

BY AUTHORITY

ORDINANCE NO.: _____
SERIES OF 2014

COUNCIL BILL NO.: CB13-1006
COMMITTEE OF REFERENCE:
Health, Safety, Education & Services

A BILL

For an Ordinance authorizing the execution of a First Amendment to Tax Regulatory Agreement relating to Capitol Heights Apartments.

WHEREAS, Emanuel Grant Company LLC, a Colorado limited liability company (the “Owner”) is the owner of a 145-unit multifamily residential rental housing project and the commercial and parking facilities related thereto located at 13th Avenue and Grant Street, Denver, Colorado, known as the Capitol Heights Apartments (the “Project”); and

WHEREAS, the acquisition, construction, equipping and installation of the Project was funded in part from proceeds of the sale of the City and County of Denver, Colorado Multifamily Housing Revenue Bonds (Capitol Heights Apartments) Series 1999A and Series 1999B (the “Senior Bonds”) and the City and County of Denver, Colorado Subordinate Multifamily Housing Revenue Bonds (Capitol Heights Apartments) Series 1999C (the “Subordinate Bonds”) (the Senior Bonds and the Subordinate Bonds are collectively referred to herein as the “Bonds”); and

WHEREAS, in connection with the issuance of the Bonds, the City, the Owner and UMB Bank, N.A., as trustee and successor in that capacity to The Bank of Cherry Creek, N.A. (the “Trustee”) entered into a Tax Regulatory Agreement, dated as of September 1, 1999 (the “Regulatory Agreement” and filed within City Clerk’s Filing No. 99-675), in order to set forth certain terms and conditions relating to the acquisition, construction, equipping and completion of the Project, and in order to ensure that the Project would be used and operated in accordance with the Internal Revenue Code of 1986, as amended (the “Code”) and the County and Municipality Development Revenue Bond Act, Article 3, Title 29, Colorado Revised Statutes, as amended (the “Act”); and

WHEREAS, the City authorized the issuance of the Bonds pursuant to its Home Rule Charter, the Act and Ordinance No. 608, Series of 1999 (the “Bond Ordinance”); and

WHEREAS, the Owner is going to cause all of the Bonds to be redeemed and in connection with the redemption of the Bonds, the Owner has requested that the City execute a First Amendment to Tax Regulatory Agreement (the “First Amendment”) in order to amend the Regulatory Agreement’s provisions in order to accommodate a new FHA Loan (the “FHA Loan”) and

1 certain provisions required by the United States Department of Housing and Urban Development
2 (“HUD”); and

3 **WHEREAS**, the First Amendment to Tax Regulatory Agreement has been filed in the office of
4 the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing
5 No. 99-675-A;

6 **NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY AND**
7 **COUNTY OF DENVER, COLORADO:**

8 **Section 1.** The form and substance of the First Amendment to Tax Regulatory Agreement is
9 hereby approved; provided, however, that the appropriate officers of the City are hereby authorized
10 to make such technical variations, additions or deletions in or to such First Amendment to Tax
11 Regulatory Agreement as he, she or they shall deem necessary or appropriate and not inconsistent
12 with the approval thereof by this Ordinance.

13 **Section 2.** The appropriate officers of the City are hereby authorized to execute and deliver
14 the First Amendment to Tax Regulatory Agreement on behalf of the City and to take such other
15 steps or actions as may be necessary, useful or convenient to effect the aforesaid assignment in
16 accordance with the intent of this Ordinance.

17 **Section 3.** All actions not inconsistent with the provisions of this Ordinance heretofore taken
18 by the Council or any officer or employee of the City in furtherance of the execution of the First
19 Amendment to Tax Regulatory Agreement are hereby ratified, approved and confirmed.

20 **Section 4.** If any section, paragraph, clause or provision of this Ordinance shall be adjudged
21 to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or
22 provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this
23 Ordinance.

24 **Section 5.** All bylaws, orders, resolutions, ordinances, or parts thereof, inconsistent herewith
25 are hereby repealed to the extent only of such inconsistency, and if so repealed, no other bylaw,
26 order, resolution, ordinance, or part thereof, shall be revived. This repealer shall not be construed
27 as reviving any bylaw, order, resolution or ordinance, or part thereof.

28 **Section 6.** This ordinance shall be in full force and effect upon its passage and approval.
29

1 COMMITTEE APPROVAL DATE: January 7, 2014
2 MAYOR-COUNCIL DATE: January 14, 2014
3 PASSED BY THE COUNCIL: _____, 2014
4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____, 2014

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

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2014; _____, 2014

10 PREPARED BY: KUTAK ROCK LLP

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

15 D. Scott Martinez, City Attorney for the City and County of Denver

16 BY: _____, Assistant City Attorney DATE: _____, 2014