

ORDINANCE NO. 20100

**AN ORDINANCE INTRODUCED BY CITY MANAGER BRENT TROUT
AUTHORIZING THE CITY OF TOPEKA, KANSAS, TO EXECUTE AN
EIGHTH SUPPLEMENTAL INDENTURE BY AND BETWEEN THE
CITY AND COREFIRST BANK & TRUST, TOPEKA, KANSAS, AS
TRUSTEE; AUTHORIZING THE EXECUTION OF AN EIGHTH
SUPPLEMENTAL LEASE BY AND BETWEEN THE CITY AND THE
CONGREGATIONAL HOME, A KANSAS NOT-FOR-PROFIT
CORPORATION; AND AUTHORIZING AND APPROVING CERTAIN
AMENDMENTS IN CONNECTION WITH THE ACKNOWLEDGEMENT
OF PARITY SWAP OBLIGATIONS.**

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 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

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2 **WHEREAS**, any bonds issued in addition to the Series 1999 Bonds shall, subject to the
3 terms and conditions of **Section 203** of the 1999 Indenture, qualify to be on a parity with the
4 Series 1999 Bonds and any Additional Bonds outstanding at any time and from time to time; and
5

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

21 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted August
22 13, 2002, and published as required by law, its Ordinance No. 17872 (the "2002 Ordinance")
23 which authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and
24 Health Care Revenue Bonds, Series 2002, (Brewster Place Project) in the aggregate principal
25 amount of \$2,225,000 (the "Series 2002 Bonds") to finance among other things the cost of
26 acquiring certain land and rehabilitating, remodeling, constructing, furnishing and equipping
27 certain assisted living and health care facilities thereon (the "2002 Facility") and lease the same
28 to the Tenant pursuant to a Second Supplemental Lease Agreement dated as of August 15, 2002
29 (the "Second Supplemental Lease"); and
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31 **WHEREAS**, pursuant to both the Act and the 2002 Ordinance, the City as the Issuer of
32 the Series 2002 Bonds entered into a Second Supplemental Indenture dated as of August 15,
33 2002, (the "Second Supplemental Indenture") by and between the Issuer and the Trustee relating
34 to the issuance by the Issuer of the Series 2002 Bonds; and
35

36 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted May 11,
37 2004, and published as required by law, its Ordinance No. 18231 (the "2004 Ordinance") which
38 authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and Health
39 Care Refunding and Improvement Revenue Bonds, Series 2004, (Brewster Place Project) in the
40 aggregate principal amount of \$12,000,000 (the "Series 2004 Bonds") to finance among other
41 things (i) the cost of acquiring certain land and rehabilitating, remodeling, constructing,
42 furnishing and equipping certain assisted living and health care facilities thereon (the "2004
43 Facility") and lease the same to the Tenant pursuant to a Third Supplemental Lease Agreement
44 dated as of May 15, 2004 (the "Third Supplemental Lease"), (ii) currently refund all of the
45 outstanding Series 1999A Bonds and (iii) advance refund all of the outstanding Series 2000
46 Bonds; and

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2 **WHEREAS**, pursuant to both the Act and the 2004 Ordinance, the City as the Issuer of
3 the Series 2004 Bonds entered into a Third Supplemental Indenture dated as of May 15, 2004,
4 (the "Third Supplemental Indenture") by and between the Issuer and the Trustee relating to the
5 issuance by the Issuer of the Series 2004 Bonds; and
6

7 **WHEREAS**, none of the Series 1999 Bonds or the Series 2000 Bonds remain
8 outstanding; and
9

10 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted July 20,
11 2010, and published as required by law, its Ordinance No. 19446 (the "2010 Ordinance") which
12 authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and Health
13 Care Improvement Revenue Bonds, Series 2010, (Brewster Place Project) in the principal
14 amount of \$9,765,000 (the "Series 2010 Bonds") to finance, among other things, the costs of (i)
15 certain improvements to the Facility, (ii) currently refund and pay all of the outstanding Series
16 2002 Bonds in the principal amount of \$1,740,000, (iii) refinance a portion of a commercial bank
17 loan incurred to acquire land for future expansion of the Brewster Place campus, including all or
18 part of the Series 2010 Site, as defined in the Fourth Supplemental Indenture (as defined in the
19 recital to this ordinance which recital immediately follows this recital), (iv) fund a deposit to the
20 Series 2010 Debt Service Reserve Account, and (v) pay certain costs of issuing the Series 2010
21 Bonds, and lease the 2010 Facility to the Tenant pursuant to a Fourth Supplemental Lease
22 Agreement dated as of July 1, 2010 (the "Fourth Supplemental Lease"); and
23

24 **WHEREAS**, pursuant to both the Act and the 2010 Ordinance, the City as the Issuer of
25 the Series 2010 Bonds entered into a Fourth Supplemental Indenture dated as of July 1, 2010,
26 (the "Fourth Supplemental Indenture") by and between the Issuer and the Trustee relating to the
27 issuance by the Issuer of the Series 2010 Bonds; and
28

29 **WHEREAS**, none of the Series 2002 Bonds remain outstanding; and
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31 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted February
32 19, 2013, and published as required by law, its Ordinance No. 19795 (the "2013 Ordinance")
33 which authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and
34 Health Care Improvement Revenue Bonds, Series 2013, (Brewster Place Project) in the principal
35 amount of \$10,000,000 (the "Series 2013 Bonds") to finance, among other things, the costs of (i)
36 certain improvements to the Facility, (ii) currently refund and pay all of the outstanding Series
37 2004 Bonds in the principal amount of \$8,500,000, and (iii) pay certain costs of issuing the
38 Series 2013 Bonds, and lease the 2013 Facility to the Tenant pursuant to a Fifth Supplemental
39 Lease Agreement dated as of March 1, 2013 (the "Fifth Supplemental Lease"); and
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41 **WHEREAS**, pursuant to both the Act and the 2013 Ordinance, the City as the Issuer of
42 the Series 2013 Bonds entered into a Fifth Supplemental Indenture dated as of March 1, 2013,
43 (the "Fifth Supplemental Indenture") by and between the Issuer and the Trustee relating to the
44 issuance by the Issuer of the Series 2013 Bonds; and
45

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

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2 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted July 21,
3 2015, and published as required by law, its Ordinance No. 19959 (the “2015 Ordinance”) which
4 authorized the City to, among other things, issue its City of Topeka, Kansas, Housing and Health
5 Care Improvement Refunding Revenue Bonds, Series 2015, (Brewster Place Project) in the
6 principal amount of \$8,190,000 (the “Series 2015 Bonds”) to (i) currently refund and pay all of
7 the outstanding Series 2010 Bonds in the principal amount of \$8,550,000, and (ii) pay certain
8 costs of issuing the Series 2015 Bonds, and lease the 2015 Facility to the Tenant pursuant to a
9 Sixth Supplemental Lease Agreement dated as of July 1, 2015 (the “Sixth Supplemental Lease”);
10 and

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

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

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19 **WHEREAS**, pursuant to the Act, the governing body of the City duly adopted June 13,
20 2017 and published as required by law, its Ordinance No. 20069 (the “2017 Bond Ordinance”)
21 which authorized the City to, among other things, issue its (1) Housing and Health Care
22 Improvement and Refunding Revenue Bonds, Series 2017A1, (Brewster Place Project) (the
23 “Series 2017A1 Bonds”); (2) Housing and Health Care Improvement and Refunding Revenue
24 Bonds, Series 2017A2, (Brewster Place Project) (the “Series 2017A2 Bonds”); (3) Housing and
25 Health Care Improvement and Refunding Revenue Bonds, Series 2017B1 (Brewster Place
26 Project) (the “Series 2017B1 Bonds”); (4) Housing and Health Care Improvement and Refunding
27 Revenue Bonds, Series 2017B2 (Brewster Place Project) (the “Series 2017B2 Bonds”); and (5)
28 Housing and Health Care Improvement and Refunding Revenue Bonds, Series 2017C, (Brewster
29 Place Project) (the “Series 2017C Bonds”) (the Series 2017A1 Bonds, the Series 2017A2 Bonds,
30 the Series 2017B1 Bonds, the Series 2017B2 Bonds, and the Series 2017C Bonds are collectively
31 referred to as the “Series 2017 Bonds”) to (i) finance the project costs of the Series 2017 Project
32 to be leased by the Issuer to the Tenant, (ii) currently refund all of the outstanding Series 2013
33 Bonds and (iii) pay certain costs of issuing the Series 2017 Bonds, and lease the 2017 Facility to
34 the Tenant pursuant to a Seventh Supplemental Lease Agreement dated as of June 1, 2017 (the
35 “Seventh Supplemental Lease”); and

36
37 **WHEREAS**, none of the Series 2013 Bonds remain outstanding; and

38
39 **WHEREAS**, the Seventh Supplemental Lease required that the Tenant enter into an
40 interest rate swap transaction (the “2017 Swap Transaction”) secured on a parity basis with all
41 outstanding Bonds in order to mitigate interest rate risk in connection with the Series 2017
42 Bonds; and

43
44 **WHEREAS**, the City therefore finds and determines that it is necessary and desirable to
45 execute and deliver both the Eighth Supplemental Indenture with CoreFirst Bank & Trust,
46 Topeka, Kansas, as Trustee, and the Eighth Supplemental Lease, between the City, as Landlord,

1 and the Tenant for the purposes as more fully described therein to assist the Tenant acknowledge
2 the parity security interest granted to secure the 2017 Swap Transactions and make certain other
3 amendments relating to the 2017 Swap Transaction and Series 2017 Bonds; and to execute such
4 other documents and agreements in connection with the 2017 Swap Transaction as hereinafter
5 provided;

6
7 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
8 **TOPEKA, SHAWNEE COUNTY, KANSAS, AS FOLLOWS:**
9

10 **Section 1. Authorization and Approval of Documents.** The following documents (the
11 "Issuer Documents") are hereby approved in substantially the forms presented to the Governing
12 Body at this meeting with such changes therein as shall be approved by the officer of the Issuer
13 executing such documents, such officer's signature thereon being conclusive evidence of such
14 officer's approval and the Issuer's approval thereof:
15

16 (a) Eighth Supplemental Indenture dated as of December 1, 2017, by and between the
17 Issuer and CoreFirst Bank & Trust, Topeka, Kansas, (the "Trustee") (the "Eighth Supplemental
18 Indenture"); and
19

20 (b) Eighth Supplemental Lease dated as of December 1, 2017, by and between the
21 Tenant and the Issuer (the "Eighth Supplemental Lease").
22

23 **Section 2. Execution of Documents.** The Mayor or Deputy Mayor of the Issuer is
24 hereby authorized and directed to execute and deliver the Issuer Documents including, but not
25 limited to, the Eighth Supplemental Indenture and the Eighth Supplemental Lease, for and on
26 behalf of and as the act and deed of the Issuer. The Clerk or Deputy Clerk of the Issuer is hereby
27 authorized and directed to attest Mayor's or Deputy Mayor's signatures to the Issuer Documents,
28 and to such other documents, certificates and instruments, as may be necessary or desirable to
29 carry out and comply with the intent of this Ordinance.
30

31 **Section 3. Approval of Parity Swap Indebtedness.** The grant by the Tenant of the parity
32 security interest in its Unrestricted Receivables to secure to the 2017 Swap Transaction, as set
33 forth in the Issuer Documents and other related documents, is hereby approved.
34

35 **Section 4. Further Authority.** The Issuer shall, and the officers, agents and employees of
36 the Issuer are hereby authorized and directed to, take such further action, and execute such other
37 documents, certificates and instruments, including, without limitation, any security documents,
38 arbitrage certificate, closing certificates and tax forms, as may be necessary or desirable to carry
39 out and comply with the intent of this Ordinance, and to carry out, comply with and perform the
40 duties of the Issuer with respect to the 2017 Swap Transaction, Series 2017 Bonds and the Issuer
41 Documents.
42

43 **Section 5. Repeal of Conflicting Ordinances.** All prior ordinances of the Issuer or any
44 parts thereof in conflict with any or all of the foregoing ordinances are hereby repealed to the
45 extent of such conflict.
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Section 6. Severability. 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 such section, paragraph, clause or provision shall not affect any remaining provisions of this Ordinance.

Section 7. Effective Date. This Ordinance shall take effect and be in full force immediately after its adoption by the Issuer and publication once in the official newspaper of the City.

PASSED and approved by the Governing Body this 12th day of December, 2017.

CITY OF TOPEKA, KANSAS

ATTEST:

Larry E. Wolgast, Mayor

Brenda Younger, City Clerk

(SEAL)

I, BRENDA YOUNGER, City Clerk of the City of Topeka, Shawnee County, Kansas, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 20100 adopted and approved by the Governing Body on December 12, 2017.

Brenda Younger, City Clerk