

(Published in the *Morning Sun*, October 16, 2015)

ORDINANCE NO. S-1030

AN ORDINANCE AUTHORIZING CONSENT TO THE ASSIGNMENT OF A CERTAIN LEASE BETWEEN THE CITY, AS LESSOR, AND H11 PITTSBURG, LLC, AS LESSEE, WHEREBY SAID LESSEE TRANSFERS ITS LEASEHOLD INTEREST IN THE HOLIDAY INN EXPRESS HOTEL TO PITTSBURG HOSPITALITY, LLC, AS ASSIGNEE; ISSUANCE OF ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2015 (HOLIDAY INN EXPRESS PROJECT) IN FOR THE PURPOSES OF PAYING A PORTION OF THE COSTS OF ASSIGNEE'S ACQUISITION OF SUCH LEASEHOLD INTEREST; AND EXECUTION OF ADDITIONAL DOCUMENTS NECESSARY OR DESIRABLE TO EFFECT THE TRANSACTION CONTEMPLATED HEREBY.

THE GOVERNING BODY OF THE CITY OF PITTSBURG, KANSAS HAS FOUND AND DETERMINED:

A. The City of Pittsburg, Kansas (the "Issuer") is authorized by the Kansas Economic Development Revenue Bond Act, as amended, as codified in K.S.A. 12-1740 *et seq.* (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities and to issue revenue bonds for the purpose of refunding such bonds.

B. Pursuant to the Act, the Issuer has issued its Taxable Industrial Revenue Bonds, Series 2008 (Holiday Inn Express Project) in the aggregate principal amount of not to exceed \$4,900,000, of which \$3,403,074.32 remains outstanding (the "Series 2008 Bonds"), for the purpose of paying the costs of acquiring, constructing and equipping the Holiday Inn Express hotel within the City of Pittsburg (the "Project"), and has leased the Project to H11 Pittsburg, LLC, a Kansas limited liability company (the "Original Tenant") pursuant to a Lease dated as of May 15, 2008 (the "Original Lease").

C. The Original Tenant has entered into an agreement to sell its leasehold interest in the Project to Pittsburg Hospitality, LLC, a Kansas limited liability company (the "Successor Tenant"), subject to the consent of the Issuer.

D. The Issuer has heretofore found and determined it is desirable to consent to such sale and the assignment of the Lease to the Successor Tenant, to amend the terms of the Series 2008 Bonds to modify the interest rate and extend the maturity date, and to issue its Taxable Industrial Revenue Bonds, Series 2015 (Holiday Inn Express Project) in the aggregate principal amount of \$676,925.68 (the "Series 2015 Bonds") to pay a portion of the cost of the acquisition of such leasehold interest.

E. The Issuer's governing body finds that it is necessary and desirable to execute and deliver the following documents (collectively, the "Bond Documents"):

- (i) Issuer's Consent to Assignment, under which the Issuer consents to the assignment of the Original Lease to the Successor Tenant;

(ii) Supplemental Trust Indenture No. 3 (the "Supplemental Indenture"), further amending and supplementing the Trust Indenture dated as of May 15, 2008 (as supplemented and amended in accordance with its terms, the "Indenture") with Security Bank of Kansas City, Kansas City, Kansas, as successor trustee to UMB Bank, n.a., Kansas City, Missouri, (the "Trustee"), which amends the terms of the outstanding Series 2008 Bonds and prescribes the terms and conditions of issuing and securing the Series 2015 Bonds;

(iii) Supplemental Lease No. 1, amending and supplementing the Original Lease, under which the Issuer will lease the Project to the Successor Tenant in consideration of Basic Rent and other payments; and

(iv) Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series 2015 Bonds by the Issuer to Arvest Bank, Joplin, Missouri.

F. The Issuer's governing body has found that under the provisions of K.S.A. 79-201a, the Project purchased or constructed with the proceeds of the Series 2008 Bonds should be exempt from ad valorem property taxes for a period of 8 years, commencing the year following the year in which the Series 2008 Bonds were issued, subject to a payment in lieu of taxes for each year of the exemption, as more particularly described in the Agreement for Payment in Lieu of Taxes dated as of May 11, 2008 between the Issuer and the Original Tenant (the "Agreement for Payment in Lieu of Taxes"). Prior to making this determination, the governing body of the Issuer conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. Supp. 12-1749d.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PITTSBURG, KANSAS:

Section 1. Definition of Terms. All terms and phrases not otherwise defined in this ordinance will have the meanings set forth in the Supplemental Indenture and the Supplemental Lease.

Section 2. Consent to Assignment. The Issuer hereby consents to the assignment by the Original Tenant to the Successor Tenant of the Original Tenant's leasehold interest in the Original Lease. Notwithstanding such consent to said assignment, the Issuer expressly reserves to itself and its assignees all rights and privileges accruing to it under the terms of the Original Lease, as supplemented and amended by the Supplemental Lease (collectively, the "Lease").

Section 3. Authorization of and Security for the Series 2015 Bonds. The Issuer is authorized and directed to issue the Series 2015 Bonds, to be designated "City of Pittsburg, Kansas Taxable Industrial Revenue Bonds, Series 2015 (Holiday Inn Express Project)" in the aggregate principal amount of \$676,925.68. The Series 2015 Bonds will bear interest at a stated rate and will mature, and will have such other redemption provisions, including premiums, will be in such forms and will be issued according to the provisions, covenants, agreements and other terms as are set forth in the Indenture and the Bond Purchase Agreement. The Series 2015 Bonds will be special limited obligations of the Issuer payable solely from the Trust Estate under the Indenture, including revenues from the lease of the Project to the Successor Tenant. The Series 2015 Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer, and will not be payable in any manner by taxation.

Section 4. Authorization of Supplemental Indenture. The Issuer is authorized to enter into the Supplemental Indenture with the Trustee in the form approved in this ordinance. The Issuer will pledge the Trust Estate described in the Indenture to the Trustee for the benefit of the owners of the Series 2008 Bonds and Series 2015 Bonds on the terms and conditions in the Indenture.

Section 5. Authorization of Lease of the Project. The Issuer is authorized to enter into the Supplemental Lease with the Successor Tenant in the form approved in this ordinance. The Issuer will lease the Project to the Successor Tenant according to the provisions of the Lease.

Section 6. Approval of the Guaranty Agreement. The form of the Guaranty Agreement between the Successor Tenant, the other guarantors named therein, and the Trustee, for the benefit of the owners of the Series 2008 Bonds and Series 2015 Bonds, is approved.

Section 7. Authorization of Bond Purchase Agreement. The Issuer is authorized to sell the Series 2015 Bonds to Arvest Bank, Joplin, Missouri, according to the terms and provisions of the Bond Purchase Agreement, in the form approved in this ordinance.

Section 8. Execution of Bonds and Bond Documents. The Mayor of the Issuer or such person authorized by the Issuer to act for the Mayor in the Mayor's absence is hereby authorized and directed to execute a replacement bond certificate for the Series 2008 Bonds and to execute the Series 2015 Bonds, and deliver both to the Trustee for authentication on behalf of the Issuer in the manner provided by the Act and in the Indenture. The Mayor or other authorized signatory is hereby authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to passage of this ordinance, which forms are approved, with such corrections or amendments as the Mayor or other authorized signatory shall approve, as evidenced by his or her signature. The authorized signatory may also sign and deliver such other documents, or certificates as may be necessary or desirable to carry out the purposes and intent of this ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series 2008 Bonds, the Series 2015 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this ordinance under the Issuer's corporate seal.

Section 9. Tax Exemption; Payment in Lieu of Taxes. The Project purchased or constructed with the proceeds of the Series 2008 Bonds will continue to be exempt from ad valorem property taxes for 8 years, commencing in the calendar year after the calendar year in which the Series 2008 Bonds were issued, subject to the conditions set forth in the Agreement for Payment in Lieu of Taxes and an assumption of the Original Tenant's obligations under the Agreement for Payment in Lieu of Taxes by the Successor Tenant.

Section 10. Pledge of the Project and Net Lease Rentals. The Issuer hereby pledges the Project and the net earnings therefrom to the payment of the Series 2008 Bonds and Series 2015 Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Series 2008 Bonds and Series 2015 Bonds are paid or deemed to have been paid under the Indenture.

Section 11. Further Authority. The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates as may be necessary or desirable to carry out the provisions of this ordinance and to carry out and perform the Issuer's duties with respect to the Series 2008 Bonds, the Series 2015 Bonds, and the Bond Documents.

Section 12. Effective Date. This ordinance shall take effect after its final passage by the governing body of the Issuer, signature by the Mayor and publication once in the Issuer's official newspaper.

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PASSED by the governing body of the City of Pittsburg, Kansas this 13th day of October, 2015.



Chude Munsell

Mayor

Jammy Nagel

City Clerk