address of the Assignee for purposes of the IRB Documents is:

Independence Senior Living, LLC
7251 Lane Park Dr.
Dallas, Texas 75225
Attn: Manager

8. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, Assignor and Assignee and their respective successors and assigns.

9. Receipt of Transcript; Delivery of Insurance Certificates. Assignee hereby represents that it has received and reviewed the copy of the Transcript delivered to it by Assignor. Assignee hereby represents that it has delivered to the Bank evidence of insurance as required under **Article VI** of the Lease.

10. Recording. Assignee shall submit this Agreement for recording in the Office of the Register of Deeds of Montgomery County, Kansas on or about the date hereof.

11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Kansas and each party agrees to jurisdiction and venue in said state and the federal and state courts located in such state.

12. Counterparts. This Agreement may be executed and delivered in any number of counterparts, or by the parties on separate counterpart signature pages, all of which shall constitute one and the same instrument.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

ASSIGNOR:

**MONTGOMERY COUNTY
ASSISTED LIVING, LLC,
a Kansas limited liability company**

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____, 2022, before me the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of Montgomery County Assisted Living, LLC, a Kansas limited liability company, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said limited liability company, and such officer duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

ASSIGNEE:

INDEPENDENCE SENIOR LIVING, LLC,
a Kansas limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
) SS.
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____, 2022, before me the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of Independence Senior Living, LLC, a Kansas limited liability company, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said corporation, and such officer duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

CITY OF INDEPENDENCE, KANSAS

[SEAL]

Dean Hayse, Mayor

ATTEST:

David Schwenker, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF MONTGOMERY)

BE IT REMEMBERED, that on this ____ day of _____, 2022, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Dean Hayse, the Mayor of the City of Independence, Kansas, a municipal corporation and David Schwenker, the City Clerk, who are each personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said municipal corporation, and such officers duly acknowledged the execution of the same to be the act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

COMMUNITY NATIONAL BANK & TRUST,
a banking corporation or association organized under the
laws of the United States or one of the states thereof

By: _____
Name: _____
Title: _____

STATE OF KANSAS)
) SS.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2022, before me the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of Community National Bank & Trust, a banking corporation or association organized under the laws of the United States or one of the states thereof, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said corporation, and such officer duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL] Notary Public

Notary Public

Typed Name: _____

My commission expires _____.

CONSENT OF BONDOWNER

MONTGOMERY COUNTY ASSISTED LIVING, LLC, a Kansas limited liability company, as bondowner of all outstanding City of Independence, Kansas, Taxable Industrial Revenue Bonds, Series 2016B (Montgomery County Assisted Living Project), (the “**Bondowner**”), hereby acknowledges and consents to the execution and delivery of this Assignment and Assumption of Lease and Other Bond Documents dated February __, 2022, among Montgomery County Assisted Living, LLC, Independence Senior Living, LLC, Community National Bank & Trust, and the City of Independence, Kansas. The Bondowner further acknowledges and agrees to execute such other instruments and documents which may be reasonably required to evidence the foregoing. On even date hereof, the Bondowner is transferring and assigning all of its right, title and interest in the Series B Bonds to the Assignee by separate instrument.

**MONTGOMERY COUNTY
ASSISTED LIVING, LLC,
a Kansas limited liability company**

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2022, before me the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of Montgomery County Assisted Living, LLC, a Kansas limited liability company, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said limited liability company, and such officer duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires

EXHIBIT A

Legal Description

The following property acquired by the City of Independence, Kansas (the “Issuer”) in connection with the issuance by the City of its Taxable Industrial Revenue Bonds, Series 2016A and Series 2016B (Montgomery County Assisted Living Project) (the “Series 2016A and Series 2016B Bonds”):

(a) The following described real estate in Montgomery County, Kansas:

Lots 3, 4, 5, and 6; and Lot 2, Except a tract beginning 35 feet West of the Northeast corner of Lot 2, thence West 131.2 feet, thence south 110 feet, thence East 131.2 feet, thence North 110 feet to the point of beginning, All in Block 3, Highland Park Addition to the City of Independence, Montgomery County, Kansas,

said real property constituting the “Land” as referred to in the Lease entered into by the Issuer concurrently with the issuance of the Series 2016A and Series 2016B Bonds (the “Lease”), subject to the following Permitted Encumbrances:

All easements, rights-of-way and other encumbrances of record.

(b) All buildings, building additions, improvements, machinery and equipment constructed, located or installed on the Land, all or any portion of the costs of which were paid from the proceeds of the Series 2016A and Series 2016B Bonds, and which constitute “Improvements” referred to in the Lease, together with any substitutions or replacements therefor, the property described in paragraphs (a) and (b) of this *Schedule I* together constituting the “Project” as referred to in the Lease.