

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2014

COUNCIL BILL NO. CB14-0474
COMMITTEE OF REFERENCE:
4 Health, Safety, Education & Services

5
6 A BILL

7 **For an ordinance authorizing the issuance and sale of an amount not to exceed**
8 **\$23,000,000 of City and County of Denver, Colorado Multifamily Housing**
9 **Revenue Bonds (2300 Welton Project) Series 2014 for the purpose of financing**
10 **the acquisition, construction and equipping of a multifamily residential rental**
11 **housing development to be occupied by low and middle income persons in the**
12 **City and County of Denver, Colorado and to pay certain expenses of such bond**
13 **issue; approving and authorizing execution of a trust indenture, a loan**
14 **agreement, a bond purchase agreement and a tax regulatory agreement with**
15 **respect to the bonds; making findings and determinations with respect to the**
16 **project and the bonds; authorizing the execution and delivery of related**
17 **documents; and repealing all action heretofore taken in conflict herewith.**

18 WHEREAS, the City and County of Denver, Colorado (the "City") is a legally and regularly
19 created, established, organized and validly existing home rule city, municipal corporation and
20 political subdivision under the provisions of Article XX of the Constitution of the State of Colorado
21 (the "State") and the home rule charter of the City (the "Charter"); and

22 WHEREAS, the Charter, the County and Municipality Development Revenue Bond Act,
23 constituting Article 3 of Title 29, Colorado Revised Statutes, as amended (the "Act") and the
24 Supplemental Public Securities Act, constituting Part 2, Article 57 of Title 11, Colorado Revised
25 Statutes, as amended (the "Supplemental Public Securities Act"), authorize cities and counties in
26 the State to issue revenue bonds to finance one or more projects, including any land, buildings or
27 other improvements and all real and personal properties, whether or not in existence, which shall
28 be suitable for residential facilities for low-income and middle-income families or persons and
29 intended for use as the sole place of residence by the owners or intended occupants to the end
30 that more adequate residential housing facilities for low-income and middle-income families and
31 persons may be provided, which promote the public health, welfare, safety, convenience and
32 prosperity; and

33 WHEREAS, the City is further authorized by the Act, the Supplemental Public Securities Act
34 and the Charter to issue its revenue bonds for the purposes of defraying the costs of financing any
35 such project, including all incidental expenses incurred in issuing such bonds, and to secure the

1 payment of such bonds as provided in the Act, the Supplemental Public Securities Act and the
2 Charter; and

3 WHEREAS, in addition to its powers under the Act and the Supplemental Public Securities
4 Act, the City is also possessed of plenary powers under the Colorado Constitution and the Charter
5 as to matters of local or municipal concern; and

6 WHEREAS, representatives of 2300 Welton, LLC, a limited liability company duly organized
7 and validly existing under the laws of State of Colorado, including any of its successors or assigns
8 (the "Borrower"), have presented to the City a proposal whereby the City will issue its multifamily
9 housing revenue bonds pursuant to the Act, the Supplemental Public Securities Act and the
10 Charter to finance the cost of a project under the Act, the Supplemental Public Securities Act and
11 the Charter, which project consists of: (a) the acquisition, construction and equipping of a 223-unit
12 multifamily residential rental facility consisting of a four-story building with 195 units located at 2300
13 Welton Street and a three-story building with 28 units located at 515 Park Avenue West, Denver,
14 Colorado; and (b) the payment of the costs of issuing the Bonds (collectively, the "Project"); and

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

16 WHEREAS, the City has considered the request of the Borrower and has concluded that the
17 Project will provide more low- and middle-income residential rental facilities, promoting the public
18 health, welfare, safety, convenience and prosperity and that the City should issue its multifamily
19 housing revenue bonds under the Act, the Supplemental Public Securities Act and the Charter to
20 finance a portion of the Project, subject to the conditions set forth herein; and

21 WHEREAS, the City will issue, sell and deliver the City and County of Denver, Colorado
22 Multifamily Housing Revenue Bonds (2300 Welton Project) Series 2014 (referred to herein as the
23 "Bonds"), in the aggregate principal amount not to exceed \$23,000,000, to pay a portion of the cost
24 of financing the Project; and

25 WHEREAS, the Borrower will enter into a Loan Agreement (the "Loan Agreement"), by and
26 between the City and the Borrower, which will provide for payments sufficient to pay the principal
27 of, premium, if any, and interest on the Bonds and to meet other obligations as herein and therein
28 provided; and

29 WHEREAS, the Borrower has applied to the Colorado Housing and Finance Authority for an
30 allocation of low-income housing tax credits ("LITC") under Section 42 of the Internal Revenue
31 Code of 1986, as amended (the "Code"); and

32 WHEREAS, there have been presented to the City Council at this meeting substantially final
33 forms of the following documents: (a) the Loan Agreement; (City Clerk's Filing No. 2014-0939);

1 (b) the Trust Indenture (the “Indenture”), by and between the City and U.S. Bank National
2 Association, as trustee thereunder (the “Trustee”) (City Clerk’s Filing No. 2014-0939-A); (c) the
3 Bond Purchase Agreement (the “Bond Purchase Agreement”) (City Clerk’s Filing No. 2014-0939-
4 B), by and among the City, the Borrower and D.A. Davidson & Co. or any affiliate thereof (the
5 “Purchaser”); and (d) the Tax Regulatory Agreement (the “Tax Regulatory Agreement”), by and
6 among the City, the Borrower and the Trustee (City Clerk’s Filing No. 2014-0939-C);

7 NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY AND
8 COUNTY OF DENVER, COLORADO:

9 **Section 1. Legal Authorization.** The City is a legally, duly and regularly created,
10 established, organized and validly existing home rule city, municipal corporation and political
11 subdivision under the provisions of Article XX of the Constitution of the State and the Charter of the
12 City and is authorized under the Act, the Supplemental Public Securities Act and its Charter to
13 issue and sell its multifamily housing revenue bonds in the form of one or more debt instruments,
14 such as the Bonds, for the purpose, in the manner and upon the terms and conditions set forth in
15 the Act, the Supplemental Public Securities Act, the Charter, this Ordinance and in the Indenture.

16 **Section 2. Findings.** The City Council has heretofore determined, and does hereby
17 determine, based upon the representations of the Borrower contained in the application form
18 submitted to the City, as follows:

- 19 (a) The Project is an eligible “project,” as defined in the Act.
- 20 (b) The issuance of the Bonds will effectuate the public purposes of the City and carry
21 out the purposes of the Act by, among other things, providing residential facilities for low- and
22 middle-income families in the City.
- 23 (c) The Bonds are special, limited obligations of the City payable solely out of the
24 income, revenues and receipts specifically pledged pursuant to the Indenture and the Loan
25 Agreement. The Bonds, the premium, if any, and the interest thereon shall never constitute the
26 debt or indebtedness of the City within the meaning of any provision or limitation of the State
27 Constitution or statutes, shall not constitute nor give rise to a pecuniary liability of the City or a
28 charge against its general credit or taxing power and shall not constitute a “multiple fiscal year
29 direct or indirect debt or other financial obligation” of the City under Article X, Section 20 of the
30 Colorado Constitution. Neither the State nor any political subdivision thereof shall be obligated to
31 pay the principal of, premium, if any, or interest on the Bonds or other costs incident thereto. The
32 Bonds do not constitute a debt, loan, credit or pledge of the faith and credit or taxing power of the
33 State, the City or any political subdivision thereof.

1 **Section 3. Approval and Authorization of Documents.** The Indenture, the Loan
2 Agreement, the Bond Purchase Agreement and the Tax Regulatory Agreement shall be and the
3 same are in all respects hereby approved, authorized and confirmed and the Mayor (or Acting
4 Mayor) is hereby authorized and directed to execute, the City Clerk and Recorder is hereby
5 authorized and directed to affix the seal of the City and to attest, the Manager of Finance is hereby
6 authorized and directed to execute, and the City Auditor is hereby authorized and directed to
7 countersign and register the Indenture, the Loan Agreement, the Bond Purchase Agreement and
8 the Tax Regulatory Agreement in substantially the forms and content as presented to the City on
9 this date, subject to the approval of bond counsel to the City, but with such changes, modifications,
10 additions and deletions therein as shall to them seem necessary, desirable or appropriate, their
11 execution thereof to constitute conclusive evidence of their approval of any and all changes,
12 modifications, additions and deletions from the forms thereof as before this date.

13 **Section 4. All Actions Heretofore Taken.** All actions (not inconsistent with the provisions
14 of this Ordinance) heretofore taken by the City Council and the officers, employees and agents of
15 the City directed toward the issuance and sale of the Bonds therefor are hereby ratified, approved
16 and confirmed.

17 **Section 5. Authorization to Issue and Sell the Bonds.**

18 (a) The issuance of the Bonds shall be in such series, denominations, and such principal
19 amounts, bearing such dates and interest rates and shall mature as set forth in the Indenture;
20 provided, however, that the aggregate principal amount of Bonds issued hereby shall not exceed
21 \$23,000,000. The Bonds shall be payable, shall be subject to redemption or purchase prior to
22 maturity and shall be in substantially the form as provided in the Indenture. Furthermore, the
23 Bonds shall be payable at such place and in such form, shall carry such registration privileges,
24 shall be subject to redemption, shall be executed, and shall contain such terms, covenants and
25 conditions, as set forth in the Indenture. The Bonds shall mature on or prior to June 1, 2018. The
26 maximum net effective interest rate payable on the Bonds shall not exceed 5.00% per annum. The
27 first optional redemption date for the Bonds shall be no later than 24 months from the date of issue
28 of the Bonds.

29 (b) The sale of the Bonds to the Purchaser pursuant to the terms of the Bond Purchase
30 Agreement shall be and the same are in all respects hereby approved, authorized and confirmed
31 and the Mayor (or Acting Mayor) is hereby authorized and directed to execute the Bonds, the City
32 Clerk and Recorder is hereby authorized and directed to affix the seal of the City and to attest the
33 Bonds, the Manager of Finance is hereby authorized and directed to execute the Bonds, and the

1 City Auditor is hereby authorized and directed to countersign the Bonds and each is hereby
2 authorized to deliver the Bonds for and on behalf of the City to the Trustee for authentication
3 pursuant to the Indenture. The Bonds shall be sold to the Purchaser for the purchase price as set
4 forth in the Bond Purchase Agreement (subject to the limitations set forth above).

5 **Section 6. Compliance with the Act.** The following determinations and findings are hereby
6 made in accordance with Sections 29-3-103 (10) (d), 29-3-113, 29-3-114 and 29-3-120 of the Act:

7 (a) The maximum amount necessary in each year to pay the principal of and the interest
8 on the Bonds (based on the maximum net effective interest rates set forth herein, assuming that
9 interest is paid semiannually, and assuming no redemptions) shall not exceed:

10	<u>Year</u>	<u>Principal Amount</u>	<u>Interest</u>	<u>Total</u>
11	2015	-0-	\$1,150,000	\$ 1,150,000
12	2016	-0-	1,150,000	1,150,000
13	2017	-0-	1,150,000	1,150,000
14	2018	<u>\$23,000,000</u>	<u>575,000</u>	<u>23,575,000</u>
15	Total	<u>\$23,000,000</u>	<u>\$4,025,000</u>	<u>\$27,025,000</u>

16 (b) No reserve funds will be established from proceeds of the Bonds and held by the
17 Trustee under the Indenture. The Purchaser has not required that any reserves be established
18 from proceeds of the Bonds.

19 (c) In the Loan Agreement, the Borrower has covenanted to maintain, or cause to be
20 maintained, the Project and to carry, or cause to be carried, all proper insurance with respect
21 thereto.

22 (d) The revenues and other amounts payable under the Loan Agreement are sufficient to
23 pay, in addition to all other requirements of the Loan Agreement and this Ordinance, all sums
24 referred to in paragraphs (a) and (c) of this Section and all taxes or payments in lieu of taxes levied
25 upon the Project.

26 (e) "Low-and middle-income persons and families" means with respect to the Project
27 households that earn less than 60% of the area median income (at least 40% of the units in the
28 Project will be reserved for such households).

29 (f) Any inconsistency between the provisions of this Ordinance, the Loan Agreement, or
30 the Indenture and those of the Act or the Supplemental Public Securities Act is intended by the
31 City Council. To the extent of any such inconsistency, the provisions of this Ordinance shall be
32 deemed made pursuant to the Charter and shall supersede to the extent permitted by law, the
33 conflicting provisions of the Act and the Supplemental Public Securities Act.

1 **Section 7. Investments.** Proceeds from the sale of the Bonds and special funds from the
2 revenues from the Project shall be invested and reinvested in such securities and other
3 investments specified in, and otherwise in accordance with, the Indenture and Section 29-3-109 of
4 the Act.

5 **Section 8. Authority To Execute and Deliver Additional Documents.** The officers,
6 employees and agents of the City shall take all action in conformity with the Act, the Supplemental
7 Public Securities Act and the Charter necessary or reasonably required to effectuate the issuance
8 of the Bonds and shall take all action necessary or desirable in conformity with the Act, the
9 Supplemental Public Securities Act and the Charter to finance the portion of the costs of the
10 Project to be financed with proceeds of the Bonds and for carrying out, giving effect to and
11 consummating the transactions contemplated by this Ordinance, the Loan Agreement, the
12 Indenture, the Bond Purchase Agreement and the Tax Regulatory Agreement, including without
13 limitation the execution, delivery and filing of any documents, statements or reports with the United
14 States Internal Revenue Service or with the Secretary of the United States Treasury necessary to
15 maintain the exclusion of interest on the Bonds from gross income for federal income tax
16 purposes, the execution of any documents relating to the LITC, the execution and delivery of any
17 documents necessary in order to assist the Purchaser in complying with 17 C.F.R. Part 240,
18 § 240.15c2-12, as amended, the execution of any documents relating to the City's private activity
19 bond volume cap allocation and the execution and delivery of any closing documents to be
20 delivered in connection with the sale and delivery of the Bonds.

21 **Section 9. Section 147(f) Approval.** For the purposes of Section 147(f) of the Code, the
22 City Council hereby approves the Bonds and the financing of the Project.

23 **Section 10. Bonds are Limited Obligations.** The Bonds shall be special, limited
24 obligations of the City payable solely from the receipts and revenues of the City under the Loan
25 Agreement that are specifically pledged therefor under the Indenture; the Bonds shall never
26 constitute a debt or indebtedness of the City, the State or any county, municipality or political
27 subdivision of the State within the meaning of any provision or limitation of the Constitution or
28 statutes of the State or of any political subdivision of the State; and the Bonds shall never
29 constitute nor give rise to any pecuniary liability of, or a charge against the general credit or taxing
30 powers of, the City, the State or any county, municipality or political subdivision of the State. The
31 Bonds shall not constitute a "multiple fiscal year direct or indirect debt or other financial obligation"
32 of the City under Article X, Section 20 of the Colorado Constitution.

1 **Section 11. No Pecuniary Liability.** Nothing contained in this Ordinance or in the Bonds,
2 the Loan Agreement, the Indenture, the Bond Purchase Agreement, the Tax Regulatory
3 Agreement or any other instrument shall give rise to a pecuniary liability of, or a charge upon the
4 general credit or taxing powers of, the City, the State or any county, municipality or political
5 subdivision of the State. The breach by any party of any agreement contained in this Ordinance,
6 the Bonds, the Loan Agreement, the Indenture, the Bond Purchase Agreement, the Tax
7 Regulatory Agreement or any other instrument shall not impose any pecuniary liability upon, or any
8 charge upon the general credit or taxing powers of, the City, the State or any county, municipality
9 or political subdivision of the State, none of which has the power to pay out of its general fund, or
10 otherwise contribute, any part of the cost of financing the Project or power to operate the Project
11 as a business or in any manner.

12 **Section 12. No Condemnation by City.** The City shall not condemn any land or other
13 property for the Project.

14 **Section 13. Trustee.** U.S. Bank National Association is hereby appointed as Trustee,
15 paying agent and registrar under the Indenture.

16 **Section 14. Negotiated Sale.** Due to the nature of the Bonds and the complexity of the
17 structuring of the terms and conditions of the Bonds, such sale of the Bonds to D.A. Davidson &
18 Co. shall be by negotiation rather than by means of a bid process.

19 **Section 15. Volume Cap Allocation.** The Council acting on behalf of the City hereby
20 awards to the Project an amount not to exceed \$23,000,000 of its calendar year 2011 and 2012
21 private activity bond volume cap allocation. The actual amount of private activity volume cap
22 allocation to be awarded shall be as set forth in the Indenture. This award of private activity bond
23 volume cap allocation will be revoked by the City, if the Bonds are not issued on or prior to
24 120 days from the adoption date of this Ordinance.

25 **Section 16. Supplemental Ordinances.** The City may, subject to the terms and conditions
26 of the Indenture, pass and execute ordinances supplemental to this Ordinance which shall not be
27 inconsistent with the terms and provisions hereof.

28 **Section 17. Limitation of Rights.** With the exception of any rights herein expressly
29 conferred, nothing expressed or mentioned in or to be implied from the Ordinance or the Bonds is
30 intended or shall be construed to give to any person, other than the City, the Borrower and the
31 Purchaser, any legal or equitable right, remedy or claim under or with respect to this Ordinance or
32 any covenants, conditions and provisions herein contained; this Ordinance and all of the

1 covenants, conditions and provisions hereof being intended to be and being for the sole and
2 exclusive benefit of the City, the Borrower and the Purchaser as herein provided.

3 **Section 18. Immunity of Officers.** No recourse for the payment of any part of the principal
4 of, premium, if any, or interest on the Bonds for the satisfaction of any liability arising from, founded
5 upon or existing by reason of the issue, purchase or ownership of the Bonds shall be had against
6 any official, officer, member or agent of the City or the State, all such liability to be expressly
7 released and waived as a condition of and as a part of the consideration for the issue, sale and
8 purchase of the Bonds.

9 **Section 19. Counterparts.** This Ordinance may be simultaneously executed in several
10 counterparts, each of which shall be an original and all of which shall constitute but one and the
11 same instrument.

12 **Section 20. Captions.** The captions or headings in this Ordinance are for convenience only
13 and in no way define, limit or describe the scope or intent of any provisions or sections of this
14 Ordinance.

15 **Section 21. Validity of Bonds.** Each Bond shall contain a recital that such Bond is issued
16 pursuant to the Act and the Supplemental Public Securities Act and such recital shall be conclusive
17 evidence of its validity and of the regularity of its issuance.

18 **Section 22. Irrepealability.** After any of the Bonds are issued, this Ordinance shall be and
19 remain irrepealable until the Bonds and the interest thereon shall have been fully paid, canceled
20 and discharged.

21 **Section 23. Severability.** If any section, paragraph, clause or provision of this Ordinance
22 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such
23 section, paragraph, clause or provision shall not affect any of the remaining provisions of this
24 Ordinance.

25 **Section 24. Supplemental Public Securities Act.** Section 11-57-204 of the Supplemental
26 Public Securities Act provides that a public entity, including the City, may elect in an act of
27 issuance to apply all or any of the applicable provisions of the Supplemental Public Securities Act
28 to the Bonds. The City hereby elects to apply all of the provisions of the Supplemental Public
29 Securities Act.

30
31 **[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**
32
33

1 COMMITTEE APPROVAL DATE: June 3, 2014
2 MAYOR-COUNCIL DATE: June 9, 2014
3 PASSED BY THE COUNCIL: _____, 2014
4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____, 2014
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2014; _____, 2014
10 PREPARED BY: Kutak Rock, LLP DATE: November 20, 2014

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

15 D. Scott Martinez, City Attorney

16 BY: _____, Assistant City Attorney DATE: _____, 2014
17