BY AUTHORITY

ORDINANCE NO. _____ COUNCIL BILL NO. 20-0587

SERIES 2020 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

payment of such notes as provided in the Act, the Supplemental Public Securities Act and the Charter; and

WHEREAS, in addition to its powers under the Act and the Supplemental Public Securities Act, the City is also possessed of plenary powers under the Colorado Constitution and the Charter as to matters of local or municipal concern; and

WHEREAS, representatives of Morrison Road, LLC, a limited liability company duly organized and validly existing under the laws of State of Wisconsin and a foreign limited liability company duly organized and validly existing under the laws of the State of Colorado, including any of its successors or assigns (the "Borrower"), has presented to the City a proposal whereby the City will issue its multifamily housing revenue notes pursuant to the Act, the Supplemental Public Securities Act and the Charter to finance the cost of a project under the Act, the Supplemental Public Securities Act and the Charter, which project consists of: (a) the acquisition, construction, improvement and equipping of a 80-unit multifamily facility located at the 5048 Morrison Road in Denver, Colorado (the "Property"); and (b) the payment of the costs of issuing the Notes (collectively, the "Project"); and

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

WHEREAS, the City has considered the request of the Borrower and has concluded that the Project will provide low- and middle-income residential rental facilities, promoting the public health, welfare, safety, convenience and prosperity and that the City should issue its multifamily housing revenue notes under the Act, the Supplemental Public Securities Act and the Charter to finance a portion of the Project, subject to the conditions set forth herein; and

WHEREAS, the City will issue, sell and deliver the City and County of Denver, Colorado Multifamily Housing Revenue Notes (Avenida del Sol Project) Series 2020, in one or more series (referred to herein as the "Notes"), in the aggregate principal amount not to exceed $15,000,000, to pay a portion of the cost of financing the Project; and

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

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

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

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

Section 1. Legal Authorization. The City is a legally, duly 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 and the Charter of the City and is authorized under the Act, the Supplemental Public Securities Act and its Charter to issue and sell its multifamily housing revenue notes in the form of one or more debt instruments, such as the Notes, for the purpose, in the manner and upon the terms and conditions set forth in the Act, the Supplemental Public Securities Act, the Charter, this Ordinance and in the Loan Documents. The Notes are being issued pursuant to the Act and the Supplemental Public Securities Act.

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

(a) The Project is an eligible "project," as defined in the Act.

(b) The issuance of the Notes will effectuate the public purposes of the City and carry out the purposes of the Act by, among other things, providing residential facilities for low- and middle-income families and persons in the City.

(c) The Notes are special, limited obligations of the City payable solely out of the income, revenues and receipts specifically pledged pursuant to the Funding Loan Agreement and Project Loan Agreement. The Notes, the premium, if any, and the interest thereon shall never constitute the debt or indebtedness of the City, the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes; shall not constitute nor give rise to a pecuniary liability of the City, the State or any political subdivision thereof or a charge against their general credit or taxing power and shall not constitute a "multiple fiscal year direct or indirect debt or other financial obligation" of the City, the State or any political subdivision thereof under Article X, Section 20 of the Colorado Constitution. Neither the City, the State nor any political subdivision

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

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

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

Section 5. Authorization to Issue and Sell the Notes.

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

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

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

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

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

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

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

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

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

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

Section 7. Investments. Proceeds from the sale of the Notes and special funds from the revenues from the Project shall be invested and reinvested in such securities and other investments specified in, and otherwise in accordance with, the Funding Loan Agreement, Project Loan Agreement and Section 29-3-109 of the Act.

Section 8. Authority To Execute and Deliver Additional Documents. The officers, employees and agents of the City shall take all action in conformity with the Act, the Supplemental Public Securities Act and the Charter necessary or reasonably required to effectuate the issuance of the Notes and shall take all action necessary or desirable in conformity with the Act, the Supplemental Public Securities Act and the Charter to finance the portion of the costs of the Project to be financed with proceeds of the Notes and for carrying out, giving effect to and consummating the transactions contemplated by this Ordinance and the Loan Documents, including without limitation the execution, delivery and filing of any documents, statements or reports with the United States Internal Revenue Service or with the Secretary of the United States Treasury necessary to maintain the exclusion of interest on the Notes from gross income for federal income tax purposes, the execution of any documents relating to the LITC, the execution of any documents relating to the City's private activity bond volume cap allocation and the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Notes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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COMMITTEE APPROVAL DATE: June 24, 2020

MAYOR-COUNCIL DATE: July 7, 2020

PASSED BY THE COUNCIL: _____

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____

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

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____ ; _____

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

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

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

Kristin M. Bronson, Denver City Attorney

BY: _____, Assistant City Attorney DATE: _____