

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES 2013

COUNCIL BILL NO. CB13-0002
COMMITTEE OF REFERENCE:
Government & Finance

5 A BILL

6 **For an ordinance (I) authorizing and approving the City’s sponsorship of the**
7 **2013 Metro Mortgage Assistance Plus Program; (II) authorizing the execution of**
8 **all Program Documents; (III) authorizing the appointment of a Master Servicer,**
9 **Escrow Agent, Custodian, Administrator, Program Monitor and Program**
10 **Advisor for the Program; (IV) allocating funds for the DPA Grant; and (V)**
11 **delegating to the power to take all such actions as are necessary or**
12 **appropriate to accomplish the foregoing.**

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

17 WHEREAS, the City is authorized to promote the financing of residential facilities for low
18 and middle income persons or families or facilities intended for use as the sole place of residence
19 by the owners or intended occupants and to promote the health, safety and general welfare of the
20 people of the City; and

21 WHEREAS, the City desires to sponsor a program to provide competitive fixed rate 30-year
22 mortgage loans which will be coupled with down payment and closing cost assistance grants (the
23 “DPA Grant”) in connection with financing mortgage loans for residential facilities for low–and
24 middle–income families or facilities intended for use as the sole place of residence by the owners
25 or intended occupants thereof; and

26 WHEREAS, Raymond James & Associates, Inc. (“Raymond James”) has presented to the
27 City a program identified as the 2013 Metro Mortgage Assistance Plus Program (the “Program”)
28 for which the City would be the sponsor and a summary description of which has been submitted
29 to the City (the “Program Summary”); and

30 WHEREAS, the City finds and determines that sponsoring the Program will assist in the
31 financing of mortgage loans for residential facilities for low–and middle–income families or facilities
32 intended for use as the sole place of residence by the owners or intended occupants thereof and
33 promote the health, safety and general welfare of the people of the City;

34 WHEREAS, there have been presented to the City Council of the City (the “Council”) the
35 following documents in substantially final form: (a) the proposed form of the Program
36 Administration Agreement to be entered into by and between the City and Housing and

1 Development Services, Inc. D/B/A eHousingPlus (“Administrator”), as administrator of the Program
2 (City Clerk’s Filing No. 2013-0045); (b) the proposed form of the GNMA Purchase Agreement (the
3 “GNMA Purchase Agreement”) to be entered into by and between the City and Raymond James
4 (City Clerk’s Filing No. 2013-0045-A); (c) the proposed form of the GNMA Custody Agreement to
5 be entered into by and between the City and U.S. Bank National Association, as custodian
6 thereunder (City Clerk’s Filing No. 2013-0045-B); (d) the proposed form of the Lender Agreement
7 to be entered into by and between the City and each lender under the Program (City Clerk’s Filing
8 No. 2013-0045-C); (e) the proposed form of the Servicing Agreement to be entered into by and
9 between the City and U.S. Bank National Association, as servicer thereunder, (City Clerk’s Filing
10 No. 2013-0045-D); (f) the proposed form of Escrow Agreement to be entered into by and between
11 the City and U.S. Bank National Association, as escrow agent; (City Clerk’s Filing No. 2013-0045-
12 E) (g) the proposed form of the Program Summary (City Clerk’s Filing No. 2013-0045-F); and (h)
13 the proposed form of the Program Monitoring Agreement, to be entered into by and between the
14 City and FirstSouthwest, as program monitor, (City Clerk’s Filing No. 2013-0045-G); which are
15 available in the office and on the web page of the Council, and to be filed in the office of the Clerk
16 and Recorder, Ex-Officio Clerk of the City and County of Denver (the “City Clerk”) under the City
17 Clerk’s Filing Numbers set forth above (collectively, the Program Documents);

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

20 **Section 1.** In order to benefit the residents of the City, the Council authorizes and
21 approves its sponsorship of the Program in connection with the financing of mortgage loans for
22 residential facilities for low–and middle–income families or facilities intended for use as the sole
23 place of residence by the owners or intended occupants thereof, all of which residents shall be
24 located within the boundaries of the City. The maximum amount of mortgage loans under the
25 Program shall be initially \$15,000,000, which shall revolve pursuant to the terms of the GNMA
26 Purchase Agreement.

27 **Section 2.** The City shall allocate monies from a Special Revenue Fund to directly fund
28 all or a portion of the DPA Grant, if necessary, in an amount not to exceed 4.00% of the original
29 principal amount of the mortgage loans originated under the Program, which monies are
30 anticipated to be replenished under the Program as the resulting GNMA Certificates are delivered.

31 **Section 3.** The Program shall not constitute nor give rise to a pecuniary liability of the City
32 or a charge against the City’s general credit or taxing powers, nor shall the Program ever be
33 deemed to be an obligation or agreement of any officer, director, agent or employee of the City in

1 such person's individual capacity, and none of such persons shall be subject to any personal
2 liability by reason of the Program.

3 **Section 4.** The form, terms and provisions of the Program Documents are hereby
4 approved; with such changes and modifications as the appropriate officers of the City deem
5 necessary and advisable and are not inconsistent herewith; and the City shall execute and deliver
6 the Program Documents, in substantially the form heretofore filed with the Council and to be filed
7 with the City Clerk; and the Mayor (or Acting Mayor) is hereby authorized and directed to execute
8 and deliver the Program Documents, and the City Clerk is hereby authorized and directed to affix
9 the City seal and to attest the Program Documents, the Manager of Finance and the City Auditor
10 are hereby authorized and directed to countersign and register the Program Documents and the
11 City Attorney is hereby authorized to execute the Program Documents.

12 **Section 5.** U.S. Bank National Association is hereby appointed to serve as the Program's
13 Master Servicer, Custodian and Escrow Agent. Housing and Development Services, Inc. D/B/A
14 eHousingPlus is hereby appointed to serve as Administrator. Raymond James is hereby appointed
15 to serve as Program Advisor. FirstSouthwest is hereby appointed to serve as Program Monitor.

16 **Section 6.** The City is hereby authorized to pay all costs associated with the Program
17 from surplus housing funds.

18 **Section 7.** All actions not inconsistent with the provisions of this Ordinance heretofore
19 taken by the Council and the officers of the City directed toward the Program are hereby, ratified,
20 approved and confirmed.

21 **Section 8.** The officers of the City shall take all action in conformity with the Charter
22 necessary or reasonably required to sponsor the Program and shall take all action necessary or
23 desirable in conformity with the Charter for carrying out, giving effect to and consummating the
24 transactions contemplated by this Ordinance, including, but not limited to effecting the transactions
25 with the member jurisdictions of the Metro Mayors Caucus contemplated under the Program and
26 the Program Documents, further, including, but not limited to the execution of any
27 intergovernmental agreements with such member jurisdictions.

28 **Section 9.** The Council hereby delegates to the Manager of Finance, or in the absence of
29 the Manager of Finance, the Executive Director of the Office of Economic Development, the power
30 to execute any amendments to the Program Documents and take any actions necessary to
31 administer the Program consistent with the transactions contemplated by this Ordinance.

32 **Section 10.** After the Program is implemented, this Ordinance shall be and remain
33 irrevocable.

1 **Section 11.** If any section, paragraph, clause or provision of this Ordinance shall for any
2 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 Ordinance.

4 **Section 12.** All bylaws, orders, resolutions, ordinances, or parts thereof, inconsistent
5 herewith are hereby repealed to the extent only of such inconsistency, and if so repealed, no other
6 bylaw, order, resolution, ordinance, or part thereof, shall be revived. This repealer shall not be
7 construed as reviving any bylaw, order, resolution or ordinance, or part thereof.

8 COMMITTEE APPROVAL DATE: January 9, 2013

9 MAYOR-COUNCIL DATE: January 15, 2013

10 PASSED BY THE COUNCIL ON _____, 2013 AND ON _____, 2013
11 _____ - PRESIDENT

12 APPROVED: _____ - MAYOR _____, 2013

13 ATTEST: _____ -CLERK AND RECORDER, EX OFFICIO
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NOTICE PUBLISHED IN THE DAILY JOURNAL _____, 2013 AND _____, 2013

PREPARED BY: KUTAK ROCK LLP

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

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney DATE: _____, 2013