

TRIPLETT, WOOLF & GARRETSON, LLC

ORDINANCE NO. 1582

OF

CITY OF ANDOVER, KANSAS

AUTHORIZING THE ISSUANCE OF

\$2,542,000

CITY OF ANDOVER, KANSAS
TAXABLE HOSPITAL FACILITY REVENUE BONDS
SERIES 2014
(FOUNDERS' REAL ESTATE, LLC)

(Published in *The Butler County Times-Gazette* on November ____, 2014)

ORDINANCE NO. 1582

AN ORDINANCE AUTHORIZING THE CITY OF ANDOVER, KANSAS TO ISSUE ITS TAXABLE HOSPITAL FACILITY REVENUE BONDS, SERIES 2014 (FOUNDERS' REAL ESTATE, LLC) IN THE AGGREGATE PRINCIPAL AMOUNT OF \$2,542,000 FOR THE PURPOSE OF PROVIDING FUNDS TO (1) PURCHASE, ACQUIRE, CONSTRUCT, EQUIP, FURNISH, AND INSTALL ADDITIONS TO AN EXISTING ACUTE CARE HOSPITAL, AND (2) PAY CERTAIN COSTS OF ISSUANCE; AUTHORIZING EXECUTION OF A TRUST INDENTURE BETWEEN THE CITY AND SECURITY BANK OF KANSAS CITY, KANSAS CITY, KANSAS, AS TRUSTEE; AUTHORIZING EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY AND FOUNDERS' REAL ESTATE, LLC; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BETWEEN THE CITY, FOUNDERS' REAL ESTATE, LLC AND KANSAS MEDICAL CENTER, L.L.C., AS PURCHASER OF THE BONDS; AND APPROVING THE FORM OF A GUARANTY AGREEMENT BY FOUNDERS' REAL ESTATE, LLC.

WHEREAS, the City of Andover, Kansas (the "Issuer") is authorized by K.S.A. 12-1740, *et seq.*, as amended (the "Act"), to purchase, acquire, construct, improve, furnish, equip, and install certain facilities (as defined in the Act) for agricultural, commercial, hospital, industrial, natural resources, recreational development, and manufacturing purposes, and to enter into lease and lease-purchase agreements with any person, firm or corporation for said facilities, and to issue revenue bonds for the purpose of paying the cost of any such facilities; and

WHEREAS, the Issuer 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 Issuer and the State of Kansas that the Issuer issue its Taxable Hospital Facility Revenue Bonds, Series 2014 (Founders' Real Estate, LLC) in the aggregate principal amount of \$2,542,000 (the "2014 Bonds"), for the purpose of (i) purchasing, acquiring, constructing, equipping, furnishing, and installing an addition to an existing acute care hospital located at 1124 W. 21st Street, Andover, Kansas (the "Project"), and (ii) paying costs of issuance of the 2014 Bonds; and

WHEREAS, the Project shall be leased by the Issuer to Founders' Real Estate, LLC, a Kansas limited liability company (the "Tenant"), pursuant to a Lease Agreement, dated as of December 1, 2014 (the "Lease"), by and between the Issuer and the Tenant; and

WHEREAS, the 2014 Bonds and the interest thereon shall not constitute an indebtedness of the Issuer within the meaning of any constitutional provision or statutory limitation, shall not constitute nor give rise to a pecuniary liability of the Issuer, nor shall any 2014 Bond or the

interest thereon be a charge against the general credit or taxing powers of the Issuer, but shall be payable solely from certain fees, rentals, revenues and other amounts derived by the Issuer pursuant to the Lease and, under certain circumstances, from the proceeds of the 2014 Bonds and insurance and condemnation awards; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of said 2014 Bonds (i) to execute and deliver a Trust Indenture, dated as of December 1, 2014 (the "Indenture"), by and between the Issuer and Security Bank of Kansas City, as Trustee (the "Trustee"), for the purpose of issuing and securing the 2014 Bonds as provided therein; and (ii) execute and deliver a Lease Agreement, dated as of December 1, 2014 (the "Lease"), by and between the Issuer, as landlord, and the Tenant pursuant to which the Issuer shall cause the Project to be acquired, constructed, equipped, furnished, and leased to the Tenant in consideration of payments of Basic Rent, Additional Rent and other charges provided for therein; and to execute such other documents and agreements in connection with the issuance of the 2014 Bonds as hereinafter provided; and

WHEREAS, pursuant to the terms of the Indenture, the 2014 Bonds shall be equally and ratably secured and on a parity with any Additional Bonds (collectively, the "Bonds").

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANDOVER, KANSAS AS FOLLOWS:

Section 1. Definition of Terms. All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Trust Indenture (as defined above) and the Lease (as defined above) herein authorized.

Section 2. Authority to Cause the Project to be Purchased, Acquired, Constructed, Equipped, Furnished, and Installed. The governing body of the Issuer hereby declares that the Project, if in being, would promote the welfare of the City of Andover, Kansas, and the Issuer is hereby authorized to cause the Project to be purchased, acquired, constructed, equipped, furnished, and installed all in the manner and as more particularly described in the Indenture and in the Lease herein authorized.

Section 3. Authorization and Security for the 2014 Bonds. There are hereby authorized and directed to be issued revenue bonds in an aggregate amount of \$2,542,000, to be designated "City of Andover, Kansas, Taxable Hospital Facility Revenue Bonds, Series 2014 (Founders' Real Estate, LLC)" (the "2014 Bonds") for the purpose of providing funds to pay the cost of (i) purchasing, acquiring, constructing, equipping, furnishing, and installing the Project, and (ii) paying costs of issuance of the 2014 Bonds.

The 2014 Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The 2014 Bonds shall be special limited obligations of the Issuer payable solely from certain of the revenues derived by the Issuer pursuant to the Lease and the Project shall be pledged and assigned to the Trustee as security for the 2014 Bonds, all as

further described in the Indenture. The 2014 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the Issuer within the meaning of any constitutional or statutory provision and shall not be payable in any manner from tax revenues.

Section 4. Authorization of Indenture. The Issuer is hereby authorized to enter into and deliver the Indenture, under which the Issuer shall pledge and assign to the Trustee, for the benefit of the holders of the 2014 Bonds, the Trust Estate created by the Indenture, all upon the terms and conditions set forth in said Indenture.

Section 5. Lease of the Project. The Issuer is hereby authorized to enter into and deliver the Lease under which the Issuer shall cause the Project to be purchased, acquired, constructed, equipped, furnished, and installed and leased to Founders' Real Estate, LLC, a limited liability company (the "Tenant").

Section 6. Authorization of Bond Purchase Agreement. The 2014 Bonds shall be sold and delivered to Kansas Medical Center, L.L.C. (the "Purchaser") subject to satisfaction of all conditions precedent to issuance of the 2014 Bonds and upon the terms and subject to the provisions and conditions of the herein authorized Bond Purchase Agreement, dated as of December 1, 2014 (the "Bond Purchase Agreement"), by and between the Issuer, the Tenant and the Purchaser.

Section 7. Approval of the Form of Guaranty Agreement. The form of Guaranty Agreement, dated as of December 1, 2014 (the "Guaranty Agreement"), pursuant to which the Tenant guarantees to the Trustee, for the benefit of the Owners of the 2014 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the 2014 Bonds, is hereby approved.

Section 8. Execution of 2014 Bonds and Agreements. The Mayor, or President of the Council, is hereby authorized and directed to execute each of the 2014 Bonds and deliver same 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 President of the Council, is hereby further authorized and directed to execute and deliver the Indenture, the Lease, and the Bond Purchase Agreement for and on behalf of and as the act and deed of the Issuer in substantially the form presented today with such minor corrections or amendments thereto as the Mayor shall approve, in consultation with Bond Counsel, which approval shall be evidenced by his execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk is hereby authorized and directed to attest the execution of the 2014 Bonds, the Indenture, the Lease, and the Bond Purchase Agreement, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 9. Pledge of the Project. The Issuer hereby pledges the Project, and its net earnings therefrom, to the payment of the 2014 Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the 2014 Bonds and any Additional Bonds shall be deemed to have been paid within the meaning of the Indenture.

Section 10. Further Authority. The Issuer shall, and the officers, agents and employees of the Issuer are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the 2014 Bonds, the Indenture, the Lease, and the Bond Purchase Agreement, all as necessary to carry out and give effect to the transactions contemplated hereby and thereby.

Section 11. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the Issuer and publication once in the official newspaper of the Issuer.

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PASSED AND APPROVED by the governing body of the City of Andover, Kansas this 25th day of November, 2014.

CITY OF ANDOVER, KANSAS

[seal]

By _____
Ben Lawrence, Mayor

ATTEST:

By _____
Susan C. Renner, City Clerk

EXCERPT OF MINUTES

The City Council of the City of Andover, Kansas, met in regular session, at the usual meeting place in said City on November 25, 2014, at 7:00 p.m., with the Mayor Ben Lawrence presiding, and the following members present: Troy Tabor, Sheri Geisler, Clark Nelson, Caroline Hale and Kris Estes.

and the following members absent: Byron Stout IV

Among other business, there came on for consideration and discussion the following:

AN ORDINANCE AUTHORIZING THE CITY OF ANDOVER, KANSAS TO ISSUE ITS TAXABLE HOSPITAL FACILITY REVENUE BONDS, SERIES 2014 (FOUNDERS' REAL ESTATE, LLC) IN THE AGGREGATE PRINCIPAL AMOUNT OF \$2,542,000 FOR THE PURPOSE OF PROVIDING FUNDS TO (1) PURCHASE, ACQUIRE, CONSTRUCT, EQUIP, FURNISH, AND INSTALL ADDITIONS TO AN EXISTING ACUTE CARE HOSPITAL, AND (2) PAY CERTAIN COSTS OF ISSUANCE; AUTHORIZING EXECUTION OF A TRUST INDENTURE BETWEEN THE CITY AND SECURITY BANK OF KANSAS CITY, KANSAS CITY, KANSAS, AS TRUSTEE; AUTHORIZING EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY AND FOUNDERS' REAL ESTATE, LLC; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BETWEEN THE CITY, FOUNDERS' REAL ESTATE, LLC AND KANSAS MEDICAL CENTER, L.L.C., AS PURCHASER OF THE BONDS; AND APPROVING THE FORM OF A GUARANTY AGREEMENT BY FOUNDERS' REAL ESTATE, LLC.

After discussion, upon motion by Council Member Troy Tabor, seconded by Council Member Caroline Hale, each section of the Ordinance was passed by a majority of the members elect.

A majority of the members having voted in favor of the passage of said Ordinance, it was designated Ordinance No. 1582 to publish the Ordinance one time in the official City newspaper as required by law and provided therein.

CITY CLERK'S
CERTIFICATION OF EXCERPT OF MINUTES

I hereby certify that the foregoing is a true and correct Excerpt of Minutes of the November 25, 2014 meeting of the governing body of the City of Andover, Kansas.

[seal]

Susan C. Renner, City Clerk