

ORDINANCE NO. 19959

AN ORDINANCE INTRODUCED BY CITY MANAGER JIM COLSON AUTHORIZING THE CITY OF TOPEKA, KANSAS, TO ISSUE ITS HOUSING AND HEALTH CARE IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2015, (BREWSTER PLACE PROJECT) IN THE PRINCIPAL AMOUNT NOT EXCEEDING \$8,190,000 FOR THE PURPOSE OF CURRENTLY REFUNDING THE CITY'S OUTSTANDING SERIES 2010 BREWSTER PLACE PROJECT HOUSING AND HEALTH CARE IMPROVEMENT REVENUE BONDS TOGETHER WITH PAYING THE COSTS THEREOF; AUTHORIZING THE EXECUTION OF A SIXTH SUPPLEMENTAL INDENTURE BY AND BETWEEN THE CITY AND COREFIRST BANK & TRUST, TOPEKA, KANSAS, AS TRUSTEE; AUTHORIZING THE EXECUTION OF A SIXTH 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 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 purposes of paying the costs of any such facilities and refunding any such revenue bonds issued for such purposes; 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

WHEREAS, pursuant to both the Act and the 1999 Ordinance, the City as the Issuer of the Series 1999 Bonds entered into a Trust Indenture dated as of June 1, 1999, (the "1999 Indenture") by and between the Issuer and Commerce Bank & Trust, Topeka, Kansas, now

1 known as CoreFirst Bank & Trust, as Trustee, (the "Trustee") relating to the issuance by the
2 Issuer of the Series 1999 Bonds; and
3

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

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

13 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted November
14 7, 2000, and published as required by law, its Ordinance No. 17590 (the "2000 Ordinance")
15 which authorized the City to, among other things, issue its City of Topeka, Kansas, Health Care
16 Facilities Revenue Bonds, Series 2000, (Brewster Place Project) in the aggregate principal
17 amount of \$2,100,000 (the "Series 2000 Bonds") to finance among other things the cost of
18 acquiring certain land and rehabilitating, remodeling, constructing, furnishing and equipping
19 certain assisted living and health care facilities thereon (the "2000 Facility") and lease the same
20 to the Tenant pursuant to a First Supplemental Lease Agreement dated as of November 1, 2000
21 (the "First Supplemental Lease"); and
22

23 **WHEREAS**, pursuant to both the Act and the 2000 Ordinance, the City as the Issuer of
24 the Series 2000 Bonds entered into a First Supplemental Indenture dated as of November 1,
25 2000, (the "First Supplemental Indenture") by and between the Issuer and the Trustee relating to
26 the issuance by the Issuer of the Series 2000 Bonds; and
27

28 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted August
29 13, 2002, and published as required by law, its Ordinance No. 17872 (the "2002 Ordinance")
30 which authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and
31 Health Care Revenue Bonds, Series 2002, (Brewster Place Project) in the aggregate principal
32 amount of \$2,225,000 (the "Series 2002 Bonds") to finance among other things the cost of
33 acquiring certain land and rehabilitating, remodeling, constructing, furnishing and equipping
34 certain assisted living and health care facilities thereon (the "2002 Facility") and lease the same
35 to the Tenant pursuant to a Second Supplemental Lease Agreement dated as of August 15, 2002
36 (the "Second Supplemental Lease"); and
37

38 **WHEREAS**, pursuant to both the Act and the 2002 Ordinance, the City as the Issuer of
39 the Series 2002 Bonds entered into a Second Supplemental Indenture dated as of August 15,
40 2002, (the "Second Supplemental Indenture") by and between the Issuer and the Trustee relating
41 to the issuance by the Issuer of the Series 2002 Bonds; and
42

43 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted May 11,
44 2004, and published as required by law, its Ordinance No. 18231 (the "2004 Ordinance") which
45 authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and Health
46 Care Refunding and Improvement Revenue Bonds, Series 2004, (Brewster Place Project) in the

1 aggregate principal amount of \$12,000,000 (the "Series 2004 Bonds") to finance among other
2 things (i) the cost of acquiring certain land and rehabilitating, remodeling, constructing,
3 furnishing and equipping certain assisted living and health care facilities thereon (the "2004
4 Facility") and lease the same to the Tenant pursuant to a Third Supplemental Lease Agreement
5 dated as of May 15, 2004 (the "Third Supplemental Lease"), (ii) currently refund all of the
6 outstanding Series 1999A Bonds and (iii) advance refund all of the outstanding Series 2000
7 Bonds; and
8

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

14 **WHEREAS**, none of the Series 1999 Bonds or the Series 2000 Bonds remain
15 outstanding; and
16

17 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted July 20,
18 2010, and published as required by law, its Ordinance No. 19446 (the "2010 Ordinance") which
19 authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and Health
20 Care Improvement Revenue Bonds, Series 2010, (Brewster Place Project) in the principal
21 amount of \$9,765,000 (the "Series 2010 Bonds") to finance, among other things, the costs of (i)
22 certain improvements to the Facility, (ii) currently refund and pay all of the outstanding Series
23 2002 Bonds in the principal amount of \$1,740,000, (iii) refinance a portion of a commercial bank
24 loan incurred to acquire land for future expansion of the Brewster Place campus, including all or
25 part of the Series 2010 Site, as defined in the Fourth Supplemental Indenture (as defined in the
26 recital to this ordinance which recital immediately follows this recital), (iv) fund a deposit to the
27 Series 2010 Debt Service Reserve Account, and (v) pay certain costs of issuing the Series 2010
28 Bonds, and lease the 2010 Facility to the Tenant pursuant to a Fourth Supplemental Lease
29 Agreement dated as of July 1, 2010 (the "Fourth Supplemental Lease"); and
30

31 **WHEREAS**, pursuant to both the Act and the 2010 Ordinance, the City as the Issuer of
32 the Series 2010 Bonds entered into a Fourth Supplemental Indenture dated as of July 1, 2010,
33 (the "Fourth Supplemental Indenture") by and between the Issuer and the Trustee relating to the
34 issuance by the Issuer of the Series 2010 Bonds; and
35

36 **WHEREAS**, none of the Series 2002 Bonds remain outstanding; and
37

38 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted February
39 19, 2013, and published as required by law, its Ordinance No. 19795 (the "2013 Ordinance")
40 which authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and
41 Health Care Improvement Revenue Bonds, Series 2013, (Brewster Place Project) in the principal
42 amount of \$10,000,000 (the "Series 2013 Bonds") to finance, among other things, the costs of (i)
43 certain improvements to the Facility, (ii) currently refund and pay all of the outstanding Series
44 2004 Bonds in the principal amount of \$8,500,000, and (iii) pay certain costs of issuing the
45 Series 2013 Bonds, and lease the 2013 Facility to the Tenant pursuant to a Fifth Supplemental
46 Lease Agreement dated as of March 1, 2013 (the "Fifth Supplemental Lease"); and

1
2 **WHEREAS**, pursuant to both the Act and the 2013 Ordinance, the City as the Issuer of
3 the Series 2013 Bonds entered into a Fifth Supplemental Indenture dated as of March 1, 2013,
4 (the "Fifth Supplemental Indenture") by and between the Issuer and the Trustee relating to the
5 issuance by the Issuer of the Series 2013 Bonds; and

6
7 **WHEREAS**, none of the Series 2004 Bonds remain outstanding; and

8
9 **WHEREAS**, the Tenant has by means of a certificate signed by an authorized Tenant
10 representative (the Corporation Representative under the 1999 Indenture), the receipt of which is
11 hereby acknowledged, certified that the conditions precedent to the issuance of the Additional
12 Bonds (as set out in both **Section 203(d)** of the 1999 Indenture and **Section 6.1** of the 1999
13 Lease) have been met; and

14
15 **WHEREAS**, in order to achieve certain financial benefits currently available, the Tenant
16 has requested that the City issue housing and health care improvement refunding revenue bonds
17 in the estimated principal amount of \$8,190,000 for the purpose of providing funds together with
18 other available funds to, among other things, (i) currently refund and pay all of the outstanding
19 Series 2010 Bonds in the principal amount of \$8,550,000 and (ii) pay certain costs of issuance;
20 and

21
22 **WHEREAS**, pursuant to **Section 302** of the 1999 Indenture and **Section 3.01** of the
23 Fourth Supplemental Indenture, the City deems it necessary and advisable to call (i) the Series
24 2010 Bonds, maturing on June 1, 2016, and thereafter, for redemption and payment on or about
25 July 31, 2015; and

26
27 **WHEREAS**, pursuant to public notice published in The Topeka Metro News on July 6,
28 2015, a public hearing was held by the Governing Body on July 21, 2015, in accordance with the
29 requirements of law, to consider the issuance by the City of the Series 2015 Bonds; and

30
31 **WHEREAS**, the Governing Body has heretofore and does hereby find and determine
32 that it is desirable in order to promote, stimulate and develop the general economic welfare and
33 prosperity of the City and the State of Kansas that the Issuer issue its Housing and Health Care
34 Improvement Refunding Revenue Bonds, Series 2015, (Brewster Place Project) to be dated the
35 date of issuance, in the principal amount not exceeding \$8,190,000 (the "Series 2015 Bonds") for
36 the purpose of providing funds to (i) currently refund all of the outstanding Series 2010 Bonds
37 and (ii) pay certain costs of issuing the Series 2015 Bonds; and

38
39 **WHEREAS**, the Series 2015 Bonds shall be payable solely and only from certain fees,
40 rentals, revenues and other amounts derived by the City under the 1999 Lease as amended and
41 supplemented by the First Supplemental Lease Agreement dated as of November 1, 2000, the
42 Second Supplemental Lease Agreement dated as of August 15, 2002, the Third Supplemental
43 Lease Agreement dated as of May 15, 2004, the Fourth Supplemental Lease Agreement dated as
44 of July 1, 2010, the Fifth Supplemental Lease dated as of March 1, 2013, and the Sixth
45 Supplemental Lease Agreement dated as of July 1, 2015, (the "Sixth Supplemental Lease,"
46 together with the 1999 Lease, the First Supplemental Lease, the Second Supplemental Lease, the

1 Third Supplemental Lease, the Fourth Supplemental Lease, and the Fifth Supplemental Lease,
2 the "Lease") and in the 1999 Indenture as amended and supplemented by the First Supplemental
3 Indenture dated as of November 1, 2000, the Second Supplemental Indenture dated as of August
4 15, 2002, the Third Supplemental Indenture dated as of May 15, 2004, the Fourth Supplemental
5 Indenture dated as of July 1, 2010, the Fifth Supplemental Indenture dated as of March 1, 2013,
6 and the Sixth Supplemental Indenture dated as of July 1, 2015, (the "Sixth Supplemental
7 Indenture," together with the 1999 Indenture, the First Supplemental Indenture, the Second
8 Supplemental Indenture, the Third Supplemental Indenture, the Fourth Supplemental Indenture,
9 and the Fifth Supplemental Indenture, the "Indenture") hereinafter authorized, and, under certain
10 circumstances, from the proceeds of insurance and condemnation awards; and
11

12 **WHEREAS**, the City further finds and determines that it is necessary and desirable in
13 connection with the issuance of the Series 2015 Bonds to execute and deliver the Sixth
14 Supplemental Indenture with CoreFirst Bank & Trust, Topeka, Kansas, as Trustee, for the
15 purpose of issuing and securing the Series 2015 Bonds as provided therein; to enter into the Sixth
16 Supplemental Lease, between the City, as Landlord, and the Tenant for the purpose of leasing the
17 Facility to the Tenant in consideration for payments of Basic Rent, Additional Rent and other
18 charges provided for therein to provide for the payment of the Series 2015 Bonds; and to execute
19 such other documents and agreements in connection with the issuance of the Series 2015 Bonds
20 as hereinafter provided;
21

22 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
23 **TOPEKA, SHAWNEE COUNTY, KANSAS, AS FOLLOWS:**
24

25 **Section 1.** Authorization of the Series 2015 Bonds. In order to obtain funds to be used
26 for the purposes aforesaid, the Issuer is hereby authorized to issue the Series 2015 Bonds in the
27 principal amount not exceeding \$8,190,000 which shall be issued under and secured by and
28 shall have the terms and provisions set forth in the Indenture, and the signatures of the officers of
29 the Issuer executing such Indenture and the hereinafter referred to Bond Purchase Agreement
30 shall constitute conclusive evidence of their approval and the Issuer's approval thereof. The
31 Series 2015 Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature
32 of the Mayor and attested by the manual or facsimile signature of its City Clerk and shall have
33 the corporate seal of the Issuer affixed thereto or imprinted thereon.
34

35 **Section 2.** Limited Obligations. The Series 2015 Bonds shall be special limited
36 obligations of the Issuer payable solely from the sources and in the manner as provided in the
37 Indenture, and shall be secured by a transfer, pledge and assignment of and a grant of a security
38 interest in the Trust Estate (as defined in the Indenture) to the Trustee (as herein defined) and in
39 favor of the registered owners of the Series 2015 Bonds, as provided in the Indenture. The
40 Series 2015 Bonds and interest thereon shall not in any respect be a general obligation of the
41 Issuer and shall not be payable in any manner from taxation and shall not constitute a pledge of
42 the full faith and credit of the Issuer, but shall be payable solely from the funds provided for in
43 the Lease and the Indenture. The issuance of the Series 2015 Bonds shall not, directly, indirectly
44 or contingently, obligate the Issuer to levy any form of taxation therefor or to make any
45 appropriation for their payment. The Issuer shall not in any event be liable for the payment of
46 the principal of, redemption premium, if any, or interest on the Series 2015 Bonds or for the

1 performance of any pledge, obligation or agreement of any kind whatsoever which may be
2 undertaken by the Issuer. No breach by the Issuer of any such pledge, obligation or agreement
3 may impose any liability, pecuniary or otherwise, upon the Issuer or any charge upon its general
4 credit or against its taxing power.

5
6 **Section 3. Authorization and Approval of Documents.** The following documents (the
7 "Issuer Documents") are hereby approved in substantially the forms presented to the Governing
8 Body at this meeting with such changes therein as shall be approved by the officer of the Issuer
9 executing such documents, such officer's signature thereon being conclusive evidence of such
10 officer's approval and the Issuer's approval thereof:

11
12 (a) Sixth Supplemental Indenture between the Issuer and CoreFirst Bank & Trust,
13 Topeka, Kansas, (the "Trustee"), providing for the issuance thereunder of the Series 2015 Bonds
14 and setting forth the terms and provisions applicable to the Series 2015 Bonds, including a
15 pledge and assignment by the Issuer of the Trust Estate to the Trustee for the benefit and security
16 of the registered owners of the Series 2015 Bonds upon the terms and conditions as set forth in
17 the Indenture.

18
19 (b) Sixth Supplemental Lease between the Tenant and the Issuer under which the
20 Issuer will lease the Facility to the Tenant in consideration of payments which will be sufficient
21 to pay the principal of, redemption premium, if any, and interest on the Series 2015 Bonds upon
22 the terms and conditions as set forth in the Lease.

23
24 (c) Private Placement Bond Purchase Agreement (the "Purchase Agreement"), among
25 the Issuer, the Tenant and UMB Bank, N.A., Kansas City, Missouri, (the "Purchaser"), regarding
26 the sale of the Series 2015 Bonds.

27
28 **Section 4. Execution of Bonds and Documents.** The Mayor or Deputy Mayor of the
29 Issuer is hereby authorized and directed to execute the Series 2015 Bonds by manual or facsimile
30 signature and to deliver the Series 2015 Bonds to the Trustee for authentication for and on behalf
31 of and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor or
32 Deputy Mayor of the Issuer is hereby authorized and directed to execute and deliver the Issuer
33 Documents for and on behalf of and as the act and deed of the Issuer. The Clerk or Deputy Clerk
34 of the Issuer is hereby authorized and directed to attest to the Series 2015 Bonds by manual or
35 facsimile signature, to such of the Issuer Documents, and to such other documents, certificates
36 and instruments, as may be necessary or desirable to carry out and comply with the intent of this
37 Ordinance.

38
39 **Section 5. Further Authority.** The Issuer shall, and the officers, agents and employees of
40 the Issuer are hereby authorized and directed to, take such further action, and execute such other
41 documents, certificates and instruments, including, without limitation, any security documents,
42 arbitrage certificate, closing certificates and tax forms, as may be necessary or desirable to carry
43 out and comply with the intent of this Ordinance, and to carry out, comply with and perform the
44 duties of the Issuer with respect to the Series 2015 Bonds and the Issuer Documents.

1 **Section 6. Repeal of Conflicting Ordinances.** All prior ordinances of the Issuer or any
2 parts thereof in conflict with any or all of the foregoing ordinances are hereby repealed to the
3 extent of such conflict.
4

5 **Section 7. Severability.** If any section, paragraph, clause or provision of this Ordinance
6 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of
7 such section, paragraph, clause or provision shall not affect any remaining provisions of this
8 Ordinance.
9

10 **Section 8. Effective Date.** This Ordinance shall take effect and be in full force
11 immediately after its adoption by the Issuer and publication once in the official newspaper of the
12 City.
13

14 (THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK)

1
2
3 **PASSED** and approved by the Governing Body this 21st day of July, 2015.
4

5 CITY OF TOPEKA, KANSAS

6 ATTEST:
7

8
9 _____
Larry E. Wolgast, Mayor

10 _____
11 Brenda Younger, City Clerk
12

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. 19959
19 adopted and approved by the Governing Body on July 21, 2015.
20
21
22

23 _____
24 Brenda Younger, City Clerk