

BY AUTHORITY

ORDINANCE NO. _____
SERIES 2021

COUNCIL BILL NO. 21-1042
COMMITTEE OF REFERENCE:
Finance & Governance

A BILL

For an ordinance authorizing the issuance and sale of an amount not to exceed \$10,000,000 of the City and County of Denver, Colorado Multifamily Housing Revenue Note (Forum Apartments) Series 2021 for the purpose of financing the acquisition, renovation, construction, and equipping of a permanent supportive housing facility for individuals experiencing homelessness located in the City and County of Denver, Colorado and to pay certain expenses of such Note (as defined below) issue; approving and authorizing execution of a Loan Agreement with the Bank, a Loan Agreement with the Borrower, an Assignment Agreement and a Tax Regulatory Agreement (each as defined below) with respect to the Note; making findings and determinations with respect to the Project (as defined below) and the Note; 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 Forum Apartments 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 note
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) the acquisition, renovation, construction and equipping of a 101 unit (including one (1)
11 manager’s unit) permanent supportive housing facility for individuals experiencing homelessness
12 located at 250 W. 14th Avenue in Denver, Colorado (the “Property”); and (b) the payment of the costs
13 of issuing the Note (collectively, the “Project”); and

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

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

20 **WHEREAS**, the City will issue, sell and deliver the City and County of Denver, Colorado
21 Multifamily Housing Revenue Note (Forum Apartments) Series 2021 (referred to herein as the
22 “Note”), in the aggregate principal amount not to exceed \$10,000,000, to pay a portion of the cost of
23 financing the Project; and

24 **WHEREAS**, the Bank will enter into a Loan Agreement (the “Bank Loan Agreement”), by and
25 between the City and PNC Bank, National Association, including all successors and assigns, by
26 merger, acquisition or otherwise, as the initial purchaser of the Note (the “Bank”), which will provide
27 for the issuance of the Note; and

28 **WHEREAS**, the Borrower will enter into a Loan Agreement (the “Borrower Loan Agreement”),
29 by and between the City and the Borrower, which will provide for payments sufficient to pay the
30 principal of, premium, if any, and interest on the Note and to meet other obligations as herein and
31 therein provided; and

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

4 **WHEREAS**, there have been presented to the City Council at this meeting substantially final
5 forms of the following documents: (a) the Bank Loan Agreement (City Clerk’s Filing No. 20210081);
6 (b) the Borrower Loan Agreement (City Clerk’s Filing No. 20210081A); (c) the Tax Regulatory
7 Agreement (the “Tax Regulatory Agreement”) (City Clerk’s Filing No. 20210081B), by and among
8 the City, the Bank and the Borrower; and (d) the Assignment Agreement, by and between the City
9 and the Bank (City Clerk’s Filing No. 20210081C) (collectively, the “Loan Documents”);

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

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

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

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

1 other financial obligation” of the City, the State or any political subdivision thereof under Article X,
2 Section 20 of the Colorado Constitution. Neither the City, the State nor any political subdivision
3 thereof shall be obligated to pay the principal of, premium, if any, or interest on the Note or other
4 costs incident thereto. The Note does not constitute a debt, loan, credit or pledge of the faith and
5 credit or taxing power of the City, the State or any political subdivision thereof.

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

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

21 **Section 5. Authorization to Issue and Sell the Note.**

22 (a) The issuance of the Note shall be in such principal amount, bearing such date and
23 interest rates and shall mature as set forth in the Loan Documents; provided, however, that the
24 aggregate principal amount of Note issued hereby shall not exceed \$10,000,000. The Note shall be
25 payable, shall be subject to redemption or purchase prior to maturity and shall be in substantially the
26 form as provided in the Bank Loan Agreement and the Borrower Loan Agreement. Furthermore, the
27 Note shall be payable at such place and in such form, shall carry such registration privileges, shall
28 be subject to redemption, shall be executed, and shall contain such terms, covenants and conditions,
29 as set forth in the Bank Loan Agreement and the Borrower Loan Agreement. The maximum net
30 effective interest rate payable on the Note shall not exceed 12.0% (such rate being hereinafter
31 referred to as the “Maximum Rate”) and the final maturity of the Note shall not be more than forty
32 (40) years after the closing date of the Note.

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

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

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

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

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

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

(e) "Low-and middle-income persons and families" means with respect to the Project households that earn less than 60% of the area median income (100 of the units in the Project will be reserved for such households); and

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

Section 7. Investments. Proceeds from the sale of the Note and special funds from the revenues from the Project shall be invested and reinvested in such securities and other investments

1 specified in, and otherwise in accordance with, the Bank Loan Agreement, Borrower Loan
2 Agreement and Section 29-3-109 of the Act.

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

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

29 **Section 10. No Pecuniary Liability.** Nothing contained in this Ordinance or in the Note, the
30 Loan Documents or any other instrument shall give rise to a pecuniary liability of, or a charge upon
31 the general credit or taxing powers of, the City, the State or any political subdivision thereof. The
32 breach by any party of any agreement contained in this Ordinance, the Loan Documents or any other
33 instrument shall not impose any pecuniary liability upon, or any charge upon the general credit or

1 taxing powers of, the City, the State or any political subdivision thereof, none of which has the power
2 to pay out of their general fund, or otherwise contribute, any part of the cost of financing the Project
3 or power to operate the Project as a business or in any manner.

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

6 **Section 12. Volume Cap Allocation.** The Council acting on behalf of the City hereby
7 awards to the Project an amount not to exceed \$10,000,000 of its private activity bond volume cap
8 from the Statewide Balance and direct allocation. This award of private activity bond volume cap
9 allocation will be revoked by the City if the Note is not issued on or prior to December 31, 2022.

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

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

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

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

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

1 **Section 18. Validity of Note.** The Note shall contain a recital that such Note is issued
2 pursuant to the Act and the Supplemental Public Securities Act and such recital shall be conclusive
3 evidence of its validity and of the regularity of its issuance.

4 **Section 19. Irrepealability.** After the Note is issued, this Ordinance shall be and remain
5 irrepealable until the Note and the interest thereon shall have been fully paid, canceled and
6 discharged.

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

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

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

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1 COMMITTEE APPROVAL DATE: September 14, 2021
2 MAYOR-COUNCIL DATE: September 21, 2021 by Consent
3 PASSED BY THE COUNCIL: October 4, 2021
4 *Steve Filmer* - 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 23, 2021
11 REVIEWED BY: Brad Neiman, Assistant City Attorney DATE: September 23, 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
17 Kristin M. Bronson, Denver City Attorney
18
19 BY: *Jonathan Griffin*, Assistant City Attorney DATE: Sep 23, 2021