

BY AUTHORITY

ORDINANCE NO. _____
SERIES 2021

COUNCIL BILL NO. 21-0942
COMMITTEE OF REFERENCE:
Safety, Housing, Education & Homelessness

A BILL

For an ordinance authorizing the issuance and sale of an amount not to exceed \$15,425,000 of the City and County of Denver, Colorado Multifamily Housing Revenue Note (The Rose on Colfax) Series 2021 for the purpose of financing the acquisition, construction, renovation, rehabilitation, improvement and equipping of an affordable multifamily housing facility in the City and County of Denver, Colorado and to pay certain expenses of such Notes (as defined below) issue; approving and authorizing execution of a Funding Loan Agreement, a Borrower Loan Agreement and a Tax Regulatory Agreement (each as defined below) with respect to the Notes; making findings and determinations with respect to the Project (as defined below) and the Notes; 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 notes 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 or 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 notes for the purposes of defraying the costs of financing any such project, including all incidental expenses incurred in issuing such notes, and to secure the payment of such notes as provided in the Act, the Supplemental Public Securities Act and the Charter; and

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

4 **WHEREAS**, representatives of MHMP 15 E Colfax LLLP, a Colorado limited liability limited
5 partnership, including any subsidiaries, affiliates, successors or assigns (but only if such
6 subsidiaries, affiliates, successors or assigns are acceptable to the City) (the “Borrower”), has
7 presented to the City a proposal whereby the City will issue its multifamily housing revenue notes
8 pursuant to the Act, the Supplemental Public Securities Act and the Charter to finance the cost of a
9 project under the Act, the Supplemental Public Securities Act and the Charter, which project consists
10 of: (a) of the acquisition, construction, renovation, rehabilitation, improvement and equipping of an
11 approximately 82-unit affordable multifamily housing facility located at 1510 North Valentia Street in
12 Denver, Colorado, known as The Rose on Colfax (the “Property”); and (b) the payment of the costs
13 of issuing the Notes (collectively, the “Project”); and

14 **WHEREAS**, an affiliate of the Borrower will separately finance an early childhood education
15 center located at 1500 North Valentia Street, Denver, Colorado (the “Early Childhood Center”), and
16 no proceeds of the Notes, as defined below, will be used to finance the Early Childhood Center.

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

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

23 **WHEREAS**, the City will issue, sell and deliver the City and County of Denver, Colorado
24 Multifamily Housing Revenue Note (The Rose on Colfax Project) Series 2021, in one or more series
25 (referred to herein as the “Notes”), in the aggregate principal amount not to exceed \$15,425,000, to
26 pay a portion of the cost of financing the Project; and

27 **WHEREAS**, Wells Fargo Bank, National Association, as the initial purchaser of the Notes (the
28 “Bank”) will enter into a Funding Loan Agreement (the “Funding Loan Agreement”), by and among
29 the City; the Bank; and the Wells Fargo Bank, National Association (the “Fiscal Agent”), which will
30 provide for the issuance of the Notes; and

31 **WHEREAS**, the Borrower will enter into a Borrower Loan Agreement (the “Borrower Loan
32 Agreement”), by and between the City and the Borrower, which will provide for payments sufficient

1 to pay the principal of, premium, if any, and interest on the Notes and to meet other obligations as
2 herein and therein provided; and

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

6 **WHEREAS**, there have been presented to the City Council at this meeting substantially final
7 forms of the following documents: (a) the Funding Loan Agreement; (City Clerk’s Filing No.
8 20210069); (b) the Borrower Loan Agreement (City Clerk’s Filing No. 20210069A); and (c) the Tax
9 Regulatory Agreement (the “Tax Regulatory Agreement”, and together with the Funding Loan
10 Agreement and Borrower Loan Agreement, the “Loan Documents”) (City Clerk’s Filing No.
11 20210069B), by and among the City, the Fiscal Agent and the Borrower;

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

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

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

- 25 (a) The Project is an eligible “project,” as defined in the Act.
- 26 (b) The issuance of the Notes will effectuate the public purposes of the City and carry out
27 the purposes of the Act by, among other things, providing residential facilities for low- and middle-
28 income families and persons in the City.
- 29 (c) The Notes are special, limited obligations of the City payable solely out of the income,
30 revenues and receipts specifically pledged pursuant to the Funding Loan Agreement and Borrower
31 Loan Agreement. The Notes, the premium, if any, and the interest thereon shall never constitute the
32 debt or indebtedness of the City, the State or any political subdivision thereof within the meaning of
33 any provision or limitation of the State Constitution or statutes; shall not constitute nor give rise to a

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

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

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

23 **Section 5. Authorization to Issue and Sell the Notes.**

24 (a) The issuance of the Notes shall be in such principal amounts, bearing such dates and
25 interest rates and shall mature as set forth in the Loan Documents; provided, however, that the
26 aggregate principal amount of Notes issued hereby shall not exceed \$15,425,000. The Notes shall
27 be payable, shall be subject to redemption or purchase prior to maturity and shall be in substantially
28 the form as provided in the Funding Loan Agreement and the Borrower Loan Agreement.
29 Furthermore, the Notes shall be payable at such place and in such form, shall carry such registration
30 privileges, shall be subject to redemption, shall be executed, and shall contain such terms, covenants
31 and conditions, as set forth in the Funding Loan Agreement and the Borrower Loan Agreement. The
32 maximum net effective interest rate payable on the Notes shall not exceed 12.0% (such rate being

1 hereinafter referred to as the “Maximum Rate”) and the final maturity of the Notes shall not be after
2 the date that is forty (40) years after the closing date of the Notes.

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

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 Notes is dependent upon the rate of interest on the Notes, but in any event shall not exceed the
15 principal amount of the Notes plus interest at the Maximum Rate;

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

20 (c) that the nature and amount of any reserve funds necessary to secure payment of the
21 Notes, if any, is set forth in the Funding Loan Agreement;

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

26 (e) “Low-and middle-income persons and families” means with respect to the Project
27 households that earn less than 30% of the area median income (16 of the units in the Project will be
28 reserved for such households), households that earn less than 40% of the area median income (5
29 of the units in the Project will be reserved for such households), households that earn less than 50%
30 of the area median income (10 of the units in the Project will be reserved for such households),
31 households that earn less than 60% of the area median income (37 of the units in the Project will be
32 reserved for such households), and households that earn less than 70% of the area median income
33 (14 of the units in the Project will be reserved for such households); and

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

6 **Section 7. Investments.** Proceeds from the sale of the Notes 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 Funding Loan Agreement, Borrower Loan
9 Agreement and Section 29-3-109 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 Notes 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 Notes and for carrying out, giving effect to and consummating
16 the transactions contemplated by this Ordinance and the Loan 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 Notes from gross income for federal income tax purposes,
20 the execution of any documents relating to the LITC, the execution of any documents relating to the
21 City's private activity bond volume cap allocation and the execution and delivery of any closing
22 documents to be delivered in connection with the sale and delivery of the Notes.

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

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

3 **Section 10. No Pecuniary Liability.** Nothing contained in this Ordinance or in the Notes,
4 the Loan 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 Loan 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 Council acting on behalf of the City hereby
14 awards to the Project an amount not to exceed \$15,425,000 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 Notes are not issued on or prior to December 31, 2022.

17 **Section 13. Supplemental Ordinances.** The City may, subject to the terms and conditions
18 of the Funding Loan Agreement and Borrower Loan Agreement, pass and execute ordinances
19 supplemental to this 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 Notes is
22 intended or shall be construed to give to any person, other than the City, the Fiscal Agent, the
23 Borrower and the Bank, any legal or equitable right, remedy or claim under or with respect to this
24 Ordinance or any covenants, conditions and provisions herein contained; this Ordinance and all of
25 the covenants, conditions and provisions hereof being intended to be and being for the sole and
26 exclusive benefit of the City, the Borrower, the Fiscal Agent, and the Bank 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 Notes for the satisfaction of any liability arising from, founded
29 upon or existing by reason of the issue, purchase or ownership of the Notes 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 Notes.

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 Notes.** Each Note shall contain a recital that such Note is issued
8 pursuant to the Act and the Supplemental Public Securities Act and such recital shall be conclusive
9 evidence of its validity and of the regularity of its issuance.

10 **Section 19. Irrepealability.** After any of the Notes are issued, this Ordinance shall be and
11 remain irrepealable until the Notes 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 Notes.
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 Notes
23 are hereby superseded for the purposes of this Ordinance and the issuance of the Notes only. To
24 the extent of such inconsistency the provisions of this Bond Ordinance shall be deemed made
25 pursuant to the Charter. All ordinances, resolutions, bylaws, orders, and other instruments, or parts
26 thereof, related to and inconsistent with the issuance of the Notes and this Ordinance are hereby
27 superseded but only to the extent they relate to the issuance of the Notes and this Ordinance and
28 only to the extent of such inconsistency. Any inconsistency between the provisions of this Ordinance
29 and such other ordinances, resolutions, bylaws, orders and other instruments or parts thereof is
30 intended by the Council.

31 **[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**
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1 COMMITTEE APPROVAL DATE: August 25, 2021
2 MAYOR-COUNCIL DATE: August 31, 2021, by Consent
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 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____ ; _____
10 PREPARED BY: KUTAK ROCK LLP DATE: September 2, 2021
11 REVIEWED BY: Brad Neiman, Assistant City Attorney DATE: September 2, 2021
12 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
13 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
14 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
15 3.2.6 of the Charter.
16 Kristin M. Bronson, Denver City Attorney
17 BY: _____, Assistant City Attorney DATE: _____
18