

BY AUTHORITY

RESOLUTION NO. CR21-1033
SERIES 2021

COMMITTEE OF REFERENCE:
Finance & Governance

A RESOLUTION

Approving and evidencing the intention of the City and County of Denver, Colorado to issue an amount not to exceed \$12,500,000 of Multifamily Housing Revenue Bonds for Hilltop Apartments.

WHEREAS, the City and County of Denver, Colorado (the “City”) is a legally and regularly created, established, organized and 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 City is authorized by its 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”) to finance or refinance projects as defined in the Act to the end that residential facilities for low- and middle-income families or persons intended for use as the sole place of residence by the owners or intended occupants may be provided in order to promote the public health, welfare, safety, convenience and prosperity; and

WHEREAS, representatives of GHC CO Developer LLC, a Delaware limited liability company and Colorado foreign limited liability company (such entity, together with one or more related affiliates or successors or assigns, are collectively referred to herein as the “Developer”), have advised the City that the Developer intends to acquire, construct, renovate, rehabilitate, improve and equip an approximately 77 unit affordable multifamily housing facility scatter site portfolio to be located at 1705 Franklin Street and 1554 Logan Street, each in Denver, Colorado (the “Project”), subject to the City’s financing the acquisition, construction, renovation, rehabilitation, improvement and equipping of the Project through the issuance of the City’s multifamily housing revenue bonds in an amount not to exceed \$12,500,000; and

WHEREAS, the issuance of the City’s multifamily housing revenue bonds to finance the acquisition, construction, renovation, rehabilitation, improvement and equipping of the Project is contingent upon the City receiving private activity bond volume cap allocation in the amount of \$12,500,000 from the statewide balance pursuant to C.R.S. § 24-32-1707, as amended; and

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

WHEREAS, the Project will be known as Hilltop Apartments (or such other name as determined by the Developer); and

1 **WHEREAS**, the Developer has represented to the City that the Project will qualify as a
2 “project” within the meaning of the Act; and

3 **WHEREAS**, the City has considered the Developer’s proposal and has concluded that the
4 Project will provide affordable housing to low- and middle-income persons and families in the City
5 and will promote the public health, welfare, safety, convenience and prosperity; and

6 **WHEREAS**, the City desires to indicate its intent to proceed with financing the Project through
7 the issuance of the City’s multifamily housing revenue bonds;

8 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY**
9 **OF DENVER, COLORADO:**

10 **Section 1.** That in order to benefit the residents of the City and to induce the Developer to
11 undertake the Project, the City shall, subject to the provisions hereof, take all necessary and
12 advisable steps to effect the issuance, in one or more series, of the City’s multifamily housing
13 revenue bonds (the “Bonds”) pursuant to its Charter, the Act and the Supplemental Public Securities
14 Act in the maximum aggregate principal amount of \$12,500,000 or such other amount as shall be
15 determined and agreed upon by the Developer and the City as may be necessary to finance the
16 Project. The Bonds shall be special, limited obligations of the City payable solely from and secured
17 by a pledge of revenues derived from and payable by the Developer pursuant to the loan agreement
18 with the City; the Bonds shall never constitute a debt, multiple fiscal year obligation or indebtedness
19 of the City, the State or any political subdivision of the State within the meaning of any provision or
20 limitation of the State Constitution or statutes and shall not constitute nor give rise to a pecuniary
21 liability of the City or be a charge against the City’s general credit or taxing powers of, the City, the
22 State or any county, municipality or political subdivision of the State. The Bonds shall not constitute
23 a “multiple fiscal year direct or indirect debt or other financial obligation” of the City under Article X,
24 Section 20 of the Colorado Constitution, nor shall the Bonds ever be deemed to be an obligation or
25 agreement of any officer, director, agent or employee of the City in such person’s individual capacity,
26 and none of such persons shall be subject to any personal liability by reason of the issuance of the
27 Bonds.

28 **Section 2.** That the City hereby finds, determines, recites and declares that the issuance
29 of the Bonds to finance the Project will provide affordable housing to low- and middle-income persons
30 and families in the City and will promote the public health, welfare, safety, convenience and
31 prosperity.

32 **Section 3.** That the City hereby finds, determines, recites and declares the City’s intent that
33 this Resolution constitute an official indication of the present intention of the City to issue the Bonds

1 as herein provided, subject to: (a) the Developer obtaining a commitment for the purchase of the
2 Bonds on terms which are acceptable to the City, its municipal advisor and its Bond Counsel; (b) the
3 delivery of an approving opinion of Bond Counsel to the City; (c) the delivery of an appraisal, survey,
4 title insurance, environmental audit and plans and specifications which are all acceptable to the City;
5 (d) the Developer obtaining sufficient debt and equity financing acceptable to the City; (e) the
6 Developer receiving all applicable approvals for the Project from the City and County of Denver,
7 Colorado and any other relevant governmental entity; (f) City approval of the design of the Project;
8 (g) if the Bonds are sold on an unrated basis, the Bonds may only be purchased by qualified
9 institutional buyers or accredited investors in denominations acceptable to the City; (h) the execution
10 and delivery of indemnity agreements and payment or reimbursement of costs and expenses, all to
11 the satisfaction of the City; (i) the Developer agreeing to post issuance compliance policies and
12 procedures acceptable to the City; (j) the receipt of private activity bond volume cap allocation in the
13 amount of \$12,500,000 from the statewide balance, as further described in Section 4, below; and (l)
14 the adoption of a final bond ordinance by the City. The City in its sole discretion may modify or waive
15 any of the requirements contained in (a) – (l) above. The City’s discretion to accept or not to accept
16 items relating to the Project or additional financing therefore or relating to credit, security, sale or
17 marketing aspects of the Bonds is intended for the protection of the City’s interests, and any such
18 acceptance shall not be construed to impose upon the City any duties to, nor to confer any rights
19 against the City upon, any bondholders, investors or other third parties.

20 **Section 4.** The Developer and the City will use their best efforts to obtain private activity
21 bond volume cap allocation in the amount of \$12,500,000 from the statewide balance; and, upon the
22 City receiving such private activity bond volume cap allocation, the City will award the Project up to
23 \$12,500,000 of its private activity volume cap allocation (the “Allocation”). The Allocation, if and when
24 provided by the City, shall be effective for the statewide balance award period, which is determined
25 and may be extended by the Executive Director of the State of Colorado Department of Local Affairs.
26 Nothing contained herein is construed to commit the City to using any other additional sources of
27 private activity bond volume cap allocation outside of the Allocation for the Project.

28 **Section 5.** That no costs or expenses whether incurred by the City or any other party in
29 connection with the issuance of the Bonds or the preparation or review of any documents by any
30 legal or financial consultants retained in connection herewith shall be borne by the City. The City
31 shall have the right to select and retain legal, financial and other consultants in connection with the
32 proposed financing, and all fees, costs and expenses of such consultants, along with all other such
33 costs and expenses shall be paid from the proceeds of the Bonds or otherwise borne by the

1 Developer regardless of whether the Bonds are issued. The City may require such deposits or
2 advances as it deems desirable for such fees, costs and expenses, and may require reimbursement
3 of any such fees, costs and expenses paid by the City.

4 **Section 6.** That prior to any execution of a loan agreement, indenture of trust, bond
5 purchase agreement, tax regulatory agreement or any other necessary documents and agreements
6 in connection with such Bonds, such documents and/or agreements shall be submitted for approval
7 to the City, and, if satisfactory to the City, their execution shall be authorized by ordinance of the City
8 pursuant to law.

9 **Section 7.** That all public hearings scheduled and held in accordance with the Tax Equity
10 and Fiscal Responsibility Act of 1982 (“TEFRA”) in connection with the issuance of the Bonds shall
11 incorporate available and feasible innovative and inclusive technological solutions, subject to
12 compliance with any applicable requirements under Section 147(f) of the Internal Revenue Code of
13 1986, as amended, so that the public can continue to have fullest possible access to the TEFRA
14 hearing.

15 **Section 8.** That the agreements of the City set forth above are expressly conditioned upon
16 the ability and willingness of the City to issue the Bonds as tax-exempt obligations under the Code.
17 Nothing contained in this Resolution shall be construed as requiring the City to issue the Bonds and
18 the decision to issue the Bonds shall be in the complete discretion of the City.

19 **Section 9.** The City hereby desires to declare its official intent, pursuant to 26 C.F.R.
20 § 1.150-2, to issue the Bonds and thereby permit the City and the Developer to reimburse itself from
21 proceeds of the Bonds for certain expenditures incurred in connection with the Project prior to
22 issuance of the Bonds.

23 **Section 10.** That if any section, paragraph, clause or provision of this Resolution shall for
24 any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section,
25 paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

26 **Section 11.** That all bylaws, orders, resolutions and ordinances, or parts thereof,
27 inconsistent herewith and with the documents hereby approved, are hereby repealed to the extent
28 only of such inconsistency. This repealer clause shall not be construed as reviving any bylaw, order,
29 or ordinance or part thereof.

30

1 COMMITTEE APPROVAL DATE: September 14, 2021 by Consent

2 MAYOR-COUNCIL DATE: September 21, 2021 by Consent

3 PASSED BY THE COUNCIL: September 27, 2021

4 *Steve Gilmore* - PRESIDENT

5 ATTEST: _____ - CLERK AND RECORDER,
6 EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER

8 PREPARED BY: KUTAK ROCK LLP DATE: September 23, 2021

9 REVIEWED BY: Bradley T. Neiman, Assistant City Attorney DATE: September 23, 2021

10 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the
11 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
12 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to
13 § 3.2.6 of the Charter.

14
15 Kristin M. Bronson, Denver City Attorney

16 BY: *Jonathan Griffin*, Assistant City Attorney DATE: Sep 23, 2021