

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (1) APPROVING A TOTAL COMMITMENT OF UP TO \$15,925,000 WITH \$10,875,000 IN LOW AND MODERATE INCOME HOUSING ASSET FUNDS AND \$5,100,000 IN INCLUSIONARY FEE FUNDS FOR AN ACQUISITION AND CONSTRUCTION-PERMANENT LOAN TO THE KELSEY AYER STATION, L.P., OR AN AFFILIATED ENTITY, FOR THE KELSEY AYER STATION APARTMENTS, A NEW AFFORDABLE DEVELOPMENT TO BE LOCATED AT 447 NORTH FIRST STREET), WHICH IS BEING DEVELOPED TO OFFER 113 RENT- AND INCOME-RESTRICTED APARTMENTS FOR EXTREMELY LOW INCOME, VERY LOW INCOME AND LOW INCOME HOUSEHOLDS, AND TWO UNRESTRICTED MANAGER'S UNIT; (2) AUTHORIZING THE DIRECTOR OF HOUSING TO ACQUIRE THE SITE FROM THE DEVELOPER FOR A PRICE NOT TO EXCEED THE ACQUISITION LOAN BALANCE AT THE TIME OF TRANSFER, AND TO NEGOTIATE AND EXECUTE LOAN DOCUMENTS, THE DOCUMENTS RELATED TO THE ACQUISITION AND GROUND LEASING OF THE SITE AND ALL OTHER DOCUMENTS, INCLUDING AMENDMENTS THERETO, RELATED TO CITY FINANCING FOR THE DEVELOPMENT; (3) APPROVING A LOAN-TO-VALUE RATIO OF GREATER THAN 100% FOR THIS LOAN; (4) MAKING A DETERMINATION THAT, CONSISTENT WITH GOVERNMENT CODE SECTION 37364, AFTER ACQUISITION, THE SITE CAN BE LEASED TO THE DEVELOPER WITHOUT FIRST OFFERING THE SITE TO THE PUBLIC FOR ANY OTHER USE, SINCE THE SITE WILL BE RESTRICTED SO AS TO PROVIDE HOUSING AFFORDABLE TO PERSONS AND FAMILIES OF LOW OR MODERATE INCOME, AS DEFINED BY SECTION 50093 OF THE HEALTH AND SAFETY CODE OR AS DEFINED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ITS SUCCESSORS, AND THAT THIS USE IS IN THE CITY'S BEST INTERESTS

WHEREAS, on August 31, 2018, a Notice of Funding Availability (“NOFA”) in the amount of \$100 million was released by the City of San José (“City”) that made funding available for housing developers to submit written proposals for affordable multifamily rental housing projects providing housing for extremely low and very low income individuals and families; and

WHEREAS, in response to the NOFA released by the City, The Kelsey Ayer Station, L.P. (“Developer”) submitted a proposal with a request for a commitment of funding in the amount of up to \$11,125,000 in City funds for The Kelsey Ayer Station Apartments (“Development”), a new affordable rental housing development to be located at 447 North First Street (“Site”), providing 113 units affordable to extremely low, very low and low income individuals and families; and

WHEREAS, the NOFA guidelines stated that the City would allocate funding at \$125,000 per unit and the Development was originally awarded \$11,125,000, however, because the project has taken approximately 2 years to secure all additional funding and to accommodate lower rents for the tenants, the Kelsey has requested an additional \$1,700,00 from the City to cover this gap, in response to which staff recommended providing a total commitment of \$10,825,000 in Low and Moderate Income Housing Asset Funds and up to \$2,000,000 in Inclusionary Fee funds which equates to approximately \$125,000 per units for the units that are rent and income restricted at up to 60% of Area Median Income (“AMI”), and Inclusionary Fee funds for 26 units with rents at up to 80% AMI, which equates to approximately \$77,000 per unit; and

WHEREAS, consistent with the Ground Lease Policy in the City’s Housing Department Underwriting Guidelines, the City will provide up to \$3,100,000 in Inclusionary Fee Funds to acquire the land (“Acquisition Loan”) prior to close of construction funding and negotiate and execute a ground lease or option to the Developer with a term of 70 years, and if required by California Housing and Community Development (“HCD”) or

California Housing Finance Agency regulations, an option to extend for up to an additional 19 years, for a total term not to exceed 99 years; and

WHEREAS, Developer is currently pursuing or has recently been approved for other construction and permanent funding sources for the Project, including a Santa Clara County Program for Intellectual Development Disability Housing in the amount of \$4,000,000 and a HCD Transit-Oriented Development Program in the amount of \$10,000,000; and

WHEREAS, City's Loan to Value ("LTV") policy requires that the LTV ratio not exceed 100% in order to mitigate the City's risk of potential loss associated with a loan; and

WHEREAS, there is a possibility of an LTV ratio for the Project in excess of 100%; and

WHEREAS, under recent amendments to the Surplus Lands Act, the City must follow certain procedures in selling or ground leasing of City-owned property which require the offering of that property to the public, unless the sale or lease falls under an exemption, and once the Site is acquired by the City, it will become a City property to be leased after acquisition restricted for the term of the lease to provide housing affordable to person and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as define by the United States Department of Housing and Urban Development ("HUD") or its successors; and

WHEREAS, based on the description of the Development, staff recommends that the City Council make a determination that, consistent with Government Code Section 37364, after acquisition, the Site can be leased to the Developer without first offering the Site to the public for any other use, since the Site will be restricted so as to provide housing affordable to persons and families of low or moderate income, as defined by

Section 50093 of the Health and Safety Code or as defined by HUD or its successors, and that this use is in the City's best interests

WHEREAS, staff also recommends approval of a total commitment of up to \$15,925,000 for an Acquisition Loan and Construction-Permanent Loan to Developer; approval of a loan-to-value of greater than 100% for these loans; and authority to the Director of Housing to acquire the Site from the Developer for a price not to exceed the Acquisition Loan balance at the time of transfer, and to negotiate and execute loan documents, the documents related acquisition and ground leasing of the Site and all other documents, including amendments thereto, related to the City financing for the Development, as set forth in the memorandum to Council from the Director of Housing dated April 21, 2021;

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

- a. A total commitment of up to \$15,925,000 with \$10,875,000 in Low and Moderate Income Housing Asset Funds and \$5,100,000 in Inclusionary Fee Funds for an Acquisition and Construction-Permanent Loan to The Kelsey Ayer Station, L.P. ("Developer", or an affiliated entity for The Kelsey Ayer Station Apartments ("Development")), a new affordable development to be located at 447 North First Street ("Site"), which is being developed to offer 113 rent- and income-restricted apartments for extremely low income, very low income and low income households, and two unrestricted manager's unit, is hereby approved.
- b. The Director of Housing is hereby authorized to acquire the Site from the Developer for a price not to exceed the Acquisition Loan balance at the time of transfer, and to negotiate and execute loan documents, the documents related acquisition and ground leasing of the Site and all other documents, including amendments thereto, related to the City financing for the Development.

- c. A loan-to-value ratio of greater than 100% for this loan, is hereby approved.
- d. A determination that, consistent with Government Code Section 37364, after acquisition, the Site can be leased to the Developer without first offering the Site to the public for any other use, since the Site will be restricted so as to provide housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors, and that this use is in the City's best interests, is hereby made.

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

ADOPTED this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk