

RESOLUTION NO. 011121-2

A RESOLUTION OF THE CITY OF ABILENE, KANSAS APPROVING THE SALE OF A CERTAIN PROJECT FINANCED WITH THE PROCEEDS OF REVENUE BONDS OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF (1) A BILL OF SALE, (2) A TERMINATION AND RELEASE OF LEASE AND SITE LEASE, AND (3) A SATISFACTION, DISCHARGE AND RELEASE OF INDENTURE.

WHEREAS, the City of Abilene, Kansas (the "Issuer") is a municipal corporation organized under the laws of the State of Kansas; and

WHEREAS, the Issuer is authorized pursuant to K.S.A. 12-1740 *et seq.* to issue its revenue bonds for the purpose of paying all or any portion of the cost of purchasing, acquiring, constructing and equipping facilities for commercial purposes, including facilities for the promotion of physical and mental health, and to enter into leases with any person, firm or corporation for such facilities; and

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series 2020 (The Garfield, LLC), in the original principal amount of not to exceed \$4,000,000 (the "Bonds") for the purpose of the first phase of purchasing, renovation, acquiring, constructing, furnishing and equipping a multi-phased senior independent living facility, located at 300 NW 7th St., in the City of Abilene (the "Project"), and paying certain costs of issuance in connection with the Bonds; and

WHEREAS, the Project is leased by the Issuer to The Garfield, LLC, a Kansas limited liability company (the "Tenant"), pursuant to a Lease Agreement, dated as of March 26, 2020 (the "Lease"); and

WHEREAS, the Bonds are payable from the Trust Estate created pursuant to a Trust Indenture, dated as of March 26, 2020 (the "Indenture"), by and between the Issuer and Security Bank of Kansas City (the "Trustee"), which Trust Estate includes a pledge of the Project and revenue received from the fees charged and Basic Rent received pursuant to the Lease; and

WHEREAS, Section 15.1 of the Lease provides for the purchase of the Project by the Tenant upon the proper exercise of the Tenant's option to purchase and the payment (pursuant to Section 15.2) to the Trustee of the full amount necessary and incidental to the retirement and defeasance of the Bonds or, in lieu of payment, submission of all outstanding Bonds for cancelation, plus the payment to the Issuer of \$1,000; and

WHEREAS, the Tenant has provided notice of its election to purchase the Project on or about February 1, 2021 (the "Closing Date") and has previously requested the Issuer to redeem the Bonds on or about the Closing Date; and

WHEREAS, on the Closing Date, The Garfield, LLC, as Owner of 100% of the Bonds, will surrender the Bonds to the Trustee in full satisfaction of payment of the principal of, interest on, and premium, if any, due and payable on the Bonds at redemption; and

WHEREAS, the Issuer finds it necessary to consent to the early redemption of the Bonds and authorize the execution and delivery of (1) Bill of Sale, (2) Termination and Release of Lease and Site Lease, and (3) Satisfaction, Release and Discharge of Indenture in connection with the exercise by the Tenant of its option to purchase the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS, AS FOLLOWS:

Section 1. Definition of Terms. All terms and phrases used but not otherwise defined herein shall have the meanings set forth in the Lease and Indenture (as defined above).

Section 2. Sale of the Project. The Issuer is authorized to convey the Project to the Tenant upon (1) sufficient moneys having been deposited with the Trustee so as to completely redeem and pay the Bonds in accordance with the terms of the Indenture, the sufficiency of which amount is to be acknowledged by the Trustee in writing, and/or surrender of the Bonds in satisfaction of the payment of all principal of, interest on, and premium, if any, due and payable at redemption, and (2) receipt by the Issuer of the \$1,000 to which it is entitled pursuant to Section 15.2 of the Lease.

Section 3. Authorization and Consent to Redemption. The governing body of the Issuer declares its desire and consent to the early redemption of the Bonds as described herein on the Closing Date, or as soon thereafter as practicable, in accordance with the instructions from the Tenant (which shall also be deemed the Issuer's instructions to the Trustee). Issuer acknowledges proper notice of the Tenant's instructions to redeem the Bonds or otherwise waives any additional notice requirements under the Indenture.

Section 4. Authorization of Bill of Sale. The Issuer is authorized to execute and deliver its Bill of Sale (the "Bill of Sale") for the personal property portions of the Project to the Tenant, upon satisfaction of the conditions contained in the Lease and set forth in Section 2 hereof, and in substantially the same form as the Bill of Sale before the governing body on this date.

Section 5. Authorization of Termination and Release of Lease and Site Lease. The Issuer is authorized to execute and deliver a Termination and Release of Lease and Site Lease (the "Lease Termination") by and between the Tenant, the Issuer and the Trustee, upon satisfaction of the conditions contained in the Lease and set forth in Section 2 hereof, and in substantially the same form as the Lease Termination before the governing body on this date.

Section 6. Authorization of Satisfaction, Release and Discharge of Indenture. The Issuer is authorized to execute and deliver a Satisfaction, Release and Discharge of Indenture (the "Indenture Release") by and between the Issuer and the Trustee, upon satisfaction of the conditions contained in the Lease and set forth in Section 2 hereof, and in substantially the same form as the Indenture Release before the governing body on this date.

Section 7. Execution of Documents. The Mayor or Acting Mayor of the Issuer is authorized and directed to execute the Bill of Sale, Lease Termination and Indenture Release for and on behalf of and as the act and deed of the Issuer in substantially the forms as they are presented today with such minor corrections or amendments thereto as the Mayor of the governing body of the Issuer shall approve, which approval shall be evidenced by his execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Resolution, including specifically any applicable UCC Termination Statements. The City Clerk or any Deputy City Clerk of the Issuer are authorized and directed to attest the execution of the Bill of Sale, Lease Termination and Indenture Release, on behalf of the Issuer 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 8. Delivery of Documents. The Bill of Sale, Lease Termination and Indenture Release shall be delivered by the Mayor, City Clerk or other appropriate staff member of the Issuer concurrently upon the satisfaction of the requirements set forth in the Lease and in Section 2 of this Resolution. Prior escrow delivery of such documents may be made to Bond Counsel.

Section 9. Further Authority. The Issuer shall, and the officers, agents and employees of the Issuer are authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Resolution and to carry out, comply with and perform the duties of the Issuer with respect to the Bill of Sale, Lease Termination and Indenture Release and the early redemption, satisfaction and discharge of the Bonds, all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 10. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the governing body of the Issuer.

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ADOPTED AND APPROVED by the governing body of the City of Abilene, Kansas on January 11, 2021.

CITY OF ABILENE, KANSAS

[seal]



ATTEST:

By

Penny Soukup, CMC
Penny Soukup, City Clerk, CMC

By

Brandon Rein
Brandon Rein, Mayor

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that, as of February 1, 2021, in consideration of One Thousand Dollars (\$1,000.00) and other good and valuable past consideration, the receipt of which is hereby acknowledged, the undersigned, City of Abilene, Kansas, a municipal corporation (the "Grantor"), does grant, sell, transfer and deliver unto The Garfield, LLC, a Kansas limited liability company (the "Grantee"), all of its interest in the following goods and chattels, viz:

All buildings, improvements, equipment, fixtures and personal property constructed, located or installed on the Land, as defined in the Lease Agreement, dated as of March 26, 2020, by and between the Grantor and Grantee, all or any portion of the costs of which were financed or refinanced from the proceeds of the City of Abilene, Kansas, Taxable Industrial Revenue Bonds, Series 2020 (The Garfield, LLC) and which constitute Improvements, as defined in the Lease, together with any substitutions or replacements therefor, including but not limited to the "Project" as defined in Schedule I hereto.

To have and to hold, all and singular, the said goods and chattels forever. And the said Grantor hereby covenants with the said Grantee that the interest of Grantor conveyed hereby is free from all encumbrances except (i) those liens and encumbrances to which title to the described property was subject when conveyed to the Grantor, (ii) those liens and encumbrances created by the Grantee or to the creation or suffering of which the Grantee has consented; and (iii) those liens and encumbrances resulting from the failure of the Grantee to perform and observe any of the agreements on its part contained in the Lease under which it has heretofore leased such property; and that it will warrant and defend the same against the lawful claims and demands of all persons claiming through the Grantor.

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IN WITNESS WHEREOF, we have hereunto set our hands and affixed the official seal of the City of Abilene, Kansas for delivery as of the date set forth above.

CITY OF ABILENE, KANSAS



By *Brandon Rein*
Brandon Rein, Mayor

ATTEST

By *Penny Soukup, CMC*
Penny Soukup, City Clerk, CMC

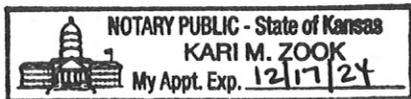
“ISSUER”

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF DICKINSON)

BE IT REMEMBERED that on this _____ day of January, 2021, before me, a notary public in and for said County and State, came Brandon Rein and Penny Soukup, Mayor and City Clerk, respectively, of City of Abilene, Kansas, a municipal corporation of the State of Kansas, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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



Kari M Zook
Notary Public

My Appointment Expires:

12/17/2024

SCHEDULE I

PROPERTY SUBJECT TO LEASE

(A) The following described real estate located in City of Abilene, Dickinson County, Kansas, to wit:

A PORTION OF LOT 7, AND ALL OF LOTS 9, 11, AND 13 ON 7TH STREET, SOUTHWICK & AUGUSTINE'S ADDITION TO THE CITY OF ABILENE, DICKINSON COUNTY, KANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 13; THENCE ON THE NORTH LINE OF SAID LOTS, N 89°38'28" E A DISTANCE OF 285.00 FEET; THENCE S 00°10'06" E A DISTANCE OF 272.55 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF 7TH STREET; THENCE ON SAID NORTH RIGHT-OF-WAY LINE, N 89°58'42" W A DISTANCE OF 285.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 13 SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF CEDAR STREET; THENCE ON SAID EAST RIGHT-OF-WAY LINE, N 00°10'06" W A DISTANCE OF 270.65 FEET TO THE POINT OF BEGINNING. CONTAINS 1.78 ACRES, MORE OR LESS.

said real property constituting the "Project Site" as referred to in the Lease.

(B) The buildings, improvements, equipment, fixtures and personal property now or hereafter acquired, constructed, or installed with proceeds of the 2020 Bonds, including but not limited to the following:

acquiring, renovating, constructing, furnishing, and equipping a multi-phased senior independent living facility, in and adjacent to the historic Garfield Elementary School in the City (the "Project") located at 300 NW 7th St, Abilene, Kansas

The property described in paragraphs (A) and (B) of this Schedule I, together with any alterations or additional improvements properly deemed a part of the Project pursuant to and in accordance with the provisions of Sections 11.1 and 12.1 of the Lease, constitute the "Project" as referred to in both the Lease and the Indenture.