

1 BY AUTHORITY

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF 2014

COUNCIL BILL NO. CB14-0439  
COMMITTEE OF REFERENCE:  
4 Health, Safety, Education & Services

5  
6 A BILL

7 **For an ordinance authorizing the issuance and sale of an amount not to exceed**  
8 **\$18,000,000 of City and County of Denver, Colorado Multifamily Housing**  
9 **Revenue Bonds (Park Hill Village West Project) Series 2014 for the purpose of**  
10 **financing the acquisition, construction and equipping of a multifamily**  
11 **residential rental housing development to be occupied by low and middle**  
12 **income persons in the City and County of Denver, Colorado and to pay certain**  
13 **expenses of such bond issue; approving and authorizing execution of a trust**  
14 **indenture, a loan agreement, a bond purchase agreement and a tax regulatory**  
15 **agreement with respect to the bonds; making findings and determinations with**  
16 **respect to the project and the bonds; authorizing the execution and delivery of**  
17 **related documents; and repealing all action heretofore taken in conflict**  
18 **herewith.**

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 bonds 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  
29 be suitable for residential facilities for low-income and middle-income families or persons and  
30 intended for use as the sole place of residence by the owners or intended occupants to the end  
31 that more adequate residential housing facilities for low-income and middle-income families and  
32 persons may be provided, which promote the public health, welfare, safety, convenience and  
33 prosperity; and

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

1 payment of such bonds 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 PHVW LLLP, a limited liability limited partnership duly  
7 organized and validly existing under the laws of State of Colorado, including any of its successors  
8 or assigns (the "Borrower"), have presented to the City a proposal whereby the City will issue its  
9 multifamily housing revenue bonds pursuant to the Act, the Supplemental Public Securities Act and  
10 the Charter to finance the cost of a project under the Act, the Supplemental Public Securities Act  
11 and the Charter, which project consists of: (a) the acquisition, construction and equipping of a 156-  
12 unit multifamily residential rental facility located at 4175 Albion Street, Denver, Colorado; and  
13 (b) the payment of the costs of issuing the Bonds (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 more low- and middle-income residential rental facilities, promoting the public  
17 health, welfare, safety, convenience and prosperity and that the City should issue its multifamily  
18 housing revenue bonds under the Act, the Supplemental Public Securities Act and the Charter to  
19 finance a 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 Bonds (Park Hill Village West Project) Series 2014 (referred to  
22 herein as the "Bonds"), in the aggregate principal amount not to exceed \$18,000,000, to pay a  
23 portion of the cost of financing the Project; and

24 WHEREAS, the Borrower will enter into a Loan Agreement, dated as of June 1, 2014 (the  
25 "Loan Agreement"), by and between the City and the Borrower, which will provide for payments  
26 sufficient to pay the principal of, premium, if any, and interest on the Bonds and to meet other  
27 obligations as herein and therein provided; and

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

31 WHEREAS, there have been presented to the City Council at this meeting substantially final  
32 forms of the following documents: (a) the Loan Agreement, City Clerk's Filing No. 2014-0437;  
33 (b) the Trust Indenture, dated as of June 1, 2014 (the "Indenture"), by and between the City and

1 Wells Fargo Bank, National Association, as trustee thereunder (the “Trustee”), City Clerk’s Filing  
2 No. 2014-0437-A; (c) the Bond Purchase Agreement (the “Bond Purchase Agreement”), City  
3 Clerk’s Filing No. 2014-0437-B, by and among the City, the Borrower and Citigroup Global  
4 Markets, Inc. or any affiliate thereof (the “Purchaser”); and (d) the Tax Regulatory Agreement,  
5 dated as of June 1, 2014 (the “Tax Regulatory Agreement”), by and among the City, the Borrower  
6 and the Trustee (City Clerk’s Filing No. 2014-0437-C;

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,  
10 established, organized and validly existing home rule city, municipal corporation and political  
11 subdivision under the provisions of Article XX of the Constitution of the State and the Charter of the  
12 City and is authorized under the Act, the Supplemental Public Securities Act and its Charter to  
13 issue and sell its multifamily housing revenue bonds in the form of one or more debt instruments,  
14 such as the Bonds, for the purpose, in the manner and upon the terms and conditions set forth in  
15 the Act, the Supplemental Public Securities Act, the Charter, this Ordinance and in the Indenture.

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

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

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

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

17           **Section 5. Authorization to Issue and Sell the Bonds.**

18           (a) The issuance of the Bonds shall be in such series, denominations, and such principal  
19 amounts, bearing such dates and interest rates and shall mature as set forth in the Indenture;  
20 provided, however, that the aggregate principal amount of Bonds issued hereby shall not exceed  
21 \$18,000,000. The Bonds shall be payable, shall be subject to redemption or purchase prior to  
22 maturity and shall be in substantially the form as provided in the Indenture. Furthermore, the  
23 Bonds shall be payable at such place and in such form, shall carry such registration privileges,  
24 shall be subject to redemption, shall be executed, and shall contain such terms, covenants and  
25 conditions, as set forth in the Indenture. The Bonds shall mature on or prior to June 1, 2018. The  
26 maximum net effective interest rate payable on the Bonds shall not exceed 5.00% per annum. The  
27 first optional redemption date for the Bonds shall be no later than 24 months from the date of issue  
28 of the Bonds.

29           (b) The sale of the Bonds to the Purchaser pursuant to the terms of the Bond Purchase  
30 Agreement shall be and the same are in all respects hereby approved, authorized and confirmed  
31 and the Mayor (or Acting Mayor) is hereby authorized and directed to execute the Bonds, the City  
32 Clerk and Recorder is hereby authorized and directed to affix the seal of the City and to attest the  
33 Bonds, and the Manager of Finance and the City Auditor are hereby authorized and directed to

1 countersign the Bonds and each is hereby authorized to deliver the Bonds for and on behalf of the  
2 City to the Trustee for authentication pursuant to the Indenture. The Bonds shall be sold to the  
3 Purchaser for the purchase price as set forth in the Bond Purchase Agreement (subject to the  
4 limitations set forth above).

5 **Section 6. Compliance with the Act.** The following determinations and findings are hereby  
6 made in accordance with Sections 29-3-103 (10) (d), 29-3-113, 29-3-114 and 29-3-120 of the Act:

7 (a) The maximum amount necessary in each year to pay the principal of and the interest  
8 on the Bonds (based on the maximum net effective interest rates set forth herein, assuming that  
9 interest is paid monthly, and assuming no redemptions) shall not exceed:

10	<u>Date</u>	<u>Principal Amount</u>	<u>Interest</u>	<u>Total</u>
11	06/01/2015		\$ 900,000	\$ 900,000
12	06/01/2016		900,000	900,000
13	06/01/2017		900,000	900,000
14	06/01/2018	<u>\$18,000,000</u>	<u>900,000</u>	<u>18,900,000</u>
15		<u>\$18,000,000</u>	<u>\$3,600,000</u>	<u>\$21,600,000</u>

16 (b) No reserve funds will be established from proceeds of the Bonds and held by the  
17 Trustee under the Indenture. The Purchaser has not required that any reserves be established  
18 from proceeds of the Bonds.

19 (c) In the Loan Agreement, the Borrower has covenanted to maintain, or cause to be  
20 maintained, the Project and to carry, or cause to be carried, all proper insurance with respect  
21 thereto.

22 (d) The revenues and other amounts payable under the Loan Agreement are sufficient to  
23 pay, in addition to all other requirements of the Loan Agreement and this Ordinance, all sums  
24 referred to in paragraphs (a), (b) and (c) of this Section and all taxes or payments in lieu of taxes  
25 levied upon the Project.

26 (e) “Low-and middle-income persons and families” means with respect to the Project  
27 households that earn less than 60% of the area median income (at least 40% of the units in the  
28 Project will be reserved for such households).

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

1           **Section 7. Investments.** Proceeds from the sale of the Bonds and special funds from the  
2 revenues from the Project shall be invested and reinvested in such securities and other  
3 investments specified in, and otherwise in accordance with, the Indenture and Section 29-3-109 of  
4 the Act.

5           **Section 8. Authority To Execute and Deliver Additional Documents.** The officers,  
6 employees and agents of the City shall take all action in conformity with the Act, the Supplemental  
7 Public Securities Act and the Charter necessary or reasonably required to effectuate the issuance  
8 of the Bonds and shall take all action necessary or desirable in conformity with the Act, the  
9 Supplemental Public Securities Act and the Charter to finance the portion of the costs of the  
10 Project to be financed with proceeds of the Bonds and for carrying out, giving effect to and  
11 consummating the transactions contemplated by this Ordinance, the Loan Agreement, the  
12 Indenture, the Bond Purchase Agreement and the Tax Regulatory Agreement, including without  
13 limitation the execution, delivery and filing of any documents, statements or reports with the United  
14 States Internal Revenue Service or with the Secretary of the United States Treasury necessary to  
15 maintain the exclusion of interest on the Bonds from gross income for federal income tax  
16 purposes, the execution of any documents relating to the LITC, the execution and delivery of any  
17 documents necessary in order to assist the Purchaser in complying with 17 C.F.R. Part 240,  
18 § 240.15c2-12, as amended, the execution of any documents relating to the City's private activity  
19 bond volume cap allocation and the execution and delivery of any closing documents to be  
20 delivered in connection with the sale and delivery of the Bonds.

21           **Section 9. Section 147(f) Approval.** For the purposes of Section 147(f) of the Code, the  
22 City Council hereby approves the Bonds and the financing of the Project.

23           **Section 10. Bonds are Limited Obligations.** The Bonds shall be special, limited  
24 obligations of the City payable solely from the receipts and revenues of the City under the Loan  
25 Agreement that are specifically pledged therefor under the Indenture; the Bonds shall never  
26 constitute a debt or indebtedness of the City, the State or any county, municipality or political  
27 subdivision of the State within the meaning of any provision or limitation of the Constitution or  
28 statutes of the State or of any political subdivision of the State; and the Bonds shall never  
29 constitute nor give rise to any pecuniary liability of, or a charge against the general credit or taxing  
30 powers of, the City, the State or any county, municipality or political subdivision of the State. The  
31 Bonds shall not constitute a "multiple fiscal year direct or indirect debt or other financial obligation"  
32 of the City under Article X, Section 20 of the Colorado Constitution.

1           **Section 11. No Pecuniary Liability.** Nothing contained in this Ordinance or in the Bonds,  
2 the Loan Agreement, the Indenture, the Bond Purchase Agreement, the Tax Regulatory  
3 Agreement or any other instrument shall give rise to a pecuniary liability of, or a charge upon the  
4 general credit or taxing powers of, the City, the State or any county, municipality or political  
5 subdivision of the State. The breach by any party of any agreement contained in this Ordinance,  
6 the Bonds, the Loan Agreement, the Indenture, the Bond Purchase Agreement, the Tax  
7 Regulatory Agreement or any other instrument shall not impose any pecuniary liability upon, or any  
8 charge upon the general credit or taxing powers of, the City, the State or any county, municipality  
9 or political subdivision of the State, none of which has the power to pay out of its general fund, or  
10 otherwise contribute, any part of the cost of financing the Project or power to operate the Project  
11 as a business or in any manner.

12           **Section 12. No Condemnation by City.** The City shall not condemn any land or other  
13 property for the Project.

14           **Section 13. Trustee.** The commercial bank or financial institution named as trustee under  
15 the Indenture is hereby appointed as Trustee, paying agent and registrar under the Indenture.

16           **Section 14. Negotiated Sale.** Due to the nature of the Bonds and the complexity of the  
17 structuring of the terms and conditions of the Bonds, such sale of the Bonds shall be by negotiation  
18 rather than by means of a bid process.

19           **Section 15. Volume Cap Allocation.** The Council acting on behalf of the City hereby  
20 awards to the Project an amount not to exceed \$18,000,000 of its calendar year 2011 private  
21 activity bond volume cap allocation. The actual amount of private activity volume cap allocation to  
22 be awarded shall be as set forth in the Indenture. This award of private activity bond volume cap  
23 allocation will be revoked by the City, if the Bonds are not issued on or prior to 120 days from the  
24 adoption date of this Ordinance.

25           **Section 16. Supplemental Ordinances.** The City may, subject to the terms and conditions  
26 of the Indenture, pass and execute ordinances supplemental to this Ordinance which shall not be  
27 inconsistent with the terms and provisions hereof.

28           **Section 17. Limitation of Rights.** With the exception of any rights herein expressly  
29 conferred, nothing expressed or mentioned in or to be implied from the Ordinance or the Bonds is  
30 intended or shall be construed to give to any person, other than the City, the Borrower and the  
31 Purchaser, any legal or equitable right, remedy or claim under or with respect to this Ordinance or  
32 any covenants, conditions and provisions herein contained; this Ordinance and all of the

1 covenants, conditions and provisions hereof being intended to be and being for the sole and  
2 exclusive benefit of the City, the Borrower and the Purchaser as herein provided.

3 **Section 18. Immunity of Officers.** No recourse for the payment of any part of the principal  
4 of, premium, if any, or interest on the Bonds for the satisfaction of any liability arising from, founded  
5 upon or existing by reason of the issue, purchase or ownership of the Bonds shall be had against  
6 any official, officer, member or agent of the City or the State, all such liability to be expressly  
7 released and waived as a condition of and as a part of the consideration for the issue, sale and  
8 purchase of the Bonds.

9 **Section 19. Counterparts.** This Ordinance may be simultaneously executed in several  
10 counterparts, each of which shall be an original and all of which shall constitute but one and the  
11 same instrument.

12 **Section 20. Captions.** The captions or headings in this Ordinance are for convenience only  
13 and in no way define, limit or describe the scope or intent of any provisions or sections of this  
14 Ordinance.

15 **Section 21. Validity of Bonds.** Each Bond shall contain a recital that such Bond is issued  
16 pursuant to the Act and the Supplemental Public Securities Act and such recital shall be conclusive  
17 evidence of its validity and of the regularity of its issuance.

18 **Section 22. Irrepealability.** After any of the Bonds are issued, this Ordinance shall be and  
19 remain irrepealable until the Bonds and the interest thereon shall have been fully paid, canceled  
20 and discharged.

21 **Section 23. Severability.** If any section, paragraph, clause or provision of this Ordinance  
22 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such  
23 section, paragraph, clause or provision shall not affect any of the remaining provisions of this  
24 Ordinance.

25 **Section 24. Supplemental Public Securities Act.** Section 11-57-204 of the Supplemental  
26 Public Securities Act provides that a public entity, including the City, may elect in an act of  
27 issuance to apply all or any of the applicable provisions of the Supplemental Public Securities Act  
28 to the Bonds. The City hereby elects to apply all of the provisions of the Supplemental Public  
29 Securities Act.

30 **Section 25. Superseder.** Pursuant to Article XX of the State Constitution and the Charter,  
31 all other statutes of the State that might otherwise apply in connection with the issuance of the  
32 Bonds are hereby superseded for the purposes of this Ordinance and the issuance of the Bonds  
33 only. To the extent of such inconsistency the provisions of this Bond Ordinance shall be deemed



1 made pursuant to the Charter. All ordinances, resolutions, bylaws, orders, and other instruments,  
2 or parts thereof, related to and inconsistent with the issuance of the Bonds and this Ordinance are  
3 hereby superseded but only to the extent they relate to the issuance of the Bonds and this  
4 Ordinance and only to the extent of such inconsistency. Any inconsistency between the provisions  
5 of this Ordinance and such other ordinances, resolutions, bylaws, orders and other instruments or  
6 parts thereof is intended by the Council.

7 COMMITTEE APPROVAL: May 20, 2014

8 MAYOR-COUNCIL DATE: May 27, 2014

9 PASSED BY THE COUNCIL ON \_\_\_\_\_,  
10 \_\_\_\_\_, PRESIDENT

11 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2014

12 ATTEST: \_\_\_\_\_ CLERK AND RECORDER,  
13 EX-OFFICIO CLERK OF THE  
14 CITY AND COUNTY OF DENVER  
15

16 PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2014 \_\_\_\_\_, 2014

17 PREPARED BY: KUTAK ROCK LLP DATE: May 29, 2014

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

23 D. Scott Martinez, City Attorney for the City and County of Denver

24 By: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_, 2014

1 COMMITTEE APPROVAL: \_\_\_\_\_, 2014

2 MAYOR-COUNCIL DATE: \_\_\_\_\_, 2014

3 PASSED BY THE COUNCIL ON \_\_\_\_\_, 2014 AND ON \_\_\_\_\_, 2014

4 \_\_\_\_\_ - PRESIDENT

5 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2014

6 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
7 EX-OFFICIO CLERK OF THE  
8 CITY AND COUNTY OF DENVER

9 PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_, 2014 \_\_\_\_\_, 2014

10 PREPARED BY: KUTAK ROCK LLP

11 Pursuant to Section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to  
14 §3.2.6 of the Charter.

15 D. SCOTT MARTINEZ, CITY ATTORNEY

16 BY: \_\_\_\_\_ City Attorney- \_\_\_\_\_, 2014