

ORDINANCE NO. 1534

OF THE

CITY OF ANDOVER, KANSAS

AUTHORIZING THE ISSUANCE OF

NOT TO EXCEED \$16,875,000
TAXABLE MULTIFAMILY HOUSING REVENUE BONDS
SERIES A, 2013
(ANDOVER APARTMENTS, LLC)

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

(Published in *The Augusta Daily Gazette*, March 2, 2013)

ORDINANCE NO. 1534

AN ORDINANCE AUTHORIZING THE CITY OF ANDOVER, KANSAS TO ISSUE ITS TAXABLE MULTIFAMILY HOUSING REVENUE BONDS, SERIES A, 2013 (ANDOVER APARTMENTS, LLC), IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$16,875,000 AND ITS SUBORDINATED TAXABLE MULTIFAMILY HOUSING REVENUE BONDS, SERIES B, 2013 (ANDOVER APARTMENTS, LLC) IN THE AGGREGATE AMOUNT OF NOT TO EXCEED \$5,625,000, FOR THE PURPOSES OF (1) PURCHASING, ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING AN APARTMENT FACILITY LOCATED IN THE CITY OF ANDOVER, KANSAS, AND (2) PAYING CERTAIN COSTS OF ISSUANCE; AUTHORIZING THE EXECUTION OF A TRUST INDENTURE BY AND BETWEEN THE CITY AND EMPRISE BANK, WICHITA, KANSAS, AS TRUSTEE; AUTHORIZING THE CITY TO LEASE THE PROJECT TO ANDOVER APARTMENTS, LLC; AUTHORIZING EXECUTION OF A LEASE BETWEEN THE CITY AND ANDOVER APARTMENTS, LLC; APPROVING THE FORM OF A GUARANTY AGREEMENT; APPROVING THE FORM OF AN INDIVIDUAL GUARANTY AGREEMENT; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BY AND BETWEEN THE CITY, ANDOVER APARTMENTS, LLC AND EMPRISE BANK, AS ORIGINAL PURCHASER OF THE SERIES A, 2013 BONDS; AND AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BY AND BETWEEN THE CITY AND ANDOVER APARTMENTS, LLC, AS TENANT AND ORIGINAL PURCHASER OF THE SERIES B, 2013 BONDS.

WHEREAS, the City of Andover, Kansas (the "Issuer") is authorized by K.S.A. 12-1740 *et seq.*, 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; 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 Multifamily Housing Revenue Bonds, Series A, 2013 (Andover Apartments, LLC), to be dated as of their issuance and delivery, in the aggregate principal amount of not to exceed \$16,875,000 (the "Series A, 2013 Bonds") and its Subordinated Taxable Multifamily Housing Revenue Bonds, Series B, 2013 (Andover Apartments, LLC), to be dated as of their issuance and delivery, in the aggregate principal amount of not to exceed \$5,625,000 (the "Series B, 2013 Bonds"), all for the purpose of paying the costs of purchasing, acquiring, constructing, furnishing and equipping an apartment facility (the "Project"); and

WHEREAS, the Series A, 2013 Bonds and Series B, 2013 Bonds (collectively, the “2013 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 2013 Bond or the interest thereon be a charge against the general credit or taxing powers of the Issuer. The 2013 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 and, under certain circumstances, from the proceeds of the 2013 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 2013 Bonds (i) to execute and deliver a Trust Indenture, dated as of March 7, 2013 (the “Indenture”), by and between the Issuer and Emprise Bank, as Trustee (the “Trustee”), for the purpose of issuing and securing the 2013 Bonds as provided therein; and (ii) execute and deliver a Lease Agreement, dated as of March 7, 2013 (the “Lease”), by and between the Issuer, as landlord, and Andover Apartments, LLC, 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 2013 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. Authorization to Cause the Project to be Acquired, Constructed 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 provide for the acquisition and construction of the Project in accordance with the provisions of the Indenture, all as provided herein and the Indenture and Lease hereinafter authorized.

Section 3. Authorization of and Security for the 2013 Bonds. There is hereby authorized and directed to be issued two series of revenue bonds to be designated (i) “City of Andover, Kansas, Taxable Multifamily Housing Revenue Bonds, Series A, 2013 (Andover Apartments, LLC),” in the aggregate principal amount of not to exceed \$16,875,000 and (ii) “City of Andover, Kansas, Subordinated Taxable Multifamily Housing Revenue Bonds, Series B, 2013 (Andover Apartments, LLC),” in the aggregate principal amount of not to exceed \$5,625,000, all for the purpose of financing the costs of the Project and paying certain costs of issuance.

The 2013 Bonds shall be issued in such amounts and 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 Series A, 2013 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 Series B, 2013 Bonds shall be subordinated to the Series A, 2013 Bonds and 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 2013 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 2013 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 (as defined above), under which the Issuer shall pledge and assign to the Trustee, for the benefit of the holders of the 2013 Bonds, the Trust Estate created thereby, all upon the terms and conditions set forth in the Indenture.

Section 5. Lease of Project. The Issuer shall cause the Project to be acquired, purchased, constructed and equipped and shall lease the Project to the Tenant, pursuant to and in accordance with the terms and provisions of the Lease (as defined above). The Issuer is hereby authorized to enter into the Lease.

Section 6. Approval of the Form of Guaranty Agreement. The form of Guaranty Agreement, dated as of March 7, 2013 (the "Guaranty Agreement"), pursuant to which the Tenant guarantees to the Trustee, for the benefit of the Owners of the Series A, 2013 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the Series A, 2013 Bonds, is hereby approved.

Section 7. Approval of the Form of Individual Guaranty Agreement. The form of Individual Guaranty Agreement, dated as of March 7, 2013 (the "Individual Guaranty Agreement"), pursuant to which Paul D. Jackson (the "Individual Guarantor") guarantees to the Trustee, for the benefit of the Owners of the Series A, 2013 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the Series A, 2013 Bonds, is hereby approved.

Section 8. Authorization of Bond Purchase Agreements. The Series A, 2013 Bonds shall be sold and delivered pursuant to and in accordance with the terms and provisions of a Bond Purchase Agreement, dated as of March 7, 2013 (the "Series A Bond Purchase Agreement"), by and between the Issuer, the Tenant, the Individual Guarantor, and Emprise Bank, Wichita, Kansas, as the Original Purchaser for the Series A, 2013 Bonds.

The Series B, 2013 Bonds shall be sold and delivered pursuant to and in accordance with the terms and provisions of a Bond Purchase Agreement, dated as of March 7, 2013 (the "Series B Bond Purchase Agreement"), by and between the Issuer, the Tenant, and Andover Apartments, LLC, as the Original Purchaser for the Series B, 2013 Bonds. The Series A Bond Purchase Agreement and Series B Bond Purchase Agreement shall be collectively referred to herein as the "Bond Purchase Agreements".

Section 9. Execution of 2013 Bonds and Related Agreements and Documents. The Mayor is hereby authorized and directed to execute the 2013 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 authorized and directed to execute and deliver the Indenture, the Lease, and the Bond Purchase Agreements 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 or President of the Council 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 2013 Bonds, the Indenture, the Lease, and the Bond Purchase Agreements 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 10. Pledge of the Project. The Issuer hereby pledges the Project and the net earnings therefrom to the payment of the 2013 Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the 2013 Bonds and any Additional Bonds issued under the Indenture shall be deemed to have been paid within the meaning of the Indenture.

Section 11. 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 2013 Bonds, the Indenture, the Lease, and the Bond Purchase Agreements, all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

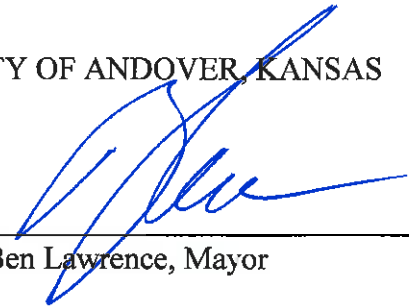
Section 12. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the Issuer and publication once in the official newspaper of the Issuer.

[Remainder of Page Intentionally Left Blank]

PASSED, ADOPTED AND APPROVED by the Governing Body of the City of Andover, Kansas this 28th day of February, 2013.



CITY OF ANDOVER, KANSAS

By 
Ben Lawrence, Mayor

ATTEST:

By 
Susan C. Renner, City Clerk

I hereby certify that the foregoing is the original ordinance; that said ordinance was passed on the 28 day of FEBRUARY, 2013; that the record of the final vote on its passage is found on page 2 of the minutes from FEBRUARY 28, 2013; that it was published in the Augusta Daily Gazette on the 2 day of MARCH, 2013.

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 February 26, 2013 and following a duly authorized recess, reconvened on February 28, 2013 at 7:15 p.m., with Mayor Ben Lawrence presiding, and the following members present: Byron Stout IV, Troy Tabor, Caroline Hale, and Clark Nelson

and the following members absent: Sheri Geisler and Kris Estes

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

AN ORDINANCE AUTHORIZING THE CITY OF ANDOVER, KANSAS TO ISSUE ITS TAXABLE MULTIFAMILY HOUSING REVENUE BONDS, SERIES A, 2013 (ANDOVER APARTMENTS, LLC), IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$16,875,000 AND ITS SUBORDINATED TAXABLE MULTIFAMILY HOUSING REVENUE BONDS, SERIES B, 2013 (ANDOVER APARTMENTS, LLC) IN THE AGGREGATE AMOUNT OF NOT TO EXCEED \$5,625,000, FOR THE PURPOSES OF (1) PURCHASING, ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING AN APARTMENT FACILITY LOCATED IN THE CITY OF ANDOVER, KANSAS, AND (2) PAYING CERTAIN COSTS OF ISSUANCE; AUTHORIZING THE EXECUTION OF A TRUST INDENTURE BY AND BETWEEN THE CITY AND EMPRISE BANK, WICHITA, KANSAS, AS TRUSTEE; AUTHORIZING THE CITY TO LEASE THE PROJECT TO ANDOVER APARTMENTS, LLC; AUTHORIZING EXECUTION OF A LEASE BETWEEN THE CITY AND ANDOVER APARTMENTS, LLC; APPROVING THE FORM OF A GUARANTY AGREEMENT; APPROVING THE FORM OF AN INDIVIDUAL GUARANTY AGREEMENT; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BY AND BETWEEN THE CITY, ANDOVER APARTMENTS, LLC AND EMPRISE BANK, AS ORIGINAL PURCHASER OF THE SERIES A, 2013 BONDS; AND AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT BY AND BETWEEN THE CITY AND ANDOVER APARTMENTS, LLC, AS TENANT AND ORIGINAL PURCHASER OF THE SERIES B, 2013 BONDS.

After discussion, upon motion by Council Member Caroline Hale, seconded by Council Member Troy Tabor, 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. 1534 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 the February 26, 2013 meeting, as reconvened on February 28, 2013, of the governing body of the City of Andover,

Kansas



Susan C. Renner, City Clerk