

1 BY AUTHORITY

2 RESOLUTION NO. CR13-0093
3 SERIES OF 2013

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

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

26 WHEREAS, the Project will be known as the 2300 Welton Street Apartment 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

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

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

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

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

24 **Section 3.** That the City hereby finds, determines, recites and declares the City’s intent
25 that this Resolution constitute an official indication of the present intention of the City to issue the
26 Bonds as herein provided, subject to: (a) an appraisal which is acceptable to the City, (b) a market
27 study which is acceptable to the City, (c) a Phase I report which is acceptable to the City, (d) a
28 FHA Mortgage insurance commitment or other credit enhancement acceptable to the City, (e) City
29 approval of the design of the Project, (f) City approval of the energy savings elements and
30 standards of the Project, (g) if the Bonds are sold on an unrated basis, the Bonds may only be
31 purchased by qualified institutional buyers or accredited investors in denominations acceptable to
32 the City, (h) the Borrower shall elect the “40-60 test” pursuant to Section 142(d)(1)(B) of the
33 Internal Revenue Code of 1986, as amended (the “Code”), (i) the delivery of an approving opinion
34 of Co-Bond Counsel to the City, (j) the execution and delivery of indemnity agreements and

1 payment or reimbursement of costs and expenses, all to the satisfaction of the City, (k) the
2 Borrower agreeing to post issuance compliance policies and procedures acceptable to the City,
3 and (l) the adoption of a final bond ordinance by the City. The City's discretion to accept or not to
4 accept items relating to the Project or additional financing therefore or relating to credit, security,
5 sale or marketing aspects of the Bonds is intended for the protection of the City's interests, and
6 any such acceptance shall not be construed to impose upon the City any duties to, nor to confer
7 any rights against the City upon, any bondholders, investors or other third parties.

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

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

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

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

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

32 **Section 9.** That all bylaws, orders, resolutions and ordinances, or parts thereof,
33 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: February 13, 2013

4 MAYOR-COUNCIL DATE: February 19, 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
11 PREPARED BY: KUTAK ROCK LLP

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13 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the Office of
14 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
15 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to
16 § 3.2.6 of the Charter.

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

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