

1 **BY AUTHORITY**

2 ORDINANCE NO.: _____
3 SERIES OF 2010

COUNCIL BILL NO.: _10-0876____
COMMITTEE OF REFERENCE:
Business, Workforce & Sustainability

5 **A BILL**

6 **For an Ordinance authorizing the execution of a First Amendment to Tax Regulatory**
7 **Agreement relating to the Buerger Brothers Lofts Apartments and the Fire Clay Lofts**
8 **Apartments.**

9 WHEREAS, 1732 Champa LP, a Colorado limited partnership (the “Owner”) is the owner of
10 a 31-unit multifamily residential rental facility, commercial facilities and the parking facilities related
11 thereto located at 1732-46 Champa Street, Denver, Colorado 80202, known as the Buerger
12 Brothers Lofts Apartments and the Fire Clay Lofts Apartments (the “Project”); and

13 WHEREAS, the acquisition, construction, equipping and installation of the Project was
14 funded in part from proceeds of the sale of \$4,950,000 of the City and County of Denver,
15 Colorado’s Multifamily Housing Revenue Bonds (FHA Insured Mortgage Loan—The Buerger
16 Brothers and Denver Fire Clay Lofts Project) Series 1997A (the “Series 1997A Bonds”) and
17 \$80,000 Taxable Multifamily Housing Revenue Bonds (FHA Insured Mortgage Loan—The Buerger
18 Brothers and Denver Fire Clay Lofts Project) Series 1997B (the “Series 1997B Bonds”) (the Series
19 1997A Bonds and the Series 1997B Bonds are collectively referred to herein as the “Bonds”)
20 issued pursuant to a Trust Indenture, dated as of August 1, 1997 (the “Indenture”), by and between
21 the City and County of Denver, Colorado (the “City”) and The Bank of New York Mellon Trust
22 Company, N.A., as successor to Bank One, Colorado, NA, as trustee thereunder (the “Trustee”);
23 and

24 WHEREAS, in connection with the issuance of the Bonds, the City, the Owner and the
25 Trustee entered into a Tax Regulatory Agreement, dated as of August 1, 1997 (the “Regulatory
26 Agreement” and filed as City Clerk’s Filing No. 97-745), in order to set forth certain terms and

1 conditions relating to the acquisition, construction, equipping and completion of the Project, and in
2 order to ensure that the Project would be used and operated in accordance with the Internal
3 Revenue Code of 1986, as amended (the “Code”) and the County and Municipality Development
4 Revenue Bond Act, Article 3, Title 29, Colorado Revised Statutes, as amended (the “Act”); and

5 WHEREAS, the City authorized the issuance of the Bonds pursuant to its Home Rule
6 Charter (the “Charter”), the Act and Ordinance No. 590, Series of 1997 (the “Bond Ordinance”);
7 and

8 WHEREAS, the Owner is going to cause all of the Bonds to be redeemed and in connection
9 with the redemption of the Bonds, the Owner has requested that the City execute a First
10 Amendment to Tax Regulatory Agreement (the “First Amendment”) in order to amend the
11 Regulatory Agreement’s definition of “mortgage” and “mortgage loan”; and

12 WHEREAS, the First Amendment to Tax Regulatory Agreement has been filed with the City
13 Clerk, Ex-Officio Clerk of the City and County of Denver, Filing No. 97-745-A;

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

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

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

1 Section 3. All prior acts, orders, resolutions, ordinances or parts thereof of the City in
2 conflict with this Ordinance are hereby repealed, except that this repealer shall not be construed to
3 revive an act, order, resolution, ordinance, or part thereof, heretofore repealed.

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

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

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

11 COMMITTEE APPROVAL DATE: (by Consent) October 7, 2010

12 MAYOR-COUNCIL DATE: October 12, 2010

13 PASSED BY THE COUNCIL: _____, 2010

14 _____ - PRESIDENT

15 APPROVED: _____ - MAYOR _____, 2010

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

19 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2010; _____, 2010

20 PREPARED BY: KUTAK ROCK LLP October 14, 2010

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

25 DAVID R. FINE, City Attorney

26 By: _____, City Attorney

27 Date: _____, 2010