

BY AUTHORITY

RESOLUTION NO. CR18-0961
SERIES OF 2018

COMMITTEE OF REFERENCE:
Finance & Governance

A RESOLUTION

Approving and evidencing the intention of the City and County of Denver, Colorado to issue an amount not to exceed \$11,000,000 of Multifamily Housing Revenue Bonds for The Colburn.

WHEREAS, the City and County of Denver, Colorado (the “City”) is a legally and regularly created, established, organized and 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 City is authorized by its 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”) to finance or refinance projects as defined in the Act to the end that residential facilities for low- and middle-income families or persons intended for use as the sole place of residence by the owners or intended occupants may be provided in order to promote the public health, welfare, safety, convenience and prosperity; and

WHEREAS, representatives of Colburn, LLC (such entity, together with one or more related affiliates or successors or assigns, are collectively referred to herein as the “Borrower”) have advised the City that the Borrower intends to acquire, rehabilitate, improve and equip a 92-unit multifamily facility to be located at 980 Grant Street, Denver, Colorado (the “Project”), subject to the City’s financing the acquisition, rehabilitation, improvement and equipping of the Project through the issuance of the City’s multifamily housing revenue bonds in an amount not to exceed \$11,000,000; and

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

WHEREAS, the Project will be known as The Colburn; and

WHEREAS, the Borrower has represented to the City that the Project will qualify as a “project” within the meaning of the Act; and

WHEREAS, the City has considered the Borrower’s proposal and has concluded that the Project will provide affordable housing to low- and middle-income persons and families in the City and will promote the public health, welfare, safety, convenience and prosperity; and

1 **WHEREAS**, the City desires to indicate its intent to proceed with financing the Project through
2 the issuance of the City’s multifamily housing revenue bonds;

3 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY**
4 **OF DENVER, COLORADO:**

5 **Section 1.** That in order to benefit the residents of the City and to induce the Borrower to
6 undertake the Project, the City shall, subject to the provisions hereof, take all necessary and
7 advisable steps to effect the issuance, in one or more series, of the City’s multifamily housing
8 revenue bonds (the “Bonds”) pursuant to its Charter, the Act and the Supplemental Public Securities
9 Act in the maximum aggregate principal amount of \$11,000,000 or such other amount as shall be
10 determined and agreed upon by the Borrower and the City as may be necessary to finance the
11 Project. The Bonds shall be special, limited obligations of the City payable solely from and secured
12 by a pledge of revenues derived from and payable by the Borrower pursuant to the loan agreement
13 with the City; the Bonds shall never constitute a debt, multiple fiscal year obligation or indebtedness
14 of the City, the State or any political subdivision of the State within the meaning of any provision or
15 limitation of the State Constitution or statutes and shall not constitute nor give rise to a pecuniary
16 liability of the City or be a charge against the City’s general credit or taxing powers of, the City, the
17 State or any county, municipality or political subdivision of the State. The Bonds shall not constitute
18 a “multiple fiscal year direct or indirect debt or other financial obligation” of the City under Article X,
19 Section 20 of the Colorado Constitution, nor shall the Bonds ever be deemed to be an obligation or
20 agreement of any officer, director, agent or employee of the City in such person’s individual capacity,
21 and none of such persons shall be subject to any personal liability by reason of the issuance of the
22 Bonds.

23 **Section 2.** That the City hereby finds, determines, recites and declares that the issuance
24 of the Bonds to finance the Project will provide affordable housing to low- and middle-income persons
25 and families in the City and will promote the public health, welfare, safety, convenience and
26 prosperity.

27 **Section 3.** That the City hereby finds, determines, recites and declares the City’s intent that
28 this Resolution constitute an official indication of the present intention of the City to issue the Bonds
29 as herein provided, subject to: (a) the Borrower obtaining a commitment for the purchase of the
30 Bonds on terms which are acceptable to the City, its municipal advisor and its Bond Counsel; (b) the
31 delivery of an approving opinion of Bond Counsel to the City; (c) the delivery of an appraisal, survey,
32 title insurance, environmental audit and plans and specifications which are all acceptable to the City;

1 (d) the Borrower obtaining sufficient debt and equity financing acceptable to the City; (e) the
2 Borrower receiving all applicable approvals for the Project from the City and County of Denver,
3 Colorado and any other relevant governmental entity; (f) City approval of the design of the Project,
4 (g) if the Bonds are sold on an unrated basis, the Bonds may only be purchased by qualified
5 institutional buyers or accredited investors in denominations acceptable to the City, (h) the Borrower
6 shall elect the “40-60 test” pursuant to Section 142(d)(1)(B) of the Internal Revenue Code of 1986,
7 as amended (the “Code”), (j) the execution and delivery of indemnity agreements and payment or
8 reimbursement of costs and expenses, all to the satisfaction of the City, (i) the Borrower agreeing to
9 post issuance compliance policies and procedures acceptable to the City, and (j) the adoption of a
10 final bond ordinance by the City. The City’s discretion to accept or not to accept items relating to the
11 Project or additional financing therefore or relating to credit, security, sale or marketing aspects of
12 the Bonds is intended for the protection of the City’s interests, and any such acceptance shall not be
13 construed to impose upon the City any duties to, nor to confer any rights against the City upon, any
14 bondholders, investors or other third parties.

15 **Section 4.** The City hereby awards \$11,000,000 of its private activity bond volume cap
16 allocation (the “Allocation”) to the Project. The award of the Allocation shall expire one year from
17 the date of this Resolution (the “Expiration Date”); provided, however, that the Chief Financial Officer
18 of the City or the Executive Director of the City’s Office of Economic Development may extend the
19 Expiration Date to a later date in their sole discretion.

20 **Section 5.** That no costs or expenses whether incurred by the City or any other party in
21 connection with the issuance of the Bonds or the preparation or review of any documents by any
22 legal or financial consultants retained in connection herewith shall be borne by the City. The City
23 shall have the right to select and retain legal, financial and other consultants in connection with the
24 proposed financing, and all fees, costs and expenses of such consultants, along with all other such
25 costs and expenses shall be paid from the proceeds of the Bonds or otherwise borne by the Borrower
26 regardless of whether the Bonds are issued. The City may require such deposits or advances as it
27 deems desirable for such fees, costs and expenses, and may require reimbursement of any such
28 fees, costs and expenses paid by the City.

29 **Section 6.** That prior to any execution of a loan agreement, indenture of trust, bond
30 purchase agreement, tax regulatory agreement or any other necessary documents and agreements
31 in connection with such Bonds, such documents and/or agreements shall be submitted for approval

1 to the City, and, if satisfactory to the City, their execution shall be authorized by ordinance of the City
2 pursuant to law.

3 **Section 7.** That the agreements of the City set forth above are expressly conditioned upon
4 the ability and willingness of the City to issue the Bonds as tax-exempt obligations under the Code.
5 Nothing contained in this Resolution shall be construed as requiring the City to issue the Bonds and
6 the decision to issue the Bonds shall be in the complete discretion of the City.

7 **Section 8.** That if any section, paragraph, clause or provision of this Resolution shall for
8 any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section,
9 paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

10 **Section 9.** That all bylaws, orders, resolutions and ordinances, or parts thereof,
11 inconsistent herewith and with the documents hereby approved, are hereby repealed to the extent
12 only of such inconsistency. This repealer clause shall not be construed as reviving any bylaw, order,
13 or ordinance or part thereof.

14 COMMITTEE APPROVAL DATE: September 4, 2018 by Consent

15 MAYOR-COUNCIL DATE: September 11, 2018

16 PASSED BY THE COUNCIL: _____
17 _____ - PRESIDENT

18 ATTEST: _____ - CLERK AND RECORDER,
19 EX-OFFICIO CLERK OF THE
20 CITY AND COUNTY OF DENVER

21 PREPARED BY: KUTAK ROCK LLP

22 REVIEWED BY: Jo Ann Weinstein, Assistant City Attorney DATE: September 13, 2018

23 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the Office of
24 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
25 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to
26 § 3.2.6 of the Charter.

27
28 Kristin M. Bronson, Denver City Attorney

29 BY: _____, Assistant City Attorney DATE: _____
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