

**ORDINANCE NO. 21-\_\_\_\_\_**

AN ORDINANCE BY THE CITY OF COLORADO SPRINGS, COLORADO AUTHORIZING THE ISSUANCE AND DELIVERY OF ITS MULTIFAMILY HOUSING TAX-EXEMPT MORTGAGE-BACKED BONDS (M-TEMS) (DRAPER COMMONS), SERIES 2022A, IN AN AMOUNT NOT TO EXCEED \$26,000,000 AND ITS MULTIFAMILY HOUSING TAXABLE MORTGAGE-BACKED BONDS (M-TMBS) (DRAPER COMMONS PROJECT), SERIES 2022B, IN AN AMOUNT NOT TO EXCEED \$5,000,000; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF ANY AND ALL NECESSARY DOCUMENTS TO EFFECTUATE THE ISSUANCE OF SUCH BONDS; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY, AND PROVIDING FOR RELATED MATTERS

WHEREAS, the City of Colorado Springs, in the County of El Paso and State of Colorado (the “City”), a home-rule city and Colorado municipal corporation; and

WHEREAS, the City is authorized by the County and Municipality Development Revenue Bond Act, constituting Article 3, Title 29, Colorado Revised Statutes, as amended (the “Act”) and the Colorado Supplemental Public Securities Act, Article 57, Title 11, Section 201 *et seq.*, Colorado Revised Statutes, as amended (the “Supplemental Act”), to finance one or more projects (which includes any land, building or other improvement and all real and personal properties) to the end that residential facilities for low- and middle-income persons or families may be provided; and

WHEREAS, the City is further authorized by the Act and the Supplemental Act to issue revenue bonds (defined under the Act to include bonds, notes, or other securities evidencing an obligation and issued under the Act) for the purpose of defraying the cost of financing any project, including the payment of principal and interest on such revenue bonds for not exceeding three years, the funding of any reserve funds which the City may deem advisable to establish in connection with the retirement of such revenue notes or the maintenance of the project and incidental expenses incurred in issuing such revenue notes, and to secure payment of such revenue notes as provided in the Act and the Supplemental Act; and

WHEREAS, representatives of Draper Commons LLLP, a Colorado limited liability limited partnership, including any subsidiaries, affiliates, successors or assigns (but only if such subsidiaries, affiliates, successors or assigns are acceptable to the City) (the “Borrower”), have met with officials of the City and have advised the City of the Borrower’s interest in the acquisition, construction, improvement and equipping of an approximately 280-unit affordable multifamily housing facility, containing complete residential facilities, have proposed that the City issue its multifamily housing revenues bonds, in one or more series, to finance Draper Commons (or such other name as designated by the Borrower) (the “Project”), a residential facility for low- and middle-income persons or families located at 2335 Victoria Street and 405 Writers Way, Colorado Springs, Colorado, which is within the boundaries of the City, and such Project will be owned and operated by the Borrower; and

WHEREAS, the Project constitutes a project under the Act; and

WHEREAS, the City Council has determined that it is in the best interests of the City and its residents to issue revenue bonds for the Project, and the City declares its intention to authorize an issue of its Multifamily Housing Tax-Exempt Mortgage-Backed Bonds (M-TEMS) (Draper Commons Project), Series 2022A in the aggregate principal amount not to exceed \$26,000,000 and its Multifamily Housing Taxable Mortgage-Backed Bonds (M-TMBS) (Draper Commons Project), Series 2022B in the aggregate principal amount not to exceed \$5,000,000 (collectively referred to herein as the “Bonds”), for the purpose of paying the cost of financing the Project, upon such terms and conditions as are contained herein; and

WHEREAS, Regions Bank, as trustee for the Bonds (the “Trustee”) will enter into an Indenture of Trust (the “Indenture”), by and between the City and the Trustee, which will provide for the issuance of the Bonds; and

WHEREAS, the Borrower and the Trustee will enter into a Financing Agreement (the “Financing Agreement”), by and among the City, the Borrower and the Trustee, which will provide for payments sufficient to pay the principal of, premium, if any, and interest on the Bonds and to meet other obligations as herein and therein provided; and

WHEREAS, there have been presented to the City Council at this meeting substantially final forms of the following documents: (a) the Indenture; (b) the Financing Agreement; (c) the Tax Regulatory Agreement (the “Tax Regulatory Agreement”), by and among the City, the Trustee and the Borrower; (d) the Official Statement with regards to the Bonds; and (e) the Bond Purchase Agreement, by and among Stifel, Nicolaus & Company, Incorporated; the City and the Borrower (collectively, the “Bond Documents”);

WHEREAS, the City Council is desirous of authorizing and approving the execution of the agreements and instruments described above and the transactions evidenced thereby; therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS, COLORADO:

**Section 1. Ratification of Actions.** All action heretofore taken, not inconsistent with the provisions of this ordinance (the “Ordinance”), by the City Council or the officers of the City, directed for the purposes herein set forth, are hereby ratified, approved and confirmed. The City is authorized under the Act and the Supplemental Act to issue and deliver its revenue bonds and notes in the form of one or more instruments, such as the Bonds, for the purpose, in the manner and upon the terms and conditions set forth in the Act, the Supplemental Act, the Indenture and the Financing Agreement. The Bonds are being issued pursuant to the Act and the Supplemental Act.

**Section 2. Findings; Authorizations.** The City Council hereby finds and determines, pursuant to the City’s home rule powers and all applicable laws of the State of Colorado, as follows:

- (a) The Project is an eligible “project,” as defined in the Act.

(b) The issuance of the Bonds will effectuate the public purposes of the City and carry out the purposes of the Act by, among other things, providing residential facilities within the boundaries of the City for low- and middle-income families or persons intended for use as the sole place of residence by the owners or intended occupants.

(c) The Bonds are a special, limited obligation of the City payable solely out of the income, revenues and receipts specifically pledged pursuant to the Indenture. The Bonds, the premium, if any, and the interest thereon shall never constitute the debt or indebtedness of the City, the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, shall not constitute nor give rise to a pecuniary liability of the City, the State or any political subdivision thereof or a charge against their general credit or taxing power and shall not constitute a “multiple fiscal year direct or indirect debt or other financial obligation” of the City under Article X, Section 20 of the State Constitution. None of the City, the State or any political subdivision thereof shall be obligated to pay the principal of, premium, if any, or interest on the Bonds or other costs incident thereto. The Bonds do not constitute a debt, loan, credit or pledge of the faith and credit or taxing power of the City, the State or any political subdivision thereof.

(d) The Project is necessary, convenient, and in furtherance of the governmental purposes of the City and in the best interests of the City and its inhabitants; and the City Council hereby authorizes the Project.

**Section 3. Approval and Execution of Documents; Authorized Officers; Variations in Documents.** The Bond Documents, be, and the same are in all respects hereby approved, authorized and confirmed, and the Mayor of the City or his designee or designees is hereby authorized and directed to execute, and the City Clerk of the City or any Deputy or Assistant City Clerk of the City are hereby authorized and directed to affix the seal of the City to, and attest, in substantially the forms and content as presented to the City on this date, such documents, but with such changes, modifications, additions and deletions therein as are not inconsistent with the intent of this Ordinance and are approved by bond counsel or the City Attorney, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions and deletions from the forms thereof presented at this meeting.

**Section 4. Authorization to Issue and Deliver the Bonds.**

(a) The issuance of the Bonds shall be in such principal amount, bear such date and interest rate and shall mature as set forth in the Indenture, provided, however, that the aggregate principal amount of the Bonds issued under the Indenture shall not exceed the amount set forth herein. The Bonds shall be payable, shall be subject to redemption prior to maturity and shall be in substantially the form as provided in the Indenture. Furthermore, the Bonds shall be payable at such place and in such form, shall carry such registration privileges, shall be executed and shall contain such terms, covenants and conditions, all as set forth in the Indenture. The maximum net effective interest rate payable on the Bonds, without regard to any default rate that might be applicable, shall be the lesser of the maximum legal rate of interest or 6.50% (such rate being hereinafter referred to as the “Maximum Rate”) and the final maturity of the Bonds shall not be more than 40 years after the closing date of the Bonds.

(b) The delivery of the Bonds pursuant to the terms of the Indenture, be, and the same is in all respects hereby approved, authorized and confirmed, and the Mayor of the City or his designee or designees is hereby authorized and directed to execute the Bonds, and the City Clerk of the City or any Deputy or Assistant City Clerk of the City are hereby authorized and directed to affix the seal of the City to and attest the Bonds and each is hereby authorized to deliver the Bonds for and on behalf of the City to the Trustee.

**Section 5. Compliance with the Act.** In connection with the issuance of the Bonds, the City hereby makes the following determinations:

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

(b) that the Project is located within the corporate limits of the City;

(c) that the terms of the Bond Documents 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;

(d) in reliance upon information provided by the Borrower, that the amounts required to be paid by the Borrower under the terms of the Bond Documents will be adequate to retire the Bonds; and

(e) that proceeds from the issuance of the Bonds will be drawn and paid as set forth in the Bond Documents.

**Section 6. Income Determinations.** Pursuant to the Tax Regulatory Agreement to be filed of record in the real estate records of El Paso County, Colorado, for federal income tax purposes, at least 40% of the units in the Project will be occupied or available for occupancy by persons and families earning 60% or less of the area median income, based on family size, established annually for the City by the United States Department of Housing and Urban Development (“Median Income”) for the time period specified in the Tax Regulatory Agreement.

**Section 7. Allocation of Private Activity Bond Volume Cap.** The City hereby awards the Project up to \$21,000,000 of its private activity bond volume cap allocation. The Borrower and the City will use their best effort to obtain private activity bond volume cap allocation in the amount of not to exceed \$5,000,000 from other sources; and, upon the City receiving all or a part of such private activity bond volume cap allocation, the City will award the Project up to \$26,000,000 of its private activity volume cap allocation, for a total private activity volume cap allocation of up to \$26,000,000.

**Section 8. Investments.** To the extent the proceeds from the sale of the Bonds or any special funds from the revenues from the Project are required to be invested and reinvested for any period of time, such investments shall only be in securities and other investments that are permitted under, and made and held in accordance with, the terms of the Act, Section 11-57-214 of the

Supplemental Act, the Indenture, the Financing Agreement, and the related federal tax certificates from the City and the Borrower.

**Section 9. Additional Documents.** The officers, employees and agents of the City shall take all action in conformity with the Act necessary or advisable to effectuate the issuance of the Bonds and shall take all action necessary or advisable in conformity with the Act to finance the construction, rehabilitation, improvement, equipping and placing in service of the Project and for carrying out, giving effect to and consummating the transactions contemplated by this Ordinance and the Bond Documents, including the execution and delivery of appropriate closing documents, subject to the approval of special counsel to the City. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance. The Mayor and his designee(s) are hereby authorized to execute and deliver for and on behalf of the City any and all related agreements, certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance.

**Section 10. No Pecuniary Liability.** Nothing contained in this Ordinance or in the Bonds, the Bond Documents or any other instrument shall give rise to a pecuniary liability of, or a charge upon the general credit or taxing powers of the City, the State or any other county, municipality or political subdivision of the State. The breach by any party of any agreement contained in this Ordinance, the Bonds, the Bond Documents or any other instrument shall not impose any pecuniary liability upon, or a charge upon the general credit or taxing powers of the City, the State or any county, municipality or political subdivision of the State, none of which has the power to pay out of its general fund, or otherwise contribute, any part of the cost of financing the Project, or power to operate the Project as a business or in any manner.

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

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

**Section 13. Immunity of Officers.** No recourse for the payment of any part of the principal of, premium, if any, or interest on the Bonds, for the satisfaction of any liability arising from, founded upon or existing by reason of the issue, purchase or ownership of the Bonds, shall be had against any Member of the City Council, official, counsel, attorney, trustee, employee, financial advisor or agent of the City or the State, all such liability to be expressly released and waived as a condition of and as a part of the consideration for the issue, sale and purchase of the Bonds.

**Section 14. Captions.** The captions or headings in this Ordinance are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Ordinance.

**Section 15. Validity of Bonds.** The Bonds shall contain a recital that such Bonds are issued pursuant to the Act and the Supplemental Act, and such recital shall be conclusive evidence of its validity and of the regularity of its issuance.

**Section 16. Irrepealability.** After the Bonds are issued, this Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall have been fully paid, canceled and discharged.

**Section 17. Severability.** If any section, paragraph, clause or provision of this Ordinance and the Bond Documents shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

**Section 18. Repealer of Measures.** All acts, orders, resolutions, ordinances or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof heretofore repealed.

**Section 19. Public Inspection.** City Council deems it appropriate that this Ordinance be published by title and summary prepared by the City Clerk and that this Ordinance be available for inspection and acquisition in the office of the City Clerk.

**Section 20. Termination Date.** This Ordinance and all of the obligations of the City described herein shall terminate on May 31, 2022.

**Section 21. Effective Date.** This Ordinance shall be in full force and effect from and after its final adoption and publication as provided by the home rule charter of the City (the "Charter").

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Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 2021.

**Finally passed:** \_\_\_\_\_  
Council President

**Mayor's Action:**

- Approved on \_\_\_\_\_.
- Disapproved on \_\_\_\_\_, based on the following objections:

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\_\_\_\_\_  
Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk