

**BY AUTHORITY**

ORDINANCE NO.: \_\_\_\_\_  
SERIES OF 2010

COUNCIL BILL NO. CB10-0792  
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 Senior Apartments.**

**WHEREAS**, HGV Senior, L.P., a Colorado limited partnership (the “Owner”) is the owner of a 61-unit age-restricted residential housing project and the parking facilities related thereto located at 3755, 3755-A and 3755-B Tennyson Street, Denver, Colorado 80212, known as Highlands Garden Village Senior Apartments; and

**WHEREAS**, the acquisition, construction, equipping and installation of the Project was funded in part from proceeds of the sale of \$4,045,000 of the City and County of Denver, Colorado’s Multifamily Housing Mortgage Revenue Bonds (FHA Insured Mortgage Loan—Highlands Garden Village Senior Apartments) Series 1999A (the “Series 1999A Bonds”) and \$150,000 Taxable Multifamily Housing Mortgage Revenue Bonds (FHA Insured Mortgage Loan—Highlands Garden Village Senior Apartments) Series 1999B (the “Series 1999B Bonds”) (the Series 1999A Bonds and the Series 1999B Bonds are collectively referred to herein as the “Bonds”) issued pursuant to a Trust Indenture, dated as of November 1, 1999 (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 November 1, 1999 (the “Regulatory Agreement” and filed as City Clerk’s Filing No. 99-858-C), in order to set forth certain terms and conditions relating to the acquisition, construction, equipping and completion of the Project, and in

1 order to ensure that the Project would be used and operated in accordance with the Internal  
2 Revenue Code of 1986, as amended (the "Code") and the County and Municipality Development  
3 Revenue Bond Act, Article 3, Title 29, Colorado Revised Statutes, as amended (the "Act"); and

4 **WHEREAS**, the City authorized the issuance of the Bonds pursuant to its Home Rule  
5 Charter, the Act and Ordinance No. 744, Series of 1999 (the "Bond Ordinance"); and

6 **WHEREAS**, the Owner is going to cause all of the Bonds to be redeemed pursuant to the  
7 Indenture and in connection with the redemption of the Bonds, the Owner has requested that the  
8 City execute a First Amendment to Tax Regulatory Agreement (the "First Amendment") in order to  
9 amend the Regulatory Agreement's definition of "mortgage" and "mortgage loan"; 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. 1999-858-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  
15 is hereby approved; provided, however, that the appropriate officers of the City are hereby  
16 authorized to make such technical variations, additions or deletions in or to such First Amendment  
17 to Tax 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 prior acts, orders, resolutions, ordinances or parts thereof of the City in  
24 conflict with this Ordinance are hereby repealed, except that this repealer shall not be construed to  
25 revive an act, order, resolution, ordinance, or part thereof, heretofore repealed.

1           **Section 4.** If any section, paragraph, clause, or provision of this Ordinance shall for any  
2 reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section,  
3 paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

4           **Section 5.** All bylaws, orders, resolutions, ordinances, or parts thereof, inconsistent  
5 herewith are hereby repealed to the extent only of such inconsistency, and if so repealed, no other  
6 bylaw, order, resolution, ordinance, or part thereof, shall be revived.

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

8 COMMITTEE APPROVAL DATE: (by Consent) September 16, 2010

9 MAYOR-COUNCIL DATE: September 21, 2010

10 PASSED BY THE COUNCIL: \_\_\_\_\_, 2010

11 \_\_\_\_\_ - PRESIDENT

12 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2010

13 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
14 EX-OFFICIO CLERK OF THE  
15 CITY AND COUNTY OF DENVER

16 NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2010; \_\_\_\_\_, 2010

17 PREPARED BY: KUTAK ROCK LLP    September 23, 2010

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

22 DAVID R. FINE, City Attorney

23 By: \_\_\_\_\_, City Attorney            Date: \_\_\_\_\_, 2010