

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE ISSUANCE OF MULTIFAMILY HOUSING REVENUE NOTES AND THE LOAN OF THE PROCEEDS THEREOF FOR THE FINANCING OF VITALIA (FORMERLY KNOWN AS BASCOM APARTMENTS), LOCATED AT 3090 SOUTH BASCOM AVENUE 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 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, Bascom Affordable Housing, L.P., a California limited partnership (the “Borrower”), has requested that the City issue and sell two Notes (defined below) for the purpose of financing costs of the construction by the Borrower of a 79 unit multifamily rental housing development to be located at 3090 South Bascom Avenue in the City (to

be renumbered upon building permit issuance to 3100 Bascom Avenue), currently identified as Vitalia, and formerly known as Bascom Apartments (the "Project"); and **WHEREAS**, on May 21, 2021, the Director of Finance and the Director of Housing of the City executed Declaration No. 2021-03, expressing the intent of the City to issue the Notes to finance the construction of the Project; and

WHEREAS, a notice of a public hearing with respect to the proposed issuance of the Notes was published on October 22, 2021; and

WHEREAS, a public hearing was held before the Director of Finance of the City on November 2, 2021 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 Notes and the financing and operation of the Project; and

WHEREAS, subsequent to the public hearing, the Mayor executed a Certificate approving the issuance of the 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 August 11, 2021, the California Debt Limit Allocation Committee adopted its Resolution No. 21-215 allocating \$35,672,716 of the 2021 California State ceiling for qualified private activity bonds to the City for the Project; 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 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), revenue notes of the City designated as “City of San José, California Multifamily Housing Revenue Note (Vitalia), Series 2021F-1” and “City of San José, California Multifamily Housing Revenue Note (Vitalia), Series 2021F-2” (referred to in this Resolution collectively as the “Notes”), in an aggregate principal amount not to exceed \$35,672,716, are hereby authorized to be issued. The 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 Finance, the Deputy Director, Debt and Treasury Management, or the designee of any of them (each, an “Authorized Officer”), in the forms set forth in and otherwise in accordance with the Funding Loan Agreement.
3. The Funding Loan Agreement with respect to the Notes (the “Funding Loan Agreement”) among the City, MUFG Union Bank, N.A., as funding lender (the “Funding Lender”), and [Fiscal Agent], 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 7 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, manner of execution, place of payment, principal amount, terms of prepayment and other terms of the Notes shall be as provided in the Funding Loan Agreement as finally executed.
4. The Construction and Permanent Loan Agreement (Multifamily Housing Back to Back Loan Program) among the Funding Lender, the City and the Borrower (the “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 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 7 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the 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 7 hereof, the approval of such changes to be conclusively evidenced by the execution and delivery by the City of the Regulatory Agreement.
 6. The 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 Notes by executing the Fiscal Agent’s certificate of authentication and registration appearing thereon, and to deliver the Notes, when

duly executed and authenticated, to or upon the order of 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 Notes to the Funding Lender, upon receipt by the Fiscal Agent of the initial advance of the purchase price of the Notes.

7. 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 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 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 Project.
8. 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 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 Project, any addition or substitution of security for the Notes or any prepayment of the 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 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 obligation or liability of the City other than as provided in the Funding Loan Agreement, the Loan Agreement and the other documents approved herein.

9. 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 _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk