

**RESOLUTION NO. \_13-01\_**

**A RESOLUTION AUTHORIZING BARTON COUNTY COMMUNITY COLLEGE TO ENTER INTO A LEASE PURCHASE TRANSACTION, THE PROCEEDS OF WHICH WILL BE USED TO PAY THE COSTS OF ACQUIRING, CONSTRUCTING AND INSTALLING CERTAIN BUILDING IMPROVEMENTS ON THE COLLEGE CAMPUS IN GREAT BEND, KANSAS , TO REFUND CERTAIN OUTSTANDING LEASE PURCHASE AGREEMENT CERTIFICATES OF PARTICIPATION, SERIES 2005; AND APPROVING AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

**WHEREAS**, under the constitution and statutes of the State of Kansas, particularly K.S.A. 71-201 and K.S.A. 10-1116c, Barton County Community College, Great Bend, Kansas (the "College") is empowered to enter into certain leases and lease purchase agreements for the lease and/or acquisition of property; and

**WHEREAS**, the College has immediate need for construction, acquisition, and equipping of a student housing facility with a capacity of approximately 172 students on the College's Great Bend (the "2013 Improvements"), which will further its educational and public purposes, but does not have sufficient moneys on hand legally available to purchase the 2013 Improvements for its use; and

**WHEREAS**, the governing body of the College has heretofore adopted a Resolution on November 20, 2012 (the "Intent Resolution") declaring the intent of the College to enter into a financing arrangement for the 2013 Improvements involving a lease purchase agreement in an amount not to exceed \$4,625,000, subject to the provisions of K.S.A. 10-1116c; and

**WHEREAS**, the Intent Resolution was duly published and no sufficient petition in opposition of the lease purchase agreement was filed with the County Clerk of Barton County, Kansas; and

**WHEREAS**, governing body of the College has also determined that it is necessary and advisable to refund the certain outstanding Lease Purchase Agreement Refunding Certificates of Participation, Series 2005, maturing in the years 2014, and thereafter, in advance of maturity (the "Refunded Certificates"), which Refunded Certificates refinanced certain student housing and daycare facilities on the campus of the College in Great Bend (the "Original Improvements," and, with the 2013 Improvements, jointly, the "Improvements"); and

**WHEREAS**, in order to finance the costs of the 2013 Improvements and of refunding the Refunded Certificates, the governing body of the College now finds and determines that it is advisable to enter into a financing arrangement involving a lease purchase agreement and the issuance and delivery of corresponding lease purchase agreement certificates of participation; and

**WHEREAS**, in order to facilitate the foregoing and to pay the cost thereof, it is necessary and desirable for the College to take the following actions:

1. Enter into a Site Lease (the "Site Lease") with the College, as lessor, and Security Bank of Kansas City, Kansas City, Kansas (the "Trustee"), as lessee, pursuant to which the College will lease certain real property (the "Real Property") to the Trustee on the terms and conditions set forth therein, a form of which has been submitted to the governing body for review;

2. Enter into a Lease Purchase Agreement (the "Lease") with the Trustee, pursuant to which the College will lease the Improvements and the Real Property (jointly, the "Project") from the Trustee, with an option to purchase the Trustee's interest in the Project, a form of which has been submitted to the governing body for review;

3. Approve a Declaration of Trust (the "Declaration of Trust"), by the Trustee, pursuant to which Certificates of Participation (as defined below) will be executed and delivered, a form of which has been submitted to the governing body for review;

4. Authorize the execution of, and the entering into of, a Certificate Purchase Agreement (the "Certificate Purchase Agreement") among the College, the Trustee and Piper Jaffray & Co., Leawood, Kansas (the "Underwriter") providing for the sale of the Certificates to the Underwriter, a form of which has been submitted to the governing body for review;

5. Approve an Official Statement respecting Refunding and Improvement Certificates of Participation, Series 2013 (the "Certificates of Participation"), evidencing proportionate interests of the owners thereof in basic rent payments to be made by the College under the Lease, to be in substantially the same form as the Preliminary Official Statement respecting the Certificates of Participation heretofore approved (the "Preliminary Official Statement," and together, the "Official Statement"); and

6. Authorize an Omnibus Continuing Disclosure Undertaking (the "Disclosure Undertaking") pursuant to which the College agrees to provide, upon request, certain financial and other information with respect to the Certificates.

The Site Lease, the Lease, the Certificate Purchase Agreement and the Disclosure Undertaking are referred to together herein as the "College Documents."

**THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF BARTON COUNTY COMMUNITY COLLEGE, AS FOLLOWS:**

**Section 1. Authorization and Approval of College Documents and Declaration of Trust.**

(a) The College Documents and the Declaration of Trust are hereby approved in substantially the forms submitted to and reviewed by the governing body on the date hereof, with such changes therein as shall be approved by the Chairperson, the Chairperson's execution of the College Documents to be conclusive evidence of such approval.

(b) The obligation of the College to pay Basic Rent Payments (as defined in the Lease) under the Lease shall constitute a current expense of the College and shall not in any way be construed to be an indebtedness or liability of the College in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness or liability by the College, and all provisions of the Lease shall be construed so as to give effect to such intent. The College covenants that pursuant to K.S.A. 71-201(b)(9), its obligation to make all Rental Payments is not subject to the Kansas cash-basis law, and therefore the College is required to make such Rental Payments from whatever source of revenues as is legally available, including the levy of ad valorem taxes without limit, if necessary.

(c) The Chairperson is hereby authorized and directed to execute and deliver the College Documents and to approve changes to the Declaration of Trust on behalf of and as the act and deed of the College. The Secretary to the Board of Trustees is hereby authorized to affix the College's seal to the College Documents and attest said seal. The foregoing authorization of execution and attestation is subject to the following parameters: (a) the principal amount of the Lease and Certificates of Participation shall not exceed \$6,825,000; (b) the true interest cost ("TIC") of the Lease and Certificates of Participation shall not exceed 3.75%; and (c) the present value savings associated with refunding the Refunded Certificates shall be not less than 5% of the outstanding principal of the Refunded Certificates.

**Section 2. Approval of Official Statement.** The final Official Statement is hereby authorized and approved, supplementing, amending and completing the Preliminary Official Statement, with such changes therein and additions thereto as shall be approved by the officer of the College executing the final Official Statement, said officer's execution thereof to be conclusive evidence of said officer's approval thereof, and the public distribution of the final Official Statement by the Underwriter are in all respects hereby authorized and approved. The Chairperson of the College is hereby authorized to execute and deliver the final Official Statement on behalf of and as the act and deed of the College.

For the purpose of enabling the Underwriter to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, the College hereby deems the information regarding the College contained in the Preliminary 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 officers of the College 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 officers in their reasonable judgment deem necessary to enable the Underwriter to comply with the requirement of such Rule.

**Section 3. Further Authority.** The College shall, and the officials and agents of the College are hereby authorized and directed to, take such actions, 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 College with respect to the College Documents, the other documents authorized or approved hereby and the Project. Without limiting the foregoing, the Chairperson is hereby authorized, if required, to execute any certificate or agreement to allow the Underwriter to comply with Rule 15c2-12 of the Securities and Exchange Commission.

**Section 4. Omit Application of DA-146a Provisions.** The mandatory contract provisions prescribed by the Kansas Department of Administration in form DA-146a, as amended, shall not apply to the Lease and Site Lease, except that the provisions of K.S.A. 71-201a and K.S.A. 71-201b shall apply to the Lease and Site Lease.

**Section 5. Effective Date.** This Resolution shall take effect and be in full force from and after its passage by the governing body.

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**ADOPTED** by the governing body and approved by the Chairperson of Barton County Community College, this 25<sup>th</sup> day of April, 2013.

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Chairperson

(SEAL)

ATTEST:

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Board Clerk