

1 **BY AUTHORITY**

2 RESOLUTION NO. CR24-1446
3 SERIES 2024

COMMITTEE OF REFERENCE:
Finance & Governance

4 **A RESOLUTION**

5 **Approving and evidencing the intention of the City and County of Denver,**
6 **Colorado to issue an amount not to exceed \$29,000,000 of Multifamily Housing**
7 **Revenue Bonds for the multi-family, affordable housing project located at 4340**
8 **South Monaco Street to support the acquisition, construction, and equipping of**
9 **an affordable housing project.**

10 **WHEREAS**, the City and County of Denver, Colorado (the “City”) is a legally and regularly
11 created, established, organized and existing home rule city, municipal corporation and political
12 subdivision under the provisions of Article XX of the Constitution of the State of Colorado (the “State”)
13 and the Home Rule Charter of the City (the “Charter”); and

14 **WHEREAS**, the City is authorized by its Charter, the County and Municipality Development
15 Revenue Bond Act, constituting Article 3 of Title 29, Colorado Revised Statutes, as amended (the
16 “Act”) and the Supplemental Public Securities Act, constituting Part 2, Article 57 of Title 11, Colorado
17 Revised Statutes, as amended (the “Supplemental Public Securities Act”) to finance or refinance
18 projects as defined in the Act to the end that residential facilities for low- and middle-income families
19 or persons intended for use as the sole place of residence by the owners or intended occupants may
20 be provided in order to promote the public health, welfare, safety, convenience and prosperity; and

21 **WHEREAS**, representatives of 4340 South Monaco, LLC, a Colorado limited liability company
22 (such entity, together with one or more related affiliates or successors or assigns, are collectively
23 referred to herein as the “Developer”), have advised the City that the Developer intends to acquire,
24 construct and equip an approximately 143 unit affordable housing facility located at 4340 South
25 Monaco Street, in Denver, Colorado (the “Project”), subject to the City’s financing the acquisition,
26 construction and equipping of the Project through the issuance of the City’s multifamily housing
27 revenue bonds in an amount not to exceed \$29,000,000; and

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

29 **WHEREAS**, the Project will be known as 4340 South Monaco Apartments (or such other
30 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 \$29,000,000 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

1 and families in the City and will promote the public health, welfare, safety, convenience and
2 prosperity.

3 **Section 3.** That the City hereby finds, determines, recites and declares the City’s intent that
4 this Resolution constitute an official indication of the present intention of the City to issue the Bonds
5 as herein provided, subject to: (a) the Developer obtaining a commitment for the purchase of the
6 Bonds on terms which are acceptable to the City, its municipal advisor and its Bond Counsel; (b) the
7 delivery of an approving opinion of Bond Counsel to the City; (c) the delivery of an appraisal, survey,
8 title insurance, environmental audit and plans and specifications acquired by the Developer as a part
9 of the redevelopment approvals needed for the Project that are all acceptable to the City, with such
10 acceptance not being unreasonably withheld; (d) the Developer obtaining sufficient debt and equity
11 financing acceptable to the City; (e) the Developer receiving all applicable approvals for the Project
12 from the City and County of Denver, Colorado and any other relevant governmental entity; (f) City
13 approval of the design of the Project; (g) if the Bonds are sold on an unrated basis, the Bonds may
14 only be purchased by qualified institutional buyers or accredited investors in denominations
15 acceptable to the City; (h) the execution and delivery of indemnity agreements and payment or
16 reimbursement of costs and expenses, all to the satisfaction of the City; (i) the Developer agreeing
17 to post issuance compliance policies and procedures acceptable to the City; and (j) the adoption of
18 a final bond ordinance by the City. The City in its sole discretion may modify or waive any of the
19 requirements contained in (a) – (j) above. The City’s discretion to accept or not to accept items
20 relating to the Project or additional financing therefore or relating to credit, security, sale or marketing
21 aspects of the Bonds is intended for the protection of the City’s interests, and any such acceptance
22 shall not be construed to impose upon the City any duties to, nor to confer any rights against the City
23 upon, any bondholders, investors or other third parties.

24 **Section 4.** The City hereby awards \$29,000,000, with a stated target of 52% and not to
25 exceed 55% of the eligible aggregate basis, of its private activity bond volume cap allocation to the
26 Project or such other amount as shall be determined and agreed upon by the Developer and the City
27 as may be necessary to finance the Project (the “Allocation”). The award of the Allocation shall expire
28 on December 31, 2025 (the “Expiration Date”); provided, however, the Chief Financial Officer of the
29 City’s Department of Finance or the Chief Housing Officer of the City’s Department of Housing
30 Stability may extend the Expiration Date to a later date in their sole discretion.

1 **Section 5.** That no costs or expenses whether incurred by the City or any other party in
2 connection with the issuance of the Bonds or the preparation or review of any documents by any
3 legal or financial consultants retained in connection herewith shall be borne by the City. The City
4 shall have the right to select and retain legal, financial and other consultants in connection with the
5 proposed financing, and all fees, costs and expenses of such consultants, along with all other such
6 costs and expenses shall be paid from the proceeds of the Bonds or otherwise borne by the
7 Developer regardless of whether the Bonds are issued. The City may require such deposits or
8 advances as it deems desirable for such fees, costs and expenses, and may require reimbursement
9 of any such fees, costs and expenses paid by the City.

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

15 **Section 7.** That all public hearings scheduled and held in accordance with the Tax Equity
16 and Fiscal Responsibility Act of 1982 (“TEFRA”) in connection with the issuance of the Bonds shall
17 incorporate available and feasible innovative and inclusive technological solutions, subject to
18 compliance with any applicable requirements under Section 147(f) of the Internal Revenue Code of
19 1986, as amended, so that the public can continue to have fullest possible access to the TEFRA
20 hearing.

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

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

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

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

8 COMMITTEE APPROVAL DATE: October 22, 2024

9 MAYOR-COUNCIL DATE: October 29, 2024 by Consent

10 PASSED BY THE COUNCIL: November 4, 2024

11 *Amursh P. Sandora* _____ - PRESIDENT

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

15 PREPARED BY: KUTAK ROCK LLP

16 REVIEWED BY: Bradley T. Neiman, Assistant City Attorney DATE: October 31, 2024

17 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the
18 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
19 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to
20 § 3.2.6 of the Charter.

21 Kerry C. Tipper, Denver City Attorney

22 BY: *Jonathan Griffin*, Assistant City Attorney DATE: Oct 31, 2024