

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE EXECUTION AND DELIVERY OF ITS TAX-EXEMPT MULTIFAMILY HOUSING REVENUE NOTE (ARYA PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$34,314,000 FOR THE PURPOSE OF FINANCING THE ACQUISITION AND CONSTRUCTION OF THE ARYA MULTIFAMILY RENTAL HOUSING PROJECT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF ANY AND ALL DOCUMENTS NECESSARY TO EXECUTE AND DELIVER NOTE, COMPLETE THE TRANSACTION AND IMPLEMENT THIS RESOLUTION, AND RATIFYING AND APPROVING ANY ACTION HERETOFORE TAKEN IN CONNECTION WITH THE NOTE

WHEREAS, the City Charter of the City of San José (the “City”) permits the City to issue revenue obligations 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 obligations for the purpose of financing the acquisition, construction, rehabilitation, refinancing or development of multifamily rental housing facilities; and

WHEREAS, SAHA Arya, L.P., a California limited partnership (the “Borrower”), intends to acquire and construct an 87-unit (including one manager’s unit) multifamily rental housing project located at 500 Almaden Boulevard (formerly known as 226 Balbach street) in the City, known as the “Arya” (the “Project”); and

WHEREAS, the Borrower has requested the City to execute and deliver tax-exempt multifamily housing revenue notes in one or more series in an aggregate principal amount not exceed \$34,314,000 (the “Note”), and to loan the proceeds of the Note to the Borrower to finance the acquisition, construction 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, construction and equipping of the Project by the execution and delivery of the Note, the sole source of payment for which shall be a promissory note executed and delivered by the Borrower (the “Borrower Note”), 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 Note will be executed and delivered pursuant to the Funding Loan Agreement (the “Funding Loan Agreement”), by and among JPMorgan Chase Bank, N.A. (“Chase”), the City and U.S. Bank National Association, as fiscal agent (the “Fiscal Agent”), and the proceeds of the Note will be loaned to the Borrower pursuant to the Borrower Loan Agreement, by an among the City, the Borrower and the Fiscal Agent (the “Borrower Loan Agreement”);

WHEREAS, Chase will act as the Funding Lender under the Funding Loan Agreement; and

WHEREAS, the City will loan the proceeds of the Note to the Borrower and the Borrower will use the proceeds of the Note exclusively to finance the costs of acquisition, construction and equipping of the Project and the costs of executing and delivering the Note; 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 obligations and the City has filed such an application; and

WHEREAS, the Committee has allocated to the Project \$34,314,000 of the State of California 2020 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 Note being executed and delivered (collectively, the “Transaction Documents”), including: (1) the Funding Loan Agreement; (2) the Borrower Loan Agreement; and (3) a regulatory agreement and declaration of restrictive covenants, by and among the City, the Borrower and the Fiscal Agent (the “Regulatory Agreement”); 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 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 Funding Loan Agreement, City authorizes the execution and delivery of one or more series of tax-exempt notes designated as “City of San José Multifamily Housing Revenue Note (Arya Project)

Series 2021A” (the “Note”), with an interest rate or rates, a maturity date or dates and other terms as provided in the Funding Loan Agreement as finally executed for the Note. The Note shall be in substantially the form set forth in and otherwise in accordance with the Funding Loan Agreement, and shall be executed and delivered 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, Deputy Director, Debt & Management 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 Funding Loan Agreement. The Program for the loan of the proceeds of the Note 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 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 prepayment, and other terms of the Note shall be as provided in the Funding Loan Agreement 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 prepayment, and other terms of the Note shall be as provided in the Funding Loan Agreement as finally executed. This resolution hereby authorizes, requests and directs the Fiscal Agent to authenticate the Note by executing the certificate of authentication attached to the Note and to deliver the Note to Chase, when duly executed and authenticated, on behalf of the City, when directed by an Authorized Officer to do so.

SECTION 4. Any Authorized Officer executing a document approved herein, in consultation with special 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 Note.

SECTION 5. All actions heretofore taken by the officers, employees and agents of City with respect to the execution and delivery of the Note 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 execution and delivery of the Note 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 Note 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 Note, or any prepayment of the Note may be taken or given by the Authorized Officers, and the City Manager, the Director of Housing or the Director of Finance 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 _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk