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ORDINANCE NO. 20069

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AN ORDINANCE INTRODUCED BY INTERIM CITY MANAGER DOUG GERBER AUTHORIZING THE CITY OF TOPEKA, KANSAS, TO ISSUE **HOUSING AND HEALTH CARE IMPROVEMENT** ITS REFUNDING REVENUE BONDS, SERIES 2017A1 (BREWSTER PLACE PROJECT), SERIES 2017A2 (BREWSTER PLACE PROJECT), SERIES 2017B1 (BREWSTER PLACE PROJECT), SERIES 2017B2 (BREWSTER PLACE PROJECT) AND SERIES 2017C (BREWSTER PLACE PROJECT) IN THE AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$33,000,000 (COLLECTIVELY, THE "SERIES 2017 BONDS") FOR THE **PURPOSE** OF FINANCING THE COSTS OF CONSTRUCTING, RENOVATING, EQUIPPING, **AND IMPROVING CERTAIN** RESIDENTIAL AND HEALTH CARE FACILITIES LOCATED ON THE **CAMPUS** CITY. **BREWSTER PLACE** IN THE **CURRENTLY** REFUNDING THE CITY'S OUTSTANDING SERIES 2013 BREWSTER PLACE PROJECT HOUSING AND HEALTH CARE IMPROVEMENT REVENUE BONDS. **PAYING** THE **COSTS** AND THEREOF: AUTHORIZING THE EXECUTION OF A SEVENTH SUPPLEMENTAL INDENTURE BY AND BETWEEN THE CITY AND COREFIRST BANK & TRUST, TOPEKA, KANSAS, AS TRUSTEE; AUTHORIZING THE EXECUTION OF A SEVENTH 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.

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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

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

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

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

WHEREAS, pursuant to the Act, the governing body of the City duly adopted November 7, 2000, and published as required by law, its Ordinance No. 17590 (the "2000 Ordinance") which authorized the City to, among other things, issue its City of Topeka, Kansas, Health Care Facilities Revenue Bonds, Series 2000, (Brewster Place Project) in the aggregate principal amount of \$2,100,000 (the "Series 2000 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 "2000 Facility") and lease the same to the Tenant pursuant to a First Supplemental Lease Agreement dated as of November 1, 2000 (the "First Supplemental Lease"); and

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

WHEREAS, pursuant to the Act, the governing body of the City duly adopted August 13, 2002, and published as required by law, its Ordinance No. 17872 (the "2002 Ordinance") which authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and Health Care Revenue Bonds, Series 2002, (Brewster Place Project) in the aggregate principal amount of \$2,225,000 (the "Series 2002 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 "2002 Facility") and lease the same to the Tenant pursuant to a Second Supplemental Lease Agreement dated as of August 15, 2002 (the "Second Supplemental Lease"); and

WHEREAS, pursuant to both the Act and the 2002 Ordinance, the City as the Issuer of the Series 2002 Bonds entered into a Second Supplemental Indenture dated as of August 15,

2002, (the "Second Supplemental Indenture") by and between the Issuer and the Trustee relating to the issuance by the Issuer of the Series 2002 Bonds; and

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

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

WHEREAS, none of the Series 1999 Bonds or the Series 2000 Bonds remain outstanding; and

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

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

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

WHEREAS, pursuant to the Act, the governing body of the City duly adopted February 19, 2013, and published as required by law, its Ordinance No. 19795 (the "2013 Ordinance")

which authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and Health Care Improvement Revenue Bonds, Series 2013, (Brewster Place Project) in the principal amount of \$10,000,000 (the "Series 2013 Bonds") to finance, among other things, the costs of (i) certain improvements to the Facility, (ii) currently refund and pay all of the outstanding Series 2004 Bonds in the principal amount of \$8,500,000, and (iii) pay certain costs of issuing the Series 2013 Bonds, and lease the 2013 Facility to the Tenant pursuant to a Fifth Supplemental Lease Agreement dated as of March 1, 2013 (the "Fifth Supplemental Lease"); and

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

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

WHEREAS, pursuant to the Act, the governing body of the City duly adopted July 21, 2015, and published as required by law, its Ordinance No. 19959 (the "2015 Ordinance") which authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and Health Care Improvement Refunding Revenue Bonds, Series 2015, (Brewster Place Project) in the principal amount of \$8,190,000 (the "Series 2015 Bonds") to (i) currently refund and pay all of the outstanding Series 2010 Bonds in the principal amount of \$8,550,000, and (ii) pay certain costs of issuing the Series 2015 Bonds, and lease the 2015 Facility to the Tenant pursuant to a Sixth Supplemental Lease Agreement dated as of July 1, 2015 (the "Sixth Supplemental Lease"); and

 WHEREAS, pursuant to both the Act and the 2015 Ordinance, the City as the Issuer of the Series 2015 Bonds entered into a Sixth Supplemental Indenture dated as of July 1, 2015, (the "Sixth Supplemental Indenture") by and between the Issuer and the Trustee relating to the issuance by the Issuer of the Series 2015 Bonds; and

WHEREAS, none of the Series 2010 Bonds remain outstanding; and

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

WHEREAS, in order to achieve certain financial benefits currently available, the Tenant has requested that the City issue housing and health care improvement refunding revenue bonds in the estimated maximum principal amount of \$33,000,000 for the purpose of providing funds together with other available funds to, among other things, (i) currently refund and pay all of the outstanding Series 2013 Bonds in the principal amount of \$7,080,000, (ii) finance the costs of certain Facility improvements, and (iii) pay certain costs of issuance; and

 WHEREAS, pursuant to **Section 302** of the 1999 Indenture and **Section 3.01** of the Fifth Supplemental Indenture, the City deems it necessary and advisable to call (i) the Series 2013 Bonds, either maturing or subject to mandatory redemption and payment on December 1, 2017, and thereafter, for redemption and payment on or about June 30, 2017; and

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WHEREAS, pursuant to public notice published in <u>The Topeka Metro News</u> on May 29, 2017, a public hearing was held by the Governing Body on June 13, 2017, in accordance with the requirements of law, to consider the issuance by the City of the Series 2017 Bonds; and

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WHEREAS, the Governing Body has heretofore and does hereby find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the City and the State of Kansas that the Issuer issue five separate series of bonds consisting of its (1) Housing and Health Care Improvement and Refunding Revenue Bonds, Series 2017A1, (Brewster Place Project) (the "Series 2017A1 Bonds"); (2) Housing and Health Care Improvement and Refunding Revenue Bonds, Series 2017A2, (Brewster Place Project) (the "Series 2017A2 Bonds"); (3) Housing and Health Care Improvement and Refunding Revenue Bonds, Series 2017B1 (Brewster Place Project) (the "Series 2017B1 Bonds"); (4) Housing and Health Care Improvement and Refunding Revenue Bonds, Series 2017B2 (Brewster Place Project) (the "Series 2017B2 Bonds"); and (5) Housing and Health Care Improvement and Refunding Revenue Bonds, Series 2017C, (Brewster Place Project) (the "Series 2017C Bonds") (the Series 2017A1 Bonds, the Series 2017A2 Bonds, the Series 2017B1 Bonds, the Series 2017B2 Bonds, and the Series 2017C Bonds are collectively referred to as the "Series 2017 Bonds") all to be dated the date of issuance, and in the combined aggregate principal amount not exceeding \$33,000,000; for the purpose of providing funds to (i) finance the project costs (the "Project Costs") of the Series 2017 Project to be leased by the Issuer to the Tenant, as hereinafter provided, (ii) currently refund all of the outstanding Series 2013 Bonds and (iii) pay certain costs of issuing the Series 2017 Bonds; and

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WHEREAS, the Series 2017 Bonds shall be payable solely and only from certain fees, rentals, revenues and other amounts derived by the City under the 1999 Lease as amended and supplemented by the First Supplemental Lease Agreement dated as of November 1, 2000, the Second Supplemental Lease Agreement dated as of August 15, 2002, the Third Supplemental Lease Agreement dated as of May 15, 2004, the Fourth Supplemental Lease Agreement dated as of July 1, 2010, the Fifth Supplemental Lease dated as of March 1, 2013, the Sixth Supplemental Lease dated as of July 1, 2015, and the Seventh Supplemental Lease Agreement dated as of June 1, 2017, (the "Seventh Supplemental Lease," together with the 1999 Lease, the First Supplemental Lease, the Second Supplemental Lease, the Third Supplemental Lease, the Fourth Supplemental Lease, the Fifth Supplemental Lease, and the Sixth Supplemental Lease, the "Lease") and in the 1999 Indenture as amended and supplemented by the First Supplemental Indenture dated as of November 1, 2000, the Second Supplemental Indenture dated as of August 15, 2002, the Third Supplemental Indenture dated as of May 15, 2004, the Fourth Supplemental Indenture dated as of July 1, 2010, the Fifth Supplemental Indenture dated as of March 1, 2013, the Sixth Supplemental Indenture dated as of July 1, 2015, and the Seventh Supplemental Indenture dated as of June 1, 2017, (the "Seventh Supplemental Indenture," together with the 1999 Indenture, the First Supplemental Indenture, the Second Supplemental Indenture, the Third Supplemental Indenture, the Fourth Supplemental Indenture, the Fifth Supplemental Indenture,

and the Sixth Supplemental Indenture, the "Indenture") hereinafter authorized, and, under certain circumstances, from the proceeds of insurance and condemnation awards; and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with the issuance of the Series 2017 Bonds to execute and deliver the Seventh Supplemental Indenture with CoreFirst Bank & Trust, Topeka, Kansas, as Trustee, for the purpose of issuing and securing the Series 2017 Bonds as provided therein; to enter into the Seventh Supplemental Lease, between the City, as Landlord, and the Tenant for the purpose of leasing the Facility to the Tenant in consideration for payments of Basic Rent, Additional Rent and other charges provided for therein to provide for the payment of the Series 2017 Bonds; and to execute such other documents and agreements in connection with the issuance of the Series 2017 Bonds as hereinafter provided;

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

Section 1. Authorization of the Series 2017 Bonds. In order to obtain funds to be used for the purposes aforesaid, the Issuer is hereby authorized to issue the (1) Series 2017A1 Bonds, (2) the Series 2017A2 Bonds, (3) Series 2017B1 Bonds, (4) the Series 2017B2 Bonds, and (5) the Series 2017C Bonds, in the combined aggregate principal amount not exceeding \$33,000,000, which shall be issued under and secured by and shall have the terms and provisions set forth in the Indenture, and the signatures of the officers of the Issuer executing such Indenture and the hereinafter referred to Bond Purchase Agreements shall constitute conclusive evidence of their approval and the Issuer's approval thereof. The Series 2017 Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its City Clerk and shall have the corporate seal of the Issuer affixed thereto or imprinted thereon.

Section 2. Limited Obligations. The Series 2017 Bonds shall be special limited obligations of the Issuer payable solely from the sources and in the manner as provided in the Indenture, and shall be secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate (as defined in the Indenture) to the Trustee (as herein defined) and in favor of the registered owners of the Series 2017 Bonds, as provided in the Indenture. The Series 2017 Bonds and interest thereon shall not in any respect be a general obligation of the Issuer and shall not be payable in any manner from taxation and shall not constitute a pledge of the full faith and credit of the Issuer, but shall be payable solely from the funds provided for in the Lease and the Indenture. The issuance of the Series 2017 Bonds shall not, directly, indirectly or contingently, obligate the Issuer to levy any form of taxation therefor or to make any appropriation for their payment. The Issuer shall not in any event be liable for the payment of the principal of, redemption premium, if any, or interest on the Series 2017 Bonds or for the performance of any pledge, obligation or agreement of any kind whatsoever which may be undertaken by the Issuer. No breach by the Issuer of any such pledge, obligation or agreement may impose any liability, pecuniary or otherwise, upon the Issuer or any charge upon its general credit or against its taxing power.

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

(a) Seventh Supplemental Indenture between the Issuer and CoreFirst Bank & Trust, Topeka, Kansas, (the "Trustee"), providing for the issuance thereunder of the Series 2017 Bonds and setting forth the terms and provisions applicable to the Series 2017 Bonds, including a pledge and assignment by the Issuer of the Trust Estate to the Trustee for the benefit and security of the registered owners of the Series 2017 Bonds upon the terms and conditions as set forth in the Indenture.

(b) Seventh Supplemental Lease between the Tenant and the Issuer under which the Issuer will lease the Facility to the Tenant in consideration of payments which will be sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2017 Bonds upon the terms and conditions as set forth in the Lease.

(c) Private Placement Bond Purchase Agreements (the "Purchase Agreements"), among the Issuer, the Tenant and UMB Bank, N.A., Kansas City, Missouri, and First Midwest Bank, Buffalo Grove, Illinois (the "Purchasers"), regarding the sale of the Series 2017 Bonds.

Section 4. Execution of Bonds and Documents. The Mayor or Deputy Mayor of the Issuer is hereby authorized and directed to execute the Series 2017 Bonds by manual or facsimile signature and to deliver the Series 2017 Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor or Deputy Mayor of the Issuer is hereby authorized and directed to execute and deliver the Issuer Documents for and on behalf of and as the act and deed of the Issuer. The Clerk or Deputy Clerk of the Issuer is hereby authorized and directed to attest to the Series 2017 Bonds by manual or facsimile signature, to such of the Issuer Documents, and to such other documents, certificates and instruments, as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

<u>Section 5</u>. Further Authority. The Issuer shall, and the officers, agents and employees of the Issuer are hereby authorized and directed to, take such further action, and execute such other documents, certificates and instruments, including, without limitation, any security documents, arbitrage certificate, closing certificates and tax forms, as may be necessary or desirable to carry out and comply with the intent of this Ordinance, and to carry out, comply with and perform the duties of the Issuer with respect to the Series 2017 Bonds and the Issuer Documents.

<u>Section 6</u>. <u>Repeal of Conflicting Ordinances</u>. All prior ordinances of the Issuer or any parts thereof in conflict with any or all of the foregoing ordinances are hereby repealed to the extent of such conflict.

<u>Section 7</u>. <u>Severability</u>. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of

l	such section, paragraph, clause or provision shall not affect any remaining provisions of this
2	Ordinance.
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1	Section 8. Effective Date. This Ordinance shall take effect and be in full force
5	immediately after its adoption by the Issuer and publication once in the official newspaper of the
5	City.
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PASSED and approved by the Governing Body this 13th day of June, 2017.		
	CITY OF TOPEKA, KANSAS	
ATTEST:		
	Larry E. Wolgast, Mayor	
Brenda Younger, City Clerk		
(SEAL)		
I, BRENDA YOUNGER, City Clerk of the Ci	ity of Topeka, Shawnee County, Kansas, do	
hereby certify that the above and foregoing is a true	e and correct copy of Ordinance No. 20069	
adopted and approved by the Governing Body on Jun-	e 13, 2017.	
	Brenda Younger, City Clerk	