

**ORDINANCE NO. 3229**

**OF THE  
CITY OF MCPHERSON, KANSAS**

**AUTHORIZING THE ISSUANCE OF  
NOT TO EXCEED \$8,500,000  
SENIOR HOUSING REFUNDING REVENUE BONDS  
SERIES 2016A  
(THE CEDARS, INC.)**

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**ORDINANCE NO. 3229**

AN ORDINANCE AUTHORIZING THE CITY OF MCPHERSON, KANSAS TO ISSUE ITS SENIOR HOUSING REFUNDING REVENUE BONDS, SERIES 2016A (THE CEDARS, INC.) FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING REVENUE BONDS AND PAYING THE COSTS OF THE REFUNDING OUTSTANDING BONDS FOR AN EXISTING SENIOR HOUSING FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

**THE GOVERNING BODY OF THE CITY OF MCPHERSON, KANSAS HAS FOUND AND DETERMINED:**

A. The City of McPherson, Kansas (the "Issuer") 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, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities and in conjunction with K.S.A. 10-116a, to issue revenue bonds for the purpose of refunding such bonds.

B. The Issuer has previously issued the following revenue bonds (collectively, the "Outstanding Bonds"), for the purposes set forth as follows (collectively the "Project"):

1) Health Care Facilities Refunding and Improvement Revenue Bonds, Series 2002 (The Cedars, Inc.), dated November 15, 2002 (the "Series 2002 Bonds"), were issued pursuant to Ordinance No. 2758 and a Trust Indenture, dated April 1, 1997, as amended and supplemented by Supplemental Trust Indenture No. 1, dated July 15, 2000, as further amended and supplemented by Supplemental Trust Indenture No. 2, dated November 15, 2002, between the Issuer and Peoples Bank & Trust Co., McPherson, Kansas, as trustee, and First National Bank of Hutchinson, Hutchinson, Kansas, as bond registrar and paying agent, in the original principal amount of \$4,095,000, of which \$1,255,000 remains outstanding, originally issued for the purpose of refunding the Issuer's Health Care Facilities Refunding and Improvement Revenue Bonds, Series 1997 (The Cedars, Inc.) and financing additional equipment and furnishings for an assisted living facility;

2) Long-Term Care Facility Revenue Bonds, Series 2005 (The Cedars, Inc.), dated September 28, 2005 (the "Series 2005 Bonds"), were issued pursuant to Ordinance No. 2860 and a Bond Agreement, dated September 28, 2005 (the "Original Bond Agreement"), between the Issuer, Peoples Bank and Trust Company, McPherson, Kansas, as bond purchaser, registrar and paying agent, and The Cedars, Inc., in the original principal amount of \$4,500,000, of which \$2,971,797.62 remains outstanding, originally issued for the purpose of constructing and equipping four buildings housing 12 – 14 residents who require skilled nursing care; and

3) Assisted Living Facilities Refunding Revenue Bonds, Series 2008 (The Cedars, Inc.), dated October 15, 2008 (the "Series 2008 Bonds"), were issued pursuant to Ordinance No. 2973 and a Trust Indenture, dated April 1, 1997, as amended and supplemented by Supplemental Trust Indenture No. 1, dated July 15, 2000, as further amended and supplemented by Supplemental Trust Indenture No. 2, dated November 15,

2002, and by Supplemental Trust Indenture No. 3, dated October 15, 2008 (collectively, the "Original Indenture"), between the Issuer and Peoples Bank & Trust Co., McPherson, Kansas, as trustee, and First National Bank of Hutchinson, Hutchinson, Kansas, as bond registrar and paying agent, in the original principal amount of \$6,260,000, of which \$4,530,000 remains outstanding, originally issued for the purpose of refunding the Issuer's Assisted Living Facility Revenue Bonds, Series A, 2000 (The Cedars, Inc.).

C. The Project was leased to The Cedars, Inc., a Kansas corporation (the "Tenant"), pursuant to the provisions of the following Leases between the Issuer and the Tenant (collectively, the "Original Lease"):

1) Lease, dated April 1, 1997, as amended and supplemented by Supplemental Lease No. 1, dated July 15, 2000, as further amended and supplemented by Supplemental Lease No. 2, dated November 15, 2002;

2) Lease, dated September 28, 2005; and

3) Lease, dated April 1, 1997, as amended and supplemented by Supplemental Lease No. 1, dated July 15, 2000, as further amended and supplemented by Supplemental Lease No. 2, dated November 15, 2002, and Supplemental Lease No. 3, dated October 15, 2008.

D. In order to gain certain financial advantages presently available, the Tenant desires that the Issuer issue its Senior Housing Refunding Revenue Bonds, Series 2016A (The Cedars, Inc.), dated November 1, 2016, in the aggregate principal amount of not to exceed \$8,500,000 (the "Series 2016A Bonds") for the purpose of providing funds to refund the Outstanding Bonds in advance of their maturities, by providing for the early redemption thereof as more fully provided in the Indenture hereinafter authorized.

E. The Issuer's governing body finds that it is necessary and desirable in connection with the issuance of the Series 2016A Bonds to execute and deliver the following documents (collectively, the "Bond Documents"):

(i) a Trust Indenture dated as of the Issue Date of the Bonds (the "Indenture"), with Commerce Bank, Kansas City, Missouri, as Trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the Series 2016A Bonds;

(ii) a Lease dated as of the Issue Date of the Bonds (the "Lease"), with the Tenant, under which the Issuer will continue to lease the Project to the Tenant in consideration of Basic Rent and other payments; and

(iii) a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series 2016A Bonds by the Issuer to Central Bank of the Midwest, Lawrence, Kansas (the "Purchaser"), and

(iv) a Tax Compliance Agreement among the Issuer, the Tenant and the Trustee, and

(v) an Origination Fee Agreement (the "Origination Fee Agreement") to be entered into between the Issuer and the Tenant in conjunction with the issuance of the Series 2016A Bonds.

**NOW, THEREFORE, BE IT ORDAINED THE GOVERNING BODY OF THE CITY OF MCPHERSON, KANSAS:**

Section 1. **Definition of Terms.** All terms and phrases not otherwise defined in this Ordinance will have the meanings set forth in the Trust Indenture and the Lease.

Section 2. **Authority to Cause the Outstanding Bonds to be Redeemed.** The Issuer is hereby authorized to cause the Outstanding Bonds to be redeemed on or about November 1, 2016, in accordance with the provisions of the Original Indenture and the Original Bond Agreement and the Trustee is authorized to give notice of such redemption in accordance with the provisions of the Original Indenture and the Original Bond Agreement.

Section 3. **Authorization of and Security for the Bonds.** The Issuer is authorized and directed to issue the Series 2016A Bonds, to be designated "City of McPherson Kansas Senior Housing Refunding Revenue Bonds, Series 2016A (The Cedars, Inc.)" in the aggregate principal amount of not to exceed \$8,500,000, for the purpose of providing funds to refund the Outstanding Bonds and to pay the costs of refunding the Outstanding Bonds. The Series 2016A Bonds will be in such principal amount, will be dated and bear interest, will mature and be payable at such times, will be in such forms, will be subject to redemption and payment prior to maturity, and will be issued according to the provisions, covenants and agreements in the Trust Indenture. The Series 2016A Bonds will be special limited obligations of the Issuer payable solely from the Trust Estate under the Indenture, including revenues derived from the Lease of the Project. The Series 2016A Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer, and will not be payable in any manner by taxation.

Section 4. **Authorization of Indenture.** The Issuer is authorized to enter into the Indenture with the Trustee in the form approved in this Ordinance. The Issuer will pledge the Trust Estate described in the Indenture to the Trustee for the benefit of the owners of the Series 2016A Bonds on the terms and conditions in the Indenture.

Section 5. **Lease of the Project.** The Issuer will continue to lease the Project to the Tenant according to the provisions of the Lease in the form approved in this Ordinance.

Section 6. **Approval of the Guaranty Agreement.** The form of the Guaranty Agreement dated as of the Issue Date of the Bonds between the Tenant and the Trustee, for the benefit of the owners of the Series 2016A Bonds is approved.

Section 7. **Authorization of Bond Purchase Agreement.** The Issuer is authorized to sell the Series 2016A Bonds to the Purchaser, according to the terms and provisions of the Bond Purchase Agreement, in the form approved in this Ordinance.

Section 8. **Authorization of Origination Fee Agreement.** At or prior to the issuance of the Series 2016A Bonds, the Issuer will enter into the Origination Fee Agreement with the Tenant providing for the payment to the Issuer of an origination fee upon the terms and subject to the conditions set forth in such agreement, in the form approved in this Ordinance.

Section 9. **Execution of Bonds and Bond Documents.** The Mayor of the Issuer is authorized and directed to execute the Series 2016A Bonds and deliver them to the Trustee for authentication on behalf of the Issuer in the manner provided by the Act and in the Trust Indenture. The Mayor or member of the Issuer's governing body authorized by law to exercise the powers and duties of the Mayor in the Mayor's absence is further authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to passage of this Ordinance, with such corrections or amendments as the Mayor or other person lawfully acting in the absence of the Mayor may approve, which approval shall be evidenced by his or her signature. The authorized signatory may sign and

deliver all other documents, certificates or instruments as may be necessary or desirable to carry out the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series 2016A Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's corporate seal.

Section 10. **Pledge of the Project and Net Lease Rentals.** The Issuer hereby pledges the Project and the net rentals generated under the Lease to the payment of the Series 2016A Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Series 2016A Bonds are paid or deemed to have been paid under the Indenture.

Section 11. **Authority To Correct Errors, Etc.** The Mayor or member of the Issuer's governing body authorized to exercise the powers and duties of the Mayor in the Mayor's absence, the City Clerk and any Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed which may be necessary to correct errors or omissions therein or to conform the same to the other provisions of said instruments or to the provisions of this Ordinance.

Section 12. **Further Authority.** The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Series 2016A Bonds and the Bond Documents.

Section 13. **Effective Date.** This Ordinance shall take effect after its passage by the governing body of the Issuer, signature by the Mayor and publication once in the Issuer's official newspaper.

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**PASSED** by the governing body of the Issuer on October 24, 2016 and signed by the Mayor.

(SEAL)

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Mayor

ATTEST:

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City Clerk

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**CERTIFICATE**

I hereby certify that the attached copy is a true and correct copy of Ordinance No. 3229 of the City of McPherson, Kansas duly passed by the governing body, signed by the Mayor and a summary thereof was published in the official City newspaper on the respective date stated in this ordinance, and that the signed original of such Ordinance is on file in my office.

[SEAL]

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City Clerk

**EXCERPT OF MINUTES OF A MEETING  
OF THE GOVERNING BODY OF  
THE CITY OF MCPHERSON, KANSAS  
HELD ON OCTOBER 24, 2016**

The governing body of the City of McPherson, Kansas met in regular session at the usual meeting place in the City, at 8:30 a.m., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

\* \* \* \* \*

(Other Proceedings)

Thereupon, there was presented an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF MCPHERSON, KANSAS TO ISSUE ITS SENIOR HOUSING REFUNDING REVENUE BONDS, SERIES 2016A (THE CEDARS, INC.) FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING REVENUE BONDS AND PAYING THE COSTS OF THE REFUNDING OUTSTANDING BONDS FOR AN EXISTING SENIOR HOUSING FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

Thereupon, Commissioner \_\_\_\_\_ moved that said Ordinance be passed. The motion was seconded by Commissioner \_\_\_\_\_. Said Ordinance was duly read and considered, and upon being put, the motion for the passage of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Aye:

Nay:

Thereupon, the Mayor declared said Ordinance duly passed and the Ordinance was then duly numbered Ordinance No 3229 and was signed by the Mayor and the signature attested by the City Clerk.

\* \* \* \* \*

(Other Proceedings)

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**CERTIFICATE**

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of McPherson, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

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City Clerk

(Published in *The McPherson Sentinel* on October 27, 2016)

**SUMMARY OF ORDINANCE NO. [3229]**

On October 24, 2016, the governing body of the City of McPherson, Kansas passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF MCPHERSON, KANSAS TO ISSUE ITS SENIOR HOUSING REFUNDING REVENUE BONDS, SERIES 2016A (THE CEDARS, INC.) FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING REVENUE BONDS AND PAYING THE COSTS OF THE REFUNDING OUTSTANDING BONDS FOR AN EXISTING SENIOR HOUSING FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

The Ordinance authorizes the Issuer to issue its Senior Housing Refunding Revenue Bonds, Series 2016A (The Cedars, Inc.) in the aggregate principal amount of not to exceed \$8,500,000 (the "Series 2016A Bonds"), for the purpose of paying the costs of the refunding outstanding bonds of a senior housing facility (the "Project"), as more fully described in the Trust Indenture and in the Lease authorized by the Ordinance. The Project will be leased by the Issuer to The Cedars, Inc., a Kansas corporation.

A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, City Hall, 400 E. Kansas Avenue, McPherson, Kansas. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at [www.mcpcity.com](http://www.mcpcity.com).

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: \_\_\_\_\_, 20\_\_.

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City Attorney