

RESOLUTION NO. 2022-1498

**A RESOLUTION AUTHORIZING ATCHISON COUNTY, KANSAS, TO ISSUE ITS EDUCATIONAL FACILITIES REVENUE BONDS (BENEDICTINE COLLEGE PROJECT), SERIES 2022A AND SERIES 2022B FOR THE PURPOSE OF FINANCING A PROJECT 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.**

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**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 "Borrower") to (a) finance, refinance and reimburse the costs of certain educational facilities of the Borrower, including without limitation, the acquisition, demolition, construction, improvement, renovation, repair, furnishing and equipping of certain educational and student housing facilities of the Institution, including (1) a 122-bed student housing facility called St. Gabriel Hall, to be located on the north west side of the campus, (2) new row houses for student housing and (3) the remodel of Cray Seaberg Hall (collectively, the "Project"), and (b) pay certain costs of issuance associated with the issuance of the Bonds; and

**WHEREAS**, the governing body of the County hereby finds and determines that the County's financing of the Project in the manner provided in the Act and pursuant to the provisions of the Loan Agreement hereinafter described, will serve one or more of the public purposes set forth in the Act; and

**WHEREAS**, the County will issue its (a) Educational Facilities Revenue Bonds (Benedictine College Project), Series 2022A (the "Series 2022A Bonds"), pursuant to a Bond Trust Indenture between the County and UMB Bank, N.A., as the trustee (the "Trustee"), dated as of March 1, 2022 (the "Series 2022A Indenture"), and (b) Educational Facilities Revenue Bonds (Benedictine College Project), Series 2022B (the "Series 2022B Bonds," and together with the Series 2022A Bonds, the "Bonds"), pursuant to a Bond Trust Indenture between the County and the Trustee, dated as of March 1, 2022 (the "Series 2022B Indenture," and together with the Series 2022A Indenture, the "Indentures"), in an aggregate principal amount not to exceed \$7,000,000; and

**WHEREAS**, the County will make a loan (the "Series 2022A Loan") of the proceeds of the Series 2022A Bonds to the Borrower, which loan will be made pursuant to a Loan Agreement dated as of March 1, 2022, between the County and the Borrower (the "Series 2022A Loan Agreement"), to finance, refinance and reimburse the Project as described in the Series 2022A Loan Agreement, which loan will be evidenced by a promissory note of the Borrower in the principal amount of the Series 2022A Bonds (the "Series 2022A Note"); and

**WHEREAS**, the County will make a loan (the "Series 2022B Loan," and together with the Series 2022A Loan, the "Loans") of the proceeds of the Series 2022B Bonds to the Borrower, which loan

will be made pursuant to a Loan Agreement dated as of March 1, 2022, between the County and the Borrower (the "Series 2022B Loan Agreement," and together with the Series 2022A Loan Agreement, the "Loan Agreements"), to finance, refinance and reimburse the Project as described in the Series 2022B Loan Agreement, which loan will be evidenced by a promissory note of the Borrower in the principal amount of the Series 2022B Bonds (the "Series 2022B Note"); and

**WHEREAS**, the Loans will be secured by a Mortgage and Security Agreement, dated as of October 1, 2000 (as originally executed the "Original Mortgage"), executed by the Borrower, 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, Supplemental Mortgage and Security Agreement No. 14 dated as of February 1, 2018, Supplemental Mortgage and Security Agreement No. 15 dated as of May 1, 2018, Supplemental Mortgage and Security Agreement No. 16 dated as of July 1, 2018, Supplemental Mortgage and Security Agreement No. 17 dated as of March 1, 2020, Supplemental Mortgage and Security Agreement No. 18 dated as of June 1, 2020, Supplemental Mortgage and Security Agreement No. 19 dated as of September 1, 2021, and Supplemental Mortgage and Security Agreement No. 20 dated as of March 1, 2022 (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 UMB Bank, N.A. (successor to Commerce Bank), as the bond trustee for the Series 2016A Bonds and the Series 2018A Bonds, to the United States Department of Agriculture Rural Development (the "USDA"), as lender under the USDA loan and to the Trustee for the Series 2018B Bonds, the Series 2020A Bonds, the Series 2020B Bonds, the Series 2020C Bonds, the Series 2020D Bonds, the Series 2021 Bonds and the Bonds.

**WHEREAS**, a public hearing was held in Atchison, Kansas, on the date hereof concerning the request by the Borrower that the County issue its educational facilities revenue bonds in one or more series to finance the costs of the Project, after publication of notice of the public hearing not less than 7 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 Sale of Series 2022A Bonds.** The Board hereby authorizes proceeding with the offering for sale of the Series 2022A Bonds in accordance with the presentation made by the Borrower. The confirmation of the sale of the Series 2022A Bonds shall be subject to the

execution of a bond purchase agreement between the UMB Bank, N.A., as the underwriter of the Series 2022A Bonds, the Borrower and the County and the execution of various documents necessary to deliver the Series 2022A Bonds. The Chairman and Vice Chair is each hereby authorized to execute a bond purchase agreement (the "Series 2022A Bond Purchase Agreement") in a form approved by Bond Counsel and the County Counselor, provided that the sale of the Series 2022A Bonds is subject to the following parameters: (a) a final maturity not later than the calendar year **2033**; (b) a true interest cost not exceeding **3.50%**; and (c) an underwriter's discount of not to exceed **1.00%** of the principal amount of the Series 2022A Bonds.

**Section 2. Authorization of Sale of Series 2022B Bonds.** The Board hereby authorizes proceeding with the offering for sale of the Series 2022B Bonds in accordance with the presentation made by the Borrower. The confirmation of the sale of the Series 2022B Bonds shall be subject to the execution of a bond purchase agreement between the UMB Bank, N.A., as the purchaser of the Series 2022B Bonds, the Borrower and the County and the execution of various documents necessary to deliver the Series 2022B Bonds. The Chairman and Vice Chair is each hereby authorized to execute a bond purchase agreement (the "Series 2022B Bond Purchase Agreement") in a form approved by Bond Counsel and the County Counselor, provided that the sale of the Series 2022B Bonds is subject to the following parameters: (a) a final maturity not later than the calendar year **2038**; (c) an initial fixed taxable interest rate not exceeding **4.50%** per annum; and (c) a purchaser's fee of not to exceed **1.00%** of the principal amount of the Series 2022B Bonds.

**Section 3. Authorization of Issuance of the Bonds.** The County is hereby authorized to issue and sell its Bonds in the original principal amount of not to exceed **\$7,000,000**, the proceeds of which will be used to finance, refinance and reimburse the Project and pay certain costs related to the issuance of the Bonds. The Bonds shall be issued and secured pursuant to the herein authorized Indentures and shall bear such dates, shall be in such denominations, shall be in such forms, shall mature on the dates and in the principal amounts with a final maturity, shall bear interest at rates and shall be subject to redemption on the dates and in the principal amounts as provided in the below authorized Bond Purchase Agreements, and shall have such other terms and provisions, shall be issued, executed, authenticated and delivered in such manner and shall be subject to such provisions, covenants and agreements, as are set forth in the Indentures.

The Bonds, together with interest and premium, if any, thereon are not general obligations of the County but are limited obligations payable solely from the trust estate pledged to the payment thereof under the Indentures and shall be a valid claim of the respective holders thereof only against the trust estates and other moneys held by the Trustee and the revenues so pledged as aforesaid. In no event shall the Bonds be payable out of any funds or properties other than those acquired for the purpose of the Act, and the Bonds shall not be deemed to constitute a debt or liability of the State of Kansas or of any political subdivision thereof and the issuance of the Bonds shall not, directly, indirectly or contingently, obligate the County, the State of Kansas or any political subdivision thereof to levy any form of taxation therefor or to budget or make any appropriation for their payment. Nothing in the Bonds, the Indentures, the proceedings of the County authorizing the Bonds or the Act shall be construed to be a debt or loan of credit of the County, the State or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

**Section 4. Bank Qualification of the Bonds.**

Series 2022A Bonds. The County expects to designate the Series 2022A Bonds as "qualified tax-exempt obligations" described in Section 265(b)(3) of the Code. The County represents that it does not expect to issue more than \$10 million in tax-exempt debt obligations during the calendar year ending

December 31, 2022, and acknowledges that for this purpose only, the County is not required to take into account the issuance of any private activity bond, other than a qualified 501(c)(3) bond, or any tax-exempt current refunding to the extent the proceeds of the current refunding obligation do not exceed the outstanding principal amount of the refunded obligation. In addition, 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, 2022. Therefore, in support of the expected designation of the Series 2022A Bonds as “qualified tax-exempt obligations” under Section 265(b)(3) of the Code, the County represents that it does not expect, has not, and will not and any subordinate unit of the County does not expect, has not, and will not (1) issue or agree to issue more than \$10 million of tax-exempt obligations other than as described in this paragraph during the calendar year ending December 31, 2022 and (2) designate or agree to designate more than \$10 million of tax-exempt obligations as “qualified tax-exempt obligations” described in Section 265(b)(3) of the Code, including the Series 2022B Bonds and its Educational Facilities Revenue Bonds (Benedictine College Project), Series 2022A, in the calendar year ending December 31, 2022.

Series 2022B Bonds. The County expects to designate the Series 2022B Bonds on the Tax-Exempt Conversion Date as “qualified tax-exempt obligations” described in Section 265(b)(3) of the Code. The County acknowledges that it does not expect to issue more than \$10 million in tax-exempt debt obligations during the calendar year ending December 31, 2022, and acknowledges that for this purpose only, the County is not required to take into account the issuance of any private activity bond, other than a qualified 501(c)(3) bond, or any tax-exempt current refunding to the extent the proceeds of the current refunding obligation do not exceed the outstanding principal amount of the refunded obligation. In addition, 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, 2022. Therefore, in support of the expected designation of the Series 2022B Bonds as “qualified tax-exempt obligations” under Section 265(b)(3) of the Code, the County represents that it does not expect, has not, and will not and any subordinate unit of the County does not expect, has not and will not (1) issue or agree to issue more than \$10 million of tax-exempt obligations other than as described in this paragraph during the calendar year ending December 31, 2022 and (2) designate or agree to designate more than \$10 million of tax-exempt obligations as “qualified tax-exempt obligations” described in Section 265(b)(3) of the Code, including the Series 2022A Bonds and its Educational Facilities Revenue Bonds (Benedictine College Project), Series 2022B, in the calendar year ending December 31, 2022.

**Section 5. 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 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 between the County and the Trustee pursuant to which the Series 2022A Bonds shall be issued and the County shall pledge and assign the payments, revenues and receipts received pursuant to the Series 2022A Loan Agreement to the Trustee for the benefit of and security of the owners of the Series 2022A Bonds upon the terms and conditions as set forth in said form of Series 2022A Indenture;
- (b) Bond Trust Indenture between the County and the Trustee pursuant to which the Series 2022B Bonds shall be issued and the County shall pledge and assign the payments, revenues and receipts received pursuant to the Series 2022B Loan Agreement to the

Trustee for the benefit of and security of the owners of the Series 2022A Bonds upon the terms and conditions as set forth in said form of Series 2022B Indenture;

- (c) Loan Agreement under which the County will loan the proceeds of the Series 2022A Bonds to the Borrower to provide funds to finance, refinance and reimburse the Project upon the terms and conditions as set forth in said Series 2022A Loan Agreement in consideration of payments which will be sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2022A Bonds;
- (d) Loan Agreement under which the County will loan the proceeds of the Series 2022B Bonds to the Borrower to provide funds to finance, refinance and reimburse the Project upon the terms and conditions as set forth in said Series 2022B Loan Agreement in consideration of payments which will be sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2022B Bonds;
- (e) Promissory Note (Benedictine College), Series 2022A, which Series 2022A Note will be issued as provided in the Series 2022A Loan Agreement in an aggregate principal amount equal to the aggregate principal amount of the Series 2022A Bonds to be issued, made by Benedictine College, and payable to the County and to be endorsed and assigned by the County to the Trustee under the Series 2022A Indenture for the benefit and security of the owners of the Series 2022A Bonds, securing the Borrower's obligations to make loan payments under the Series 2022A Loan Agreement;
- (f) Promissory Note (Benedictine College), Series 2022B, which Series 2022B Note will be issued as provided in the Series 2022B Loan Agreement in an aggregate principal amount equal to the aggregate principal amount of the Series 2022B Bonds to be issued, made by Benedictine College, and payable to the County and to be endorsed and assigned by the County to the Trustee under the Series 2022B Indenture for the benefit and security of the owners of the Series 2022B Bonds, securing the Borrower's obligations to make loan payments under the Series 2022B Loan Agreement;
- (g) Bond Purchase Agreement dated as of the date of delivery thereof (the "Series 2022A Bond Purchase Agreement") among the County, the Borrower and UMB Bank, N.A., as the underwriter of the Bonds (the "Underwriter") under which the County agrees to sell the Series 2022A Bonds to the Underwriter upon the terms and conditions as set forth in said form of Series 2022A Bond Purchase Agreement;
- (h) Bond Purchase Agreement dated as of the date of delivery thereof (the "Series 2022B Bond Purchase Agreement") among the County, the Borrower and UMB Bank, N.A., as the purchaser of the Series 2022B Bonds (the "Purchaser") under which the County agrees to sell the Series 2022B Bonds to the Purchaser upon the terms and conditions as set forth in said form of Series 2022B Bond Purchase Agreement;
- (i) Tax Compliance Agreement dated as of March 1, 2022 (the "Series 2022A Tax Compliance Agreement"), among the County, the Borrower 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 and other money related to the Series 2022A Bonds, the use of assets financed or refinanced with proceeds of the Series 2022A Bonds, and the status of the Borrower under Internal Revenue Code (the "Code") Section 501(c)(3) to establish and maintain the exclusion of interest on the

Series 2022A 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

- (j) Tax Compliance Agreement dated as of March 1, 2022 (the “Series 2022B Tax Compliance Agreement”), among the County, the Borrower and the Bond Trustee entered into in order to set forth certain facts, expectations, representations and covenants relating to the use and investment of proceeds of and other money related to the Series 2022B Bonds, the use of assets financed or refinanced with proceeds of the Series 2022B Bonds, and the status of the Borrower under Internal Revenue Code Section 501(c)(3). It is anticipated that the Series 2022B Tax Compliance Agreement will be supplemented and amended by a Supplemental Tax Compliance Agreement, among the County, the Borrower and the Bond Trustee dated as of the Tax-Exempt Conversion Date (as defined in the Series 2022B Indenture) for the Series 2022B Bonds entered into in order to update and confirm certain facts, expectations, representations and covenants contained in the Series 2022B Tax Compliance Agreement relating to the use and investment of proceeds of and other money related to the Series 2022B Bonds, the use of assets financed or refinanced with proceeds of the Series 2022B Bonds, and the status of the Borrower under Internal Revenue Code Section 501(c)(3) in order to establish and maintain the exclusion of interest on the Series 2022B Bonds from gross income for federal income tax purposes following the Tax-Exempt Conversion Date.

**Section 6. Approval of Use of Official Statement.** The County hereby approves the use of the Preliminary Official Statement in connection with the Series 2022A Bonds, from which a final Official Statement for the Series 2022A Bonds shall be drafted (the “Official Statement”), in connection with the sale of the Series 2022A Bonds, in substantially the form presented to the County (a copy of which Official Statement 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 document by the Borrower.

The Official Statement and the distribution thereof by the Underwriter are hereby approved for use in connection with the sale of the Series 2022A Bonds. The County has not participated in the preparation of the Official Statement and has not verified the accuracy of the information therein, other than information respecting the County. Accordingly, the approval of the Official Statement 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 Statement 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 Statement 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 Underwriter 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 Underwriter to comply with the requirements of such Rule.

**Section 7. Execution of Bonds and Documents.** The Chairman and Vice Chair of the County Commission are each hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the County in the manner provided in the Indenture. The Chairman and Vice Chair of the County Commission are each hereby authorized and directed to execute the Indentures, the Loan Agreements, the Tax Compliance Agreements, the Bond Purchase Agreements 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 and the Deputy County Clerk of the

County are each hereby authorized and directed to attest to and affix the seal of the County to the Bonds, the Indentures, the Loan Agreements, the Tax Compliance Agreements, the Bond Purchase Agreements and such other documents, certificates and instruments as may be necessary.

**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, the Indentures, the Loan Agreements, the Tax Compliance Agreements and the Bond Purchase Agreements.

**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 22<sup>nd</sup> day of February, 2022.

(SEAL)



ATTEST:

Michelle Phillips  
County Clerk

Eric Roll  
Chairman of the County Commission