

1 **BY AUTHORITY**

2 RESOLUTION NO. CR13 -0409

COMMITTEE OF REFERENCE:

3 SERIES 2013

Business, Workforce & Sustainability

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 \$16,000,000 of Multifamily Housing**  
7 **Revenue Bonds for the Park Hill Village West Project**

8 **WHEREAS**, the City and County of Denver, Colorado (the “City”) is a legally, regularly and  
9 validly created, established, organized and existing home rule city, municipal corporation and  
10 political subdivision under the provisions of Article XX of the Constitution of the State of Colorado  
11 (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 Development  
13 Revenue Bond Act, constituting Article 3 of Title 29, Colorado Revised Statutes, as amended (the  
14 “Act”) and the Supplemental Public Securities Act, constituting Part 2, Article 57 of Title 11,  
15 Colorado Revised Statutes, as amended (the “Supplemental Public Securities Act”) to finance or  
16 refinance projects as defined in the Act, including any land, building or other improvement suitable  
17 or used for or in connection with residential facilities for low- and middle-income families or persons  
18 intended for use as the sole place of residence by the owners or intended occupants; and

19 **WHEREAS**, representatives of PHVW LLLP (such entity, together with one or more related  
20 affiliates or successors or assigns, are collectively referred to herein as the “Borrower”) have  
21 advised the City that the Borrower intends to construct and equip an approximately 156-unit  
22 multifamily housing facility to be located at 4055 Albion Street, Denver, Colorado (the “Project”),  
23 subject to the City’s financing the construction and equipping of the Project through the issuance of  
24 the City’s multifamily housing revenue bonds in an amount not to exceed \$16,000,000; and

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

26 **WHEREAS**, the Project will be known as the Park Hill Village West Project; and

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

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

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

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

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

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

22           **Section 3.** That the City hereby finds, determines, recites and declares the City’s intent  
23 that this Resolution constitute an official indication of the present intention of the City to issue the  
24 Bonds as herein provided, subject to: (a) an FHA Mortgage insurance commitment or other form of  
25 credit enhancement acceptable to the City, (b) if the Bonds are sold on an unrated basis, the  
26 Bonds may only be purchased by qualified institutional buyers or accredited investors in  
27 denominations acceptable to the City, (c) the Borrower shall elect the “40-60 test” pursuant to  
28 Section 142(d)(1)(B) of the Internal Revenue Code of 1986, as amended (the “Code”), (d) the  
29 delivery of an approving opinion of Co-Bond Counsel to the City, (e) the execution and delivery of  
30 indemnity agreements and payment or reimbursement of costs and expenses, all to the  
31 satisfaction of the City, (f) the Borrower agreeing to post issuance compliance policies and  
32 procedures acceptable to the City, and (g) the adoption of a final bond ordinance by the City. The  
33 City’s discretion to accept or not to accept items (a) through (g) relating to the Project or alternative

1 financing therefore or relating to credit, security, sale or marketing aspects of the Bonds is  
2 intended for the protection of the City's interests, and any such acceptance shall not be construed  
3 to impose upon the City any duties to, nor to confer any rights against the City upon, any  
4 bondholders, investors or other third parties.

5 **Section 4.** The City hereby awards \$16,000,000 of its private activity bond volume cap  
6 allocation (the "Allocation") to the Project. The award of the Allocation shall expire on  
7 December 15, 2013 (the "Expiration Date") if the Bonds are not issued prior to December 14, 2013.  
8 The Chief Financial Officer of the City and the Executive Director of the City's Office of Economic  
9 Development may extend the Expiration Date to a later date in their sole discretion.

10 **Section 5.** That no costs or expenses whether incurred by the City or any other party in  
11 connection with the issuance of the Bonds or the preparation or review of any documents by any  
12 legal or financial consultants retained in connection herewith shall be borne by the City. The City  
13 shall have the right to select and retain legal, financial and other consultants in connection with the  
14 proposed financing, and all fees, costs and expenses of such consultants, along with all other such  
15 costs and expenses shall be paid from the proceeds of the Bonds or otherwise borne by the  
16 Borrower regardless of whether the Bonds are issued. The City may require such deposits or  
17 advances as it deems desirable for such fees, costs and expenses, and may require  
18 reimbursement of any such fees, costs and expenses paid by the City.

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

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

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

31 **Section 9.** That all bylaws, orders, resolutions and ordinances, or parts thereof,  
32 inconsistent herewith and with the documents hereby approved, are hereby repealed to the extent

1 only of such inconsistency. This repealer clause shall not be construed as reviving any bylaw,  
2 order, or ordinance or part thereof.

3 COMMITTEE APPROVAL DATE: June 19, 2013

4 MAYOR-COUNCIL DATE: June 25, 2013

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

6 \_\_\_\_\_ - PRESIDENT

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

10 PREPARED BY: KUTAK ROCK LLP

11 Pursuant to section 13-12, D.R.M.C., this proposed resolution 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 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to  
14 § 3.2.6 of the Charter.  
15  
16

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

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