

BY AUTHORITY

ORDINANCE NO. _____
SERIES 2023

COUNCIL BILL NO. 23-0727
COMMITTEE OF REFERENCE:
Finance & Governance

A BILL

For an ordinance authorizing the issuance and sale of an amount not to exceed \$11,000,000 of the City and County of Denver, Colorado Multifamily Housing Revenue Bonds (All Saints Apartments), Series 2023 for the purpose of financing the acquisition, construction and equipping of an affordable multifamily rental housing facility located in the City and County of Denver, Colorado and to pay certain expenses of such Bonds (as defined below) issue; approving and authorizing execution of a Financing Agreement, Tax Regulatory Agreement and Allonge (each as defined below) with respect to the Bonds; making findings and determinations with respect to the Project (as defined below) and the Bonds; authorizing the execution and delivery of related documents; and repealing all action heretofore taken in conflict herewith.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

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

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

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

1 payment of such bonds as provided in the Act, the Supplemental Public Securities Act and the
2 Charter; and

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

6 **WHEREAS**, representatives of All Saints Apartments LLLP, a Colorado limited liability limited
7 partnership, including any subsidiaries, affiliates, successors or assigns (but only if such
8 subsidiaries, affiliates, successors or assigns are acceptable to the City) (the “Borrower”), has
9 presented to the City a proposal whereby the City will issue its multifamily housing revenue bonds
10 pursuant to the Act, the Supplemental Public Securities Act and the Charter to finance the cost of a
11 project under the Act, the Supplemental Public Securities Act and the Charter, which project consists
12 of (a) the acquisition, construction and equipping of an approximately 63-unit affordable multifamily
13 rental housing facility located at 2595 South Federal Boulevard, in Denver, Colorado and to be
14 known as All Saints Apartments (or such other name determined by the Borrower) and (b) the
15 payment of certain costs of issuing the Bonds, as defined herein (collectively, the “Project”); and

16 **WHEREAS**, the Project is located within the geographical boundaries of the City; and

17 **WHEREAS**, the City has considered the request of the Borrower and has concluded that the
18 Project will provide low- and middle-income residential rental facilities, promoting the public health,
19 welfare, safety, convenience and prosperity and that the City should issue its multifamily housing
20 revenue bonds under the Act, the Supplemental Public Securities Act and the Charter to finance a
21 portion of the Project, subject to the conditions set forth herein; and

22 **WHEREAS**, the City will issue, sell and deliver the City and County of Denver, Colorado
23 Multifamily Housing Revenue Bonds (All Saints Apartments), Series 2023 in a not to exceed amount
24 of \$11,000,000 (the “Bonds”), to pay a portion of the cost of financing the Project; and

25 **WHEREAS**, the City, the Borrower and FirstBank, a Colorado state banking corporation, as
26 purchaser of the Bonds (the “Bank”), will enter into a Financing Agreement (the “Financing
27 Agreement”), which will provide for the issuance of the Bonds; and

28 **WHEREAS**, the Borrower has applied to the Colorado Housing and Finance Authority for an
29 allocation of low-income housing tax credits (“LIHTC”) under Section 42 of the Internal Revenue
30 Code of 1986, as amended (the “Code”); and

31 **WHEREAS**, there have been presented to the City Council at this meeting substantially final
32 forms of the following documents: (a) the Financing Agreement (City Clerk’s Filing No. 20230062);
33 (b) the Tax Regulatory Agreement (the “Tax Regulatory Agreement”) (City Clerk’s Filing No.

1 20230062A), by and among the City, the Borrower and the Bank; and (c) the form of Allonge attached
2 to the Note (as defined in the Financing Agreement) (the “Allonge” and, together with the Financing
3 Agreement and the Tax Regulatory Agreement, the “Bond Documents”) (City Clerk’s Filing No.
4 20230062B);

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

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

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

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

1 **Section 3. Approval and Authorization of Documents.**

2 The Bond Documents shall be
3 and the same are in all respects hereby approved, authorized and confirmed and the Mayor (or the
4 acting Mayor) is hereby authorized and directed to execute, the City Clerk and Recorder is hereby
5 authorized and directed to affix the seal of the City and to attest, the City Attorney is hereby
6 authorized and directed to execute, and the Chief Financial Officer and City Auditor are hereby
7 authorized and directed to countersign and register the Bond Documents in substantially the forms
8 and content as presented to the City on this date, subject to the approval of bond counsel to the City,
9 but with such changes, modifications, additions and deletions therein as shall to them seem
10 necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their
11 approval of any and all changes, modifications, additions and deletions from the forms thereof as
12 before this date.

12 **Section 4. All Actions Heretofore Taken.**

13 All actions (not inconsistent with the provisions
14 of this Ordinance) heretofore taken by the City Council and the officers, employees and agents of
15 the City directed toward the issuance and sale of the Bonds therefor are hereby ratified, approved
16 and confirmed.

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

17 (a) The issuance of the Bonds shall be in such principal amount, bearing such date and
18 interest rates and shall mature as set forth in the Bond Documents; provided, however, that the
19 aggregate principal amount of the Bonds issued hereby shall not exceed \$11,000,000. The Bonds
20 shall be payable, shall be subject to redemption or purchase prior to maturity and shall be in
21 substantially the form as provided in the Financing Agreement. Furthermore, the Bonds shall be
22 payable at such place and in such form, shall carry such registration privileges, shall be subject to
23 redemption, shall be executed, and shall contain such terms, covenants and conditions, as set forth
24 in the Financing Agreement. The maximum net effective interest rate payable on the Bonds shall
25 not exceed 12.0% (such rate being hereinafter referred to as the "Maximum Rate") and the final
26 maturity of the Bonds shall not be more than forty (40) years after the closing date of the Bonds.

27 (b) The sale of the Bonds to the Bank pursuant to the terms of the Financing Agreement
28 shall be and the same are in all respects hereby approved, authorized and confirmed and the Mayor
29 (or the acting Mayor) is hereby authorized and directed to execute the Bonds, the City Clerk and
30 Recorder is hereby authorized and directed to affix the seal of the City and to attest, the City Attorney
31 is hereby authorized and directed to execute, and the Chief Financial Officer and City Auditor are
32 hereby authorized and directed to countersign the Bonds and each is hereby authorized to deliver

1 the Bonds for and on behalf of the City to the Bank pursuant to the Financing Agreement. The Bonds
2 shall be sold to the Bank at par.

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

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

8 (b) that the terms of the Financing Agreement and related security documents require that
9 the Borrower will cause to be maintained, or maintain, the Project and will cause to be carried, or
10 carry, all proper insurance with respect thereto and require the payment of all applicable taxes with
11 respect thereto;

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

14 (d) the revenues and other amounts payable under the Financing Agreement are sufficient
15 to pay, in addition to all other requirements of the Financing Agreement and this Ordinance, all sums
16 referred to in paragraphs (a) and (c) of this Section 6 and all taxes or payments in lieu of taxes levied
17 upon the Project;

18 (e) “Low-and middle-income families and persons” means with respect to the Project
19 households that earn less than 30% of the area median income (12 of the units in the Project will be
20 reserved for such households); 40% of the area median income (5 of the units in the Project will be
21 reserved for such households); 50% of the area median income (12 of the units in the Project will be
22 reserved for such households); and 60% of the area median income (34 of the units in the Project
23 will be reserved for such households)]; and

24 (f) Any inconsistency between the provisions of this Ordinance or the Financing
25 Agreement 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 Agreement 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 portion of the costs of the Project
6 to be financed with proceeds of the Bonds and for carrying out, giving effect to and consummating
7 the transactions contemplated by this Ordinance and the Bond Documents, including without
8 limitation the execution, delivery and filing of any documents, statements or reports with the United
9 States Internal Revenue Service or with the Secretary of the United States Treasury necessary to
10 maintain the exclusion of interest on the Bonds (as applicable) from gross income for federal income
11 tax purposes, the execution of any documents relating to the LIHTC, the execution of any documents
12 relating to the City's private activity bond volume cap allocation and the execution and delivery of
13 any closing 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 Agreement. 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. Volume Cap Allocation.** The City Council acting on behalf of the City hereby
4 awards to the Project an amount not to exceed \$11,000,000 of its private activity bond volume cap
5 from the Statewide Balance and direct allocation. This award of private activity bond volume cap
6 allocation will be revoked by the City if the Bonds are not issued on or prior to December 31, 2024.

7 **Section 13. Supplemental Ordinances.** The City may, subject to the terms and conditions
8 of the Financing Agreement, pass and execute ordinances supplemental to this Ordinance which
9 shall not be inconsistent with the terms and provisions hereof.

10 **Section 14. Limitation of Rights.** With the exception of any rights herein expressly
11 conferred, nothing expressed or mentioned in or to be implied from the Ordinance or the Bonds are
12 intended or shall be construed to give to any person, other than the City, the Borrower and the Bank,
13 any legal or equitable right, remedy or claim under or with respect to this Ordinance or any
14 covenants, conditions and provisions herein contained; this Ordinance and all of the covenants,
15 conditions and provisions hereof being intended to be and being for the sole and exclusive benefit
16 of the City, the Borrower and the Bank as herein provided.

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

23 **Section 16. Counterparts.** This Ordinance may be simultaneously executed in several
24 counterparts, each of which shall be an original and all of which shall constitute but one and the
25 same instrument.

26 **Section 17. Captions.** The captions or headings in this Ordinance are for convenience only
27 and in no way define, limit or describe the scope or intent of any provisions or sections of this
28 Ordinance.

29 **Section 18. Validity of Bonds.** The Bonds shall contain a recital that such Bonds are
30 issued pursuant to the Act and the Supplemental Public Securities Act and such recital shall be
31 conclusive evidence of its validity and of the regularity of its issuance.

1 **Section 19. Irrepealability.** After the Bonds are issued, this Ordinance shall be and remain
2 irrepealable until the Bonds and the interest thereon shall have been fully paid, canceled and
3 discharged.

4 **Section 20. Severability.** If any section, paragraph, clause or provision of this Ordinance
5 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such
6 section, paragraph, clause or provision shall not affect any of the remaining provisions of this
7 Ordinance.

8 **Section 21. Supplemental Public Securities Act.** Section 11-57-204 of the Supplemental
9 Public Securities Act provides that a public entity, including the City, may elect in an act of issuance
10 to apply all or any of the applicable provisions of the Supplemental Public Securities Act to the Bonds.
11 The City hereby elects to apply all of the provisions of the Supplemental Public Securities Act.

12 **Section 22. Superseder.** Pursuant to Article XX of the State Constitution and the Charter,
13 all other statutes of the State that might otherwise apply in connection with the issuance of the Bonds
14 are hereby superseded for the purposes of this Ordinance and the issuance of the Bonds only. To
15 the extent of such inconsistency the provisions of this Ordinance shall be deemed made pursuant to
16 the Charter. All ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof,
17 related to and inconsistent with the issuance of the Bonds and this Ordinance are hereby superseded
18 but only to the extent they relate to the issuance of the Bonds and this Ordinance and only to the
19 extent of such inconsistency. Any inconsistency between the provisions of this Ordinance and such
20 other ordinances, resolutions, bylaws, orders and other instruments or parts thereof is intended by
21 the Council.

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1 COMMITTEE APPROVAL DATE: June 6, 2023 by Consent
2 MAYOR-COUNCIL DATE: June 13, 2023 by Consent
3 PASSED BY THE COUNCIL: _____
4 _____ - PRESIDENT
5 ATTEST: _____ - CLERK AND RECORDER,
6 EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER
8 PREPARED BY: KUTAK ROCK LLP DATE: May 15, 2023
9 REVIEWED BY: Brad Neiman, Assistant City Attorney DATE: June 15, 2023
10 Pursuant to section 13-9, D.R.M.C., this proposed Ordinance has been reviewed by the Office of the
11 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
12 Ordinance. The proposed Ordinance is not submitted to the City Council for approval pursuant to
13 § 3.2.6 of the Charter.
14 Kerry Tipper, Denver City Attorney
15 BY: _____, Assistant City Attorney DATE: _____