

1 **BY AUTHORITY**

2 ORDINANCE NO. _____

COUNCIL BILL NO. 25-0550

3 SERIES 2025

COMMITTEE OF REFERENCE:

4 Finance & Governance

5 **A BILL**

6 **For an ordinance authorizing the issuance and sale of an aggregate amount not**
7 **to exceed \$8,500,000 of the City and County of Denver, Colorado Multifamily**
8 **Housing Revenue Bonds (The Rose on Colfax Project) Series 2025A and the City**
9 **and County of Denver, Colorado Subordinate Multifamily Housing Revenue**
10 **Bonds (The Rose on Colfax Project) Series 2025B for the purpose of refinancing**
11 **debt incurred in connection with the acquisition, construction, renovation,**
12 **rehabilitation, improvement and equipping of an affordable multifamily housing**
13 **facility located in the City and County of Denver, Colorado and to pay certain**
14 **expenses of such Bonds (as defined below) issue; approving and authorizing**
15 **execution of a Senior Financing Agreement, a Subordinate Financing**
16 **Agreement, and a Tax Regulatory Agreement (each as defined below) with**
17 **respect to the Bonds; making findings and determinations with respect to the**
18 **Project (as defined below) and the Bonds; authorizing the execution and delivery**
19 **of related documents; and repealing all action heretofore taken in conflict**
20 **herewith.**

21 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER (THE “CITY**
22 **COUNCIL”):**

23 WHEREAS, the City and County of Denver, Colorado (the “City”) is a legally and regularly
24 created, established, organized and validly existing home rule city, municipal corporation and
25 political subdivision under the provisions of Article XX of the Constitution of the State of Colorado
26 (the “State”) and the Home Rule Charter of the City (the “Charter”); and

27 WHEREAS, the Charter, the County and Municipality Development Revenue Bond Act,
28 constituting Article 3 of Title 29, Colorado Revised Statutes, as amended (the “Act”) and the
29 Supplemental Public Securities Act, constituting Part 2, Article 57 of Title 11, Colorado Revised
30 Statutes, as amended (the “Supplemental Public Securities Act”), authorize cities and counties in
31 the State to issue revenue bonds to finance and refinance one or more projects, including any land,
32 buildings or other improvements and all real and personal properties, whether or not in existence,
33 which shall be suitable for residential facilities for low- and middle-income families and persons and
34 intended for use as the sole place of residence by the owners or intended occupants to the end that
35 more adequate residential housing facilities for low- and middle-income families and persons may
36 be provided, which promote the public health, welfare, safety, convenience and prosperity; and

1 WHEREAS, the City is further authorized by the Act, the Supplemental Public Securities Act
2 and the Charter to issue its revenue bonds for the purposes of defraying the costs of financing any
3 such project, including all incidental expenses incurred in issuing such bonds, and to secure the
4 payment of such bonds as provided in the Act, the Supplemental Public Securities Act and the
5 Charter; and

6 WHEREAS, in addition to its powers under the Act and the Supplemental Public Securities
7 Act, the City is also possessed of plenary powers under the Colorado Constitution and the Charter
8 as to matters of local or municipal concern; and

9 WHEREAS, pursuant to an authorizing ordinance, as adopted by the City Council on
10 September 20, 2021 as Ordinance No. 21-0942 (the “2021 Ordinance”), the City issued the City and
11 County of Denver, Colorado Multifamily Housing Revenue Note (The Rose on Colfax Project) Series
12 2021 (the “Note”), in the aggregate principal amount not to exceed \$15,425,000, to pay a portion of
13 the cost of acquisition, construction, renovation, rehabilitation, improvement and equipping of an
14 approximately 82-unit affordable multifamily housing facility located at 1510 North Valentia Street in
15 Denver, Colorado, known as The Rose on Colfax (collectively, the “Facilities”); and

16 WHEREAS, an affiliate of the Borrower, as defined below, separately financed an early
17 childhood education center located at 1500 North Valentia Street, Denver, Colorado (the “Early
18 Childhood Center”), and no proceeds of the Bonds, as defined below, will be used to finance the
19 Early Childhood Center; and

20 WHEREAS, the Borrower, as defined below, desires to refinance the Note and has requested
21 that the City issue its Bonds (as defined below) in order to lend the proceeds of such Bonds to the
22 Borrower for the purposes of: (a) refinancing the Note; and (b) paying certain costs of issuing the
23 Bonds (collectively and including the acquisition, construction, renovation, rehabilitation,
24 improvement and equipping of the Facilities, the “Project”); and

25 WHEREAS, representatives of MHMP 15 E Colfax LLLP, a Colorado limited liability limited
26 partnership, including any subsidiaries, affiliates, successors or assigns (but only if such
27 subsidiaries, affiliates, successors or assigns are acceptable to the City) (the “Borrower”), has
28 presented to the City a proposal whereby the City will issue its multifamily housing revenue bonds
29 pursuant to the Act, the Supplemental Public Securities Act and the Charter to finance and refinance
30 the cost of the Project under the Act, the Supplemental Public Securities Act and the Charter, which
31 Project consists of the refinancing of a loan used by the Borrower to finance a portion of the costs of
32 the acquisition, construction, renovation, rehabilitation, improvement and equipping of the Facilities;
33 and

1 WHEREAS, the Project is located within the geographical boundaries of the City; and
2 WHEREAS, the City has considered the request of the Borrower and has concluded that the
3 Project will provide low- and middle-income residential rental facilities, promoting the public health,
4 welfare, safety, convenience and prosperity and that the City should issue its multifamily housing
5 revenue bonds under the Act, the Supplemental Public Securities Act and the Charter to finance the
6 Project, subject to the conditions set forth herein; and
7 WHEREAS, the City will issue, sell and deliver the City and County of Denver, Colorado
8 Multifamily Housing Revenue Bonds (The Rose on Colfax Project) Series 2025A (the “Series 2025A
9 Bonds”) and the City and County of Denver, Colorado Subordinate Multifamily Housing Revenue
10 Bonds (The Rose on Colfax Project) Series 2025B (the “Series 2025B Bonds” and together with the
11 Series 2025A Bonds, the “Bonds”), in an aggregate not to exceed amount of \$8,500,000 to pay the
12 cost of financing the Project; and
13 WHEREAS, the City, the Borrower and FirstBank, a Colorado state banking corporation, as
14 purchaser of the Series 2025A Bonds (the “Bank”), will enter into a Financing Agreement (the “Senior
15 Financing Agreement”), which will provide for the issuance of the Series 2025A Bonds and for
16 payments sufficient to pay the principal of, premium, if any, and interest on the Series 2025A Bonds
17 and to meet other obligations as herein and therein provided; and
18 WHEREAS, the City, the Borrower and Mercy Housing Mountain Plains, a Colorado not for
19 profit corporation, as purchaser of the Series 2025B Bonds (the “Sponsor”), will enter into a
20 Subordinate Financing Agreement (the “Subordinate Financing Agreement” and together with the
21 Senior Financing Agreement, the “Financing Agreements”), which will provide for the issuance of the
22 Series 2025B Bonds and for payments sufficient to pay the principal of, premium, if any, and interest
23 on the Series 2025B Bonds and to meet other obligations as herein and therein provided; and
24 WHEREAS, the Borrower has applied to the Colorado Housing and Finance Authority for an
25 allocation of low-income housing tax credits (“LIHTC”) under Section 42 of the Internal Revenue
26 Code of 1986, as amended (the “Code”); and
27 WHEREAS, there have been presented to the City Council at this meeting substantially final
28 forms of the following documents: (a) the Senior Financing Agreement (City Clerk’s Filing No.
29 20250049); (b) the Subordinate Financing Agreement (City Clerk’s Filing No. 20250050); (c) the
30 Amended and Restated Tax Regulatory Agreement (the “Tax Regulatory Agreement” and, together
31 with the Senior Financing Agreement, the Subordinate Financing Agreement, and the Tax
32 Regulatory Agreement, the “Bond Documents”) (City Clerk’s Filing No. 20250051), by and among
33 the City, the Borrower, and the Bank;

1 NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY AND
2 COUNTY OF DENVER, COLORADO:

3 **Section 1. Legal Authorization.** The City is a legally, duly and regularly created,
4 established, organized and validly existing home rule city, municipal corporation and political
5 subdivision under the provisions of Article XX of the Constitution of the State and the Charter of the
6 City and is authorized under the Act, the Supplemental Public Securities Act and its Charter to issue
7 and sell its multifamily housing revenue bonds in the form of one or more debt instruments, such as
8 the Bonds, for the purpose, in the manner and upon the terms and conditions set forth in the Act, the
9 Supplemental Public Securities Act, the Charter, this Ordinance and in the Bond Documents. The
10 Bonds are being issued pursuant to the Act and the Supplemental Public Securities Act.

11 **Section 2. Findings.** The City Council has heretofore determined, and does hereby
12 determine, based upon the representations of the Borrower contained in the application form
13 submitted to the City, as follows:

- 14 (a) The Project is an eligible “project,” as defined in the Act.
- 15 (b) The issuance of the Bonds will effectuate the public purposes of the City and carry out
16 the purposes of the Act by, among other things, providing residential facilities for low- and middle-
17 income families and persons in the City.
- 18 (c) The Bonds are special, limited obligations of the City payable solely out of the income,
19 revenues and receipts specifically pledged pursuant to the Financing Agreements. The Bonds, the
20 premium, if any, and the interest thereon shall never constitute the debt or indebtedness of the City,
21 the State or any political subdivision thereof within the meaning of any provision or limitation of the
22 State Constitution or statutes; shall not constitute nor give rise to a pecuniary liability of the City, the
23 State or any political subdivision thereof or a charge against their general credit or taxing power and
24 shall not constitute a “multiple fiscal year direct or indirect debt or other financial obligation” of the
25 City, the State or any political subdivision thereof under Article X, Section 20 of the Colorado
26 Constitution. Neither the City, the State nor any political subdivision thereof shall be obligated to
27 pay the principal of, premium, if any, or interest on the Bonds or other costs incident thereto. The
28 Bonds do not constitute a debt, loan, credit or pledge of the faith and credit or taxing power of the
29 City, the State or any political subdivision thereof.

30 **Section 3. Approval and Authorization of Documents.** The Bond Documents shall be
31 and the same are in all respects hereby approved, authorized and confirmed and the Mayor (or the
32 acting Mayor) is hereby authorized and directed to execute, the City Clerk and Recorder is hereby
33 authorized and directed to affix the seal of the City and to attest, the City Attorney (or the Acting City

1 Attorney) is hereby authorized and directed to execute, and the Chief Financial Officer and City
2 Auditor are hereby authorized and directed to countersign and register the Bond Documents in
3 substantially the forms and content as presented to the City on this date, subject to the approval of
4 bond counsel to the City, but with such changes, modifications, additions and deletions therein as
5 shall to them seem necessary, desirable or appropriate, their execution thereof to constitute
6 conclusive evidence of their approval of any and all changes, modifications, additions and deletions
7 from the forms thereof as before this date.

8 **Section 4. All Actions Heretofore Taken.** All actions (not inconsistent with the provisions
9 of this Ordinance) heretofore taken by the City Council and the officers, employees and agents of
10 the City directed toward the issuance and sale of the Bonds therefor are hereby ratified, approved
11 and confirmed.

12 **Section 5. Authorization to Issue and Sell the Bonds.**

13 (a) The issuance of the Bonds shall be in such principal amount, bearing such date and
14 interest rates and shall mature as set forth in the Bond Documents; provided, however, that the
15 aggregate principal amount of the Bonds issued hereby shall not exceed \$8,500,000. The Bonds
16 shall be payable, shall be subject to redemption or purchase prior to maturity and shall be in
17 substantially the form as provided in the Financing Agreements. Furthermore, the Bonds shall be
18 payable at such place and in such form, shall carry such registration privileges, shall be subject to
19 redemption, shall be executed, and shall contain such terms, covenants and conditions, as set forth
20 in the Financing Agreements. The maximum net effective interest rate payable on the Bonds shall
21 not exceed 15.0% (such rate being hereinafter referred to as the "Maximum Rate") and the final
22 maturity of the Bonds shall not be more than forty (40) years after the closing date of the Bonds.

23 (b) The sale of the Bonds to the purchasers thereof pursuant to the terms of the Financing
24 Agreements shall be and the same are in all respects hereby approved, authorized and confirmed
25 and the Mayor (or the acting Mayor) is hereby authorized and directed to execute the Bonds, the
26 City Clerk and Recorder is hereby authorized and directed to affix the seal of the City and to attest,
27 the City Attorney (or the Acting City Attorney) is hereby authorized and directed to execute, and the
28 Chief Financial Officer and City Auditor are hereby authorized and directed to countersign the Bonds
29 and each is hereby authorized to deliver the Bonds for and on behalf of the City to the purchasers
30 thereof pursuant to the Financing Agreements.

31 **Section 6. Compliance with the Act.** The following determinations and findings are
32 hereby made in accordance with the Act:

1 (a) that the amounts necessary in each year to pay the principal of and interest on the
2 Bonds is dependent upon the rate of interest on the Bonds, but in any event shall not exceed the
3 principal amount of the Bonds plus interest at the Maximum Rate;

4 (b) that the terms of the Financing Agreements and related security documents require
5 that the Borrower will cause to be maintained, or maintain, the Project and will cause to be carried,
6 or carry, all proper insurance with respect thereto and require the payment of all applicable taxes
7 with respect thereto;

8 (c) that the nature and amount of any reserve funds necessary to secure payment of the
9 Bonds, if any, is set forth in the Financing Agreements;

10 (d) the revenues and other amounts payable under the Financing Agreements are
11 sufficient to pay, in addition to all other requirements of the Financing Agreements and this
12 Ordinance, all sums referred to in paragraphs (a) and (c) of this Section 6 and all taxes or payments
13 in lieu of taxes levied upon the Project;

14 (e) “Low-and middle-income families and persons” means with respect to the Project, all
15 as anticipated as of the effective date of this Ordinance, households that earn less than 30% of the
16 area median income (currently anticipated that 16 of the units in the Project will be reserved for such
17 households); households that earn less than 40% of the area median income (currently anticipated
18 that 5 of the units in the Project will be reserved for such households); households that earn less
19 than 50% of the area median income (currently anticipated that 10 of the units in the Project will be
20 reserved for such households); households that earn less than 60% of the area median income
21 (currently anticipated that 37 of the units in the Project will be reserved for such households); and
22 households that earn less than 70% of the area median income (currently anticipated that 14 of the
23 units in the Project will be reserved for such households); and

24 (f) Any inconsistency between the provisions of this Ordinance or the Financing
25 Agreements and those of the Act or the Supplemental Public Securities Act is intended by the City
26 Council. To the extent of any such inconsistency, the provisions of this Ordinance shall be deemed
27 made pursuant to the Charter and shall supersede, to the extent permitted by law, the conflicting
28 provisions of the Act and the Supplemental Public Securities Act.

29 **Section 7. Investments.** Proceeds from the sale of the Bonds and special funds from the
30 revenues from the Project shall be invested and reinvested in such securities and other investments
31 specified in, and otherwise in accordance with, the Financing Agreements and Section 29-3-109 of
32 the Act.

1 **Section 8. Authority To Execute and Deliver Additional Documents.** The officers,
2 employees and agents of the City shall take all action in conformity with the Act, the Supplemental
3 Public Securities Act and the Charter necessary or reasonably required to effectuate the issuance
4 of the Bonds and shall take all action necessary or desirable in conformity with the Act, the
5 Supplemental Public Securities Act and the Charter to finance the costs of the Project to be financed
6 with proceeds of the Bonds and for carrying out, giving effect to and consummating the transactions
7 contemplated by this Ordinance and the Bond Documents, including without limitation the execution,
8 delivery and filing of any documents, statements or reports with the United States Internal Revenue
9 Service or with the Secretary of the United States Treasury necessary to maintain the exclusion of
10 interest on the Bonds (as applicable) from gross income for federal income tax purposes, the
11 execution of any documents relating to the LIHTC, the execution of any documents relating to the
12 City's private activity bond volume cap allocation and the execution and delivery of any closing
13 documents to be delivered in connection with the sale and delivery of the Bonds.

14 **Section 9. Bonds are Limited Obligations.** The Bonds are special, limited obligations of
15 the City payable solely out of the income, revenues and receipts specifically pledged pursuant to the
16 Financing Agreements. The Bonds, the premium, if any, and the interest thereon shall never
17 constitute the debt or indebtedness of the City, the State or any political subdivision thereof within
18 the meaning of any provision or limitation of the State Constitution or statutes; shall not constitute
19 nor give rise to a pecuniary liability of the City, the State or any political subdivision thereof or a
20 charge against their general credit or taxing power and shall not constitute a "multiple fiscal year
21 direct or indirect debt or other financial obligation" of the City, the State or any political subdivision
22 thereof under Article X, Section 20 of the Colorado Constitution. Neither the City, State nor any
23 political subdivision thereof shall be obligated to pay the principal of, premium, if any, or interest on
24 the Bonds or other costs incident thereto. The Bonds do not constitute a debt, loan, credit or pledge
25 of the faith and credit or taxing power of the City, the State or any political subdivision thereof.

26 **Section 10. No Pecuniary Liability.** Nothing contained in this Ordinance or in the Bonds,
27 the Bond Documents or any other instrument shall give rise to a pecuniary liability of, or a charge
28 upon the general credit or taxing powers of, the City, the State or any political subdivision thereof.
29 The breach by any party of any agreement contained in this Ordinance, the Bond Documents or any
30 other instrument shall not impose any pecuniary liability upon, or any charge upon the general credit
31 or taxing powers of, the City, the State or any political subdivision thereof, none of which has the
32 power to pay out of their general fund, or otherwise contribute, any part of the cost of financing the
33 Project or power to operate the Project as a business or in any manner.

1 **Section 11. No Condemnation by City.** The City shall not condemn any land or other
2 property for the Project.

3 **Section 12. Supplemental Ordinances.** The City may, subject to the terms and conditions
4 of the Financing Agreements, pass and execute ordinances supplemental to this Ordinance which
5 shall not be inconsistent with the terms and provisions hereof.

6 **Section 13. Limitation of Rights.** With the exception of any rights herein expressly
7 conferred, nothing expressed or mentioned in or to be implied from the Ordinance or the Bonds are
8 intended or shall be construed to give to any person, other than the City, the Borrower, the Bank and
9 the Sponsor, any legal or equitable right, remedy or claim under or with respect to this Ordinance or
10 any covenants, conditions and provisions herein contained; this Ordinance and all of the covenants,
11 conditions and provisions hereof being intended to be and being for the sole and exclusive benefit
12 of the City, the Borrower, the Bank and the Sponsor as herein provided.

13 **Section 14. Immunity of Officers.** No recourse for the payment of any part of the principal
14 of, premium, if any, or interest on the Bonds for the satisfaction of any liability arising from, founded
15 upon or existing by reason of the issue, purchase or ownership of the Bonds shall be had against
16 any official, officer, member or agent of the City or the State, all such liability to be expressly released
17 and waived as a condition of and as a part of the consideration for the issue, sale and purchase of
18 the Bonds.

19 **Section 15. Counterparts.** This Ordinance may be simultaneously executed in several
20 counterparts, each of which shall be an original and all of which shall constitute but one and the
21 same instrument.

22 **Section 16. Captions.** The captions or headings in this Ordinance are for convenience only
23 and in no way define, limit or describe the scope or intent of any provisions or sections of this
24 Ordinance.

25 **Section 17. Validity of Bonds.** The Bonds shall contain a recital that such Bonds are
26 issued pursuant to the Act and the Supplemental Public Securities Act and such recital shall be
27 conclusive evidence of its validity and of the regularity of its issuance.

28 **Section 18. Irrepealability.** After the Bonds are issued, this Ordinance shall be and remain
29 irrepealable until the Bonds and the interest thereon shall have been fully paid, canceled and
30 discharged.

31 **Section 19. Severability.** If any section, paragraph, clause or provision of this Ordinance
32 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such

1 section, paragraph, clause or provision shall not affect any of the remaining provisions of this
2 Ordinance.

3 **Section 20. Supplemental Public Securities Act.** Section 11-57-204 of the Supplemental
4 Public Securities Act provides that a public entity, including the City, may elect in an act of issuance
5 to apply all or any of the applicable provisions of the Supplemental Public Securities Act to the Bonds.
6 The City hereby elects to apply all of the provisions of the Supplemental Public Securities Act.

7 **Section 21. Superseder.** Pursuant to Article XX of the State Constitution and the Charter,
8 all other statutes of the State that might otherwise apply in connection with the issuance of the Bonds
9 are hereby superseded for the purposes of this Ordinance and the issuance of the Bonds only. To
10 the extent of such inconsistency the provisions of this Ordinance shall be deemed made pursuant to
11 the Charter. All ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof,
12 related to and inconsistent with the issuance of the Bonds and this Ordinance are hereby superseded
13 but only to the extent they relate to the issuance of the Bonds and this Ordinance and only to the
14 extent of such inconsistency. Any inconsistency between the provisions of this Ordinance and such
15 other ordinances, resolutions, bylaws, orders and other instruments or parts thereof is intended by
16 the City Council.

17 **[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

1 COMMITTEE APPROVAL DATE: April 22, 2025 by Consent

2 MAYOR-COUNCIL DATE: April 29, 2025

3 PASSED BY THE COUNCIL: _____

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

10 PREPARED BY: KUTAK ROCK LLP DATE: April 1, 2025

11 REVIEWED BY: Brad Neiman, Assistant City Attorney DATE: May 1, 2025

12 Pursuant to section 13-9, D.R.M.C., this proposed Ordinance has been reviewed by the Office of the
13 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
14 Ordinance. The proposed Ordinance is not submitted to the City Council for approval pursuant to
15 § 3.2.6 of the Charter.

16 Katie J. McLoughlin, Interim City Attorney

17 BY: Anshul Bagga, Assistant City Attorney DATE: 04/30/2025