

ORDINANCE NO. 19795

AN ORDINANCE INTRODUCED BY CITY MANAGER JIM COLSON AUTHORIZING THE CITY OF TOPEKA, KANSAS, TO ISSUE ITS HOUSING AND HEALTH CARE IMPROVEMENT REVENUE BONDS, SERIES 2013, (BREWSTER PLACE PROJECT) IN THE PRINCIPAL AMOUNT NOT EXCEEDING \$10,000,000 FOR THE PURPOSE OF FINANCING THE COSTS OF CONSTRUCTING, RENOVATING, EQUIPPING, AND IMPROVING CERTAIN RESIDENTIAL AND HEALTH CARE FACILITIES LOCATED ON THE BREWSTER PLACE CAMPUS IN THE CITY; CURRENTLY REFUNDING THE CITY'S OUTSTANDING SERIES 2004 BREWSTER PLACE PROJECT REVENUE BONDS; AUTHORIZING THE EXECUTION OF A FIFTH SUPPLEMENTAL INDENTURE BY AND BETWEEN THE CITY AND COREFIRST BANK & TRUST, TOPEKA, KANSAS, AS TRUSTEE; AUTHORIZING THE EXECUTION OF A FIFTH SUPPLEMENTAL LEASE BY AND BETWEEN THE CITY AND THE CONGREGATIONAL HOME, A KANSAS NOT-FOR-PROFIT CORPORATION; AND AUTHORIZING AND APPROVING CERTAIN ADDITIONAL DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

WHEREAS, the City of Topeka, Kansas, (the "City" or the "Issuer") is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended, (the "Act") to both refund its outstanding revenue bonds and to acquire, construct, renovate, and improve, and equip certain facilities (as defined in the Act) for commercial, hospital, industrial and manufacturing purposes, and to enter into leases and lease-purchase agreements with any persons, firm or corporation for said facilities, and to issue revenue bonds for the purpose of paying the costs of any such facilities; and

WHEREAS, pursuant to the Act, the governing body of the City duly adopted June 8, 1999, and published as required by law, its Ordinance No. 17386 (the "1999 Ordinance") which authorized the City to, among other things, issue its City of Topeka, Kansas, Health Care Facilities Revenue Bonds, Series 1999A, (Brewster Place Project) (the Series 1999A Bonds") and Taxable Health Care Facilities Revenue Bonds, Series 1999B, (Brewster Place Project) in the aggregate principal amount of \$10,485,000 (the "Series 1999B Bonds") (the Series 1999A Bonds and Series 1999B Bonds are collectively the "Series 1999 Bonds") to finance among other things the cost of acquiring certain land and rehabilitating, remodeling, constructing, furnishing and equipping certain assisted living and health care facilities thereon (the "1999 Facility") and lease the same to The Congregational Home, a Kansas not-for profit corporation (the "Tenant") pursuant to a Lease Agreement dated as of June 1, 1999 (the "1999 Lease"); and

1 **WHEREAS**, pursuant to both the Act and the 1999 Ordinance, the City as the Issuer of
2 the Series 1999 Bonds entered into a Trust Indenture dated as of June 1, 1999, (the "1999
3 Indenture") by and between the Issuer and Commerce Bank & Trust, Topeka, Kansas, now
4 known as CoreFirst Bank & Trust, as Trustee, (the "Trustee") relating to the issuance by the
5 Issuer of the Series 1999 Bonds; and
6

7 **WHEREAS**, pursuant to **Section 203** of the 1999 Indenture, bonds in addition to the
8 Series 1999 Bonds may be issued under and equally and ratably secured by the 1999 Indenture
9 to, among other things, provide funds to pay the costs of completing an Additional Facility as
10 such term is defined in the 1999 Indenture; and
11

12 **WHEREAS**, any bonds issued in addition to the Series 1999 Bonds shall, subject to the
13 terms and conditions of **Section 203** of the 1999 Indenture, qualify to be on a parity with the
14 Series 1999 Bonds and any Additional Bonds outstanding at any time and from time to time; and
15

16 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted November
17 7, 2000, and published as required by law, its Ordinance No. 17590 (the "2000 Ordinance")
18 which authorized the City to, among other things, issue its City of Topeka, Kansas, Health Care
19 Facilities Revenue Bonds, Series 2000, (Brewster Place Project) in the aggregate principal
20 amount of \$2,100,000 (the "Series 2000 Bonds") to finance among other things the cost of
21 acquiring certain land and rehabilitating, remodeling, constructing, furnishing and equipping
22 certain assisted living and health care facilities thereon (the "2000 Facility") and lease the same
23 to the Tenant pursuant to a First Supplemental Lease Agreement dated as of November 1, 2000
24 (the "First Supplemental Lease"); and
25

26 **WHEREAS**, pursuant to both the Act and the 2000 Ordinance, the City as the Issuer of
27 the Series 2000 Bonds entered into a First Supplemental Indenture dated as of November 1,
28 2000, (the "First Supplemental Indenture") by and between the Issuer and the Trustee relating to
29 the issuance by the Issuer of the Series 2000 Bonds; and
30

31 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted August
32 13, 2002, and published as required by law, its Ordinance No. 17872 (the "2002 Ordinance")
33 which authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and
34 Health Care Revenue Bonds, Series 2002, (Brewster Place Project) in the aggregate principal
35 amount of \$2,225,000 (the "Series 2002 Bonds") to finance among other things the cost of
36 acquiring certain land and rehabilitating, remodeling, constructing, furnishing and equipping
37 certain assisted living and health care facilities thereon (the "2002 Facility") and lease the same
38 to the Tenant pursuant to a Second Supplemental Lease Agreement dated as of August 15, 2002
39 (the "Second Supplemental Lease"); and
40

41 **WHEREAS**, pursuant to both the Act and the 2002 Ordinance, the City as the Issuer of
42 the Series 2002 Bonds entered into a Second Supplemental Indenture dated as of August 15,
43 2002, (the "Second Supplemental Indenture") by and between the Issuer and the Trustee relating
44 to the issuance by the Issuer of the Series 2002 Bonds; and
45
46

1 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted May 11,
2 2004, and published as required by law, its Ordinance No. 18231 (the "2004 Ordinance") which
3 authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and Health
4 Care Refunding and Improvement Revenue Bonds, Series 2004, (Brewster Place Project) in the
5 aggregate principal amount of \$12,000,000 (the "Series 2004 Bonds") to finance among other
6 things (i) the cost of acquiring certain land and rehabilitating, remodeling, constructing,
7 furnishing and equipping certain assisted living and health care facilities thereon (the "2004
8 Facility") and lease the same to the Tenant pursuant to a Third Supplemental Lease Agreement
9 dated as of May 15, 2004 (the "Third Supplemental Lease"), (ii) currently refund all of the
10 outstanding Series 1999A Bonds and (iii) advance refund all of the outstanding Series 2000
11 Bonds; and

12
13 **WHEREAS**, pursuant to both the Act and the 2004 Ordinance, the City as the Issuer of
14 the Series 2004 Bonds entered into a Third Supplemental Indenture dated as of May 15, 2004,
15 (the "Third Supplemental Indenture") by and between the Issuer and the Trustee relating to the
16 issuance by the Issuer of the Series 2004 Bonds; and

17
18 **WHEREAS**, none of the Series 1999 Bonds or the Series 2000 Bonds remain
19 outstanding; and

20
21 **WHEREAS**, the Series 2004 Bonds remain outstanding in the principal amount of
22 \$8,500,000 and are subject to optional redemption by the City upon written instruction from the
23 Tenant in whole or in part at any time at a redemption price equal to 100% of the principal
24 amount to be redeemed and paid plus accrued interest to the redemption date; and

25
26 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted July 20,
27 2010, and published as required by law, its Ordinance No. 19446 (the "2010 Ordinance") which
28 authorized the City to, among other things, issue its City of Topeka, Kanas, Housing and Health
29 Care Revenue Bonds, Series 2010, (Brewster Place Project) in the principal amount of
30 \$9,765,000 (the "Series 2010 Bonds") to finance, among other things, the costs of (i) certain
31 improvements to the Facility, (ii) currently refund and pay all of the outstanding Series 2002
32 Bonds in the principal amount of \$1,740,000, (iii) refinance a portion of a commercial bank loan
33 incurred to acquire land for future expansion of the Brewster Place campus, including all or part
34 of the Series 2010 Site, as defined in the Fourth Supplemental Indenture (as defined in the recital
35 to this ordinance which recital immediately follows this recital), (iv) fund a deposit to the Series
36 2010 Debt Service Reserve Account, and (v) pay certain costs of issuing the Series 2010 Bonds,
37 and lease the 2010 Facility to the Tenant pursuant to a Fourth Supplemental Lease Agreement
38 dated as of July 1, 2010 (the "Fourth Supplemental Lease"); and

39
40 **WHEREAS**, pursuant to both the Act and the 2010 Ordinance, the City as the Issuer of
41 the Series 2010 Bonds entered into a Fourth Supplemental Indenture dated as of July 1, 2010,
42 (the "Fourth Supplemental Indenture") by and between the Issuer and the Trustee relating to the
43 issuance by the Issuer of the Series 2010 Bonds; and

44
45 **WHEREAS**, none of the Series 2002 Bonds remain outstanding; and

1 **WHEREAS**, the Tenant has by means of a certificate signed by an authorized Tenant
2 representative (the Corporation Representative under the 1999 Indenture), the receipt of which is
3 hereby acknowledged, certified that the conditions precedent to the issuance of the Additional
4 Bonds (as set out in both **Section 203(d)** of the 1999 Indenture and **Section 6.1** of the 1999
5 Lease) have been met; and
6

7 **WHEREAS**, in order to achieve certain financial benefits currently available, the Tenant
8 has requested that the City issue housing and health care improvement revenue bonds in the
9 estimated principal amount of \$10,000,000 for the purpose of providing funds together with
10 other funds of the Tenant to, among other things, (i) currently refund and pay all of the
11 outstanding Series 2004 Bonds in the principal amount of \$8,500,000, (ii) finance the costs of
12 certain Facility improvements, and (iii) pay certain costs of issuance; and
13

14 **WHEREAS**, pursuant to **Section 302** of the 1999 Indenture and **Section 3.01** of the
15 Third Supplemental Indenture, the City deems it necessary and advisable to call (i) the Series
16 2004 Bonds, maturing on June 1, 2013, and thereafter, for redemption and payment on or about
17 April 1, 2013; and
18

19 **WHEREAS**, pursuant to public notice published in The Metro News on February 4,
20 2013, a public hearing was held by the Governing Body on February 19, 2013, in accordance
21 with the requirements of law, to consider the issuance by the City of the Series 2013 Bonds; and
22

23 **WHEREAS**, the Governing Body has heretofore and does hereby find and determine
24 that it is desirable in order to promote, stimulate and develop the general economic welfare and
25 prosperity of the City and the State of Kansas that the Issuer issue its Housing and Health Care
26 Improvement Revenue Bonds, Series 2013, (Brewster Place Project) to be dated the date of
27 issuance, in the principal amount not exceeding \$10,000,000 (the "Series 2013 Bonds") for the
28 purpose of providing funds to (i) finance the project costs (the "Project Costs") of the Series
29 2013 Project to be leased by the Issuer to the Tenant, as hereinafter provided, (ii) currently
30 refund all of the outstanding Series 2004 Bonds, and (iii) pay certain costs of issuing the Series
31 2013 Bonds; and
32

33 **WHEREAS**, the Series 2013 Bonds shall be payable solely and only from certain fees,
34 rentals, revenues and other amounts derived by the City under the 1999 Lease as amended and
35 supplemented by the First Supplemental Lease Agreement dated as of November 1, 2000, the
36 Second Supplemental Lease Agreement dated as of August 15, 2002, the Third Supplemental
37 Lease Agreement dated as of May 15, 2004, the Fourth Supplemental Lease Agreement dated as
38 of July 1, 2010, and the Fifth Supplemental Lease dated as of March 1, 2013, (the "Fifth
39 Supplemental Lease," together with the 1999 Lease, the First Supplemental Lease, the Second
40 Supplemental Lease, the Third Supplemental Lease, and the Fourth Supplemental Lease, the
41 "Lease") and in the 1999 Indenture as amended and supplemented by the First Supplemental
42 Indenture dated as of November 1, 2000, the Second Supplemental Indenture dated as of August
43 15, 2002, the Third Supplemental Indenture dated as of May 15, 2004, the Fourth Supplemental
44 Indenture dated as of July 1, 2010, and the Fifth Supplemental Indenture dated as of March 1,
45 2013, (the "Fifth Supplemental Indenture," together with the 1999 Indenture, the First
46 Supplemental Indenture, the Second Supplemental Indenture, the Third Supplemental Indenture,

1 and the Fourth Supplemental Indenture, the "Indenture") hereinafter authorized, and, under
2 certain circumstances, from the proceeds of insurance and condemnation awards; and
3

4 **WHEREAS**, the City further finds and determines that it is necessary and desirable in
5 connection with the issuance of the Series 2013 Bonds to execute and deliver the Fifth
6 Supplemental Indenture with CoreFirst Bank & Trust, Topeka, Kansas, as Trustee, for the
7 purpose of issuing and securing the Series 2013 Bonds as provided therein; to enter into the Fifth
8 Supplemental Lease, between the City, as Landlord, and the Tenant for the purpose of leasing the
9 Facility to the Tenant in consideration for payments of Basic Rent, Additional Rent and other
10 charges provided for therein to provide for the payment of the Series 2013 Bonds; and to execute
11 such other documents and agreements in connection with the issuance of the Series 2013 Bonds
12 as hereinafter provided;
13

14 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
15 **TOPEKA, SHAWNEE COUNTY, KANSAS, AS FOLLOWS:**
16

17 **Section 1. Authorization of the Series 2013 Bonds.** In order to obtain funds to be used
18 for the purposes aforesaid, the Issuer is hereby authorized to issue the Series 2013 Bonds in the
19 principal amount not exceeding \$10,000,000 which shall be issued under and secured by and
20 shall have the terms and provisions set forth in the Indenture, and the signatures of the officers of
21 the Issuer executing such Indenture and the hereinafter referred to Bond Purchase Agreement
22 shall constitute conclusive evidence of their approval and the Issuer's approval thereof. The
23 Series 2013 Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature
24 of the Mayor and attested by the manual or facsimile signature of its City Clerk and shall have
25 the corporate seal of the Issuer affixed thereto or imprinted thereon.
26

27 **Section 2. Limited Obligations.** The Series 2013 Bonds shall be special limited
28 obligations of the Issuer payable solely from the sources and in the manner as provided in the
29 Indenture, and shall be secured by a transfer, pledge and assignment of and a grant of a security
30 interest in the Trust Estate (as defined in the Indenture) to the Trustee (as herein defined) and in
31 favor of the registered owners of the Series 2013 Bonds, as provided in the Indenture. The
32 Series 2013 Bonds and interest thereon shall not in any respect be a general obligation of the
33 Issuer and shall not be payable in any manner from taxation and shall not constitute a pledge of
34 the full faith and credit of the Issuer, but shall be payable solely from the funds provided for in
35 the Lease and the Indenture. The issuance of the Series 2013 Bonds shall not, directly, indirectly
36 or contingently, obligate the Issuer to levy any form of taxation therefor or to make any
37 appropriation for their payment. The Issuer shall not in any event be liable for the payment of
38 the principal of, redemption premium, if any, or interest on the Series 2013 Bonds or for the
39 performance of any pledge, obligation or agreement of any kind whatsoever which may be
40 undertaken by the Issuer. No breach by the Issuer of any such pledge, obligation or agreement
41 may impose any liability, pecuniary or otherwise, upon the Issuer or any charge upon its general
42 credit or against its taxing power.
43

44 **Section 3. Authorization and Approval of Documents.** The following documents (the
45 "Issuer Documents") are hereby approved in substantially the forms presented to the Governing
46 Body at this meeting with such changes therein as shall be approved by the officer of the Issuer

1 executing such documents, such officer's signature thereon being conclusive evidence of such
2 officer's approval and the Issuer's approval thereof:
3

4 (a) Fifth Supplemental Indenture between the Issuer and CoreFirst Bank & Trust,
5 Topeka, Kansas, (the "Trustee"), providing for the issuance thereunder of the Series 2013 Bonds
6 and setting forth the terms and provisions applicable to the Series 2013 Bonds, including a
7 pledge and assignment by the Issuer of the Trust Estate to the Trustee for the benefit and security
8 of the registered owners of the Series 2013 Bonds upon the terms and conditions as set forth in
9 the Indenture.
10

11 (b) Fifth Supplemental Lease between the Tenant and the Issuer under which the
12 Issuer will lease the Facility to the Tenant in consideration of payments which will be sufficient
13 to pay the principal of, redemption premium, if any, and interest on the Series 2013 Bonds upon
14 the terms and conditions as set forth in the Lease.
15

16 (c) Private Placement Bond Purchase Agreement (the "Purchase Agreement"), among
17 the Issuer, the Tenant and UMB Bank, N.A., Kansas City, Missouri, (the "Purchaser"), regarding
18 the sale of the Series 2013 Bonds.
19

20 **Section 4. Execution of Bonds and Documents.** The Mayor of the Issuer is hereby
21 authorized and directed to execute the Series 2013 Bonds by manual or facsimile signature and
22 to deliver the Series 2013 Bonds to the Trustee for authentication for and on behalf of and as the
23 act and deed of the Issuer in the manner provided in the Indenture. The Mayor of the Issuer is
24 hereby authorized and directed to execute and deliver the Issuer Documents for and on behalf of
25 and as the act and deed of the Issuer. The Clerk or Deputy Clerk of the Issuer is hereby
26 authorized and directed to attest to the Series 2013 Bonds by manual or facsimile signature, to
27 such of the Issuer Documents, and to such other documents, certificates and instruments, as may
28 be necessary or desirable to carry out and comply with the intent of this Ordinance.
29

30 **Section 5. Further Authority.** The Issuer shall, and the officers, agents and employees of
31 the Issuer are hereby authorized and directed to, take such further action, and execute such other
32 documents, certificates and instruments, including, without limitation, any security documents,
33 arbitrage certificate, closing certificates and tax forms, as may be necessary or desirable to carry
34 out and comply with the intent of this Ordinance, and to carry out, comply with and perform the
35 duties of the Issuer with respect to the Series 2013 Bonds and the Issuer Documents.
36

37 **Section 6. Repeal of Conflicting Ordinances.** All prior ordinances of the Issuer or any
38 parts thereof in conflict with any or all of the foregoing ordinances are hereby repealed to the
39 extent of such conflict.
40

41 **Section 7. Severability.** If any section, paragraph, clause or provision of this Ordinance
42 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of
43 such section, paragraph, clause or provision shall not affect any remaining provisions of this
44 Ordinance.
45

1 **Section 8.** Effective Date. This Ordinance shall take effect and be in full force
2 immediately after its adoption by the Issuer and publication once in the official newspaper of the
3 City.

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1
2
3 **PASSED** and approved by the Governing Body this 19th day of February, 2013.
4

5 CITY OF TOPEKA, KANSAS

6 ATTEST:
7

8
9 _____
10 William W. Bunten, Mayor

11 _____
12 Brenda Younger, City Clerk

13 (SEAL)
14
15
16

17 I, BRENDA YOUNGER, City Clerk of the City of Topeka, Shawnee County, Kansas, do
18 hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 19795
19 adopted and approved by the Governing Body on February 19, 2013.
20
21
22

23 _____
24 Brenda Younger, City Clerk