

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SAN JOSE (A) AUTHORIZING THE ISSUANCE OF: (1) TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS DESIGNATED AS “CITY OF SAN JOSE MULTIFAMILY HOUSING REVENUE BONDS (FANNIE MAE MBS SECURED) (ARCADE) SERIES 2025A-1” AND (2) TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS DESIGNATED AS “CITY OF SAN JOSE MULTIFAMILY HOUSING REVENUE BONDS (ARCADE) SERIES 2025A-2 (COLLECTIVELY, THE “2025A BONDS”), IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$73,708,167; (B) APPROVING THE LOAN OF 2025A BOND PROCEEDS TO KOOSER APARTMENTS, L.P., A CALIFORNIA LIMITED PARTNERSHIP, TO FINANCE THE ACQUISITION, CONSTRUCTION, AND DEVELOPMENT OF A 191-UNIT MULTIFAMILY DEVELOPMENT TO BE KNOWN AS ARCADE LOCATED AT 1371 KOOSER ROAD IN SAN JOSE; (C) APPROVING IN SUBSTANTIALLY FINAL FORM AN INDENTURE OF TRUST, A FINANCING AGREEMENT, A REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, A BOND PURCHASE AGREEMENT AND A PRELIMINARY OFFICIAL STATEMENT (COLLECTIVELY, THE “2025A BOND DOCUMENTS”); AND (D) AUTHORIZING AND DIRECTING THE CITY MANAGER, DIRECTOR OF HOUSING, DIRECTOR OF FINANCE, ASSISTANT DIRECTOR OF FINANCE, DEPUTY DIRECTOR – DEBT & TREASURY MANAGEMENT, OR THEIR DESIGNEES, TO NEGOTIATE, EXECUTE AND DELIVER THE 2025A BOND DOCUMENTS, TOGETHER WITH ANY DOCUMENT ANCILLARY TO THE 2025A BOND DOCUMENTS OR NECESSARY OR CONVENIENT FOR ISSUANCE AND SALE OF THE 2025A BONDS AND LOAN OF THE PROCEEDS THEREOF

WHEREAS, the City of San José (the “City”) is a municipal corporation and charter city duly organized and existing under a charter pursuant to which the City has the right and power to make and enforce all laws and regulations with respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections

3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter of the City (the “Charter”); 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, construction and development 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 incurring indebtedness to finance the acquisition, construction, rehabilitation, refinancing or development of multifamily rental housing facilities, and has determined to borrow money for such purpose by the issuance of revenue bonds 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, Kooser Apartments, L.P., a California limited partnership (the “Borrower”), intends to acquire, construct and develop a 191-unit (including two manager’s units) multifamily rental housing project located at 1371 Kooser Road in the City, known as “Arcade” (the “Project”); and

WHEREAS, the Borrower has requested that the City issue the 2025A Bonds (as defined below) in an aggregate principal amount not to exceed \$73,708,167 and to loan the proceeds of the 2025A Bonds to the Borrower to finance the acquisition, construction and development of the Project; and

WHEREAS, the City will loan the proceeds of the 2025A Bonds to the Borrower, and the Borrower will use the proceeds of the 2025A Bonds exclusively to finance the costs

of acquisition, construction and development of the Project and the costs of issuing the 2025A Bonds; and

WHEREAS, the 2025A Bonds will not be paid from or secured by the general taxing power of the City nor any other asset; and

WHEREAS, the issuance, sale and delivery of the 2025A Bonds will be conducted in accordance with the City's policies related thereto, and the City Council finds that the public interest and necessity require that the City at this time make arrangements for the sale of the 2025A Bonds; and

WHEREAS, the 2025A Bonds shall be issued pursuant to an Indenture of Trust (the "Indenture"), by and between the City, as issuer, and Computershare Trust Company, National Association, as trustee (the "Trustee"), and the proceeds of the 2025A Bonds shall be loaned to the Borrower pursuant to a Financing Agreement, by an among the City, the Borrower and the Trustee (the "Financing Agreement"); and

WHEREAS, the Trustee is authorized to receive, hold, invest and disburse Bond proceeds and other funds established under the Indenture, authenticate the 2025A Bonds, apply and disburse payments to the bondholder(s) and pursue remedies on behalf of the bondholder(s); and

WHEREAS, Bank of America, N.A., will act as Construction Lender under the Construction Loan Documents, and Lument Real Estate Capital, LLC, a Delaware limited liability company, will act as Permanent Lender under Permanent Loan Documents, as such terms are defined in the Indenture; and

WHEREAS, the 2025A-1 Bonds (as defined below) will initially be secured by cash collateral to be held by the Trustee pursuant to the terms of the Indenture, and after the Conversion Date but on or prior to the Termination Date (as such terms are defined in the Indenture), the Trustee will apply such cash collateral, and certain other amounts held by the Trustee, to purchase a certificate issued by Fannie Mae (referred to as the

“MBS” under the Indenture), backed by the Permanent Loan, pursuant to the terms of the Indenture, and thereafter the 2025A-1 Bonds will be secured by the MBS; and

WHEREAS, the 2025A-2 Bonds (as defined below) will be secured by cash collateral to be held by the Trustee pursuant to the terms of the Indenture; and

WHEREAS, the City has determined that it is in the City’s best interests to issue the 2025A Bonds through a negotiated public sale with Lument Securities, LLC, as underwriter for the 2025A Bonds (the “Underwriter”); 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 and Borrower have previously filed such an application; and

WHEREAS, the Committee has allocated to the Project an aggregate of \$73,708,167 of the State of California ceiling on 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 2025A Bonds being issued (collectively, the “2025A Bond Documents”), including: (1) the Indenture; (2) the Financing Agreement; (3) a regulatory agreement and declaration of restrictive covenants, by and between the City and the Borrower (the “Regulatory Agreement”); (4) a Bond Purchase Agreement, by and among the City, the Underwriter, and the Borrower (the “Bond Purchase Agreement”); and (5) a Preliminary Official Statement and final Official Statement with respect to the 2025A Bonds; and

WHEREAS, the Preliminary Official Statement, an informational disclosure document, will be released prior to the sale of the 2025A Bonds and followed by the final Official Statement after pricing of the 2025A Bonds; 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 José that:

1. The City Council hereby finds and declares that the above recitals are true and correct.
2. In accordance with the Act and pursuant to the Indenture, the City authorizes the issuance and sale of tax-exempt bonds to be designated as the “City of San José Multifamily Housing Revenue Bonds (Fannie Mae MBS Secured) (Arcade) Series 2025A-1” (the “2025A-1 Bonds”) and the “City of San José Multifamily Housing Revenue Bonds (Arcade) Series 2025A-2” (the “2025A-2 Bonds” and together with the 2025A-1 Bonds, the “2025A Bonds”) in an aggregate principal amount not to exceed \$73,708,167 with interest rates, maturity dates and other terms as provided in the finally executed Indenture. The 2025A Bonds shall be executed and delivered on behalf of the City by the manual or facsimile signature of the City Manager, the Director of Housing, the Director of Finance, the Assistant Director of Finance or the Deputy Director – Debt & Treasury Management or the designee or authorized deputy of any of them (each, an “Authorized Officer”), in the respective forms set forth in and otherwise in accordance with the Indenture.
3. The 2025A Bond Documents, in substantially the respective forms posted on the Agenda webpage for the City Council meeting, are hereby approved. Each Authorized Officer, acting alone, is authorized to execute the 2025A Bond Documents in substantially said forms, with such additions thereto and changes

therein as such 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 2025A-1 Bonds and of the 2025A-2 Bonds shall be as provided in the Indenture as finally executed. This resolution hereby authorizes the 2025A Bonds to be sold to the Underwriter pursuant to the terms of the Bond Purchase Agreement. This resolution also hereby authorizes, requests and directs the Trustee to authenticate the 2025A Bonds, by executing the certificate of authentication attached to the 2025A Bonds, and deliver the executed and authenticated Bonds to the Underwriter when directed by an Authorized Officer to do so.

4. The Preliminary Official Statement, in substantially the form posted on the Agenda webpage for the City Council meeting, is hereby approved. The Underwriter is hereby authorized to distribute the Preliminary Official Statement to persons who may be interested in the purchase of the 2025A Bonds and to deliver an Official Statement in final form to the purchasers of the 2025A Bonds, in each case with such changes as any Authorized Officer, in consultation with bond counsel and the City Attorney, deems desirable, necessary or appropriate.
5. 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 the 2025A Bond Documents or any other ancillary documents and certificates related to the issuance of the 2025A Bonds as may be necessary or advisable, and the approval of any modification, change or addition to any of the aforementioned agreements, documents and certificates shall be evidenced conclusively by the execution and delivery thereof by such Authorized Officer upon consultation with bond counsel and the City Attorney. Further, without limiting the foregoing, any Authorized Officer, acting alone, is

authorized to execute any assignment of deed of trust, any endorsement, allonge or assignment of any note or other document related to the loans made to the Borrower from the proceeds of the 2025A Bonds.

6. All actions heretofore taken by the officers, employees and agents of the City with respect to the issuance of the 2025A Bonds and the execution and delivery of the 2025A Bond Documents are approved, confirmed and ratified, and the officers, employees and agents of the City are 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, including, but not limited to, those documents described in the 2025A Bond Documents and the other documents herein approved that they, or any of them, may deem necessary or advisable in order to consummate the lawful execution, issuance and delivery of the 2025A 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.
7. 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 2025A 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 2025A Bonds, or any prepayment of the 2025A Bonds 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; provided such action shall not create any obligation or liability of the City other than as provided in the 2025A Bond Documents and other documents approved herein.

8. 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.
9. This resolution shall take effect upon its adoption.

ADOPTED this ____ day of ____, 2025 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC,
City Clerk