

TRIPLETT, WOOLF & GARRETSON, LLC

ORDINANCE NO. 1512

OF THE

CITY OF ANDOVER, KANSAS

AUTHORIZING THE ISSUANCE OF

NOT TO EXCEED \$12,330,000
CITY OF ANDOVER, KANSAS
TAXABLE INDUSTRIAL REFUNDING REVENUE BONDS
SERIES A, 2012
(ANDOVER SENIOR CARE, L.L.C.)

\$420,000
CITY OF ANDOVER, KANSAS
SUBORDINATED TAXABLE INDUSTRIAL REFUNDING REVENUE BONDS
SERIES B, 2012
(ANDOVER SENIOR CARE, L.L.C.)

(Published in *The Augusta Daily Gazette* on June 16, 2012)

ORDINANCE NO. 1512

AN ORDINANCE AUTHORIZING THE CITY OF ANDOVER, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REFUNDING REVENUE BONDS, SERIES a, 2012 (ANDOVER SENIOR CARE, L.L.C.), IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$12,330,000 AND SUBORDINATED TAXABLE INDUSTRIAL REVENUE BONDS, SERIES B, 2012 (ANDOVER SENIOR CARE, L.L.C.) IN THE AGGREGATE PRINCIPAL AMOUNT OF \$420,000 FOR THE PURPOSES OF (1) REFUNDING AND REDEEMING THE OUTSTANDING CITY OF ANDOVER, KANSAS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2008 (ANDOVER SENIOR CARE, L.L.C.), TAXABLE INDUSTRIAL REVENUE BONDS, SERIES A, 2009 (ANDOVER SENIOR CARE, L.L.C.), AND SUBORDINATED TAXABLE INDUSTRIAL REVENUE BONDS, SERIES B, 2008; AND (2) PAYING CERTAIN COSTS OF ISSUANCE; AUTHORIZING THE EXECUTION OF A TRUST INDENTURE BY AND BETWEEN THE CITY AND STILLWATER NATIONAL BANK AND TRUST COMPANY, AS TRUSTEE; AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED MORTGAGE BY THE CITY AND ANDOVER SENIOR CARE, L.L.C. IN FAVOR OF THE TRUSTEE; AUTHORIZING EXECUTION OF A LEASE BETWEEN THE CITY AND ANDOVER SENIOR CARE, L.L.C.; APPROVING THE FORM OF A GUARANTY AGREEMENT; APPROVING THE FORM OF AN INDIVIDUAL GUARANTY AGREEMENT; AUTHORIZING THE EXECUTION OF A BOND PLACEMENT AGREEMENT BY AND BETWEEN THE CITY, ANDOVER SENIOR CARE, L.L.C., CERTAIN INDIVIDUAL GUARANTORS AND STILLWATER NATIONAL BANK AND TRUST COMPANY, AS PURCHASER OF THE BONDS.

WHEREAS, the City of Andover, Kansas (the "Issuer") is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, and K.S.A. 10-116a, all as amended (the "Act"), to issue revenue bonds to pay the cost of certain facilities, as such term is defined in the Act, for the purposes set forth in the Act, and to lease and otherwise dispose of such facilities to any person, firm or corporation, as well as to refund any such revenue bonds theretofore issued; and

WHEREAS, pursuant to the Act, the Issuer has previously issued its (i) Taxable Industrial Revenue Bonds, Series A, 2004 (Andover Senior Care, L.L.C.) issued in the original principal amount of \$4,750,000 (the "Series A, 2004 Bonds") and (ii) Subordinated Taxable Industrial Revenue Bonds, Series B, 2004 (Andover Senior Care, L.L.C.) in the original principal amount of \$750,000 (the "Series B, 2004 Bonds") issued for the purpose of purchasing, acquiring, constructing, furnishing and equipping a senior care facility (the "2004 Project"); and

WHEREAS, pursuant to the Act, the City previously issued its Taxable Industrial

Refunding and Improvement Revenue Bonds, Series 2008 (Andover Senior Care, L.L.C.) issued in the original principal amount of \$6,460,000 (the “2008 Bonds”) for the purpose of (i) acquiring certain land and paying certain preliminary architectural, engineering and related costs (the “Preliminary Costs”) for a new extended-care rehabilitation skilled nursing facility (the “2008 Project”), (ii) refunding and redeeming the 2004 Bonds, (iii) refinancing a certain loan previously provided to the Tenant by Midland National Bank, Newton, Kansas and (iv) paying certain costs of issuance associated with the 2008 Bonds; and

WHEREAS, pursuant to the Act, the City previously issued its Taxable Industrial Revenue Bonds, Series A, 2009 (Andover Senior Care, L.L.C.) (“Series A, 2009 Bonds”) issued in the original principal amount of \$5,450,000 and Subordinated Taxable Industrial Revenue Bonds, Series B, 2009 (Andover Senior Care, L.L.C.) (“Series B, 2009 Bonds”) issued in the original principal amount of \$1,400,000 (collectively, the “2009 Bonds”) for the purpose of purchasing, acquiring, constructing, furnishing and equipping the new extended-care rehabilitation skilled nursing facility initiated by the 2008 Project (the “2009 Project”); and

WHEREAS, the 2004 Project, 2008 Project, and 2009 Project (collectively, the “Project”) are located in the City and currently leased to Andover Senior Care, L.L.C., a Kansas limited liability company (the “Tenant”); 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 Industrial Refunding Revenue Bonds, Series A, 2012 (Andover Senior Care, L.L.C.), to be dated as of their issuance and delivery, in the aggregate principal amount of not to exceed \$12,330,000 and Subordinated Taxable Industrial Refunding Revenue Bonds, Series B, 2012 (Andover Senior Care, L.L.C.) to be dated as of their issuance and delivery, in the aggregate principal amount of \$420,000 (collectively, the “2012 Bonds”) for the purpose of paying the costs of (i) refunding and redeeming prior to their maturity the outstanding 2008 Bonds, Series A, 2009 Bonds, and Series B, 2009 Bonds (collectively, the “Refunded Bonds”) and (ii) paying certain costs of issuance associated with the 2012 Bonds; and

WHEREAS, the 2012 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 by the Issuer, nor shall any 2012 Bond or the interest thereon be a charge against the general credit or taxing powers of the Issuer. The 2012 Bonds are not general obligations of the Issuer and are payable solely and only from certain fees, rentals, revenues and other amounts derived by the Issuer pursuant to the Lease (hereinafter defined) and, under certain circumstances, from the proceeds of the 2012 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, execution and delivery of said 2012 Bonds (i) to execute and deliver a Trust Indenture, dated as of July 1, 2012 (the “Indenture”), by and between the Issuer and Stillwater National Bank and Trust Company, as Trustee (the “Trustee”), for the purpose of issuing and securing the 2012 Bonds, as provided therein; (ii) execute and deliver an Amended and Restated Mortgage and Security Agreement, dated as of July 1, 2012 (the “Mortgage”), by and between the City, the Trustee and the Tenant (hereinafter defined) for the purposes of

pledging the Project to the payment of the 2012 Bonds and (iii) execute and deliver a Lease Agreement, dated as of July 1, 2012 (the "Lease"), by and between the Issuer, as Landlord, and Andover Senior Care, L.L.C., as Tenant (the "Tenant") for the purpose of leasing the Project to the Tenant in consideration for 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 2012 Bonds as hereinafter provided.

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 Indenture and Lease hereinafter authorized and defined.

Section 2. Authority to Refund the Refunded Bonds. The governing body of the Issuer hereby authorizes the current refunding of the Refunded Bonds in accordance with the provisions of the Indenture, all as provided herein and in the Indenture and the Lease hereinafter authorized and hereby ratifies any necessary instructions to the Trustee concerning the issuance of a conditional call notice for the Refunded Bonds prior to the effective date hereof.

Section 3. Authorization of and Security for the 2012 Bonds. There is hereby authorized and directed to be issued certain revenue bonds to be designated "City of Andover, Kansas, Taxable Industrial Refunding Revenue Bonds, Series 2012 (Andover Senior Care, L.L.C.)," in the aggregate principal amount of not to exceed \$12,330,000 and "City of Andover, Kansas, Subordinated Taxable Industrial Refunding Revenue Bonds, Series B, 2012 (Andover Senior Care, L.L.C.)" in the aggregate principal amount of \$420,000 (collectively, the "2012 Bonds") for the purpose of (i) refunding the Refunded Bonds, and (ii) paying certain costs of issuance.

The 2012 Bonds shall be in the principal amounts, 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 2012 Bonds and any Additional Bonds thereafter authorized by the Issuer and the Trustee in their sole and absolute discretion (herein the "Bonds") shall be on a parity with, and equal in priority to, one another and with any Additional Bonds which may be issued on a like parity within the meaning and pursuant to the terms and provision of the Indenture herein defined. The 2012 Bonds shall be special limited obligations of the Issuer payable solely from the revenues derived by the Issuer pursuant to the Lease, or otherwise in connection with the Project. The 2012 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 the Indenture under which the Issuer shall pledge and assign to the Trustee, for the benefit of the holders of the 2012 Bonds, the Trust Estate created thereby, all upon the terms and conditions set forth in the Indenture.

Section 5. Authorization of Mortgage. The Issuer is hereby authorized to enter into the Mortgage, to be signed by the Issuer and the Tenant, in favor of the Trustee, pursuant to which the Issuer and the Tenant shall continue the mortgage of the Project to the Trustee.

Section 6. Lease of Project. The Issuer is hereby authorized to enter into the Lease under which the Issuer shall continue to lease the combined Project to the Tenant, pursuant to and in accordance with the terms and provisions of thereof.

Section 7. Approval of the Form of Guaranty Agreement. The form of Guaranty Agreement, dated as of July 1, 2012 (the "Guaranty Agreement"), pursuant to which the Tenant guarantees to the Trustee, for the benefit of the Owners of the 2012 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the 2012 Bonds, is hereby approved.

Section 8. Approval of the Form of Individual Guaranty Agreement. The form of Individual Guaranty Agreement, dated as of July 1, 2012 (the "Individual Guaranty Agreement"), pursuant to which Dr. Stephen F. Lemons, Dennis L. Bush and Debie K. Bush, as Individual Guarantors (collectively, the "Individual Guarantors"), guarantee to the Trustee, for the benefit of the owners of the 2012 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the 2012 Bonds, is hereby approved.

Section 9. Authorization of Bond Placement Agreement. The 2012 Bonds shall be sold and delivered pursuant to and in accordance with the terms and provisions of the Bond Placement Agreement, dated as of July 1, 2012 (the "Bond Placement Agreement"), by and between the Issuer, the Tenant, the Individual Guarantors and Stillwater National Bank and Trust Company, as the Purchaser of the 2012 Bonds.

Section 10. Execution of Series 2012 Bonds and Related Agreements and Documents. The Mayor of the governing body of the Issuer is hereby authorized and directed to execute the 2012 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 is authorized and directed to execute and deliver the Indenture, the Mortgage, the Lease and the Bond Placement Agreement for and on behalf of and as the act and deed of the Issuer in substantially the forms as they are presented today with such minor corrections or amendments thereto as the Mayor shall approve (after consultation with the Bond Counsel), which approval shall be evidenced by his or her 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 or any Deputy City Clerk of the Issuer are hereby authorized and directed to attest the execution of the 2012 Bonds, the Indenture, the Mortgage, the Lease and the Bond Placement 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 11. Pledge of the Project. The Issuer hereby pledges the Project and the net earnings therefrom to the payment of the Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be in addition to the Mortgage and shall be discharged when all of the Bonds shall be deemed to have been paid within the meaning of the Indenture.

Section 12. Further Authority. The Issuer shall, and the officers, agents and

employees of the Issuer are hereby authorized and directed to, take such action, expend such funds 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 2012 Bonds, the Indenture, the Mortgage, the Lease and the Bond Placement Agreement, all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 13. 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, ADOPTED AND APPROVED by the Governing Body of the City of Andover, Kansas this 12th day of June, 2012.

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 June 12, 2012 at 7:00 p.m., with the Mayor Ben Lawrence presiding, and the following members present: Byron Stout IV, Sheri Geisler, Troy Tabor, Caroline Hale, and Kris Estes.

and the following members absent: Clark Nelson

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

AN ORDINANCE AUTHORIZING THE CITY OF ANDOVER, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REFUNDING REVENUE BONDS, SERIES A, 2012 (ANDOVER SENIOR CARE, L.L.C.), IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$12,330,000 AND SUBORDINATED TAXABLE INDUSTRIAL REVENUE BONDS, SERIES B, 2012 (ANDOVER SENIOR CARE, L.L.C.) IN THE AGGREGATE PRINCIPAL AMOUNT OF \$420,000 FOR THE PURPOSES OF (1) REFUNDING AND REDEEMING THE OUTSTANDING CITY OF ANDOVER, KANSAS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2008 (ANDOVER SENIOR CARE, L.L.C.), TAXABLE INDUSTRIAL REVENUE BONDS, SERIES A, 2009 (ANDOVER SENIOR CARE, L.L.C.), AND SUBORDINATED TAXABLE INDUSTRIAL REVENUE BONDS, SERIES B, 2008; AND (2) PAYING CERTAIN COSTS OF ISSUANCE; AUTHORIZING THE EXECUTION OF A TRUST INDENTURE BY AND BETWEEN THE CITY AND STILLWATER NATIONAL BANK AND TRUST COMPANY, AS TRUSTEE; AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED MORTGAGE BY THE CITY AND ANDOVER SENIOR CARE, L.L.C. IN FAVOR OF THE TRUSTEE; AUTHORIZING EXECUTION OF A LEASE BETWEEN THE CITY AND ANDOVER SENIOR CARE, L.L.C.; APPROVING THE FORM OF A GUARANTY AGREEMENT; APPROVING THE FORM OF AN INDIVIDUAL GUARANTY AGREEMENT; AUTHORIZING THE EXECUTION OF A BOND PLACEMENT AGREEMENT BY AND BETWEEN THE CITY, ANDOVER SENIOR CARE, L.L.C., CERTAIN INDIVIDUAL GUARANTORS AND STILLWATER NATIONAL BANK AND TRUST COMPANY, AS PURCHASER OF THE BONDS.

After discussion, upon motion by Council Member Sheri Geisler, seconded by Council Member Troy Tabor, 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. 1512 and was ordered to be executed by the Mayor and by the City Clerk, and the City Clerk was directed 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 a June 12, 2012 meeting of the governing body of the City of Andover, Kansas.

[seal]

Susan C. Renner, City Clerk