

1 **BY AUTHORITY**

2 RESOLUTION NO. CR21-1446
3 SERIES 2021

COMMITTEE OF REFERENCE:
Finance & Governance

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 \$18,300,000 of Multifamily Housing**
7 **Revenue Bonds for Northfield Flats.**

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

13 **WHEREAS**, the City is authorized by its Charter, the County and Municipality Development
14 Revenue Bond Act, constituting Article 3 of Title 29, Colorado Revised Statutes, as amended (the
15 “Act”) and the Supplemental Public Securities Act, constituting Part 2, Article 57 of Title 11, Colorado
16 Revised Statutes, as amended (the “Supplemental Public Securities Act”) to finance or refinance
17 projects as defined in the Act to the end that residential facilities for low- and middle-income families
18 or persons intended for use as the sole place of residence by the owners or intended occupants may
19 be provided in order to promote the public health, welfare, safety, convenience and prosperity; and

20 **WHEREAS**, representatives of Northfield Flats, LLC, a Colorado limited liability company
21 (such entity, together with one or more related affiliates or successors or assigns, are collectively
22 referred to herein as the “Borrower”), have advised the City that the Borrower intends to acquire,
23 construct and equip an approximately 128 unit affordable housing facility located at the northwest
24 corner of 45th Avenue and Xenia Street, in Denver, Colorado (the “Project”), subject to the City’s
25 financing the acquisition, construction and equipping of the Project through the issuance of the City’s
26 multifamily housing revenue bonds in an amount not to exceed \$18,300,000; and

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

28 **WHEREAS**, the Project will be known as Northfield Flats (or such other name as determined
29 by the Borrower); and

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

32 **WHEREAS**, the City has considered the Borrower’s proposal and has concluded that the
33 Project will provide affordable housing to low- and middle-income persons and families in the City
34 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 through
2 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, in one or more series, of the City’s multifamily housing
8 revenue bonds (the “Bonds”) pursuant to its Charter, the Act and the Supplemental Public Securities
9 Act in the maximum aggregate principal amount of \$18,300,000 or such other amount as shall be
10 determined and agreed upon by the Borrower and the City as may be necessary to finance the
11 Project. The Bonds shall be special, limited obligations of the City payable solely from and secured
12 by a pledge of revenues derived from and payable by the Borrower pursuant to the loan agreement
13 with the City; the Bonds shall never constitute a debt, multiple fiscal year obligation or indebtedness
14 of the City, the State or any political subdivision of the State within the meaning of any provision or
15 limitation of the State Constitution or statutes and shall not constitute nor give rise to a pecuniary
16 liability of the City or be a charge against the City’s general credit or taxing powers of, the City, the
17 State or any county, municipality or political subdivision of the State. The Bonds shall not constitute
18 a “multiple fiscal year direct or indirect debt or other financial obligation” of the City under Article X,
19 Section 20 of the Colorado Constitution, nor shall the Bonds ever be deemed to be an obligation or
20 agreement of any officer, director, agent or employee of the City in such person’s individual capacity,
21 and none of such persons shall be subject to any personal liability by reason of the issuance of the
22 Bonds.

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

27 **Section 3.** That the City hereby finds, determines, recites and declares the City’s intent that
28 this Resolution constitute an official indication of the present intention of the City to issue the Bonds
29 as herein provided, subject to: (a) the Borrower obtaining a commitment for the purchase of the
30 Bonds on terms which are acceptable to the City, its municipal advisor and its Bond Counsel; (b) the
31 delivery of an approving opinion of Bond Counsel to the City; (c) the delivery of an appraisal, survey,
32 title insurance, environmental audit and plans and specifications which are all acceptable to the City;
33 (d) the Borrower obtaining sufficient debt and equity financing acceptable to the City; (e) the

1 Borrower receiving all applicable approvals for the Project from the City and County of Denver,
2 Colorado and any other relevant governmental entity; (f) City approval of the design of the Project;
3 (g) if the Bonds are sold on an unrated basis, the Bonds may only be purchased by qualified
4 institutional buyers or accredited investors in denominations acceptable to the City; (h) the execution
5 and delivery of indemnity agreements and payment or reimbursement of costs and expenses, all to
6 the satisfaction of the City; (i) the Borrower agreeing to post issuance compliance policies and
7 procedures acceptable to the City; and (j) the adoption of a final bond ordinance by the City. The
8 City in its sole discretion may modify or waive any of the requirements contained in (a) – (j) above.
9 The City’s discretion to accept or not to accept items relating to the Project or additional financing
10 therefore or relating to credit, security, sale or marketing aspects of the Bonds is intended for the
11 protection of the City’s interests, and any such acceptance shall not be construed to impose upon
12 the City any duties to, nor to confer any rights against the City upon, any bondholders, investors or
13 other third parties.

14 **Section 4.** The City hereby awards \$18,300,000 of its private activity bond volume cap
15 allocation to the Project (the “Allocation”). The award of the Allocation shall expire one year from the
16 date of this Resolution (the “Expiration Date”); provided, however, the Chief Financial Officer of the
17 City’s Department of Finance or the Chief Housing Officer of the City’s Department of Housing
18 Stability may extend the Expiration Date to a later date in their sole discretion.

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 the
23 proposed financing, and all fees, costs and expenses of such consultants, along with all other such
24 costs and expenses shall be paid from the proceeds of the Bonds or otherwise borne by the Borrower
25 regardless of whether the Bonds are issued. The City may require such deposits or advances as it
26 deems desirable for such fees, costs and expenses, and may require reimbursement of any such
27 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 agreements
30 in connection with such Bonds, such documents and/or agreements shall be submitted for approval
31 to the City, and, if satisfactory to the City, their execution shall be authorized by ordinance of the City
32 pursuant to law.

1 **Section 7.** That all public hearings scheduled and held in accordance with the Tax Equity
2 and Fiscal Responsibility Act of 1982 (“TEFRA”) in connection with the issuance of the Bonds shall
3 incorporate available and feasible innovative and inclusive technological solutions, subject to
4 compliance with any applicable requirements under Section 147(f) of the Internal Revenue Code of
5 1986, as amended, so that the public can continue to have fullest possible access to the TEFRA
6 hearing.

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

11 **Section 9.** The City hereby desires to declare its official intent, pursuant to 26 C.F.R.
12 § 1.150-2, to issue the Bonds and thereby permit the City and the Borrower to reimburse itself from
13 proceeds of the Bonds for certain expenditures incurred in connection with the Project prior to
14 issuance of the Bonds.

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

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

22

1 COMMITTEE APPROVAL DATE: November 30, 2021 by Consent

2 MAYOR-COUNCIL DATE: December 7, 2021 by Consent

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: November 11, 2021

9 REVIEWED BY: Bradley T. Neiman, Assistant City Attorney DATE: December 9, 2021

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
15 Kristin M. Bronson, Denver City Attorney

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