

1 **BY AUTHORITY**

2 ORDINANCE NO. \_\_\_\_\_

COUNCIL BILL NO. 22-1577

3 SERIES 2022

COMMITTEE OF REFERENCE:

4 Finance & Governance

5 **A BILL**

6 **For an ordinance authorizing the issuance and sale of an aggregate amount not**  
7 **to exceed \$19,541,667 of the City and County of Denver, Colorado Multifamily**  
8 **Tax-Exempt Mortgage-Backed Bonds (M-TEBS) (SOCIAL) (Northfield Flats**  
9 **Project) Series 2023A and the City and County of Denver, Colorado Multifamily**  
10 **Housing Revenue Bonds (Northfield Flats Project) Series 2023B for the purpose**  
11 **of financing the acquisition, construction and equipping of an affordable**  
12 **multifamily rental housing facility located in the City and County of Denver,**  
13 **Colorado and to pay certain expenses of such Bonds (as defined below) issue;**  
14 **approving and authorizing execution of an Indenture, a Financing Agreement, a**  
15 **Tax Regulatory Agreement, and a Bond Purchase Agreement (each as defined**  
16 **below) with respect to the Bonds; making findings and determinations with**  
17 **respect to the Project (as defined below) and the Bonds; authorizing the**  
18 **execution and delivery of related documents; and repealing all action heretofore**  
19 **taken in conflict herewith.**

20 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER (THE “CITY**  
21 **COUNCIL”):**

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

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

1           **WHEREAS**, the City is further authorized by the Act, the Supplemental Public Securities Act  
2 and the Charter to issue its revenue bonds for the purposes of defraying the costs of financing any  
3 such project, including all incidental expenses incurred in issuing such bonds, and to secure the  
4 payment of such bonds as provided in the Act, the Supplemental Public Securities Act and the  
5 Charter; and

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

9           **WHEREAS**, representatives of Northfield Flats LLC, a Colorado limited liability company,  
10 including any subsidiaries, affiliates, successors or assigns (but only if such subsidiaries, affiliates,  
11 successors or assigns are acceptable to the City) (the “Borrower”), has presented to the City a  
12 proposal whereby the City will issue its multifamily housing revenue bonds pursuant to the Act, the  
13 Supplemental Public Securities Act and the Charter to finance the cost of a project under the Act,  
14 the Supplemental Public Securities Act and the Charter, which project consists of: (a) the acquisition,  
15 construction and equipping of an approximately 129-unit affordable housing facility located at the  
16 northwest corner of 4545 Xenia Street, in Denver, Colorado to be known as Northfield Flats and (b)  
17 the payment of costs of issuing the Bonds (collectively, the “Project”); and

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

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

24           **WHEREAS**, the City will issue, sell and deliver the City and County of Denver, Colorado  
25 Multifamily Tax-Exempt Mortgage-Backed Bonds (M-TEBS) (SOCIAL) (Northfield Flats Project)  
26 Series 2023A (the “Series 2023A Bonds”) and the City and County of Denver, Colorado Multifamily  
27 Housing Revenue Bonds (Northfield Flats Project) Series 2023B (the “Series 2023B Bonds”, and  
28 together with the Series 2023A Bonds, the “Bonds”), in an aggregate not to exceed amount of  
29 \$19,541,667 to pay a portion of the cost of financing the Project; and

30           **WHEREAS**, the City and Zions Bancorporation, National Association, as trustee (the  
31 “Trustee”), will enter into an Indenture of Trust (the “Indenture”), which will provide for the issuance  
32 of the Bonds; and

1           **WHEREAS**, the City, the Trustee and the Borrower will enter into a Financing Agreement (the  
2 “Financing Agreement”), which will provide for payments sufficient to pay the principal of, premium,  
3 if any, and interest on the Bonds and to meet other obligations as herein and therein provided; and

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

7           **WHEREAS**, there have been presented to the City Council at this meeting substantially final  
8 forms of the following documents: (a) the Indenture; (City Clerk’s Filing No. 20220117); (b) the  
9 Financing Agreement (City Clerk’s Filing No. 20220118); (c) the Tax Regulatory Agreement (the  
10 “Tax Regulatory Agreement”) (City Clerk’s Filing No. 20220119), by and among the Trustee, the City  
11 and the Borrower; and (d) the Bond Purchase Agreement (the “Bond Purchase Agreement”) (City  
12 Clerk’s Filing No. 20220120), by and between the Issuer and KeyBanc Capital Markets Inc., as the  
13 underwriter of the Bonds (collectively, the “Bond Documents”);

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

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

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

- 27           (a) The Project is an eligible “project,” as defined in the Act.
- 28           (b) The issuance of the Bonds will effectuate the public purposes of the City and carry out  
29 the purposes of the Act by, among other things, providing residential facilities for low- and middle-  
30 income families and persons in the City.
- 31           (c) The Bonds are special, limited obligations of the City payable solely out of the income,  
32 revenues and receipts specifically pledged pursuant to the Indenture and the Financing Agreement.  
33 The Bonds, the premium, if any, and the interest thereon shall never constitute the debt or

1 indebtedness of the City, the State or any political subdivision thereof within the meaning of any  
2 provision or limitation of the State Constitution or statutes; shall not constitute nor give rise to a  
3 pecuniary liability of the City, the State or any political subdivision thereof or a charge against their  
4 general credit or taxing power and shall not constitute a “multiple fiscal year direct or indirect debt or  
5 other financial obligation” of the City, the State or any political subdivision thereof under Article X,  
6 Section 20 of the Colorado Constitution. Neither the City, the State nor any political subdivision  
7 thereof shall be obligated to pay the principal of, premium, if any, or interest on the Bonds or other  
8 costs incident thereto. The Bonds do not constitute a debt, loan, credit or pledge of the faith and  
9 credit or taxing power of the City, the State or any political subdivision thereof.

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

21 **Section 4. All Actions Heretofore Taken.** All actions (not inconsistent with the provisions  
22 of this Ordinance) heretofore taken by the City Council and the officers, employees and agents of  
23 the City directed toward the issuance and sale of the Bonds therefor are hereby ratified, approved  
24 and confirmed.

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

26 (a) The issuance of the Bonds shall be in such principal amount, bearing such date and  
27 interest rates and shall mature as set forth in the Bond Documents; provided, however, that the  
28 aggregate principal amount of the Bonds issued hereby shall not exceed \$19,541,667. The Bonds  
29 shall be payable, shall be subject to redemption or purchase prior to maturity and shall be in  
30 substantially the form as provided in the Indenture and the Financing Agreement. Furthermore, the  
31 Bonds shall be payable at such place and in such form, shall carry such registration privileges, shall  
32 be subject to redemption, shall be executed, and shall contain such terms, covenants and conditions,  
33 as set forth in the Indenture and the Financing Agreement. The maximum net effective interest rate

1 payable on the Bonds shall not exceed 12.0% (such rate being hereinafter referred to as the  
2 “Maximum Rate”) and the final maturity of the Bonds shall not be more than forty (40) years after the  
3 closing date of the Bonds.

4 (b) The sale of the Bonds pursuant to the terms of the Indenture shall be and the same  
5 are in all respects hereby approved, authorized and confirmed and the Mayor (or the acting Mayor)  
6 is hereby authorized and directed to execute the Bonds, the City Clerk and Recorder is hereby  
7 authorized and directed to affix the seal of the City and to attest, the City Attorney is hereby  
8 authorized and directed to execute, and the Chief Financial Officer and City Auditor are hereby  
9 authorized and directed to countersign the Bonds and each is hereby authorized to deliver the Bonds  
10 for and on behalf of the City pursuant to the Indenture.

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

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

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

20 (c) that the nature and amount of any reserve funds necessary to secure payment of the  
21 Bonds, if any, is set forth in a certain loan agreement to be entered into by the Borrower and KeyBank  
22 Real Estate Capital, as permanent lender for the Project;

23 (d) the revenues and other amounts payable under the Indenture and the Financing  
24 Agreement are sufficient to pay, in addition to all other requirements of the Indenture, Financing  
25 Agreement and this Ordinance, all sums referred to in paragraphs (a) and (c) of this Section and all  
26 taxes or payments in lieu of taxes levied upon the Project;

27 (e) “Low-and middle-income families and person” means with respect to the Project  
28 households that earn less than 30% of the area median income (38 of the units in the Project will be  
29 reserved for such households); 50% of the area median income (5 of the units in the Project will be  
30 reserved for such households); 60% of the area median income (22 of the units in the Project will be  
31 reserved for such households); 70% of the area median income (33 of the units in the Project will be  
32 reserved for such households); and 80% of the area median income (31 of the units in the Project  
33 will be reserved for such households); and

1 (f) Any inconsistency between the provisions of this Ordinance, the Indenture, or the  
2 Financing Agreement and those of the Act or the Supplemental Public Securities Act is intended by  
3 the City Council. To the extent of any such inconsistency, the provisions of this Ordinance shall be  
4 deemed made pursuant to the Charter and shall supersede, to the extent permitted by law, the  
5 conflicting provisions of the Act and the Supplemental Public Securities Act.

6 **Section 7. Investments.** Proceeds from the sale of the Bonds and special funds from the  
7 revenues from the Project shall be invested and reinvested in such securities and other investments  
8 specified in, and otherwise in accordance with, the Indenture, Financing Agreement and Section 29-  
9 3-109 of the Act.

10 **Section 8. Authority To Execute and Deliver Additional Documents.** The officers,  
11 employees and agents of the City shall take all action in conformity with the Act, the Supplemental  
12 Public Securities Act and the Charter necessary or reasonably required to effectuate the issuance  
13 of the Bonds and shall take all action necessary or desirable in conformity with the Act, the  
14 Supplemental Public Securities Act and the Charter to finance the portion of the costs of the Project  
15 to be financed with proceeds of the Bonds and for carrying out, giving effect to and consummating  
16 the transactions contemplated by this Ordinance and the Bond Documents, including without  
17 limitation the execution, delivery and filing of any documents, statements or reports with the United  
18 States Internal Revenue Service or with the Secretary of the United States Treasury necessary to  
19 maintain the exclusion of interest on the Bonds (as applicable) from gross income for federal income  
20 tax purposes, the execution of any documents relating to the LIHTC, the execution of any documents  
21 relating to the City’s private activity bond volume cap allocation and the execution and delivery of  
22 any closing documents to be delivered in connection with the sale and delivery of the Bonds.

23 **Section 9. Bonds are Limited Obligations.** The Bonds are special, limited obligations of  
24 the City payable solely out of the income, revenues and receipts specifically pledged pursuant to the  
25 Indenture and the Financing Agreement. The Bonds, the premium, if any, and the interest thereon  
26 shall never constitute the debt or indebtedness of the City, the State or any political subdivision  
27 thereof within the meaning of any provision or limitation of the State Constitution or statutes; shall  
28 not constitute nor give rise to a pecuniary liability of the City, the State or any political subdivision  
29 thereof or a charge against their general credit or taxing power and shall not constitute a “multiple  
30 fiscal year direct or indirect debt or other financial obligation” of the City, the State or any political  
31 subdivision thereof under Article X, Section 20 of the Colorado Constitution. Neither the City, State  
32 nor any political subdivision thereof shall be obligated to pay the principal of, premium, if any, or  
33 interest on the Bonds or other costs incident thereto. The Bonds do not constitute a debt, loan, credit

1 or pledge of the faith and credit or taxing power of the City, the State or any political subdivision  
2 thereof.

3 **Section 10. No Pecuniary Liability.** Nothing contained in this Ordinance or in the Bonds,  
4 the Bond Documents or any other instrument shall give rise to a pecuniary liability of, or a charge  
5 upon the general credit or taxing powers of, the City, the State or any political subdivision thereof.  
6 The breach by any party of any agreement contained in this Ordinance, the Bond Documents or any  
7 other instrument shall not impose any pecuniary liability upon, or any charge upon the general credit  
8 or taxing powers of, the City, the State or any political subdivision thereof, none of which has the  
9 power to pay out of their general fund, or otherwise contribute, any part of the cost of financing the  
10 Project or power to operate the Project as a business or in any manner.

11 **Section 11. No Condemnation by City.** The City shall not condemn any land or other  
12 property for the Project.

13 **Section 12. Volume Cap Allocation.** The City Council acting on behalf of the City hereby  
14 awards to the Project an amount not to exceed \$19,541,667 of its private activity bond volume cap  
15 from the Statewide Balance and direct allocation. This award of private activity bond volume cap  
16 allocation will be revoked by the City if the Bonds are not issued on or prior to June 30, 2023.

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

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

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

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

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

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

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

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

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

21          **Section 22. Superseder.** Pursuant to Article XX of the State Constitution and the Charter,  
22 all other statutes of the State that might otherwise apply in connection with the issuance of the Bonds  
23 are hereby superseded for the purposes of this Ordinance and the issuance of the Bonds only. To  
24 the extent of such inconsistency the provisions of this Ordinance shall be deemed made pursuant to  
25 the Charter. All ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof,  
26 related to and inconsistent with the issuance of the Bonds and this Ordinance are hereby superseded  
27 but only to the extent they relate to the issuance of the Bonds and this Ordinance and only to the  
28 extent of such inconsistency. Any inconsistency between the provisions of this Ordinance and such  
29 other ordinances, resolutions, bylaws, orders and other instruments or parts thereof is intended by  
30 the City Council.

31                                   **[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

1 COMMITTEE APPROVAL DATE: November 29, 2022 by Consent

2 MAYOR-COUNCIL DATE: December 6, 2022

3 PASSED BY THE COUNCIL: \_\_\_\_\_

4 \_\_\_\_\_ - PRESIDENT

5 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_

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

9 PREPARED BY: KUTAK ROCK LLP DATE: November 10, 2022

10 REVIEWED BY: Brad Neiman, Assistant City Attorney DATE: December 8, 2022

11 Pursuant to section 13-9, D.R.M.C., this proposed Ordinance has been reviewed by the Office of the  
12 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 Kerry Tipper, Denver City Attorney

16 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_