

**ORDINANCE NO. 19446**

**AN ORDINANCE INTRODUCED BY CITY MANAGER NORTON N. BONAPARTE, JR. AUTHORIZING THE CITY OF TOPEKA, KANSAS, TO ISSUE ITS HOUSING AND HEALTH CARE IMPROVEMENT REVENUE BONDS, SERIES 2010, (BREWSTER PLACE PROJECT) IN THE PRINCIPAL AMOUNT NOT EXCEEDING \$11,000,000 FOR THE PURPOSE OF FINANCING THE COSTS OF CONSTRUCTING, EQUIPPING AND IMPROVING CERTAIN RESIDENTIAL AND HEALTH CARE FACILITIES LOCATED ON THE BREWSTER PLACE CAMPUS IN THE CITY; CURRENTLY REFUNDING AN OUTSTANDING REVENUE BOND ISSUE OF THE CITY; AUTHORIZING THE EXECUTION OF A FOURTH SUPPLEMENTAL INDENTURE BY AND BETWEEN THE CITY AND COREFIRST BANK & TRUST, TOPEKA, KANSAS, AS TRUSTEE; AUTHORIZING THE EXECUTION OF A FOURTH 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 12-1749a, inclusive, as amended, (the "Act") to both refund its outstanding revenue bonds and to acquire, construct 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

**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 CoreFirst Bank & Trust, Topeka, Kansas, formerly

1 known as Commerce 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**, as of July 1, 2010, the Series 2002 Bonds remain outstanding in the  
44 principal amount of \$1,740,000 bearing interest payable semiannually on February 1 and August  
45 1 each year and maturing on August 1, as follows:  
46

1 SERIAL BONDS

2

3 MATURITY	4 PRINCIPAL	5 INTEREST
6 <u>(AUGUST 1)</u>	7 <u>AMOUNT</u>	8 <u>RATE</u>
9 2010	10 \$ 95,000	11 5.10%
12 2011	13 100,000	14 5.20
15 2012	16 105,000	17 5.25
18 2013	19 110,000	20 5.30

21 TERM BOND

22

23 MATURITY	24 PRINCIPAL	25 INTEREST
26 <u>(AUGUST 1)</u>	27 <u>AMOUNT</u>	28 <u>RATE</u>
29 2017	30 \$505,000	31 5.75%
32 2022	33 \$825,000	34 6.00%

35 **WHEREAS**, pursuant to **Section 3.01** of the Second Supplemental Indenture, the Series 2002 Bonds maturing on August 1, 2006, and thereafter are subject to redemption and payment at the option of the City, upon written instructions from the Tenant, on and after August 1, 2005, in whole at any time or in part on any Interest Payment Date at a redemption price equal to 100% of the principal amount thereof, plus accrued interest thereon to the redemption date.

36 **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

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

38 **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

39 **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 Series 2010

1 Bonds (as set out in both **Section 203(d)** of the 1999 Indenture and **Section 6.1** of the 1999  
2 Lease) have been met; and

3  
4 **WHEREAS**, in order to achieve certain financial benefits currently available, the Tenant  
5 has requested that the City issue housing and health care improvement revenue bonds in the  
6 maximum principal amount of \$11,000,000 for purpose of providing funds together with other  
7 funds of the Tenant to, among other things, currently refund and pay all of the outstanding Series  
8 2002 Bonds in the principal amount of \$1,740,000; and

9  
10 **WHEREAS**, pursuant to **Section 302** of the 1999 Indenture and **Section 3.01** of the  
11 Third Supplemental Indenture, the City deems it necessary and advisable to call (i) the Series  
12 2002 Bonds, maturing on August 1, 2010, and thereafter, for redemption and payment on July  
13 28, 2010; and

14  
15 **WHEREAS**, pursuant to public notice published in The Metro News on June 28, 2010, a  
16 public hearing was held by the Governing Body on July 20, 2010, in accordance with the  
17 requirements of law, to consider the issuance by the City of the Series 2010 Bonds; and

18  
19 **WHEREAS**, the Governing Body has heretofore and does hereby find and determine  
20 that it is desirable in order to promote, stimulate and develop the general economic welfare and  
21 prosperity of the City and the State of Kansas that the Issuer issue its Housing and Health Care  
22 Improvement Revenue Bonds, Series 2010, (Brewster Place Project) to be dated the date of  
23 issuance, in the principal amount not exceeding \$11,000,000 (the "Series 2010 Bonds") for the  
24 purpose of providing funds to (i) finance the project costs (the "Project Costs") of the Series  
25 2010 Project to be leased by the Issuer to the Tenant, as hereinafter provided, (ii) currently  
26 refund all of the outstanding Series 2002 Bonds, (iii) fund a deposit to the Series 2010 Debt  
27 Service Reserve Account, and (iv) pay part of the cost of issuing the Series 2010 Bonds; and

28  
29 **WHEREAS**, the Series 2010 Bonds shall be payable solely and only from certain fees,  
30 rentals, revenues and other amounts derived by the City under the 1999 Lease as amended and  
31 supplemented by the First Supplemental Lease Agreement dated as of November 1, 2000, the  
32 Second Supplemental Lease Agreement dated as of August 15, 2002, the Third Supplemental  
33 Lease Agreement dated as of May 15, 2004, and the Fourth Supplemental Lease Agreement  
34 dated as of July 1, 2010, (the "Fourth Supplemental Lease," together with the 1999 Lease, the  
35 First Supplemental Lease, the Second Supplemental Lease, and the Third Supplemental Lease  
36 the "Lease") and in the 1999 Indenture as amended and supplemented by the First Supplemental  
37 Indenture dated as of November 1, 2000, the Second Supplemental Indenture dated as of August  
38 15, 2002, the Third Supplemental Indenture dated as of May 15, 2004, and the Fourth  
39 Supplemental Indenture dated as of July 1, 2010, (the "Fourth Supplemental Indenture," together  
40 with the 1999 Indenture, the First Supplemental Indenture, the Second Supplemental Indenture,  
41 and the Third Supplemental Indenture, the "Indenture") hereinafter authorized, and, under certain  
42 circumstances, from the proceeds of insurance and condemnation awards; and

43  
44 **WHEREAS**, the City further finds and determines that it is necessary and desirable in  
45 connection with the issuance of the Series 2010 Bonds to execute and deliver the Fourth  
46 Supplemental Indenture with CoreFirst Bank & Trust, Topeka, Kansas, as Trustee, for the

1 purpose of issuing and securing the Series 2010 Bonds as provided therein; to enter into the  
2 Fourth Supplemental Lease, between the City, as Landlord, and the Tenant for the purpose of  
3 leasing the Project to the Tenant in consideration for payments of Basic Rent, Additional Rent  
4 and other charges provided for therein to provide for the payment of the Series 2010 Bonds; and  
5 to execute such other documents and agreements in connection with the issuance of the Series  
6 2010 Bonds as hereinafter provided;

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

10  
11 **Section 1. Authorization of the Series 2010 Bonds.** In order to obtain funds to be used  
12 for the purposes aforesaid, the Issuer is hereby authorized to issue the Series 2010 Bonds in the  
13 principal amount not exceeding \$11,000,000 which shall be issued under and secured by and  
14 shall have the terms and provisions set forth in the Indenture, and the signatures of the officers of  
15 the Issuer executing such Indenture and the hereinafter referred to Bond Purchase Agreement  
16 shall constitute conclusive evidence of their approval and the Issuer's approval thereof. The  
17 Series 2010 Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature  
18 of the Mayor and attested by the manual or facsimile signature of its City Clerk and shall have  
19 the corporate seal of the Issuer affixed thereto or imprinted thereon.

20  
21 **Section 2. Limited Obligations.** The Series 2010 Bonds shall be special limited  
22 obligations of the Issuer payable solely from the sources and in the manner as provided in the  
23 Indenture, and shall be secured by a transfer, pledge and assignment of and a grant of a security  
24 interest in the Trust Estate (as defined in the Indenture) to the Trustee (as herein defined) and in  
25 favor of the registered owners of the Series 2010 Bonds, as provided in the Indenture. The  
26 Series 2010 Bonds and interest thereon shall not in any respect be a general obligation of the  
27 Issuer and shall not be payable in any manner from taxation and shall not constitute a pledge of  
28 the full faith and credit of the Issuer, but shall be payable solely from the funds provided for in  
29 the Lease and the Indenture. The issuance of the Series 2010 Bonds shall not, directly, indirectly  
30 or contingently, obligate the Issuer to levy any form of taxation therefor or to make any  
31 appropriation for their payment. The Issuer shall not in any event be liable for the payment of  
32 the principal of, redemption premium, if any, or interest on the Series 2010 Bonds or for the  
33 performance of any pledge, obligation or agreement of any kind whatsoever which may be  
34 undertaken by the Issuer. No breach by the Issuer of any such pledge, obligation or agreement  
35 may impose any liability, pecuniary or otherwise, upon the Issuer or any charge upon its general  
36 credit or against its taxing power.

37  
38 **Section 3. Authorization and Approval of Documents.** The following documents (the  
39 "Issuer Documents") are hereby approved in substantially the forms presented to the Governing  
40 Body at this meeting with such changes therein as shall be approved by the officer of the Issuer  
41 executing such documents, such officer's signature thereon being conclusive evidence of such  
42 officer's approval and the Issuer's approval thereof:

43  
44 (a) Fourth Supplemental Indenture between the Issuer and CoreFirst Bank & Trust,  
45 Topeka, Kansas, (the "Trustee"), providing for the issuance thereunder of the Series 2010 Bonds  
46 and setting forth the terms and provisions applicable to the Series 2010 Bonds, including a

1 pledge and assignment by the Issuer of the Trust Estate to the Trustee for the benefit and security  
2 of the registered owners of the Series 2010 Bonds upon the terms and conditions as set forth in  
3 the Indenture.

4  
5 (b) Fourth Supplemental Lease between the Tenant and the Issuer under which the  
6 Issuer will lease the Facility to the Tenant in consideration of payments which will be sufficient  
7 to pay the principal of, redemption premium, if any, and interest on the Series 2010 Bonds upon  
8 the terms and conditions as set forth in the Lease.

9  
10 (c) Bond Purchase Agreement (the "Purchase Agreement"), among the Issuer, the  
11 Tenant and Ziegler Capital Markets, a division of B. C. Ziegler and Company, Chicago, Illinois,  
12 (the "Underwriter"), regarding the sale of the Series 2010 Bonds.

13  
14 **Section 4. Execution of Bonds and Documents.** The Mayor of the Issuer is hereby  
15 authorized and directed to execute the Series 2010 Bonds by manual or facsimile signature and  
16 to deliver the Series 2010 Bonds to the Trustee for authentication for and on behalf of and as the  
17 act and deed of the Issuer in the manner provided in the Indenture. The Mayor of the Issuer is  
18 hereby authorized and directed to execute and deliver the Issuer Documents for and on behalf of  
19 and as the act and deed of the Issuer. The Clerk or Deputy Clerk of the Issuer is hereby  
20 authorized and directed to attest to the Series 2010 Bonds by manual or facsimile signature, to  
21 such of the Issuer Documents, and to such other documents, certificates and instruments, as may  
22 be necessary or desirable to carry out and comply with the intent of this Ordinance.

23  
24 **Section 5. Preliminary Official Statement.** The Preliminary Official Statement  
25 respecting the Series 2010 Bonds, in substantially the form presented to the Governing Body of  
26 the Issuer at this meeting with such changes and additions thereto as are necessary to conform to  
27 and describe the transaction, is hereby authorized and approved. The Mayor of the Issuer is  
28 hereby authorized and directed to deem the information in the Preliminary Official Statement  
29 respecting the Issuer to be final as of its date for purposes of Rule 15c2-12 promulgated by the  
30 Securities and Exchange Commission. The usage by the Underwriters of the Preliminary  
31 Official Statement in connection with the sale of the Series 2010 Bonds is hereby authorized and  
32 approved. The final Official Statement respecting the Series 2010 Bonds, in substantially the  
33 form of the Preliminary Official Statement with such changes therein or amendments or  
34 supplements thereto as shall be approved by the representative of the Issuer executing said final  
35 Official Statement, said representative's execution thereof on behalf of the Issuer to be  
36 conclusive evidence of said representative's approval thereof, and the public distribution of the  
37 same by the Underwriter are hereby approved. The Issuer has not participated in the preparation  
38 of the Preliminary Official Statement or the final Official Statement and has not verified the  
39 accuracy of the information therein, other than as to the information respecting the Issuer.  
40 Accordingly, such approval does not constitute approval by the Issuer of such information or a  
41 representation by the Issuer as to the completeness or accuracy of the information contained  
42 therein.

43  
44 **Section 6. Further Authority.** The Issuer shall, and the officers, agents and employees of  
45 the Issuer are hereby authorized and directed to, take such further action, and execute such other  
46 documents, certificates and instruments, including, without limitation, any security documents,

1 arbitrage certificate, closing certificates and tax forms, as may be necessary or desirable to carry  
2 out and comply with the intent of this Ordinance, and to carry out, comply with and perform the  
3 duties of the Issuer with respect to the Series 2010 Bonds and the Issuer Documents.  
4

5 **Section 7. Repeal of Conflicting Ordinances.** All prior ordinances of the Issuer or any  
6 parts thereof in conflict with any or all of the foregoing ordinances are hereby repealed to the  
7 extent of such conflict.  
8

9 **Section 8. Severability.** If any section, paragraph, clause or provision of this Ordinance  
10 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of  
11 such section, paragraph, clause or provision shall not affect any remaining provisions of this  
12 Ordinance.  
13

14 **Section 9. Effective Date.** This Ordinance shall take effect and be in full force  
15 immediately after its adoption by the Issuer and publication once in the official newspaper of the  
16 City.  
17

18 (REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK)  
19

1 **PASSED** and approved by the Governing Body this 20th day of July, 2010.

2  
3 CITY OF TOPEKA, KANSAS

4 ATTEST:

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7 

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William W. Bunten, Mayor

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9 

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Brenda Younger, City Clerk

10  
11 (SEAL)

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14  
15 I, BRENDA YOUNGER, City Clerk of the City of Topeka, Shawnee County, Kansas, do  
16 hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 19446  
17 adopted and approved by the Governing Body on July 20, 2010.

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Brenda Younger, City Clerk  
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