

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (A) AUTHORIZING THE ISSUANCE OF A: (1) TAX-EXEMPT MULTIFAMILY HOUSING REVENUE NOTE DESIGNATED AS “CITY OF SAN JOSE MULTIFAMILY HOUSING REVENUE NOTE (777 WEST SAN CARLOS), SERIES 2023C-1 (TAX-EXEMPT)” IN A PRINCIPAL AMOUNT NOT TO EXCEED \$70,700,000 (THE “2023C-1 NOTE”), AND (2) TAXABLE MULTIFAMILY HOUSING REVENUE NOTE DESIGNATED AS “CITY OF SAN JOSE MULTIFAMILY HOUSING REVENUE NOTE (777 WEST SAN CARLOS), SERIES 2023C-2 (TAXABLE)” IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$1,3000,000(THE “2023C-2 NOTE”, AND WITH THE 2023C-1 NOTE, THE “2023C NOTES”); (B) APPROVING THE LOAN OF 2023C NOTE PROCEEDS TO SAN JOSE SUNOL STREET LP, A CALIFORNIA LIMITED PARTNERSHIP CREATED BY COMMUNITY REVITALIZATION AND DEVELOPMENT CORPORATION, A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION, TO FINANCE THE CONSTRUCTION OF A 154-UNIT MULTIFAMILY DEVELOPMENT IDENTIFIED AS 777 WEST SAN CARLOS APARTMENTS AND LOCATED AT 266 SUNOL STREET, 270 SUNOL STREET AND 777 WEST SAN CARLOS STREET IN SAN JOSE (“DEVELOPMENT”); (C) APPROVING IN SUBSTANTIALLY FINAL FORM THE FUNDING LOAN AGREEMENT, THE BORROWER LOAN AGREEMENT, THE REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, AND RELATED DOCUMENTS; (D) APPROVING IN SUBSTANTIALLY FINAL FORM THE CONTINGENCY DRAW-DOWN AGREEMENT; AND (E) AUTHORIZING AND DIRECTING THE CITY MANAGER, DIRECTOR OF HOUSING, DIRECTOR OF FINANCE, ASSISTANT DIRECTOR OF HOUSING, ASSISTANT DIRECTOR OF FINANCE, DEPUTY DIRECTOR, DEBT AND TREASURY MANAGEMENT, OR THEIR DESIGNEES, TO EXECUTE AND DELIVER THE 2023C NOTE DOCUMENTS TOGETHER WITH ANY DOCUMENTS ANCILLARY TO THE 2023C NOTES AND THE LOAN OF THE PROCEEDS THEREOF FOR THE FINANCING OF THE DEVELOPMENT AND APPROVING OTHER RELATED DOCUMENTS AND ACTIONS

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 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 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, San Jose Sunol Street LP, a California limited partnership (the “Borrower”), has requested that the City issue and sell two 2023C Notes (defined below) for the purpose of financing costs of the construction by the Borrower of a 154 unit multifamily rental housing development to be located at 266 Sunol Street, 270 Sunol Street and 777 West San Carlos Street in the City, currently identified as 777 West San Carlos Apartments (the “Development”); and

WHEREAS, on August 4, 2022, the Director of Finance and the Director of Housing of the City executed Declaration 2022-4, expressing the intent of the City to issue the 2023C Notes to finance the construction of the Development; and

WHEREAS, a notice of a public hearing with respect to the proposed issuance of the 2023C Notes was published on March 15, 2023; and

WHEREAS, a public hearing was held before the Director of Finance of the City on March 27, 2023 regarding the financing of the Development, at which an opportunity was provided for interested parties to present arguments for and against the issuance of the 2023C Notes and the financing and operation of the Development; and

WHEREAS, on March 27, 2023, the Mayor executed Certificate No. 2023-1, approving the issuance of the 2023C Notes to provide financing for the Development for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, on November 30, 2022, the California Debt Limit Allocation Committee adopted its Resolution No. 22-234 allocating \$70,700,000 of the 2022 California State ceiling for qualified private activity bonds to the City for the Development; 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 2023C 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 2023C 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 of California, 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), a tax-exempt multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (777 West San Carlos), Series 2023C-1 (Tax-Exempt)” (referred to herein as the “Tax-Exempt 2023C-1 Note”) in an aggregate principal amount not to exceed \$70,700,000 is hereby authorized to be issued, and a taxable multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (777 West San Carlos), Series 2023C-2 (Taxable)” (referred to herein as the “Taxable 2023C-2 Note” and together with the 2023C-1 Tax-Exempt Note as the “2023C Notes”), in an

aggregate principal amount not to exceed \$1,300,000 is hereby authorized to be issued. The 2023C Notes shall be executed by the manual or facsimile signature of the City Manager, the Director of Housing, the Director of Finance, the Assistant Director of Housing, Assistant Director of Finance, the Deputy Director, 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.

3. The funding loan agreement with respect to the 2023C Notes (the “Funding Loan Agreement”) among the City, Citibank, N.A. (the “Bank”), and Computershare Trust Company, N.A., as fiscal agent (the “Fiscal Agent”), in 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 2023C 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 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 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 (the “Contingency Draw-Down Agreement”) among the Bank, the Fiscal Agent and the Borrower, in the form 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 2023C 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 2023C Notes by executing the Fiscal Agent’s certificate of authentication appearing thereon, and to deliver the 2023C Notes, when duly executed and authenticated, to the Bank 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 2023C Notes to the Bank, upon the initial advance by the Bank of the purchase price of the 2023C 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 2023C 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 2023C Notes in accordance with this Resolution, including but not limited to 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 Development.

9. All 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 2023C 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 Development, any addition or substitution of security for the 2023C Notes or any prepayment of the 2023C 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 give any such consent, approval, notice, order or request and to take any such action that such officer in consultation with the City Attorney may deem necessary or desirable to further the purposes of this Resolution and the financing of the Development; provided such action shall not create any 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.

NVF:SSG:CEG
5/11/2023

ADOPTED this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk