

1 **BY AUTHORITY**

2 RESOLUTION NO. CR21-0590
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 \$19,070,000 of Multifamily Housing**
7 **Revenue Bonds for Montbello Freshlo.**

8 **WHEREAS**, the City and County of Denver, Colorado (the “City”) is a legally and regularly
9 created, established, organized and existing home rule city, municipal corporation and political
10 subdivision under the provisions of Article XX of the Constitution of the State of Colorado (the “State”)
11 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, Colorado
15 Revised Statutes, as amended (the “Supplemental Public Securities Act”) to finance or refinance
16 projects as defined in the Act to the end that residential facilities for low- and middle-income families
17 or persons intended for use as the sole place of residence by the owners or intended occupants may
18 be provided in order to promote the public health, welfare, safety, convenience and prosperity; and

19 **WHEREAS**, representatives of Montbello Organizing Committee, a Colorado nonprofit
20 corporation (such entity, together with one or more related affiliates or successors or assigns, are
21 collectively referred to herein as the “Borrower”), have advised the City that the Borrower intends to
22 acquire, construct, and equip an approximately 97-unit affordable multifamily housing facility located
23 at 12300 E. Albrook Drive in Denver, Colorado (the “Project”), subject to the City’s financing the
24 acquisition, construction and equipping of the Project through the issuance of the City’s multifamily
25 housing revenue bonds in an amount not to exceed \$19,070,000; and

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

27 **WHEREAS**, the Project is known as Montbello Freshlo (or such other name as determined
28 by the Borrower); and

29 **WHEREAS**, the Borrower has represented to the City that the Project will qualify as a “project”
30 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 City
3 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 through
5 the issuance of the City’s multifamily housing revenue bonds;

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

8 **Section 1.** That in order to benefit the residents of the City and to induce the Borrower to
9 undertake the Project, the City shall, subject to the provisions hereof, take all necessary and
10 advisable steps to effect the issuance, in one or more series, of the City’s multifamily housing
11 revenue bonds (the “Bonds”) pursuant to its Charter, the Act and the Supplemental Public Securities
12 Act in the maximum aggregate principal amount of \$19,070,000 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 secured
15 by a pledge of revenues derived from and payable by the Borrower pursuant to the loan agreement
16 with the City; the Bonds shall never constitute a debt, multiple fiscal year obligation or indebtedness
17 of the City, the State or any political subdivision of the State within the meaning of any provision or
18 limitation of the State Constitution or statutes and shall not constitute nor give rise to a pecuniary
19 liability of the City or be a charge against the City’s general credit or taxing powers of, the City, the
20 State or any county, municipality or political subdivision of the State. The Bonds shall not constitute
21 a “multiple fiscal year direct or indirect debt or other financial obligation” of the City under Article X,
22 Section 20 of the Colorado Constitution, nor shall the Bonds ever be deemed to be an obligation or
23 agreement of any officer, director, agent or employee of the City in such person’s individual capacity,
24 and none of such persons shall be subject to any personal liability by reason of the issuance of the
25 Bonds.

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

1 **Section 3.** That the City hereby finds, determines, recites and declares the City's intent that
2 this Resolution constitute an official indication of the present intention of the City to issue the Bonds
3 as herein provided, subject to: (a) the Borrower obtaining a commitment for the purchase of the
4 Bonds on terms which are acceptable to the City, its municipal advisor and its Bond Counsel; (b) the
5 delivery of an approving opinion of Bond Counsel to the City; (c) the delivery of an appraisal, survey,
6 title insurance, environmental audit and plans and specifications which are all acceptable to the City;
7 (d) the Borrower obtaining sufficient debt and equity financing acceptable to the City; (e) the
8 Borrower receiving all applicable approvals for the Project from the City and County of Denver,
9 Colorado and any other relevant governmental entity; (f) City approval of the design of the Project;
10 (g) if the Bonds are sold on an unrated basis, the Bonds may only be purchased by qualified
11 institutional buyers or accredited investors in denominations acceptable to the City; (h) the execution
12 and delivery of indemnity agreements and payment or reimbursement of costs and expenses, all to
13 the satisfaction of the City; (i) the Borrower agreeing to post issuance compliance policies and
14 procedures acceptable to the City; and (j) the adoption of a final bond ordinance by the City. The
15 City's discretion to accept or not to accept items relating to the Project or additional financing
16 therefore or relating to credit, security, sale or marketing aspects of the Bonds is intended for the
17 protection of the City's interests, and any such acceptance shall not be construed to impose upon
18 the City any duties to, nor to confer any rights against the City upon, any bondholders, investors or
19 other third parties.

20 **Section 4.** The City hereby awards \$19,070,000 of its private activity bond volume cap
21 allocation (the "Allocation") to the Project. The award of the Allocation shall expire one year from
22 the date of this Resolution (the "Expiration Date"); provided, however, the Chief Financial Officer of
23 the City's Department of Finance or the Chief Housing Officer of the City's Department of Housing
24 Stability may extend the Expiration Date to a later date in their sole discretion.

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

1 deems desirable for such fees, costs and expenses, and may require reimbursement of any such
2 fees, costs and expenses paid by the City.

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

8 **Section 7.** That all public hearings scheduled and held in accordance with the Tax Equity
9 and Fiscal Responsibility Act of 1982 ("TEFRA") in connection with the issuance of the Bonds shall
10 incorporate available and feasible innovative and inclusive technological solutions, subject to
11 compliance with any applicable requirements under Section 147(f) of the Internal Revenue Code of
12 1986, as amended, so that the public can continue to have fullest possible access to the TEFRA
13 hearing.

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

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

21 **Section 10.** That all bylaws, orders, resolutions and ordinances, or parts thereof,
22 inconsistent herewith and with the documents hereby approved, are hereby repealed to the extent
23 only of such inconsistency. This repealer clause shall not be construed as reviving any bylaw, order,
24 or ordinance or part thereof.

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1 COMMITTEE APPROVAL DATE: May 25, 2021 by Consent
2 MAYOR-COUNCIL DATE: June 1, 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: May 24, 2021
9 REVIEWED BY: Bradley T. Neiman, Assistant City Attorney DATE: June 3, 2021
10 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the Office of
11 the 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 Kristin M. Bronson, Denver City Attorney
15 BY: Jonathan Griffin, Assistant City Attorney DATE: Jun 3, 2021