

BY AUTHORITY

1
2 ORDINANCE NO. _____
3 SERIES 2019

COUNCIL BILL NO. 19-0133

COMMITTEE OF REFERENCE:

Safety, Housing, Education & Homelessness

A BILL

6 **For an ordinance authorizing the issuance and sale of an amount not to exceed**
7 **\$13,000,000 of City and County of Denver, Colorado Multifamily Housing**
8 **Revenue Notes (The Colburn Project) Series 2019 for the purpose of financing**
9 **the acquisition, rehabilitation, improvement and equipping of a multifamily**
10 **residential rental housing development to be occupied by low- and middle-**
11 **income families and persons in the City and County of Denver, Colorado and to**
12 **pay certain expenses of such Notes (as defined below) issue; approving and**
13 **authorizing execution of a Funding Loan Agreement, a Project Loan Agreement**
14 **and a Tax Regulatory Agreement (each as defined below) with respect to the**
15 **Notes; making findings and determinations with respect to the Project (as**
16 **defined below) and the Notes; authorizing the execution and delivery of related**
17 **documents; and repealing all action heretofore taken in conflict herewith.**

18 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

19 WHEREAS, the City and County of Denver, Colorado (the "City") is a legally and regularly
20 created, established, organized and validly existing home rule city, municipal corporation and
21 political subdivision under the provisions of Article XX of the Constitution of the State of Colorado
22 (the "State") and the Home Rule Charter of the City (the "Charter"); and

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

33 WHEREAS, the City is further authorized by the Act, the Supplemental Public Securities Act
34 and the Charter to issue its revenue notes for the purposes of defraying the costs of financing any
35 such project, including all incidental expenses incurred in issuing such notes, and to secure the

1 payment of such notes as provided in the Act, the Supplemental Public Securities Act and the
2 Charter; and

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

6 WHEREAS, representatives of Colburn, LLC, a limited liability company duly organized and
7 validly existing under the laws of State of Wisconsin and a foreign limited liability company duly
8 organized and validly existing under the laws of the State of Colorado, including any of its successors
9 or assigns (the "Borrower"), have presented to the City a proposal whereby the City will issue its
10 multifamily housing revenue notes pursuant to the Act, the Supplemental Public Securities Act and
11 the Charter to finance the cost of a project under the Act, the Supplemental Public Securities Act
12 and the Charter, which project consists of: (a) the acquisition, rehabilitation, improvement and
13 equipping of a 92-unit multifamily facility located at 980 Grant Street, Denver, Colorado (the
14 "Property") and (b) the payment of the costs of issuing the Notes (collectively, the "Project"); and

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

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

21 WHEREAS, the City will issue, sell and deliver the City and County of Denver, Colorado
22 Multifamily Housing Revenue Notes (The Colburn Project) Series 2019, in one or more series
23 (referred to herein as the "Notes"), in the aggregate principal amount not to exceed \$13,000,000, to
24 pay a portion of the cost of financing the Project; and

25 WHEREAS, the Borrower will enter into a Funding Loan Agreement (the "Funding Loan
26 Agreement"), by and among the City, KeyBank National Association, as the initial Funding Lender
27 (the "Funding Lender") and Zions Bancorporation, National Association, as fiscal agent thereunder
28 (the "Fiscal Agent"), which will provide for payments sufficient to pay the principal of, premium, if
29 any, and interest on the Notes and to meet other obligations as herein and therein provided; and

30 WHEREAS, the Borrower has applied to the Colorado Housing and Finance Authority for an
31 allocation of low-income housing tax credits ("LITC") under Section 42 of the Internal Revenue Code
32 of 1986, as amended (the "Code"); and

1 WHEREAS, there have been presented to the City Council at this meeting substantially final
2 forms of the following documents: (a) the Funding Loan Agreement; (City Clerk’s Filing No.
3 2019005); (b) the Project Loan Agreement (the “Project Loan Agreement”), by and among the City,
4 the Borrower and the Fiscal Agent (City Clerk’s Filing No. 2019006); and (c) the Tax Regulatory
5 Agreement (the “Tax Regulatory Agreement”) (City Clerk’s Filing No. 2019007), by and among the
6 City, the Fiscal Agent and the Borrower (collectively, the “Loan Documents”);

7 NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY AND
8 COUNTY OF DENVER, COLORADO:

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

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

- 20 (a) The Project is an eligible “project,” as defined in the Act.
- 21 (b) The issuance of the Notes will effectuate the public purposes of the City and carry out
22 the purposes of the Act by, among other things, providing residential facilities for low- and middle-
23 income families and persons in the City.
- 24 (c) The Notes are special, limited obligations of the City payable solely out of the income,
25 revenues and receipts specifically pledged pursuant to the Funding Loan Agreement and Project
26 Loan Agreement. The Notes, the premium, if any, and the interest thereon shall never constitute the
27 debt or indebtedness of the City, the State or any political subdivision thereof within the meaning of
28 any provision or limitation of the State Constitution or statutes; shall not constitute nor give rise to a
29 pecuniary liability of the City, the State or any political subdivision thereof or a charge against their
30 general credit or taxing power and shall not constitute a “multiple fiscal year direct or indirect debt or
31 other financial obligation” of the City, the State or any political subdivision thereof under Article X,
32 Section 20 of the Colorado Constitution. Neither the City, the State nor any political subdivision
33 thereof shall be obligated to pay the principal of, premium, if any, or interest on the Notes or other

1 costs incident thereto. The Notes do not constitute a debt, loan, credit or pledge of the faith and
2 credit or taxing power of the City, the State or any political subdivision thereof.

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

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

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

19 (a) The issuance of the Notes shall be in such principal amounts, bearing such dates and
20 interest rates and shall mature as set forth in the Loan Documents; provided, however, that the
21 aggregate principal amount of Notes issued hereby shall not exceed \$13,000,000. The Notes shall
22 be payable, shall be subject to redemption or purchase prior to maturity and shall be in substantially
23 the form as provided in the Funding Loan Agreement and the Project Loan Agreement. Furthermore,
24 the Notes shall be payable at such place and in such form, shall carry such registration privileges,
25 shall be subject to redemption, shall be executed, and shall contain such terms, covenants and
26 conditions, as set forth in the Funding Loan Agreement and the Project Loan Agreement. The
27 maximum net effective interest rate payable on the Notes shall not exceed 12.0% (such rate being
28 hereinafter referred to as the "Maximum Rate") and the final maturity of the Notes shall not be after
29 March 1, 2059.

30 (b) The sale of the Notes to the Funding Lender pursuant to the terms of the Funding Loan
31 Agreement shall be and the same are in all respects hereby approved, authorized and confirmed
32 and the Mayor is hereby authorized and directed to execute the Notes, the City Clerk and Recorder
33 is hereby authorized and directed to affix the seal of the City and to attest, the City Attorney (or

1 Assistant City Attorney) is hereby authorized and directed to execute, and the Chief Financial Officer
2 and City Auditor are hereby authorized and directed to countersign the Notes and each is hereby
3 authorized to deliver the Notes for and on behalf of the City to the Fiscal Agent for authentication
4 pursuant to the Funding Loan Agreement. The Notes shall be sold to the Funding Lender at par.

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

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

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

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

16 (d) The revenues and other amounts payable under the Funding Loan Agreement and
17 Project Loan Agreement are sufficient to pay, in addition to all other requirements of the Funding
18 Loan Agreement, Project Loan Agreement and this Ordinance, all sums referred to in paragraphs
19 (a) and (c) of this Section and all taxes or payments in lieu of taxes levied upon the Project;

20 (e) "Low-and middle-income persons and families" means with respect to the Project
21 households that earn less than 60% of the area median income (at least 74% of the units in the
22 Project will be reserved for such households) and households that earn less than 30% of the area
23 median income (at least 25% of the units in the Project will be reserved for such households); and

24 (f) Any inconsistency between the provisions of this Ordinance, the Funding Loan
25 Agreement, or the Project Loan Agreement and those of the Act or the Supplemental Public
26 Securities Act is intended by the City Council. To the extent of any such inconsistency, the provisions
27 of this Ordinance shall be deemed made pursuant to the Charter and shall supersede to the extent
28 permitted by law, the conflicting provisions of the Act and the Supplemental Public Securities Act.

29 **Section 7. Investments.** Proceeds from the sale of the Notes and special funds from the
30 revenues from the Project shall be invested and reinvested in such securities and other investments
31 specified in, and otherwise in accordance with, the Funding Loan Agreement, Project Loan
32 Agreement and Section 29-3-109 of the Act.

1 **Section 8. Authority to Execute and Deliver Additional Documents.** The officers,
2 employees and agents of the City shall take all action in conformity with the Act, the Supplemental
3 Public Securities Act and the Charter necessary or reasonably required to effectuate the issuance
4 of the Notes and shall take all action necessary or desirable in conformity with the Act, the
5 Supplemental Public Securities Act and the Charter to finance the portion of the costs of the Project
6 to be financed with proceeds of the Notes and for carrying out, giving effect to and consummating
7 the transactions contemplated by this Ordinance and the Loan Documents, including without
8 limitation the execution, delivery and filing of any documents, statements or reports with the United
9 States Internal Revenue Service or with the Secretary of the United States Treasury necessary to
10 maintain the exclusion of interest on the Notes from gross income for federal income tax purposes,
11 the execution of any documents relating to the LITC, the execution of any documents relating to the
12 City’s private activity bond volume cap allocation and the execution and delivery of any closing
13 documents to be delivered in connection with the sale and delivery of the Notes.

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

27 **Section 10. No Pecuniary Liability.** Nothing contained in this Ordinance or in the Notes, the
28 Loan Documents or any other instrument shall give rise to a pecuniary liability of, or a charge upon
29 the general credit or taxing powers of, the City, the State or any political subdivision thereof. The
30 breach by any party of any agreement contained in this Ordinance, the Loan Documents or any other
31 instrument shall not impose any pecuniary liability upon, or any charge upon the general credit or
32 taxing powers of, the City, the State or any political subdivision thereof, none of which has the power

1 to pay out of their general fund, or otherwise contribute, any part of the cost of financing the Project
2 or power to operate the Project as a business or in any manner.

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

5 **Section 12. Volume Cap Allocation.** The Council acting on behalf of the City hereby awards
6 to the Project an amount not to exceed \$13,000,000 of its 2017 private activity bond volume cap
7 from the Statewide Balance. This award of private activity bond volume cap allocation will be
8 revoked by the City, if the Notes are not issued on or prior to December 31, 2019.

9 **Section 13. Supplemental Ordinances.** The City may, subject to the terms and conditions
10 of the Funding Loan Agreement and Project Loan Agreement, pass and execute ordinances
11 supplemental to this Ordinance which shall not be inconsistent with the terms and provisions hereof.

12 **Section 14. Limitation of Rights.** With the exception of any rights herein expressly
13 conferred, nothing expressed or mentioned in or to be implied from the Ordinance or the Notes is
14 intended or shall be construed to give to any person, other than the City, the Borrower and the
15 Funding Lender, any legal or equitable right, remedy or claim under or with respect to this Ordinance
16 or any covenants, conditions and provisions herein contained; this Ordinance and all of the
17 covenants, conditions and provisions hereof being intended to be and being for the sole and
18 exclusive benefit of the City, the Borrower and the Funding Lender as herein provided.

19 **Section 15. Immunity of Officers.** No recourse for the payment of any part of the principal
20 of, premium, if any, or interest on the Notes for the satisfaction of any liability arising from, founded
21 upon or existing by reason of the issue, purchase or ownership of the Notes shall be had against
22 any official, officer, member or agent of the City or the State, all such liability to be expressly released
23 and waived as a condition of and as a part of the consideration for the issue, sale and purchase of
24 the Notes.

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

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

31 **Section 18. Validity of Notes.** Each Note shall contain a recital that such Note is issued
32 pursuant to the Act and the Supplemental Public Securities Act and such recital shall be conclusive
33 evidence of its validity and of the regularity of its issuance.

1 COMMITTEE APPROVAL DATE: March 27, 2019
2 MAYOR-COUNCIL DATE: April 2, 2019
3 PASSED BY THE COUNCIL: _____ April 15, 2019
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: April 4, 2019
11 REVIEWED BY: Jo Ann Weinstein, Assistant City Attorney
12 Pursuant to Section 13-12, D.R.M.C., this proposed Ordinance has been reviewed by the Office of
13 the 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 Kristen M. Bronson, Denver City Attorney
17 BY: Kristen J. Crawford, Assistant City Attorney DATE: Apr 3, 2019, 2019
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