

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2011

COUNCIL BILL NO. CB11-0626  
COMMITTEE OF REFERENCE:  
Business, Workforce & Sustainability

**A BILL**

**For an Ordinance authorizing the execution of a First Amendment to Tax Regulatory Agreement relating to Highlands Garden Village Apartments.**

WHEREAS, HGV Multifamily, L.P., a Colorado limited partnership (the “Owner”) is the owner of a 74-unit residential housing project and the recreation and parking facilities related thereto located at 4777 West 37th Avenue and 4655 West 37<sup>th</sup> Avenue, Denver, Colorado 80212, known as Highlands Garden Village Apartments (d/b/a Trocadero Apartments) and further identified as FHA Project No. 101-35685 (the “Project”); and

WHEREAS, the acquisition, construction, equipping and installation of the Project was funded in part from proceeds of the sale of \$6,615,000 of the City and County of Denver, Colorado’s Multifamily Housing Revenue Bonds (GNMA Collateralized—Highlands Garden Village Apartments Project) Series 2001A (the “Series 2001A Bonds”) and \$1,000,000 Taxable Multifamily Housing Revenue Bonds (GMNA Collateralized—Highlands Garden Village Apartments Project) Series 2001B (the “Series 2001B Bonds”) (the Series 2001A Bonds and the Series 2001B Bonds are collectively referred to herein as the “Bonds”) issued pursuant to a Trust Indenture, dated as of July 1, 2001 (the “Indenture”), by and between the City and County of Denver, Colorado (the “City”) and Zions First National Bank, as trustee thereunder (the “Trustee”); and

WHEREAS, in connection with the issuance of the Bonds, the City, the Owner and the Trustee entered into a Tax Regulatory Agreement, dated as of July 1, 2001 (the “Regulatory Agreement” and filed as City Clerk’s Filing No. 01-604-C), 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

1 Revenue Code of 1986, as amended (the "Code") and the County and Municipality Development  
2 Revenue Bond Act, Article 3, Title 29, Colorado Revised Statutes, as amended (the "Act"); and

3 WHEREAS, the City authorized the issuance of the Bonds pursuant to its Home Rule  
4 Charter, the Act and Ordinance No. 519, Series of 2001 (the "Bond Ordinance"); and

5 WHEREAS, the Owner is going to cause all of the Bonds to be redeemed pursuant to the  
6 Indenture and in connection with the redemption of the Bonds, the Owner has requested that the  
7 City execute a First Amendment to Tax Regulatory Agreement (the "First Amendment") in order to amend  
8 the Regulatory Agreement's definition of "mortgage" and "mortgage loan" and to update the notice  
9 addresses in Section 18 of the Regulatory Agreement; and

10 WHEREAS, the First Amendment to Tax Regulatory Agreement has been filed with the City  
11 Clerk, Ex-Officio Clerk of the City and County of Denver, Filing No. 01-604-D;

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

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

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

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

1 Section 4. If any section, paragraph, clause or provision of this Ordinance shall be  
2 adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section,  
3 paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses  
4 or provisions of this Ordinance.

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

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

10 COMMITTEE APPROVAL DATE: (by Consent) September 1, 2011

11 MAYOR-COUNCIL DATE: (by Consent) September 6, 2011

12 PASSED BY THE COUNCIL: \_\_\_\_\_, 2011

13 \_\_\_\_\_ - PRESIDENT

14 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2011

15 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,

16 EX-OFFICIO CLERK OF THE

17 CITY AND COUNTY OF DENVER

18 NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2011; \_\_\_\_\_, 2011

19 PREPARED BY: KUTAK ROCK LLP

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

24 Douglas J. Friednash, Denver City Attorney

25 BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney DATE: \_\_\_\_\_, 2011