

1 **BY AUTHORITY**

2 RESOLUTION NO. CR20-0341
3 SERIES 2020

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 \$15,000,000 of Multifamily Housing**
7 **Revenue Bonds for Avenida del Sol (formerly known as Morrison Road).**

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
11 “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 to the end that residential facilities for low- and middle-
17 income families or persons intended for use as the sole place of residence by the owners or
18 intended occupants may be provided in order to promote the public health, welfare, safety,
19 convenience and prosperity; and

20 **WHEREAS**, representatives of Morrison Road, LLC, a Wisconsin limited liability company,
21 d/b/a Gorman Morrison Road, LLC (such entity, together with one or more related affiliates or
22 successors or assigns, are collectively referred to herein as the “Borrower”), have advised the City
23 that the Borrower intends to acquire, construct, improve and equip an approximately 80-unit
24 multifamily facility to be located at 5048 Morrison Road in Denver, Colorado (the “Project”), subject
25 to the City’s financing the acquisition, construction, improvement and equipping of the Project
26 through the issuance of the City’s multifamily housing revenue bonds in an amount not to exceed
27 \$15,000,000; and

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

29 **WHEREAS**, the Project will be known as Avenida del Sol (or such other name as
30 determined by the Borrower); and

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

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

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

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

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

28 **Section 2.** That the City hereby finds, determines, recites and declares that the issuance
29 of the Bonds to finance the Project will provide affordable housing to low- and middle-income

1 persons and families in the City and will promote the public health, welfare, safety, convenience
2 and prosperity.

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

22 **Section 4.** The City hereby awards \$15,000,000 of its private activity bond volume cap
23 allocation (the "Allocation") to the Project. The award of the Allocation shall expire one year from
24 the date of this Resolution (the "Expiration Date"); provided, however, that the Chief Financial
25 Officer of the City's Department of Finance or the Chief Housing Officer of the City's Department of
26 Housing Stability may extend the Expiration Date to a later date in their sole discretion.

27 **Section 5.** That no costs or expenses whether incurred by the City or any other party in
28 connection with the issuance of the Bonds or the preparation or review of any documents by any
29 legal or financial consultants retained in connection herewith shall be borne by the City. The City
30 shall have the right to select and retain legal, financial and other consultants in connection with the
31 proposed financing, and all fees, costs and expenses of such consultants, along with all other such

1 costs and expenses shall be paid from the proceeds of the Bonds or otherwise borne by the
2 Borrower regardless of whether the Bonds are issued. The City may require such deposits or
3 advances as it deems desirable for such fees, costs and expenses, and may require
4 reimbursement of any such fees, costs and expenses paid by the City.

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

10 **Section 7.** That all public hearings scheduled and held in accordance with the Tax Equity
11 and Fiscal Responsibility Act of 1982 (“TEFRA”) in connection with the issuance of the Bonds shall
12 incorporate available and feasible innovative and inclusive technological solutions, subject to
13 compliance with any applicable requirements under Section 147(f) of the Internal Revenue Code of
14 1986, as amended, so that the public can continue to have fullest possible access to the TEFRA
15 hearing while the City and County of Denver remains under a State of Local Disaster Emergency,
16 as declared by the Mayor on March 12, 2020.

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

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

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

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1 COMMITTEE APPROVAL DATE: April 14, 2020 by Consent

2 MAYOR-COUNCIL DATE: April 21, 2020 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: April 23, 2020

9 REVIEWED BY: Jo Ann Weinstein, Assistant City Attorney

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: *Kristin M. Bronson*, Assistant City Attorney DATE: Apr 22, 2020