

RESOLUTION NO. 2017-1430

A RESOLUTION AUTHORIZING ATCHISON COUNTY, KANSAS, TO ISSUE ITS EDUCATIONAL FACILITIES REVENUE BONDS ON BEHALF OF BENEDICTINE COLLEGE IN ONE OR MORE SERIES FOR THE PURPOSE OF REFUNDING CERTAIN BONDS PREVIOUSLY ISSUED ON BEHALF OF BENEDICTINE COLLEGE; AUTHORIZING AND APPROVING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

WHEREAS, Atchison County, Kansas (the "**County**"), is authorized by K.S.A 19-101 *et. seq.*, as from time to time amended (the "**Act**"), to exercise the powers of home rule to determine its local affairs and government including transacting all county business and performing all powers of local legislation and administration it deems appropriate, and pursuant to and in furtherance of the purposes of the Act the County proposes to issue educational facilities revenue bonds in one or more series for the purpose of providing funds to make a loan or loans to Benedictine College (the "**Institution**"), a Kansas nonprofit corporation, to assist the Institution in providing funds to (1) currently refund \$6,710,000 outstanding principal amount of the Kansas Independent College Finance Authority Educational Facilities Refunding Revenue Bonds (Benedictine College Project), Series 2010 (the "**Series 2010 Refunded Bonds**"), previously issued to finance, refinance and reimburse certain educational facilities of the Institution, (2) advance refund \$7,645,000 outstanding principal amount of the County's Educational Facilities Revenue Bonds (Benedictine College Project), Series 2011 (the "**Series 2011 Refunded Bonds**," together with the Series 2010 Refunded Bonds, the "**Refunded Bonds**"), previously issued to finance, refinance and reimburse certain educational facilities of the Institution and (3) pay certain costs of issuance associated with the issuance of the Bonds (defined below) and the Institution has requested that the County issue its revenue bonds and loan the proceeds thereof to the Institution for such purposes, all as permitted under the Act; and

WHEREAS, the governing body of the County hereby finds and determines that the County's current refunding of the Series 2010 Refunded Bonds and advance refunding of the Series 2011 Refunded Bonds in the manner provided in the Act and pursuant to the provisions of the Loan Agreements hereinafter described, will serve one or more of the public purposes set forth in the Act; and

WHEREAS, the County desires to assist the Institution by issuing its (1) Educational Facilities Revenue Bonds (Benedictine College Project), Series 2018A, pursuant to a Bond Trust Indenture between the County and Commerce Bank, as the trustee (the "**Bond Trustee**"), dated as of January 1, 2018 (the "**Series 2018A Indenture**"), in a principal amount not to exceed \$6,710,000, (2) Educational Facilities Revenue Bonds (Benedictine College Project), Series 2018B-1 (the "**Series 2018B-1 Bonds**"), pursuant to a Bond Trust Indenture between the County and the Bond Trustee, dated as of January 1, 2018 in a principal amount not to exceed \$6,000,000 (the "**Series 2018B-1 Indenture**"), and (c) Taxable Educational Facilities Revenue Bonds (Benedictine College Project), Series 2018B-2 (the "**Series 2018B-2 Bonds**," together with the Series 2018A Bonds and the Series 2018B-1 Bonds, the "**Bonds**"), pursuant to a Bond Trust Indenture between the County and Bond Trustee dated as of January 1, 2018 (the "**Series 2018B-2 Indenture**"), in a principal amount not to exceed \$1,100,000; and

WHEREAS, the County desires to loan the proceeds of the Bonds to the Institution, which loans will be made pursuant to respective Loan Agreements, each dated as of January 1, 2018, between the County and the Institution (collectively, the **“Loan Agreements”**), to currently refund the Series 2010 Refunded Bonds and to advance refund the Series 2011 Refunded Bonds, as described in the respective Loan Agreement, which loans will each be evidenced by promissory notes of the Institution in the respective principal amounts of the respective series of Bonds (collectively, the **“Notes”**); and

WHEREAS, the Loans are secured by a Mortgage and Security Agreement, dated as of October 1, 2000 (as originally executed the **“Original Mortgage”**), executed by the Institution, as Mortgagor, as amended and supplemented by the Supplemental Mortgage and Security Agreement No. 1 dated as of March 1, 2003, Supplemental Mortgage and Security Agreement No. 2 dated as of January 3, 2005, Supplemental Mortgage and Security Agreement No. 3, dated as of December 1, 2007, Supplemental Mortgage and Security Agreement No. 4, dated as of May 1, 2010, Supplemental Mortgage and Security Agreement No. 5, dated as of September 1, 2010, Supplemental Mortgage and Security Agreement No. 6, dated as of July 1, 2011, Supplemental Mortgage and Security Agreement No. 7 dated as of November 1, 2011, Supplemental Mortgage and Security Agreement No. 8 dated as of April 1, 2012, Supplemental Mortgage and Security Agreement No. 9 dated as of March 1, 2013, Supplemental Mortgage and Security Agreement No. 10 dated as of September 1, 2013, Supplemental Mortgage and Security Agreement No. 11 dated as of July 1, 2016, Supplemental Mortgage and Security Agreement No. 12 dated as of July 1, 2016, Supplemental Mortgage and Security Agreement No. 13 dated as of July 1, 2016 and Supplemental Mortgage and Security Agreement No. 14 dated as of January 1, 2018 (said Original Mortgage, as amended and supplemented from time to time in accordance with the provisions thereof, herein collectively called the **“Mortgage”**), under which the Institution grants a first mortgage lien and security interest in the Mortgaged Property described therein to the bond trustee of each of the Existing Parity Bonds and the Bonds (as defined in the Indentures) for the benefit of the bondholders; and

WHEREAS, a public hearing was held in Atchison, Kansas, on October 31, 2017, concerning the request by the Institution that the County issue its educational facilities revenue bonds to currently refund the Series 2010 Refunded Bonds, advance refund the Series 2011 Refunded Bonds and to finance certain costs of issuing the Bonds, after publication of notice of the public hearing not less than 14 days prior to the scheduled public hearing date, in accordance with the requirements of Section 147(f) of the Internal Revenue Code; and

WHEREAS, the governing body of the County further finds and determines that it is necessary and desirable in connection with the issuance of these bonds that the County enter into certain agreements, and that the County take certain other actions and approve the execution of certain other documents as herein provided;

NOW THEREFORE, BE IT RESOLVED BY ATCHISON COUNTY, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Bonds. The County hereby approves the Institution’s request and determines and hereby authorizes the issuance, pursuant to the Act, of its educational facilities revenue bonds on behalf of the Institution, as follows: (1) Educational Facilities Revenue Bonds (Benedictine College Project), Series 2018A, pursuant to a Bond Trust Indenture between the County and Commerce Bank, as the trustee (the **“Bond Trustee”**), dated as of January 1, 2018 (the **“Series 2018A Indenture”**), in a principal amount not to exceed \$6,710,000, (2) Educational Facilities Revenue Bonds (Benedictine College Project), Series 2018B-1 (the **“Series 2018B-1 Bonds”**), pursuant to a Bond Trust Indenture between the County and the Bond Trustee, dated as of January 1, 2018 in a principal amount not to exceed \$6,000,000 (the **“Series 2018B-1 Indenture”**), and (c) Taxable Educational Facilities Revenue Bonds (Benedictine College Project), Series 2018B-2 (the **“Series 2018B-2 Bonds,”** together with the

Series 2018A Bonds and the Series 2018B-1 Bonds, the “Bonds”), pursuant to a Bond Trust Indenture between the County and Bond Trustee dated as of January 1, 2018 (the “Series 2018B-2 Indenture”), in a principal amount not to exceed \$1,100,000, in each case, the Bonds to be limited and special revenue obligations payable solely out of payments, revenues and receipts derived by the County pursuant to loan agreements to be entered into by the County with the Institution.

Section 2. Sale of the Bonds. The County hereby authorizes the sale of the Bonds, but only on a firm underwriting basis, to UMB Bank, N.A., as the original purchaser of each series of Bonds (the “Purchaser”) and receipt of an unqualified approving opinion for each series of Bonds by Gilmore & Bell, P.C., Bond Counsel, in form and substance agreeable to the County, the Institution and the Purchaser. The confirmation of the sale of the Bonds shall be subject to the execution of one bond purchase agreement for the Series 2018A Bonds and one bond purchase agreement for the Series 2018B-1 Bonds and Series 2018B-2 Bonds, all among the Purchaser, the Institution and the County and the execution of various documents necessary to deliver the Bonds. The sale of the Bonds shall be the responsibility of the Institution. The Chairman is hereby authorized to execute the bond purchase agreements in forms approved by Bond Counsel and the County Counselor, provided that the sales of the Bonds are subject to the following parameters:

- (a) The terms of the Series 2018A Bonds shall be (i) a principal amount not to exceed **\$6,710,000**; (ii) a final maturity not later than the calendar year **2028**; (iii) a stated yield not exceeding **4.00%** per annum; and (d) an underwriter’s fee not exceeding **0.90%**.
- (b) The terms of the Series 2018B-1 Bonds shall be (i) a principal amount not to exceed **\$6,000,000**; (ii) a final maturity not later than the calendar year **2028**; (iii) a stated yield not exceeding **4.00%** per annum; and (d) an underwriter’s fee not exceeding **0.90%**.
- (c) The terms of the taxable Series 2018B-2 Bonds shall be (i) a principal amount not to exceed **\$1,100,000**; (ii) a final maturity not later than the calendar year **2021**; (iii) a stated yield not exceeding **4.00%** per annum; and (d) an underwriter’s fee not exceeding **0.90%**.

Section 3. Bank Qualification of the Bonds.

- (a) The Series 2018A Bonds - Deem Designated as Qualified Tax-Exempt Obligations. The Series 2010 Refunded Bonds were designated when issued as “qualified tax-exempt obligations” described in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). The County understands that: (1) the Series 2018A Bonds will currently refund the series 2010 Refunded Bonds; (2) the average maturity date of the Series 2018A Bonds is not expected to exceed the average maturity date of the Series 2010 Refunded Bonds; and (3) the final maturity date of the Series 2018A Bonds is not expected to be later than 30 years after the date the Series 2010 Refunded Bonds were issued. In addition, the County understands that neither (A) the aggregate principal amount nor (B) the aggregate issue price (sale proceeds) of the Series 2018A Bonds exceeds \$10 million. The County has been advised that on the basis of these expectations, Bond Counsel expects, to the extent that the amount of the Series 2018A Bonds does not exceed the outstanding amount of the Series 2010 Refunded Bonds, that portion of the Series 2018A Bonds will be deem designated as “qualified tax-exempt obligations” under Section 265(b)(3) of the Code and that such portion of the Series 2018A Bonds will not count toward the County’s \$10,000,000 cap for “qualified tax-exempt obligations” for the calendar year 2018.
- (b) Series 2018B-1 Bonds - Designated as Qualified Tax-Exempt Obligations. The County expects to designate the Series 2018B-1 Bonds as “qualified tax-exempt obligations”

described in Section 265(b)(3) of the Code. The County acknowledges that it may not issue more than \$10 million of obligations designated as “qualified tax-exempt obligations” during the calendar year ending December 31, 2018. Therefore, in support of the expected designation of the Series 2018B-1 Bonds as “qualified tax-exempt obligations” under Section 265(b)(3) of the Code, the County represents that it has not and will not and any subordinate unit of the County has not and will not issue or agree to issue more than \$10 million of obligations designated as “qualified tax-exempt obligations” described in Section 265(b)(3) of the Code, including its Educational Facilities Revenue Bonds (Benedictine College Project), Series 2018B-1, in the calendar year ending December 31, 2018. The Series 2018B-1 Bonds in a principal amount not to exceed \$6,000,000 will count toward the County’s \$10,000,000 cap for “qualified tax-exempt obligations” for the calendar year 2018, leaving the County with \$4,000,000 of allotted “qualified tax-exempt obligations” available for the calendar year 2018.

- (c) Series 2018B-2 Bonds Taxable. The Series 2018B-2 Bonds are taxable bonds and do not impact the ability of the County to issue “qualified tax-exempt” obligations or count toward the County’s \$10,000,000 cap for “qualified tax-exempt obligations” for the calendar year 2018.

Section 4. Authorization and Approval of Documents. The following documents are hereby approved in substantially the forms presented to and reviewed by the County at this meeting and attached to this Resolution (copies of which documents shall be filed in the records of the County), and the County is hereby authorized to execute and deliver each of such documents to which the County is a party (the “**County Documents**”) with such changes therein as shall be approved by the officer or officers of the County executing such documents, such officers’ signatures thereon being conclusive evidence of their approval and the County’s approval thereof:

- (a) Bond Trust Indenture dated as of January 1, 2018, between the County and the Bond Trustee pursuant to which the Series 2018A Bonds shall be issued and the County shall pledge and assign the payments, revenues and receipts received pursuant to the Series 2018A Loan Agreement to the Bond Trustee for the benefit of and security of the owners of the Series 2018A Bonds upon the terms and conditions as set forth in said form of Series 2018A Indenture;
- (b) Bond Trust Indenture dated as of January 1, 2018, between the County and the Bond Trustee pursuant to which the Series 2018B-1 Bonds shall be issued and the County shall pledge and assign the payments, revenues and receipts received pursuant to the Series 2018B-1 Loan Agreement to the Bond Trustee for the benefit of and security of the owners of the Series 2018B-1 Bonds upon the terms and conditions as set forth in said form of Series 2018B-1 Indenture;
- (c) Bond Trust Indenture dated as of January 1, 2018, between the County and the Bond Trustee pursuant to which the Series 2018B-2 Bonds shall be issued and the County shall pledge and assign the payments, revenues and receipts received pursuant to the Series 2018B-2 Loan Agreement to the Bond Trustee for the benefit of and security of the owners of the Series 2018B-2 Bonds upon the terms and conditions as set forth in said form of Series 2018B-2 Indenture;
- (d) Series 2018A Loan Agreement under which the County will loan the proceeds of the Series 2018A Bonds to the Institution to provide funds to currently refund the Series 2010 Refunded Bonds upon the terms and conditions as set forth in said Series 2018A Loan

Agreement in consideration of payments which will be sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2018A Bonds;

- (e) Series 2018B-1 Loan Agreement under which the County will loan the proceeds of the Series 2018B-1 Bonds to the Institution to provide funds to advance refund the Series 2011 Refunded Bonds upon the terms and conditions as set forth in said Series 2018B-1 Loan Agreement in consideration of payments which will be sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2018B-1 Bonds;
- (f) Series 2018B-2 Loan Agreement under which the County will loan the proceeds of the Series 2018B-2 Bonds to the Institution to provide funds to advance refunding the Series 2011 Refunded Bonds upon the terms and conditions as set forth in said Series 2018B-2 Loan Agreement in consideration of payments which will be sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2018B-2 Bonds;
- (g) Promissory Note (Benedictine College), Series 2018A, which Series 2018A Note will be issued as provided in the Series 2018A Loan Agreement in an aggregate principal amount equal to the aggregate principal amount of the Series 2018A Bonds to be issued, made by Benedictine College, and payable to the County and to be endorsed and assigned by the County to the Bond Trustee under the Series 2018A Indenture for the benefit and security of the owners of the Series 2018A Bonds, securing the Institution's obligations to make loan payments under the Series 2018A Loan Agreement;
- (h) Promissory Note (Benedictine College), Series 2018B-1, which Series 2018B-1 Note will be issued as provided in the Series 2018B-1 Loan Agreement in an aggregate principal amount equal to the aggregate principal amount of the Series 2018B-1 Bonds to be issued, made by Benedictine College, and payable to the County and to be endorsed and assigned by the County to the Bond Trustee under the Series 2018B-1 Indenture for the benefit and security of the owners of the Series 2018B-1 Bonds, securing the Institution's obligations to make loan payments under the Series 2018B-1 Loan Agreement;
- (i) Promissory Note (Benedictine College), Series 2018B-2, which Series 2018B-2 Note will be issued as provided in the Series 2018B-2 Loan Agreement in an aggregate principal amount equal to the aggregate principal amount of the Series 2018B-2 Bonds to be issued, made by Benedictine College, and payable to the County and to be endorsed and assigned by the County to the Bond Trustee under the Series 2018B-2 Indenture for the benefit and security of the owners of the Series 2018B-2 Bonds, securing the Institution's obligations to make loan payments under the Series 2018B-2 Loan Agreement;
- (j) Bond Purchase Agreement dated as of the date of delivery, among the County, the Institution the Purchaser under which the County agrees to sell the Series 2018A Bonds to the Purchaser upon the terms and conditions as set forth in said form of Series 2018A Bond Purchase Agreement;
- (k) Bond Purchase Agreement dated as of the date of delivery thereof, among the County, the Institution the Purchaser under which the County agrees to sell the Series 2018B-1 Bonds and the Series 2018B-2 Bonds to the Purchaser upon the terms and conditions as set forth in said form of Bond Purchase Agreement relating to the Series 2018B-1 Bonds and Series 2018B-2 Bonds;

- (l) Tax Compliance Agreement dated as of January 1, 2018, among the County, the Institution and the Bond Trustee entered in order to set forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the proceeds of the Series 2018A Bonds, to establish and maintain the exclusion of interest on the Series 2018A Bonds from gross income for federal income tax purposes, and to provide guidance for complying with the arbitrage rebate provisions of Code § 148(f);
- (m) Tax Compliance Agreement dated as of January 1, 2018, among the County, the Institution and the Bond Trustee entered in order to set forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the proceeds of the Series 2018B-1 Bonds, to establish and maintain the exclusion of interest on the Series 2018B-1 Bonds from gross income for federal income tax purposes, and to provide guidance for complying with the arbitrage rebate provisions of Code § 148(f); and
- (n) Series 2010 Refunded Bonds Escrow Deposit Agreement dated as of January 1, 2018, between the Institution and the Bond Trustee, as escrow agent (the “Escrow Agent”), which will provide for the defeasance and payment of the principal of, redemption premium, if any, and interest on the Series 2010 Refunded Bonds; and
- (o) Series 2011 Refunded Bonds Escrow Deposit Agreement dated as of January 1, 2018, among the County, the Institution and the Escrow Agent, which will provide for the defeasance and payment of the principal of, redemption premium, if any, and interest on the Series 2011 Refunded Bonds.

Section 5. Approval of Use of Official Statements. The County hereby approves the use of the respective Preliminary Official Statements or offering documents in connection with each series of Bonds, from which final Official Statements for each series of Bonds shall be drafted (the “**Official Statements**”), in connection with the sale of the Bonds, in substantially the form presented to the County (copies of which shall be filed in the official records of the County) with such changes therein as shall be necessary to provide for the execution of such documents by the Institution.

The Official Statements and the distribution thereof by the Purchaser are hereby approved for use in connection with the sale of the Bonds. The County has not participated in the preparation of the Official Statements and has not verified the accuracy of the information therein, other than information respecting the County. Accordingly, the approval of the Official Statements does not constitute approval by the County of all information contained therein or a representation by the County as to the completeness or accuracy of the information contained therein. For the purpose of enabling the Official Statements to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, the County hereby deems the information regarding the County contained in the Official Statements to be “final” as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1), and the appropriate officials of the County are hereby authorized, if requested, to provide the Purchaser a letter or certification to such effect and to take such other actions or execute such other documents as such officials in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirements of such Rule.

Section 6. Execution of Bonds and Documents. The Chairman of the County Commission is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the applicable trustee for authentication for and on behalf of and as the act and deed of the County in the manner provided in the Indentures. The Chairman of the County Commission is hereby authorized and directed to execute the County Documents 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 County. The County Clerk of the County is hereby authorized and directed to attest to and affix the

seal of the County to the Bonds, the County Documents and such other documents, certificates and instruments as may be necessary.

Section 7. Limited Obligations. The Bonds and the interest thereon shall be special, limited obligations of the County payable (except to the extent paid out of Bond proceeds or the income from the temporary investment thereof and under certain circumstances from insurance proceeds and condemnation awards) solely out of the loan payments and other payments made by the Institution under the loan agreements and the Institution's promissory notes (except for fees and expenses payable to the County and the County's right to indemnification as set forth in the loan agreements). The Bonds and interest thereon shall not be deemed to constitute a debt or liability of the State of Kansas or of any political subdivision thereof within the meaning of any state constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the State of Kansas or of any political subdivision thereof, but shall be payable solely from the funds provided for in the loan agreements and in the bond indentures. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the State of Kansas or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. The State of Kansas or any political subdivision thereof shall not in any event be liable for the payment of the principal of, redemption premium, if any, or interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the County. No breach by the County of any such pledge, mortgage, obligation or agreement may impose any liability, pecuniary or otherwise, upon the State of Kansas or any political subdivision thereof or any charge upon their general credit or against its taxing power.

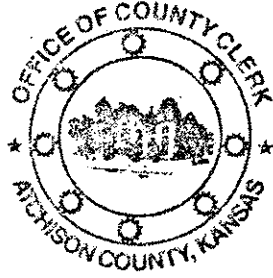
Section 8. Further Authority. The County shall, and the officers, employees and agents of the County are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the County with respect to the Bonds and the County Documents.

Section 9. Effective Date. This Resolution shall take effect and be in full force after its adoption by the County and publication once in the official newspaper of the County.

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ADOPTED by Atchison County, Kansas, this 31st day of October, 2017.

(SEAL)



ATTEST:

Michelle Phillips
County Clerk

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Chairman of the County Commission