

BY AUTHORITY

ORDINANCE NO. _____
SERIES 2020

COUNCIL BILL NO. 20-0587
COMMITTEE OF REFERENCE:

Safety, Housing, Education & Homelessness

A BILL

For an ordinance authorizing the issuance and sale of an amount not to exceed \$15,000,000 of City and County of Denver, Colorado Multifamily Housing Revenue Notes (Avenida del Sol Project) Series 2020 for the purpose of financing the acquisition, construction, improvement and equipping of a multifamily residential rental housing development to be occupied by low- and middle-income families and persons in the City and County of Denver, Colorado and to pay certain expenses of such Notes (as defined below) issue; approving and authorizing execution of a Funding Loan Agreement, a Project Loan Agreement and a Tax Regulatory Agreement (each as defined below) with respect to the Notes; making findings and determinations with respect to the Project (as defined below) and the Notes; authorizing the execution and delivery of related documents; and repealing all action heretofore taken in conflict herewith.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

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

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

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

1 payment of such notes 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 Morrison Road, LLC, a limited liability company duly organized
7 and validly existing under the laws of State of Wisconsin and a foreign limited liability company duly
8 organized and validly existing under the laws of the State of Colorado, including any of its successors
9 or assigns (the "Borrower"), has presented to the City a proposal whereby the City will issue its
10 multifamily housing revenue notes pursuant to the Act, the Supplemental Public Securities Act and
11 the Charter to finance the cost of a project under the Act, the Supplemental Public Securities Act
12 and the Charter, which project consists of: (a) the acquisition, construction, improvement and
13 equipping of a 80-unit multifamily facility located at the 5048 Morrison Road in Denver, Colorado (the
14 "Property"); and (b) the payment of the costs of issuing the Notes (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 low- and middle-income residential rental facilities, promoting the public health,
18 welfare, safety, convenience and prosperity and that the City should issue its multifamily housing
19 revenue notes under the Act, the Supplemental Public Securities Act and the Charter to finance a
20 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 Notes (Avenida del Sol Project) Series 2020, in one or more series
23 (referred to herein as the "Notes"), in the aggregate principal amount not to exceed \$15,000,000, to
24 pay a portion of the cost of financing the Project; and

25 **WHEREAS**, the Borrower will enter into a Funding Loan Agreement (the "Funding Loan
26 Agreement"), by and among the City, KeyBank National Association, as the initial Funding Lender
27 (the "Funding Lender") and Zions Bancorporation, National Association, as fiscal agent thereunder
28 (the "Fiscal Agent"), which will provide for payments sufficient to pay the principal of, premium, if
29 any, and interest on the Notes and to meet other obligations as herein and therein provided; and

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

1 **WHEREAS**, there have been presented to the City Council at this meeting substantially final
2 forms of the following documents: (a) the Funding Loan Agreement; (City Clerk’s Filing No.
3 20200063); (b) the Project Loan Agreement (the “Project Loan Agreement”), by and among the City,
4 the Borrower and the Fiscal Agent (City Clerk’s Filing No. 20200063A); (c) the Tax Regulatory
5 Agreement (the “Tax Regulatory Agreement”) (City Clerk’s Filing No. 20200063B), by and among
6 the City, the Fiscal Agent and the Borrower; and (d) Assignment of Deed of Trust and Security
7 Documents, by the City (City Clerk’s Filing No. 20200063C) (collectively, the “Loan Documents”);

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

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

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

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

1 thereof shall be obligated to pay the principal of, premium, if any, or interest on the Notes or other
2 costs incident thereto. The Notes do not constitute a debt, loan, credit or pledge of the faith and
3 credit or taxing power of the City, the State or any political subdivision thereof.

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

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

19 **Section 5. Authorization to Issue and Sell the Notes.**

20 (a) The issuance of the Notes shall be in such principal amounts, bearing such dates and
21 interest rates and shall mature as set forth in the Loan Documents; provided, however, that the
22 aggregate principal amount of Notes issued hereby shall not exceed \$15,000,000. The Notes shall
23 be payable, shall be subject to redemption or purchase prior to maturity and shall be in substantially
24 the form as provided in the Funding Loan Agreement and the Project Loan Agreement. Furthermore,
25 the Notes shall be payable at such place and in such form, shall carry such registration privileges,
26 shall be subject to redemption, shall be executed, and shall contain such terms, covenants and
27 conditions, as set forth in the Funding Loan Agreement and the Project Loan Agreement. The
28 maximum net effective interest rate payable on the Notes shall not exceed 12.0% (such rate being
29 hereinafter referred to as the "Maximum Rate") and the final maturity of the Notes shall not be after
30 July 1, 2050.

31 (b) The sale of the Notes to the Funding Lender pursuant to the terms of the Funding Loan
32 Agreement shall be and the same are in all respects hereby approved, authorized and confirmed
33 and the Mayor (or the acting Mayor) is hereby authorized and directed to execute the Notes, the City

1 Clerk and Recorder is hereby authorized and directed to affix the seal of the City and to attest, the
2 City Attorney is hereby authorized and directed to execute, and the Chief Financial Officer and City
3 Auditor are hereby authorized and directed to countersign the Notes and each is hereby authorized
4 to deliver the Notes for and on behalf of the City to the Fiscal Agent for authentication pursuant to
5 the Funding Loan Agreement. The Notes shall be sold to the Funding Lender at par.

6 **Section 6. Compliance with the Act.** The following determinations and findings are
7 hereby made in accordance with the Act:

8 (a) that the amounts necessary in each year to pay the principal of and interest on the
9 Notes is dependent upon the rate of interest on the Notes, but in any event shall not exceed the
10 principal amount of the Notes plus interest at the Maximum Rate;

11 (b) that the terms of the Funding Loan Agreement and the Project Loan Agreement and
12 related security documents require that the Borrower will cause to be maintained, or maintain, the
13 Project and will cause to be carried, or carry, all proper insurance with respect thereto and require
14 the payment of all applicable taxes with respect thereto;

15 (c) that the nature and amount of any reserve funds necessary to secure payment of the
16 Notes, if any, is set forth in the Funding Loan Agreement;

17 (d) the revenues and other amounts payable under the Funding Loan Agreement and
18 Project Loan Agreement are sufficient to pay, in addition to all other requirements of the Funding
19 Loan Agreement, Project Loan Agreement and this Ordinance, all sums referred to in paragraphs
20 (a) and (c) of this Section and all taxes or payments in lieu of taxes levied upon the Project;

21 (e) “Low-and middle-income persons and families” means with respect to the Project
22 households that earn less than 80% of the area median income (at least 20 of the units in the Project
23 will be reserved for such households); households that earn less than 60% of the area median
24 income (at least 37 of the units in the Project will be reserved for such households); households that
25 earn less than 40% of the area median income (at least 18 of the units in the Project will be reserved
26 for such households);and households that earn less than 30% of the area median income (at least
27 4 of the units in the Project will be reserved for such households); and

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

1 **Section 7. Investments.** Proceeds from the sale of the Notes and special funds from the
2 revenues from the Project shall be invested and reinvested in such securities and other investments
3 specified in, and otherwise in accordance with, the Funding Loan Agreement, Project Loan
4 Agreement and Section 29-3-109 of 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 Notes 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 Project
10 to be financed with proceeds of the Notes and for carrying out, giving effect to and consummating
11 the transactions contemplated by this Ordinance and the Loan Documents, including without
12 limitation the execution, delivery and filing of any documents, statements or reports with the United
13 States Internal Revenue Service or with the Secretary of the United States Treasury necessary to
14 maintain the exclusion of interest on the Notes from gross income for federal income tax purposes,
15 the execution of any documents relating to the LITC, the execution of any documents relating to the
16 City's private activity bond volume cap allocation and the execution and delivery of any closing
17 documents to be delivered in connection with the sale and delivery of the Notes.

18 **Section 9. Notes are Limited Obligations.** The Notes are special, limited obligations of
19 the City payable solely out of the income, revenues and receipts specifically pledged pursuant to the
20 Funding Loan Agreement and Project Loan Agreement. The Notes, the premium, if any, and the
21 interest thereon shall never constitute the debt or indebtedness of the City, the State or any political
22 subdivision thereof within the meaning of any provision or limitation of the State Constitution or
23 statutes; shall not constitute nor give rise to a pecuniary liability of the City, the State or any political
24 subdivision thereof or a charge against their general credit or taxing power and shall not constitute
25 a "multiple fiscal year direct or indirect debt or other financial obligation" of the City, the State or any
26 political subdivision thereof under Article X, Section 20 of the Colorado Constitution. Neither the
27 City, State nor any political subdivision thereof shall be obligated to pay the principal of, premium, if
28 any, or interest on the Notes or other costs incident thereto. The Notes do not constitute a debt,
29 loan, credit or pledge of the faith and credit or taxing power of the City, the State or any political
30 subdivision thereof.

31 **Section 10. No Pecuniary Liability.** Nothing contained in this Ordinance or in the Notes,
32 the Loan Documents or any other instrument shall give rise to a pecuniary liability of, or a charge
33 upon the general credit or taxing powers of, the City, the State or any political subdivision thereof.

1 The breach by any party of any agreement contained in this Ordinance, the Loan Documents or any
2 other instrument shall not impose any pecuniary liability upon, or any charge upon the general credit
3 or taxing powers of, the City, the State or any political subdivision thereof, none of which has the
4 power to pay out of their general fund, or otherwise contribute, any part of the cost of financing the
5 Project or power to operate the Project as a business or in any manner.

6 **Section 11. No Condemnation by City.** The City shall not condemn any land or other
7 property for the Project.

8 **Section 12. Volume Cap Allocation.** The Council acting on behalf of the City hereby
9 awards to the Project an amount not to exceed \$15,000,000 of its 2019 private activity bond volume
10 cap from the Statewide Balance and direct allocation. This award of private activity bond volume
11 cap allocation will be revoked by the City if the Notes are not issued on or prior to December 31,
12 2021.

13 **Section 13. Supplemental Ordinances.** The City may, subject to the terms and conditions
14 of the Funding Loan Agreement and Project Loan Agreement, pass and execute ordinances
15 supplemental to this Ordinance which shall not be inconsistent with the terms and provisions hereof.

16 **Section 14. Limitation of Rights.** With the exception of any rights herein expressly
17 conferred, nothing expressed or mentioned in or to be implied from the Ordinance or the Notes is
18 intended or shall be construed to give to any person, other than the City, the Borrower and the
19 Funding Lender, any legal or equitable right, remedy or claim under or with respect to this Ordinance
20 or any covenants, conditions and provisions herein contained; this Ordinance and all of the
21 covenants, conditions and provisions hereof being intended to be and being for the sole and
22 exclusive benefit of the City, the Borrower and the Funding Lender as herein provided.

23 **Section 15. Immunity of Officers.** No recourse for the payment of any part of the principal
24 of, premium, if any, or interest on the Notes for the satisfaction of any liability arising from, founded
25 upon or existing by reason of the issue, purchase or ownership of the Notes shall be had against
26 any official, officer, member or agent of the City or the State, all such liability to be expressly released
27 and waived as a condition of and as a part of the consideration for the issue, sale and purchase of
28 the Notes.

29 **Section 16. Counterparts.** This Ordinance may be simultaneously executed in several
30 counterparts, each of which shall be an original and all of which shall constitute but one and the
31 same instrument.

1 **Section 17. Captions.** The captions or headings in this Ordinance are for convenience only
2 and in no way define, limit or describe the scope or intent of any provisions or sections of this
3 Ordinance.

4 **Section 18. Validity of Notes.** Each Note shall contain a recital that such Note is issued
5 pursuant to the Act and the Supplemental Public Securities Act and such recital shall be conclusive
6 evidence of its validity and of the regularity of its issuance.

7 **Section 19. Irrepealability.** After any of the Notes are issued, this Ordinance shall be and
8 remain irrepealable until the Notes and the interest thereon shall have been fully paid, canceled and
9 discharged.

10 **Section 20. Severability.** If any section, paragraph, clause or provision of this Ordinance
11 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such
12 section, paragraph, clause or provision shall not affect any of the remaining provisions of this
13 Ordinance.

14 **Section 21. Supplemental Public Securities Act.** Section 11-57-204 of the Supplemental
15 Public Securities Act provides that a public entity, including the City, may elect in an act of issuance
16 to apply all or any of the applicable provisions of the Supplemental Public Securities Act to the Notes.
17 The City hereby elects to apply all of the provisions of the Supplemental Public Securities Act.

18 **Section 22. Superseder.** Pursuant to Article XX of the State Constitution and the Charter,
19 all other statutes of the State that might otherwise apply in connection with the issuance of the Notes
20 are hereby superseded for the purposes of this Ordinance and the issuance of the Notes only. To
21 the extent of such inconsistency the provisions of this Bond Ordinance shall be deemed made
22 pursuant to the Charter. All ordinances, resolutions, bylaws, orders, and other instruments, or parts
23 thereof, related to and inconsistent with the issuance of the Notes and this Ordinance are hereby
24 superseded but only to the extent they relate to the issuance of the Notes and this Ordinance and
25 only to the extent of such inconsistency. Any inconsistency between the provisions of this Ordinance
26 and such other ordinances, resolutions, bylaws, orders and other instruments or parts thereof is
27 intended by the Council.

28 **[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**
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1 COMMITTEE APPROVAL DATE: June 24, 2020
2 MAYOR-COUNCIL DATE: June 30, 2020
3 PASSED BY THE COUNCIL: _____ July 20, 2020

4  _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

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

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____ ; _____

10 PREPARED BY: KUTAK ROCK LLP DATE: June 29, 2020

11 REVIEWED BY: Bradley T. Neiman, Assistant City Attorney DATE: July 9, 2020

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

16
17 Kristin M. Bronson, Denver City Attorney

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19 BY:  _____, Assistant City Attorney DATE: Jul 8, 2020