

BY AUTHORITY

RESOLUTION NO. CR23-0217
SERIES 2023

COMMITTEE OF REFERENCE:
Finance & Governance

A RESOLUTION

Approving and evidencing the intention of the City and County of Denver, Colorado to issue an amount not to exceed \$12,500,000 of Multifamily Housing Revenue Bonds for St. Francis Center West.

WHEREAS, the City and County of Denver, Colorado (the “City”) is a legally and regularly created, established, organized and 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 City is authorized by its 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”) to finance or refinance projects as defined in the Act to the end that residential facilities for low- and middle-income families or persons intended for use as the sole place of residence by the owners or intended occupants may be provided in order to promote the public health, welfare, safety, convenience and prosperity; and

WHEREAS, representatives of The St. Francis Center, a Colorado nonprofit corporation (such entity, together with one or more related affiliates or successors or assigns, are collectively referred to herein as the “Developer”), have advised the City that the Developer intends to acquire, construct and equip an approximately 60 unit affordable housing facility located at 221 North Federal Boulevard, in Denver, Colorado (the “Project”), subject to the City’s financing the acquisition, construction and equipping of the Project through the issuance of the City’s multifamily housing revenue bonds in an amount not to exceed \$12,500,000; and

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

WHEREAS, the Project will be known as St. Francis Center West (or such other name as determined by the Developer); and

WHEREAS, the Developer has represented to the City that the Project will qualify as a “project” within the meaning of the Act; and

1 **WHEREAS**, the City has considered the Developer’s proposal and has concluded that the
2 Project will provide affordable housing to low- and middle-income persons and families in the City
3 and will promote the public health, welfare, safety, convenience and prosperity; and

4 **WHEREAS**, the City desires to indicate its intent to proceed with financing the Project through
5 the issuance of the City’s multifamily housing revenue bonds;

6 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY**
7 **OF DENVER, COLORADO:**

8 **Section 1.** That in order to benefit the residents of the City and to induce the Developer to
9 undertake the Project, the City shall, subject to the provisions hereof, take all necessary and
10 advisable steps to effect the issuance, in one or more series, of the City’s multifamily housing
11 revenue bonds (the “Bonds”) pursuant to its Charter, the Act and the Supplemental Public Securities
12 Act in the maximum aggregate principal amount of \$12,500,000 or such other amount as shall be
13 determined and agreed upon by the Developer and the City as may be necessary to finance the
14 Project. The Bonds shall be special, limited obligations of the City payable solely from and secured
15 by a pledge of revenues derived from and payable by the Developer pursuant to the loan agreement
16 with the City; the Bonds shall never constitute a debt, multiple fiscal year obligation or indebtedness
17 of the City, the State or any political subdivision of the State within the meaning of any provision or
18 limitation of the State Constitution or statutes and shall not constitute nor give rise to a pecuniary
19 liability of the City or be a charge against the City’s general credit or taxing powers of, the City, the
20 State or any county, municipality or political subdivision of the State. The Bonds shall not constitute
21 a “multiple fiscal year direct or indirect debt or other financial obligation” of the City under Article X,
22 Section 20 of the Colorado Constitution, nor shall the Bonds ever be deemed to be an obligation or
23 agreement of any officer, director, agent or employee of the City in such person’s individual capacity,
24 and none of such persons shall be subject to any personal liability by reason of the issuance of the
25 Bonds.

26 **Section 2.** That the City hereby finds, determines, recites and declares that the issuance
27 of the Bonds to finance the Project will provide affordable housing to low- and middle-income persons
28 and families in the City and will promote the public health, welfare, safety, convenience and
29 prosperity.

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

21 **Section 4.** The City hereby awards \$12,500,000 of its private activity bond volume cap
22 allocation to the Project or such other amount as shall be determined and agreed upon by the
23 Developer and the City as may be necessary to finance the Project (the "Allocation"). The award of
24 the Allocation shall expire one year from the date of this Resolution (the "Expiration Date"); provided,
25 however, the Chief Financial Officer of the City's Department of Finance or the Chief Housing Officer
26 of the City's Department of Housing Stability may extend the Expiration Date to a later date in their
27 sole discretion.

28 **Section 5.** That no costs or expenses whether incurred by the City or any other party in
29 connection with the issuance of the Bonds or the preparation or review of any documents by any
30 legal or financial consultants retained in connection herewith shall be borne by the City. The City
31 shall have the right to select and retain legal, financial and other consultants in connection with the
32 proposed financing, and all fees, costs and expenses of such consultants, along with all other such

1 costs and expenses shall be paid from the proceeds of the Bonds or otherwise borne by the
2 Developer regardless of whether the Bonds are issued. The City may require such deposits or
3 advances as it deems desirable for such fees, costs and expenses, and may require reimbursement
4 of any such fees, costs and expenses paid by the City.

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

10 **Section 7.** That all public hearings scheduled and held in accordance with the Tax Equity
11 and Fiscal Responsibility Act of 1982 ("TEFRA") in connection with the issuance of the Bonds shall
12 incorporate available and feasible innovative and inclusive technological solutions, subject to
13 compliance with any applicable requirements under Section 147(f) of the Internal Revenue Code of
14 1986, as amended, so that the public can continue to have fullest possible access to the TEFRA
15 hearing.

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

20 **Section 9.** The City hereby desires to declare its official intent, pursuant to 26 C.F.R.
21 § 1.150-2, to issue the Bonds and thereby permit the City and the Developer to reimburse itself from
22 proceeds of the Bonds for certain expenditures incurred in connection with the Project prior to
23 issuance of the Bonds.

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

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

1 COMMITTEE APPROVAL DATE: March 7, 2023 by Consent
2 MAYOR-COUNCIL DATE: March 14, 2023
3 PASSED BY THE COUNCIL: _____
4 _____ - PRESIDENT
5 ATTEST: _____ - CLERK AND RECORDER,
6 EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER
8 PREPARED BY: KUTAK ROCK LLP DATE: February 28, 2023
9 REVIEWED BY: Bradley T. Neiman, Assistant City Attorney DATE: March 16, 2023
10 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the
11 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
12 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to
13 § 3.2.6 of the Charter.
14 Kerry C. Tipper, Denver City Attorney
15 BY: _____, Assistant City Attorney DATE: _____