

**RESOLUTION NO. 2023-14**

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF AUGUSTA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE TOTAL REHABILITATION OF A SENIOR APARTMENT FACILITY LOCATED IN THE CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS

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

**WHEREAS**, the Issuer previously passed Resolution No. 2009-12 providing a framework for considering ad valorem tax incentives, including industrial revenue bonds (IRBs), for economic development purposes; and

**WHEREAS**, Resolution No. 2009-12 does not explicitly allow or prohibit the issuance of IRBs for senior housing projects and allows the Governing Body to “deviate from the policies and criteria contained herein if circumstances exist to warrant such deviation”; and

**WHEREAS**, the Governing Body finds that the rehabilitation of a large senior housing project like Country Club Tower Apartments aligns with multiple strategic goals and policy measures as outlined in the Issuer’s adopted comprehensive plan, including Section 5 Policy P11 “Develop and promote opportunities for the aging population and persons with disabilities including no maintenance housing options...” and Section 5 Policy P12 “...Encourage the development of affordable housing near commercial areas, employment centers, and social services”; and

**WHEREAS**, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the “Act”), the Issuer is authorized to issue revenue bonds for such purposes, and it is hereby found and determined to be advisable and in the interest and for the welfare of the Issuer and its inhabitants that revenue bonds of the Issuer in a principal amount not to exceed \$4,000,000 be authorized and issued, in one or more series, to provide funds to pay the costs of total rehabilitation of the Country Club Tower Apartments, located at 1515 Club House Drive, Augusta, Kansas, consisting of 48 one-bedroom units, to be leased to senior residents, and including all major building systems, all residential units and all common areas, major plumbing upgrades, mechanical systems, critical project elevator motor and control system upgrades, roofing, and electrical upgrades (the “Project”), located in the corporate limits of the Issuer and to be leased by the Issuer to Country Club Tower, LLC, a Kansas limited liability corporation or another legal entity to be formed by the principals of Country Club Tower, LLC (the “Tenant”).

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

Section 1. **Public Purpose.** The governing body of the Issuer hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the Issuer,

and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas.

**Section 2. Authorization to Acquire Project; Intent to Issue Bonds.** The Issuer is hereby authorized to proceed with the total rehabilitation of the Project and to issue its revenue bonds, in one or more series, in a principal amount not to exceed \$4,000,000 (the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

**Section 3. Conditions to Issuance of Bonds.** The issuance of the Bonds is subject to: (a) the passage of an ordinance authorizing the issuance of the Bonds; (b) the successful negotiation of a Trust Indenture, Guaranty Agreement, Site Lease, Project Lease or other legal documents necessary to accomplish the issuance of the Bonds, the terms of which shall be in compliance with the Act and mutually satisfactory to the Issuer and the Tenant; (c) the successful negotiation and sale of the Bonds to Country Club Tower, LLC, Augusta, Kansas (the "Purchaser"), which sale shall be the responsibility of the Tenant and not the Issuer; (d) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the Issuer, the Tenant and the Purchaser; (e) the obtaining of all necessary governmental approvals to the issuance of the Bonds; (f) the commitment to and payment by the Tenant or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the Issuer and the Issuer Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals; and (g) the execution and delivery by the Tenant of an agreement for payment in lieu of taxes in substantially the form presented to the governing body of the Issuer with this Resolution.

**Section 4. Notices.** The Clerk is hereby authorized and directed to publish an appropriate notice of intent to issue the Bonds and to enter into a Site Lease and Project Lease with the Tenant pursuant to the provisions of the Act and to publish a notice of public hearing with respect to the granting of a complete or partial property tax exemption as required by Kansas law.

**Section 5. Sales Tax Exemption.** The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore. In the event that the Bonds are not issued for any reason, the Tenant will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

**Section 6. Reliance by Tenant; Limited Liability of Issuer.** It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the Bonds. Proceeds of Bonds may be used to reimburse the Tenant for such expenditures made not more than 60 days prior to the date this Resolution is adopted. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the Issuer from the Project and not from any other fund or source. The Issuer shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the Issuer shall have no liability to the Tenant.

**Section 7. Further Action.** The Clerk is hereby authorized to deliver an executed copy of this Resolution to the Tenant. The Mayor, Clerk and other officials and employees of the Issuer, including the Issuer's counsel and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) cooperate with the Tenant in filing an application for a sales tax exemption certificate with the Kansas

Department of Revenue with respect to Bond-financed property; (b) execution on behalf of the Issuer of the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act; and (c) cooperate with the Tenant to maintain any *ad valorem* property tax exemption for the Project and related facilities which is consistent with the Tenant's charitable purposes, and execute such documents in connection therewith as are approved by the City Attorney.

Section 8. **Effective Date.** This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until October 1, 2025, unless extended by affirmative vote of a majority of the Governing Body.

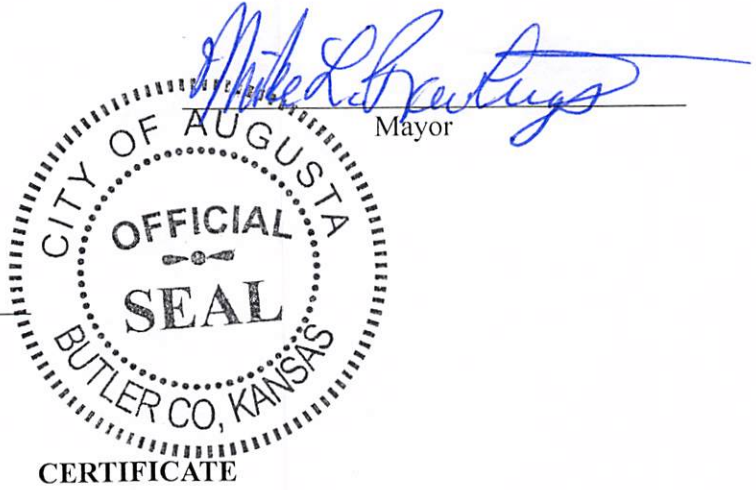
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**ADOPTED** by the governing body of the City of Augusta, Kansas on October 2, 2023.

[SEAL]

Attest:

  
Clerk



I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the Issuer adopted by the governing body on October 2, 2023, as the same appears of record in my office.

DATED: October 2, 2023.

  
Clerk