

RESOLUTION NO.

**A RESOLUTION OF THE CITY OF SAN JOSE AUTHORIZING THE ISSUANCE OF ITS TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS (LENZEN SQUARE) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$23,000,000 FOR THE PURPOSE OF FINANCING THE ACQUISITION AND REHABILITATION OF THE LENZEN SQUARE APARTMENTS MULTIFAMILY RENTAL HOUSING PROJECT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF ANY AND ALL DOCUMENTS NECESSARY TO ISSUE THE BONDS, COMPLETE THE TRANSACTION AND IMPLEMENT THIS RESOLUTION, AND RATIFYING AND APPROVING ANY ACTION HERETOFORE TAKEN IN CONNECTION WITH THE BONDS**

**WHEREAS**, the City Charter of the City of San Jose (the “City”) permits the City to issue revenue bonds pursuant to California law; and

**WHEREAS**, Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the Health and Safety Code of the State of California (the “Act”) authorizes cities to issue bonds for the purpose of financing the acquisition, construction, rehabilitation, refinancing or development of multifamily rental housing facilities; and

**WHEREAS**, Lenzen Square Community Partners, LP, a California limited partnership (the “Borrower”), intends to acquire and rehabilitate an 87-unit plus one manager’s unit multifamily rental housing project located at 790 Lenzen Avenue in the City, known as the “Lenzen Square Apartments” (the “Project”); and

**WHEREAS**, the Borrower has requested the City to issue tax-exempt multifamily housing revenue bonds in one or more series in an aggregate principal amount not exceed \$23,000,000 (the “Bonds”), and to loan the proceeds of the Bonds to the Borrower to finance the acquisition, rehabilitation and equipping of the Project; and

**WHEREAS**, the City Council hereby finds and declares that it is necessary, essential and a public purpose for the City to engage in a program (the “Program”) of incurring indebtedness to finance the acquisition, construction, rehabilitation, refinancing or development of multifamily rental housing facilities, and has determined to borrow money for the purposes of financing the acquisition and rehabilitation of the Project by the issuance of the Bonds, the sole source of payment for each of which is to be promissory notes issued by the Borrower, all as authorized by the Act; and

**WHEREAS**, the City Council hereby finds and declares that this resolution is being adopted pursuant to the powers granted by the Act; and

**WHEREAS**, the Bonds will be issued pursuant to an Indenture of Trust (the “Indenture”), between the City and U.S. Bank National Association, as trustee (the “Trustee”), and the proceeds of the Bonds will be loaned to the Borrower pursuant to a Loan Agreement, by and between the City and the Borrower (the Loan Agreement”); and

**WHEREAS**, the Bonds shall be purchased by FMSbonds, Inc. (the “Series A-1 Bond Purchaser”) and ARC70 Fund I, LP, Series A-2 (the “Series A-2 Bond Purchaser,” and together with the Series A-1 Bond Purchaser, the “Bond Purchasers”), each pursuant to the terms of a Bond Purchase Agreement, by and among the City, the Borrower and the respective Bonds Purchaser (each a “Bond Purchase Agreement,” and, collectively, the “Bond Purchase Agreements”); and

**WHEREAS**, the City will loan the proceeds of the Bonds to the Borrower and the Borrower will use the proceeds of the Bonds exclusively to finance the costs of acquisition, rehabilitation and equipping of the Project and the costs of issuing the Bonds; and

**WHEREAS**, Government Code Section 8869.85 requires a local agency to file an application with the California Debt Limit Allocation Committee (“Committee”) prior to the issuance of tax-exempt multifamily housing revenue bonds and the City has filed such an application; and

**WHEREAS**, the Committee has allocated to the Project \$23,000,000 of the State of California 2019 State ceiling for private activity bonds under Section 146 of the Internal Revenue Code of 1986; and

**WHEREAS**, it is the intent of the City to enter into bond documentation to govern the Bonds being issued (collectively, the “Transaction Documents”), including: (1) the Indenture; (2) the Loan Agreement; (3) a regulatory agreement and declaration of restrictive covenants, by and among the City, the Borrower and the Trustee (the “Regulatory Agreement”); and (4) the Bond Purchase Agreements; and

**WHEREAS**, all conditions, things and acts required to exist, to have happened and to have been performed precedent to the implementation of the Program and the consummation of the transactions contemplated by this resolution and the documents referred to herein now exist, have happened and have been performed in due time, form and manner as required by the Charter and laws of the City, and laws of the State of California, including the Act;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of San Jose that:

**Section 1.** The City Council hereby finds and declares that the above recitals are true and correct.

**Section 2.** In accordance with the Act and pursuant to the Indenture, City authorizes the issuance of one or more series of tax-exempt bonds designated as “City of San Jose Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-1 and Series A-2” (collectively, the “Bonds”), with an interest rate or rates, a maturity date or dates and other terms as provided in the Indenture as finally executed for the Bonds. The Bonds shall be in substantially the form set forth in and otherwise in accordance with the Indenture, and shall be issued on behalf of City by the manual or facsimile signature of the City Manager, the Director of Housing, the Director of Finance or the Assistant Director of Finance, Treasury Division Manager and Debt Administrator or the designee of any of them (each, an “Authorized Officer”) and attested by the manual or facsimile signature of the City Clerk, in the form set forth in and otherwise in accordance with the Indenture. The Program for the loan of the proceeds of the Bonds to the Borrower is also authorized.

**Section 3.** The form of each of the Transaction Documents, in substantially the form on file with the City Clerk, is hereby approved. The Authorized Officers are authorized to execute, and the City Clerk is authorized to attest, each of the Transaction Documents in substantially said form, with such additions thereto and changes therein as the Authorized Officer may approve or recommend in accordance with Section 5 hereof. The date, maturity date or dates, interest rate or rates, interest payment dates, series designations, denominations, form, registration privileges, manner of execution, place of payment, terms of redemption, and other terms of the Bonds shall be as provided in the Indenture as finally executed, and the date, maturity date or dates, interest rate or rates, interest payment dates, denominations, form, registration privileges, manner of execution, place of payment, terms of redemption, and other terms of the Bonds shall be as provided in the Indenture as finally executed.

**Section 4.** Any Authorized Officer executing a document approved herein, in consultation with bond counsel and the City Attorney, is authorized to approve and make such modifications, changes or additions to Transaction Documents or other documents as may be necessary or advisable, and the approval of any modification, change or addition to any of the aforementioned agreements shall be evidenced conclusively by the execution and delivery thereof by such Authorized Officer upon consultation with bond counsel and the City Attorney. Further, any Authorized Officer, acting alone, is authorized to execute any assignment agreement related to any allonge, mortgage note, mortgage, deed of trust or other document related to the loan made to the Borrower from the proceeds of the Bonds.

**Section 5.** All actions heretofore taken by the officers, employees and agents of City with respect to the issuance of the Bonds are approved, confirmed and ratified, and the officers, employees and agents of City are authorized and directed, for and in the name and on behalf of City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents, including, but not limited to, those documents described in the Transaction Documents and the other documents herein approved, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance of the Bonds and to effectuate the purposes thereof and of the documents herein approved in accordance with this resolution and resolutions heretofore adopted by the City Council. If any Authorized Officer is unavailable to execute the documents hereinabove mentioned, a designee or authorized deputy thereof shall be entitled to sign in the place of such Authorized Officer.

**Section 6.** All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this Resolution or otherwise appropriate in the administration of the Bonds and the Program financed thereby, including without limitation any of the foregoing that may be necessary or desirable in connection with any amendment of such documents, any transfer of the Project, any substitution of security for the Bonds, or any prepayment of the Bonds may be taken or given by the Authorized Officers, and the Chair or the Executive Director are hereby authorized and directed to give any such consent, approval, notice, order or request and to take any such action which such officer may deem necessary or desirable to further the purposes of this Resolution.

**Section 7.** If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any remaining sections, paragraphs or provisions of this Resolution.

**Section 8.** This Resolution shall take effect upon its adoption.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk