

TRIPLETT, WOOLF & GARRETSON, LLC

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ORDINANCE NO. 1802

OF

THE

CITY OF ANDOVER, KANSAS

AUTHORIZING AMENDMENTS TO:

NOT TO EXCEED \$5,625,000  
SUBORDINATED TAXABLE MULTIFAMILY HOUSING REVENUE BONDS  
SERIES B, 2013  
(ANDOVER APARTMENTS, LLC)

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(Published in *The Butler County Times-Gazette* on July 10, 2021)

ORDINANCE NO. 1802

AN ORDINANCE OF THE CITY OF ANDOVER, KANSAS CONSENTING TO THE ASSIGNMENT OF THE CITY'S SUBORDINATED TAXABLE MULTIFAMILY HOUSING REVENUE BONDS, SERIES B, 2013 (ANDOVER APARTMENTS, LLC); AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO TRUST INDENTURE BY AND BETWEEN THE CITY AND EMPRISE BANK, WICHITA, KANSAS, AS TRUSTEE AND AN ASSIGNMENT AND FIRST AMENDMENT TO LEASE AGREEMENT BY AND BETWEEN THE CITY, ANDOVER APARTMENTS, LLC, AND ANDOVER APARTMENTS I, LLC CONSENTING TO A MORTGAGE OF LEASEHOLD; AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS.

WHEREAS, the City of Andover, Kansas (the "Issuer") has previously authorized and issued its Taxable Multifamily Housing Revenue Bonds, Series A, 2013 (Andover Apartments, LLC), in the original aggregate principal amount of not to exceed \$16,875,000 (the "Series A, 2013 Bonds") and Subordinated Taxable Multifamily Housing Revenue Bonds, Series B, 2013 (Andover Apartments, LLC), in the original aggregate principal amount of not to exceed \$5,625,000 (the "Series B, 2013 Bonds"), for the purpose of paying the costs of purchasing, acquiring, constructing, furnishing, and equipping an apartment facility (the "Project"), and paying costs of issuance of the Series A, 2013 Bonds and Series B, 2013 Bonds (collectively, the "2013 Bonds"); and

WHEREAS, the Issuer has acquired title to the Project and is leasing the Project to Andover Apartments, LLC (the "Tenant"), pursuant to the Lease Agreement, dated as of March 7, 2013 (the "2013 Lease"), by and between the Issuer and Tenant; and

WHEREAS, the 2013 Bonds are payable from the Trust Estate created pursuant to a Trust Indenture, dated as of March 7, 2013 (the "2013 Indenture"), by and between the Issuer and Emprise Bank, Wichita, Kansas (the "Trustee"), which Trust Estate includes a pledge of the Project and revenue received from the fees charged and Basic Rent received pursuant to the 2013 Lease; and

WHEREAS, the Series A, 2013 Bonds have been redeemed, paid, and satisfied in full; and

WHEREAS, Section 9.2 of the 2013 Lease provides that the Tenant may assign its interests in the 2013 Lease with the prior written consent of the Issuer and Emprise Bank; and

WHEREAS, Section 1102 of the 2013 Indenture provides that the 2013 Indenture may be amended with the consent of the Owners of 100% of the Outstanding 2013 Bonds and Section 25.1 of the 2013 Lease and Section 1105 of the 2013 Indenture provides that the 2013 Lease may be amended with the consent of the Owners of 51% of the Outstanding 2013 Bonds; and

WHEREAS, in connection with a sale of substantially all of its assets, the Tenant desires to assign its interests in the 2013 Lease (including all options to purchase all or part of the Project) to Andover Apartments I, LLC, a Kansas limited liability company (the “Purchaser”), assign and transfer the Series B, 2013 Bonds to the Purchaser, and assign all other interests of the Tenant in documents related to the Series 2013 Bonds to the Purchaser; and

WHEREAS, the Tenant, as owner of 100% of the Outstanding 2013 Bonds, desires to amend the 2013 Indenture and 2013 Lease to accommodate the above-referenced assignment simultaneous with the closing of the sale of the Tenant’s assets to the Purchaser (the “Closing Date”); and

WHEREAS, the Issuer, the Tenant, and Emprise Bank desire and have consented to (1) amend the 2013 Indenture and the 2013 Lease in order to reflect the Purchaser as the new tenant, (2) the Tenant’s conveyance of the Series B, 2013 Bonds and assignment of its interests on other documents relating to the 2013 Bonds to the Purchaser, (3) authorize the execution and delivery of (i) a First Amendment to Indenture (as hereinafter defined), (ii) an Assignment and First Amendment to Lease (as hereinafter defined), and (iii) of necessary documents, in connection with the forgoing, and (4) consent to and execute a mortgage of Purchaser’s leasehold estate in the Project and/or assignment of the Tenant’s existing mortgage thereof.

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 herein and in the 2013 Indenture and 2013 Lease.

Section 2. Authorization of First Amendment to Indenture. The Issuer is hereby authorized to execute and deliver the First Amendment to Trust Indenture, dated as of the Closing Date (the “First Amendment to Indenture”), by and between the Issuer and Emprise Bank, Wichita, Kansas (the “Trustee”), in substantially the form as presented and now before the governing body of the Issuer, under which the Purchaser will be substituted as the “Tenant”.

Section 3. Authorization of Assignment and First Amendment to Lease. The Issuer is hereby authorized to execute and deliver the Assignment and First Amendment to Lease Agreement, dated as of the Closing Date (the “First Amendment to Lease”), by and between the Issuer, the Trustee, the Tenant, and the Purchaser in substantially the form as presented and now before the governing body of the Issuer, under which the Tenant’s interests in the 2013 Lease will be assigned to, and assumed by, the Purchaser.

Section 4. Authorization of Mortgage of Leasehold. The City hereby consents, without recourse, to the filing of, and is hereby authorized to execute and deliver, solely as an accommodation, a mortgage upon the leasehold estate represented by the Lease; provided the City shall be in no manner obligated with respect to any obligations or provision of said mortgage and the City’s consent and execution of any acknowledgement or other document related to said mortgage shall not result in any obligation of or liability to the City deriving from or in any way

related to the mortgage. The Issuer further consents to, and is hereby authorized to execute and deliver, solely as an accommodation, any assignment of any previous mortgage of the Tenant's leasehold estate to the Purchaser.

Section 5. Consent to Assignment. The Issuer consents to the assignment of the Series B, 2013 Bond to the Purchaser.

Section 6. Execution of the Documents. The Mayor is hereby authorized and directed to execute any replacement Series B, 2013 Bond certificates necessitated by the First Amendment to Indenture and to deliver the same to the Trustee for authentication and for an on behalf of the Issuer. The City Clerk is hereby authorized and directed to attest to the execution of such Series B, 2013 Bonds. The Mayor, or President of the Council, is hereby authorized and directed to execute and deliver the First Amendment to Indenture, Assignment and First Amendment to Lease, any leasehold mortgage or assignment thereof, and other notices and documents relating to the assignment of Tenant's interest in the Series B, 2013 Bonds (including, but not limited to, a payment in lieu of tax agreement) (the "Issuer Documents") for and on behalf of and as the act and deed of the Issuer in substantially the form as it is presented today or in such form as the Mayor or President of the Council shall approve (after 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 Issuer Documents 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 7. 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 Issuer Documents, all as necessary to carry out and give effect to the transaction contemplated hereby and thereby, including, but not limited to, a notice of the Assignment and First Amendment to Lease, an amended information statement to be filed with the Kansas Board of Tax Appeals, and a UCC-3 Financing Statement Amendment.

Section 8. 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.

*[Remainder of Page Intentionally Left Blank]*

PASSED, ADOPTED AND APPROVED by the Governing Body of the City of Andover,  
Kansas this 29th day of June, 2021.

CITY OF ANDOVER, KANSAS

[seal]

By \_\_\_\_\_  
Ronnie Price, Mayor

ATTEST:

By \_\_\_\_\_  
Susan C. Renner, City Clerk

EXCERPT OF MINUTES

The governing body of the City of Andover, Kansas met in regular session, at the usual meeting place in said City on June 29, 2021 at 7:00 p.m., with Mayor Ronnie Price, and the following members of the governing body present:

Homer Henry, Joseph Forred, Troy Tabor, Mike Warrington and Tim Berry

and the following members absent:

Shelby Carselowey

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

AN ORDINANCE OF THE CITY OF ANDOVER, KANSAS CONSENTING TO THE ASSIGNMENT OF THE CITY'S SUBORDINATED TAXABLE MULTIFAMILY HOUSING REVENUE BONDS, SERIES B, 2013 (ANDOVER APARTMENTS, LLC); AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO TRUST INDENTURE BY AND BETWEEN THE CITY AND EMPRISE BANK, WICHITA, KANSAS, AS TRUSTEE AND AN ASSIGNMENT AND FIRST AMENDMENT TO LEASE AGREEMENT BY AND BETWEEN THE CITY, ANDOVER APARTMENTS, LLC, AND ANDOVER APARTMENTS I, LLC; CONSENTING TO A MORTGAGE OF LEASEHOLD; AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS.

After discussion, upon motion by Henry, seconded by Forred, the Ordinance was adopted by a majority of the members of the governing body.

A majority of the members having voted in favor of the adoption of said Ordinance, it was designated Ordinance No. 1802 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.

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CITY CLERK'S  
CERTIFICATION OF EXCERPT OF MINUTES

I hereby certify that the foregoing is a true and correct Excerpt of Minutes of the June 29, 2021 meeting of the governing body of the City of Andover, Kansas.

[seal]

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Susan C. Renner, City Clerk