

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING (A) A CHANGE IN THE EXISTING CITY AFFORDABILITY RESTRICTION FOR MARKHAM PLAZA II APARTMENTS (FORMERLY TULLY GARDENS II APARTMENTS) TO ALLOW: (A) A CHANGE IN THE NUMBER OF UNITS AFFORDABLE TO EXTREMELY LOW INCOME (“ELI”) HOUSEHOLDS AT UP TO 30% OF AREA MEDIAN INCOME (“AMI”) FROM 151 UNITS, TO 76 UNITS AFFORDABLE TO ELI HOUSEHOLDS AT UP TO 30% OF AMI AND UP TO 75 UNITS TO BE AFFORDABLE TO VERY LOW-INCOME HOUSEHOLDS (“VLI”) AT UP TO 35% AMI FOR NEW OR OVER INCOME TENANTS ONLY; (B) AN INCREASE TO RENTS AND INCOME UP TO 60% AMI (LOW-INCOME) FOR ALL UNITS IN THE EVENT OF FORECLOSURE OR FOR NEW TENANTS IN SUBSIDIZED UNITS IN THE EVENT OF THE EXPIRATION OR INVOLUNTARY TERMINATION OF SUBSIDY CONTRACTS, PROVIDED THE CITY HAS DETERMINED THE INCREASE IS NEEDED FOR FEASIBILITY OF THE DEVELOPMENT AND ALLOWED BY OTHER FUNDS; (C) THE EXTENSION OF THE EXISTING CITY’S LOAN TERM BY AN ADDITIONAL 17 YEARS, UNTIL THE 55TH ANNIVERSARY OF THE CLOSING OF THE BOND FINANCING, AND A DECREASE IN THE CITY’S LOAN INTEREST RATE FROM 4.77% TO 3%; (D) THE SUBORDINATION OF THE CITY’S DEED OF TRUST TO A COUNTY OPTION TO PURCHASE THE LAND, PROVIDED THAT THE CITY SHALL HAVE A RIGHT OF FIRST REFUSAL TO PURCHASE THE LAND; AND (E) THE DIRECTOR OF HOUSING TO NEGOTIATE AND EXECUTE ANY CITY LOAN DOCUMENTS, GRANT DOCUMENTS, AND ALL OTHER DOCUMENTS RELATED TO THESE ACTIONS

WHEREAS, on October 31, 2000, the City of San José (“City”) made a \$3,781,000 grant (“Grant”) from the Redevelopment Agency’s Extremely Low-Income (“ELI”) Supplemental funds to subsidize the 151 ELI units, and in addition to the Grant, on September 30, 2002 the City made a \$2,825,295 HOME loan (“Loan”), together, to fund the acquisition and development of Markham Plaza II Apartments (formerly Tully

Gardens II Apartments) located at 2010 Monterey Road in San Jose (“Development”);
and

WHEREAS, in January 2019, CORE Affordable Housing, LLC (“CORE”) applied to the Housing Department in connection with its proposed resyndication and rehabilitation for the Development; and

WHEREAS, CORE and the City will submit a joint application to the California Debt Allocation Committee for allocation of \$25,000,000 in tax-exempt multifamily housing revenue bonds to finance the acquisition and rehabilitation of the Development, and in addition CORE will submit an application to Tax Credit Allocation Committee (“TCAC”) to be considered for low-income tax credits for the Development, which awards for both applications are anticipated to be announced by TCAC sometime in August 2020; and

WHEREAS, under a commitment letter dated February 20, 2020, the Santa Clara County Office of Supportive Housing (“County”) approved a permanent loan in the amount of \$5,900,000 in Measure A funds for as a part of the financial restructure of the Development, and the loan is zero percent interest with annual amortizing payments payable in 30 years; and

WHEREAS, the zero-interest feature of the County loan enables the Development to provide cash flow to pay for the much-needed supportive services to existing and future tenants, additionally, the County, in coordination with the Santa Clara County Housing Authority (“SCCHA”), will provide a total of 30 tenant-based vouchers restricted to households or individuals formerly homeless or experiencing homelessness and shall be rented to households referred through the County’s Coordinated Entry System or such other equivalent County direct referral program while the SCCHA will provide 20 project-based Veterans Affairs Supportive Housing (“VASH”) vouchers under the

Housing and Urban Development VASH Program, such vouchers will provide additional cash flow to the Development; and

WHEREAS, the Development was built and occupied in 2003 and was one of the first development dedicated to serving only extremely low-income households, therefore tenants who qualify to live in the Development face challenges typical for the poorest households living within the high-cost Bay Area; and

WHEREAS, an individual living at the Development earns less than \$2,329 per month (before taxes) and pays \$699 to rent a single-room-efficiency apartment, and many extremely low-income tenants do not have options to move to other apartments when rents increase or life circumstances changes; and

WHEREAS, the most recent rent roll for the Development indicates that 66 of the 152 tenant households are rent burdened paying greater than 50% of their incomes in rent, with average incomes of \$17,537 per year; and

WHEREAS, some tenants earn less than \$10,000, the lowest annual income reported is \$1,232 per year, and tenants living in these income ranges are often left with insufficient income to support all of their basic needs such as food, transportation and clothing; and

WHEREAS, over the past few years, the City, County and SCCHA have worked together to establish a model for funding supportive housing for extremely low-income households, and not only is funding now made available for the construction of new housing, but also for the services necessary to support households with the lowest incomes; and

WHEREAS, the restructuring of the financing for the Development will provide increase funding for services for the tenants and for rehabilitation of the existing building; and

WHEREAS, the proposed restructuring will allow for the investment of County Measure A funds, while not requiring any additional investment from the City, and the City's original investment of over \$6.6 million will be preserved by this action and the length of the City's Affordability Restriction for the Development ("Affordability Restriction") will be extended; and

WHEREAS, since the opening of the Development, all of the apartments have been restricted, with respect to rents and incomes, to up to 30% of Area Median Income ("AMI"); and

WHEREAS, these affordability restrictions create housing opportunities for the lowest incomes in our community, at the same time, the rents do not produce the revenue necessary to provide the level of services necessary to serve the residents; and

WHEREAS, staff is requesting authority to allow an increase of the AMI level for up to 75 of the apartments in the Development from 30% AMI to 35% AMI, and this change would only be allowed for new tenants and over-income tenants so that there is no impact on the current eligible tenants; and

WHEREAS, this requested change in affordability is intended to improve cash flow to pay for enhanced services for the existing tenants and financially stabilize the Development, and CORE also plans to seek VASH vouchers for new tenants to bring more revenue into the Development and indicated that those vouchers require the City to allow incomes up to 35% of AMI; and

WHEREAS, the request action will gradually create more economic diversity in the Development and will provide added flexibility without compromising the program's intent; and

WHEREAS, the CORE also requested that the City allow an increase in income and rents to 60% of AMI in the event of foreclosure or for units with subsidies in the event of expiration or involuntary termination of subsidy contracts; and

WHEREAS, this is reasonable provided the City has first determined the extent of increase needed for feasibility of the Development and that any increases are limited to the extent necessary to achieve feasibility; and

WHEREAS, the Affordability Restriction which has a current termination date of December 23, 2058; as a result of this transaction it will be extended to 2075, 55 years from the closing of the bond financing, and the Affordability Restriction will be amended to reflect the new termination date and other covenants; and

WHEREAS, CORE also requested that the City consent to the execution and recording of a County option to purchase the land (“Option”), and to the subordination of the City’s Deed of Trust to the County Option; and

WHEREAS, the Affordability Restriction will not be subordinated to any senior lender; and

WHEREAS, CORE also requested the City to extend the term of the loan by an additional 17 years to 55 years from the closing of the bond funding and reduce its interest rate from 4.77% fixed, compounded annually to 3% fixed compounded annually, and the extension of the City loan term and the interest rate reduction are necessary to meet the Internal Revenue Service’s true debt test requirements; and

WHEREAS, City desires to authorize (a) a change in the existing affordability restriction recorded on the Development to allow a change from 151 units affordable to ELI households at up to 30% of AMI to 76 units affordable to ELI households at up to 30%

of AMI and up to 75 units to be restricted affordable to very low-income households for new or over income tenants only at up to 35% of AMI; (b) an increase to rents and income up to 60% of AMI (low income) for all units in the event of foreclosure or for voucher subsidized units in the event of the expiration or involuntary termination of subsidy contracts, provided the City has determined the increase is needed for feasibility of the development and allowed by other funds; (c) the extension of the existing City's loan term by an additional 17 years, until the 55th anniversary of the closing of the bond financing, and a decrease in the City's loan interest rate from 4.77% compounded annually to 3%, compounded annually; (d) the subordination of the City's Deed of Trust to a County option to purchase the land provided that the City shall have a right of first refusal to purchase the land; and (e) the Director of Housing to negotiate and execute any City loan documents, grant documents, amendments, and all other documents related to these actions;

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

- a. A change in the existing affordability restriction for Markham Plaza II Apartments (formerly Tully Gardens II Apartments) is hereby authorized to allow a change from 152 units affordable to extremely low-income ("ELI") households at up to 30% of Area Median Income ("AMI") and one unrestricted manager's unit to 76 units affordable to ELI households at up to 30% of AMI and 75 units to be restricted affordable to very low-income households ("VLI") for new or over income tenants only at up to 35% of AMI;
- b. An increase to rents and income up to 60% AMI (low-income) for all units in the event of foreclosure or for new tenants in subsidized units in the event of the expiration or involuntary termination of subsidy contracts, provided the City has determined the increase is needed for feasibility of the development and allowed by other funds is hereby authorized;

- c. The extension of the existing City's loan term by an additional 17 years; until the 55th anniversary of the closing of the bond financing, and a decrease in the City's loan interest rate from 4.77% fixed, compounded annually to 3% fixed, compounded annually is hereby authorized;
- d. The subordination of the City's Deeds of Trust to a County option to purchase the land, provided that the City shall have a right of first refusal to purchase the land is hereby authorized; and
- e. The Director of Housing is hereby authorized to negotiate and execute any City loan documents, grant documents, amendments, and all other documents related to these actions.

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk