

GILMORE & BELL, P.C.  
November 2, 2012

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**ORDINANCE NO. 2134**

**OF THE  
CITY OF DERBY, KANSAS**

**AUTHORIZING THE ISSUANCE OF  
TAXABLE INDUSTRIAL REVENUE BONDS  
NOT EXCEEDING \$2,885,000  
SERIES A, 2012 AND SERIES B, 2012  
(OXFORD DERBY MEMORY CARE PROJECT)**

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(Published in *The Derby Informer*, December 5, 2012)

**ORDINANCE NO. 2134**

AN ORDINANCE AUTHORIZING THE CITY OF DERBY, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES A, 2012 AND SERIES B, 2012 (OXFORD DERBY MEMORY CARE PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$2,885,000 FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING A RESIDENTIAL HEALTH CARE FACILITY; AUTHORIZING EXECUTION OF SUPPLEMENTAL BOND AGREEMENT NO. 1 BETWEEN THE CITY, OXFORD DERBY MEMORY CARE, LLC, ANDOVER STATE BANK, ANDOVER, KANSAS AND UMB BANK, N.A., KANSAS CITY, MISSOURI; AUTHORIZING THE CITY TO LEASE SUCH FACILITY TO OXFORD DERBY MEMORY CARE, LLC AND AUTHORIZING EXECUTION OF SUPPLEMENTAL LEASE NO. 1 BETWEEN THE CITY AND OXFORD DERBY MEMORY CARE, LLC; APPROVING THE FORM OF A GUARANTY AGREEMENT BETWEEN THE TENANT, OTHER GUARANTORS NAMED THEREIN AND ANDOVER STATE BANK; AND AUTHORIZING CERTAIN OTHER DOCUMENTS NECESSARY AND ACTIONS IN CONNECTION THEREWITH.

**WHEREAS**, the City of Derby, Kansas is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, and to enter into leases 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**, pursuant to Ordinance 2069 adopted May 26, 2011, as amended by Ordinance No. 2100 adopted November 29, 2011 (jointly the "Original Ordinance") and a Bond Agreement dated as of the Issue Date of the Bonds between the City, Andover State Bank, UMB Bank, n.a. and Oxford Derby Memory Care, LLC (the "Original Bond Agreement") the City has previously issued its Taxable Industrial Revenue Bonds, Series A, 2011 and Series B, 2011 (Oxford Derby Memory Care Project) dated as of their Issue Date (jointly, the "Original Bonds"), in the original principal amount of \$3,050,000, for the purposes of acquiring, constructing, furnishing and equipping a residential health care facility (the "Original Project"); and

**WHEREAS**, the Original Project was leased to Oxford Derby Memory Care, LLC, a Kansas limited liability company, pursuant to the provisions of a certain Lease dated as of its Issue Date between the City and the Tenant (the "Original Lease");

**WHEREAS**, the Tenant has requested the City assist in a financing plan proposed by the Tenant to acquire, construct, furnish and equip additional units in a residential health care facility (the "Project") by the issuance of the City's Taxable Industrial Revenue Bonds, Series A, 2012 (Oxford Derby Memory Care Project) in the aggregate principal amount not exceeding \$2,250,000

(the "Series A, 2012 Bonds") and its Taxable Industrial Revenue Bonds, Series B, 2012 (Oxford Derby Memory Care Project) in the aggregate principal amount not exceeding \$635,000 (the "Series B, 2012 Bonds" and jointly with the Series A, 2012 Bonds, the "Series 2012 Bonds") for such purpose as more fully described in the Supplemental Bond Agreement and in the Supplemental Lease hereinafter authorized; and

**WHEREAS**, the City further finds and determines that it is necessary and desirable in connection with the issuance of said Series 2012 Bonds to execute and deliver Supplemental Bond Agreement No. 1 dated as of the Issue Date of the Bonds (the "Supplemental Bond Agreement"), with the Andover State Bank, Andover, Kansas, as fiscal and paying agent and initial purchaser and owner of the Series A, 2012 Bonds (the "ASB" and "Series A Bondowner"), the Tenant, as initial purchaser and owner of the Series B, 2012 Bonds (the "Tenant" and "Series B, 2012 Bondowner"), and UMB Bank, n.a., Kansas City, Missouri, as depository, fiscal and paying agent for the Series B, 2012 Bonds ("UMB"), for the purpose of issuing and securing the Series 2012 Bonds as provided in the Original Bond Agreement and in the Supplemental Bond Agreement, and to enter into Supplemental Lease No. 1 dated as of the Issue Date of the Bonds (the "Supplemental Lease"), with the Tenant pursuant to which the City shall cause the Project to be leased to the Tenant in consideration of payments of Basic Rent, Additional Rent and other charges as provided in the Original Lease and in the Supplemental Lease.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, 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 Original Bond Agreement, the Supplemental Bond Agreement, the Original Lease and the Supplemental Lease referred to herein.

Section 2. **Authority to Cause the Project to be Acquired, Constructed, Furnished and Equipped.** The City shall cause the Project to be acquired, constructed, furnished and equipped in the manner and as more particularly described in the Supplemental Bond Agreement and the Supplemental Lease hereinafter authorized.

Section 3. **Authorization of and Security for the Bonds.** The Series 2012 Bonds are hereby authorized and directed to be issued. They shall be designated "City of Derby, Kansas Taxable Industrial Revenue Bonds, Series A, 2012 (Oxford Derby Memory Care Project)" in the aggregate principal amount not exceeding \$2,250,000 and the "City of Derby, Kansas Taxable Industrial Revenue Bonds, Series B, 2012 (Oxford Derby Memory Care Project)" in the aggregate principal amount not exceeding \$635,000. The Series 2012 Bonds are issued for the purpose of providing funds to pay the costs of the Project. The Series 2012 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 Supplemental Bond Agreement. The Series 2012 Bonds shall be special limited obligations of the City payable solely from the revenues derived by the Issuer from the Project under the Original Bond Agreement, as augmented and supplemented under the Supplemental Bond Agreement. The Series 2012 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the City within

the meaning of any constitutional or statutory provision and shall not be payable in any manner from tax revenues.

Section 4. **Authorization of the Supplemental Bond Agreement.** The City is hereby authorized to enter into the Supplemental Bond Agreement dated as of the Issue Date of the Bonds, between the City, the Tenant, ASB and UMB under which the City shall pledge and assign to ASB, for the benefit of the owners of the Original Bonds, the Series 2012 Bonds, and any other Bonds issued and secured as provided in the Original Bond Agreement and in the Supplemental Bond Agreement.

Section 5. **Authorization of the Supplemental Lease.** The City is authorized to enter into the Supplemental Lease with the Tenant. The City shall cause the Project to be acquired and leased by the City to the Tenant pursuant to and in accordance with the provisions of the Original Lease, as amended and supplemented by the Supplemental Lease.

Section 6. **Approval of Form of Guaranty Agreement.** The form of Guaranty Agreement, dated as of the Issue Date of the Bonds, pursuant to which the guarantors named therein guarantee to ASB, for the benefit of the owners of the Series A, 2012 Bonds, the full and prompt payment of the Series A, 2012 Bonds and interest thereon, is hereby approved.

Section 7. **Pledge of the Project.** The City hereby pledges the Project to the payment of the Original Bonds and the Series 2012 Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the bonds secured by the Original Bond Agreement (including the Series 2012 Bonds) shall be deemed to have been paid within the meaning of the Original Bond Agreement.

Section 8. **Execution of Bonds and Agreements.** The Mayor of the City or person authorized by the City to act for the Mayor in the Mayor's absence is hereby authorized and directed to execute the Series 2012 Bonds and deliver same to ASB for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Original Bond Agreement and the Supplemental Bond Agreement. The Mayor or other authorized signatory is hereby further authorized and directed to execute and deliver the Supplemental Bond Agreement and the Supplemental Lease for and on behalf of and as the act and deed of the City in substantially the forms presented today, with such minor corrections or amendments thereto as the Mayor or other authorized signatory shall approve, 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 the Deputy City Clerk of the City is hereby authorized and directed to attest the execution of the Series 2012 Bonds, the Supplemental Bond Agreement and the Supplemental Lease 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. **Further Authority.** The City shall, and the officers, agents and employees of the City 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 City with respect to the Series 2012 Bonds, the Original Bond Agreement, Original Lease, the Supplemental Bond Agreement and the Supplemental Lease as necessary to carry out and effect the issuance of the Series 2012 Bonds.

Section 10. **Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the governing body, signature by the Mayor and publication once in the official City newspaper.

**PASSED** by the governing body of the City of Derby, Kansas this 27<sup>th</sup> day of November, 2012.

**SIGNED** by the Mayor of the City of Derby, Kansas this 27<sup>th</sup> day of November, 2012.

(Seal)

  
\_\_\_\_\_  
Mayor

Attest:

  
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City Clerk

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**CERTIFICATE OF COPY**

I hereby certify that the attached copy is a true and correct copy of Ordinance No. 2134 of the City of Derby, Kansas duly passed by the governing body, signed by the Mayor and published in the official City newspaper on the respective dates stated therein, and that the signed original of such Ordinance is on file in my office.

(Seal)

  
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City Clerk