

1 BY AUTHORITY

2 RESOLUTION NO. \_\_\_\_\_  
3 SERIES 2013

COMMITTEE OF REFERENCE:

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 \$23,000,000 of Multifamily**  
7 **Housing Revenue Bonds for the 2300 Welton Street Project**

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

12 WHEREAS, the City is authorized by its Charter, the County and Municipality  
13 Development Revenue Bond Act, constituting Article 3 of Title 29, Colorado Revised Statutes, as  
14 amended (the "Act") and the Supplemental Public Securities Act, constituting Part 2, Article 57 of  
15 Title 11, Colorado Revised Statutes, as amended (the "Supplemental Public Securities Act") to  
16 finance or refinance projects as defined in the Act, including any land, building or other  
17 improvement suitable or used for or in connection with residential facilities for low- and middle-  
18 income families or persons intended for use as the sole place of residence by the owners or  
19 intended occupants; and

20 WHEREAS, representatives of 2300 Welton LLC (such entity, together with one or more  
21 related affiliates or successors or assigns, are collectively referred to herein as the "Borrower")  
22 have advised the City that the Borrower intends to construct and equip a four-story 218-unit  
23 multifamily facility to be located at 2300 Welton Street, Denver, Colorado (the "Project"), subject  
24 to the City's financing the construction and equipping of the Project through the issuance of the  
25 City's multifamily housing revenue bonds in an amount not to exceed \$23,000,000; and

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

27 WHEREAS, the Project will be known as the 2300 Welton Street Apartment Project; and

28 WHEREAS, the Borrower has represented to the City that the Project will qualify as a  
29 "project" within the meaning of the Act; and

1           WHEREAS, the City has considered the Borrower’s proposal and has concluded that the  
2 Project will provide affordable housing to low- and middle-income persons and families in the  
3 City 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  
5 through the issuance of the City’s multifamily housing revenue bonds;

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

8           **Section 1.** That in order to benefit the residents of the City and to induce the Borrower  
9 to undertake the Project, the City shall, subject to the provisions hereof, take all necessary and  
10 advisable steps to effect the issuance of the City’s multifamily housing revenue bonds (the  
11 “Bonds”) pursuant to its Charter, the Act and the Supplemental Public Securities Act in the  
12 maximum aggregate principal amount of \$23,000,000 or such other amount as shall be  
13 determined and agreed upon by the Borrower 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  
15 secured by a pledge of revenues derived from and payable by the Borrower pursuant to the loan  
16 agreement with the City; the Bonds shall never constitute a debt or indebtedness of the City, the  
17 State or any county, municipality or political subdivision of the State within the meaning of any  
18 provision or limitation of the Constitution or statutes of the State or of any political subdivision of  
19 the State; and the Bonds shall never constitute nor give rise to any pecuniary liability of, or be a  
20 charge against the general credit or taxing powers of, the City, the State or any county,  
21 municipality or political subdivision of the State. The Bonds shall not constitute a “multiple fiscal  
22 year direct or indirect debt or other financial obligation” of the City under Article X, Section 20 of  
23 the Colorado Constitution.

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

28           **Section 3.** That the City hereby finds, determines, recites and declares the City’s intent  
29 that this Resolution constitute an official indication of the present intention of the City to issue the  
30 Bonds as herein provided, subject to: (a) an appraisal which is acceptable to the City, (b) a

1 market study which is acceptable to the City, (c) a Phase I report which is acceptable to the City,  
2 (d) a FHA Mortgage insurance commitment or other credit enhancement acceptable to the City,  
3 (e) City approval of the design of the Project, (f) City approval of the energy savings elements  
4 and standards of the Project, (g) if the Bonds are sold on an unrated basis, the Bonds may only  
5 be purchased by qualified institutional buyers or accredited investors in denominations  
6 acceptable to the City, (h) the Borrower shall elect the "40-60 test" pursuant to Section  
7 142(d)(1)(B) of the Internal Revenue Code of 1986, as amended (the "Code"), (i) the delivery of  
8 an approving opinion of Co-Bond Counsel to the City, (j) the execution and delivery of indemnity  
9 agreements and payment or reimbursement of costs and expenses, all to the satisfaction of the  
10 City, (k) the Borrower agreeing to post issuance compliance policies and procedures acceptable  
11 to the City, and (l) the adoption of a final bond ordinance by the City. The City's discretion to  
12 accept or not to accept items relating to the Project or additional financing therefore or relating to  
13 credit, security, sale or marketing aspects of the Bonds is intended for the protection of the City's  
14 interests, and any such acceptance shall not be construed to impose upon the City any duties to,  
15 nor to confer any rights against the City upon, any bondholders, investors or other third parties.

16 **Section 4.** The City hereby awards \$23,000,000 of its private activity bond volume cap  
17 allocation (the "Allocation") to the Project. The award of the Allocation shall expire on  
18 December 15, 2013 if the Bonds are not issued prior to December 14, 2013.

19 **Section 5.** That no costs or expenses whether incurred by the City or any other party in  
20 connection with the issuance of the Bonds or the preparation or review of any documents by any  
21 legal or financial consultants retained in connection herewith shall be borne by the City. The City  
22 shall have the right to select and retain legal, financial and other consultants in connection with  
23 the proposed financing, and all fees, costs and expenses of such consultants, along with all  
24 other such costs and expenses shall be paid from the proceeds of the Bonds or otherwise borne  
25 by the Borrower regardless of whether the Bonds are issued. The City may require such  
26 deposits or advances as it deems desirable for such fees, costs and expenses, and may require  
27 reimbursement of any such fees, costs and expenses paid by the City.

28 **Section 6.** That prior to any execution of a loan agreement, indenture of trust, bond  
29 purchase agreement, tax regulatory agreement or any other necessary documents and  
30 agreements in connection with such Bonds, such documents and/or agreements shall be

1 submitted for approval to the City, and, if satisfactory to the City, their execution shall be  
2 authorized by ordinance of the City pursuant to law.

3 **Section 7.** That the agreements of the City set forth above are expressly conditioned  
4 upon the ability and willingness of the City to issue the Bonds as tax-exempt obligations under  
5 the Code. Nothing contained in this Resolution shall be construed as requiring the City to issue  
6 the Bonds and the decision to issue the Bonds shall be in the complete discretion of the City.

7 **Section 8.** That if any section, paragraph, clause or provision of this Resolution shall for  
8 any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such  
9 section, paragraph, clause or provision shall not affect any of the remaining provisions of this  
10 Resolution.

11 **Section 9.** That all bylaws, orders, resolutions and ordinances, or parts thereof,  
12 inconsistent herewith and with the documents hereby approved, are hereby repealed to the  
13 extent only of such inconsistency. This repealer clause shall not be construed as reviving any  
14 bylaw, order, or ordinance or part thereof.

15 COMMITTEE APPROVAL DATE: \_\_\_\_\_, 2013

16 MAYOR-COUNCIL DATE: \_\_\_\_\_, 2013

17 PASSED BY THE COUNCIL: \_\_\_\_\_, 2013

18 \_\_\_\_\_ - PRESIDENT

19 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
20 EX-OFFICIO CLERK OF THE  
21 CITY AND COUNTY OF DENVER  
22

23 PREPARED BY: KUTAK ROCK LLP  
24

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

29 DOUGLAS J. FRIEDNASH, City Attorney for the City and County of Denver

30 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_, 2013