

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (A) AUTHORIZING THE ISSUANCE OF (1) A TAX-EXEMPT MULTIFAMILY HOUSING REVENUE NOTE DESIGNATED AS “CITY OF SAN JOSE MULTIFAMILY HOUSING REVENUE NOTE (DRY CREEK CROSSING), SERIES 2023E-1 (TAX-EXEMPT)” IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$33,000,000 (THE “2023E-1 NOTE”) AND (2) A TAXABLE MULTIFAMILY HOUSING REVENUE NOTE DESIGNATED AS “CITY OF SAN JOSE MULTIFAMILY REVENUE NOTE (DRY CREEK CROSSING), SERIES 2023E-2 (TAXABLE)” IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$15,000,000 (THE “2023E-2 NOTE,” AND TOGETHER WITH THE 2023E-1 NOTE, THE “2023E NOTES”); (B) APPROVING THE LOAN OF 2023E NOTES PROCEEDS TO CRP DRY CREEK CROSSING LP, A CALIFORNIA LIMITED PARTNERSHIP, TO FINANCE THE CONSTRUCTION AND DEVELOPMENT OF A 64-UNIT MULTIFAMILY DEVELOPMENT CURRENTLY IDENTIFIED AS DRY CREEK CROSSING LOCATED AT 2388 SOUTH BASCOM AVENUE IN SAN JOSE (ALSO KNOWN AS 2388 SOUTH BASCOM AVENUE, CAMPBELL); (C) APPROVING SUBSTANTIALLY FINAL FORMS OF THE FUNDING LOAN AGREEMENT, THE BORROWER LOAN AGREEMENT, THE REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, THE CONTINGENCY DRAW DOWN AGREEMENT, AND ALL OTHER DOCUMENTS EVIDENCING, SECURING, GOVERNING OR OTHERWISE PERTAINING TO THE 2023E NOTES (COLLECTIVELY, THE “2023E NOTE DOCUMENTS”); AND (D) AUTHORIZING AND DIRECTING THE CITY MANAGER, DIRECTOR OF HOUSING, ACTING DIRECTOR OF HOUSING, DIRECTOR OF FINANCE, ASSISTANT DIRECTOR OF HOUSING, ASSISTANT DIRECTOR OF FINANCE, DEPUTY DIRECTOR OF FINANCE, DEBT AND TREASURY MANAGEMENT, OR THEIR DESIGNEES, TO EXECUTE AND DELIVER THE 2023E NOTE DOCUMENTS, TOGETHER WITH ANY DOCUMENTS ANCILLARY TO THE 2023E NOTE DOCUMENTS**

**WHEREAS**, the City Charter of the City of San José (the “City”) provides that the City is authorized to issue revenue bonds pursuant to California (the “State” or “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 incur indebtedness for the purpose of financing the acquisition and construction of multifamily rental housing facilities; 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 issuing revenue bonds and notes of the City to finance the construction of multifamily rental housing, and has determined to borrow money for such purpose by the issuance of revenue notes, the sole source of payment for which shall be promissory notes executed and delivered by the Borrower (defined below), 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**, CRP Dry Creek Crossing LP, a California limited partnership (the “Borrower”), has requested that the City issue and sell the 2023E Notes (defined below) for the purpose of financing costs of the construction by the Borrower of a 64-unit (including one unrestricted manager unit) multifamily rental housing development to be located at 2388 South Bascom Avenue, San José (also known as 2388 South Bascom Avenue, Campbell), currently identified as Dry Creek Crossing (the “Project”); and

**WHEREAS**, on February 3, 2023, the Director of Finance and the Director of Housing of the City executed Declaration No. 2023-1, expressing the intent of the City to issue the 2023E Notes to finance the construction of the Project; and

**WHEREAS**, a notice of a public hearing with respect to the proposed issuance of the 2023E Notes was published on August 18, 2023; and

**WHEREAS**, a public hearing was held before the Director of Finance of the City on August 31, 2023 regarding the financing of the Project, at which an opportunity was provided for interested parties to present arguments for and against the issuance of the 2023E Notes and the financing and operation of the Project; and

**WHEREAS**, on September 8, 2023, the Mayor executed Certificate No. 2023-5, approving the issuance of the 2023E Notes to provide financing for the Project for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended; and

**WHEREAS**, on May 10, 2023, the California Debt Limit Allocation Committee (“CDLAC”) adopted its Resolution No. 23-133 allocating \$29,694,905.00 of the 2023 California State ceiling for qualified private activity bonds to the City for the Project; and

**WHEREAS**, on September 15, 2023, CDLAC adopted its Resolution No. 23-210 allocating \$1,500,000 of the 2023 California State ceiling for qualified private activity bonds to the City for the Project, which allocation is supplemental to the allocation awarded to the Project in Resolution No. 23-133; and

**WHEREAS**, all obligations and any liability of the City under any of the 2023E Notes, the Funding Loan Agreement (as defined herein), the Borrower Loan Agreement (and defined herein), the Regulatory Agreement (as defined herein) and all other documents evidencing, securing, governing or otherwise pertaining to the 2023E Notes (collectively, the “2023E Note Documents”) are limited obligations of the City, payable solely from the Pledged Revenues (as defined under the Funding Loan Agreement) and other funds and moneys and security pledged and assigned under the 2023E Note Documents; and

**WHEREAS**, none of the City, the State, or any political subdivision thereof (except the City, to the limited extent set forth in the 2023E Note Documents) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the 2023E Notes or for the performance of any pledge, obligation or agreement of any kind whatsoever of the City under the 2023E Note Documents except as set forth therein, and none of the 2023E Notes or any of the City's agreements or obligations under the 2023E Note Documents, shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever; and

**WHEREAS**, none of the faith, revenues, credit or taxing power of the City, the State or any other political corporation or subdivision or agency thereof shall be pledged to the payment of the principal of, premium (if any), or interest on the 2023E Notes and the related loan made thereunder or otherwise to secure the obligations of the City under the Funding Loan Documents; and

**WHEREAS**, pursuant to Section 5852.1 of the California Government Code, the City, as a conduit financing provider, has received certain representations and good faith estimates from the Borrower and has disclosed such good faith estimates which will be attached to the staff report to the City Council in connection with the authorization of the issuance of the 2023E Notes; and

**WHEREAS**, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the 2023E Notes and the implementation of the Program as contemplated by this Resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State, including the Act;

**NOW, THEREFORE,** BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The City Council hereby finds and declares that the above recitals are true and correct.
2. Pursuant to the Act and the Funding Loan Agreement (defined below), the issuance of a Tax-Exempt Multifamily Housing Revenue Note designated as “City of San José Multifamily Housing Revenue Note (Dry Creek Crossing), Series 2023E-1 (Tax-Exempt)” in an aggregate principal amount not to exceed \$33,000,000.00 (The “2023E-1 Note”) and a Taxable Multifamily Housing Revenue Note designated as “City of San José Multifamily Housing Revenue Note (Dry Creek Crossing), Series 2023E-2 (Taxable)” in an aggregate principal amount not to exceed \$15,000,000.00 (the “2023E-2 Note,” and together with the 2023E-1 Note, The “2023E Notes”), is hereby authorized to be issued. The 2023E Notes shall be executed by the manual or facsimile signature of the City Manager, the Director of Housing, the Acting Director of Housing, the Assistant Director of Housing, the Director of Finance, the Assistant Director of Finance, the Deputy Director of Finance, Debt and Treasury Management, or the designee of any of them (each, an “Authorized Officer”), in the form set forth in and otherwise in accordance with the Funding Loan Agreement. The Authorized Officers are hereby authorized to provide for a different name and series designation of the 2023E Notes as may be necessary or desirable.
3. The Funding Loan Agreement with respect to the 2023E Notes (the “Funding Loan Agreement”) among the City, Citibank, N.A. (the “Funding Lender”), and U.S. Bank Trust Company, National Association, as fiscal agent (the “Fiscal Agent”), in substantially the form on file with the City Clerk, is hereby approved. Each of the Authorized Officers, acting alone, is hereby authorized, for and in the name and on behalf of the City, to execute and deliver the Funding Loan

Agreement in said form, together with such additions thereto or changes therein as are recommended or approved by any Authorized Officer upon consultation with bond counsel and the City Attorney, including such additions or changes as are necessary or advisable in accordance with Section 8 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Funding Loan Agreement.

The date, maturity date, interest rate, interest payment dates, form, place of payment, principal amount, terms of prepayment and other terms of each of the 2023E Notes shall be as provided in the Funding Loan Agreement as finally executed.

4. The Borrower Loan Agreement between the City and the Borrower (the “Borrower Loan Agreement”), in substantially the form on file with the City Clerk, is hereby approved. Each of the Authorized Officers, acting alone, is hereby authorized, for and in the name and on behalf of the City, to execute and deliver the Borrower Loan Agreement in said form, together with such additions thereto or changes therein as are recommended or approved by any Authorized Officer upon consultation with bond counsel and the City Attorney, including such additions or changes as are necessary or advisable in accordance with Section 8 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Borrower Loan Agreement.
  
5. The Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”) between the City and the Borrower, in substantially the form on file with the City Clerk, is hereby approved. Each of the Authorized Officers, acting alone, is hereby authorized for and in the name of and on behalf of the City, to execute and deliver the Regulatory Agreement in said form, with such additions thereto or changes therein as are recommended or approved by any Authorized Officer upon consultation with bond counsel and the City

Attorney, including with such additions or changes as are necessary or advisable in accordance with Section 8 hereof, the approval of such changes to be conclusively evidenced by the execution and delivery by the City of the Regulatory Agreement.

6. The proposed form of Contingency Draw-Down Agreement by and among the Borrower and the Funding Lender, on file with the City Clerk, is hereby approved, with such additions thereto or changes therein as are recommended or approved by any Authorized Officer upon consultation with bond counsel and the City Attorney, including with such additions or changes as are necessary or advisable in accordance with Section 8 hereof.
7. The 2023E Notes, when executed by an Authorized Officer, shall be delivered to the Fiscal Agent for authentication. The Fiscal Agent is hereby requested and directed to authenticate the 2023E Notes by executing the Fiscal Agent's certificate of authentication and registration appearing thereon, and to deliver the 2023E Notes, when duly executed and authenticated, to the Funding Lender in accordance with written instructions executed on behalf of the City by any Authorized Officer, which instructions each Authorized Officer is hereby authorized, for and in the name and on behalf of the City, to execute and deliver to the Fiscal Agent. Such instructions shall provide for the delivery of the 2023E Notes to the Funding Lender, upon the initial advance by the Funding Lender of the purchase price of the 2023E Notes.
8. All actions heretofore taken by the officers and agents of the City with respect to the establishment of the Program and the sale and issuance of the 2023E Notes are hereby approved, confirmed and ratified, and the proper officers of the City, including the Authorized Officers, are hereby authorized and directed, for and in the name and on behalf of the 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 which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the 2023E Notes in accordance with this Resolution, including but not limited to such making additions or changes to the forms of the documents approved hereunder as are necessary or advisable and within the parameters of the terms of the 2023E Notes and the Program established hereunder and executing those certificates, agreements and other documents described in the documents approved by this Resolution and any certificates, agreements or documents as may be necessary to carry out the financing of the Project.

9. All amendments, waivers, assignments, allonges, conveyances, reconveyances, consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents approved by this Resolution, whether before or after the issuance of the 2023E Notes, including without limitation any of the foregoing that may be necessary or desirable in connection with any default under or amendment of such documents, any transfer or other disposition of the 2023E Notes or the Project, any addition or substitution of security for the 2023E Notes or any prepayment of the 2023E Notes, may be given or taken by any of the Authorized Officers, as appropriate, without further authorization by this City Council, and each of the Authorized Officers is hereby authorized and directed to execute any such amendment or waiver or give any such consent, approval, notice, order or request and to take any such action that such officer may deem necessary or desirable to further the purposes of this Resolution and the financing of the Project; provided such action shall not create any material obligation or liability of the City other than as provided in the Funding Loan Agreement, the Borrower Loan Agreement and the other documents approved herein.



10. If any of the Authorized Officers 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.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk