

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (A) DECLARING THE RESIDENTIAL CONDOMINIUM UNIT LOCATED AT 435 NORTH 2ND STREET, UNIT 213, IN SAN JOSE (APN 249-73-047) SURPLUS TO THE NEEDS OF THE CITY; (B) WAIVING THE PROCEDURES REQUIRED UNDER COUNCIL POLICY 7-13; (C) APPROVING THE SALE OF THE RESIDENTIAL CONDOMINIUM UNIT TO KIM COSMAS, OR OTHER QUALIFIED BUYER, FOR NO LESS THAN \$588,000; (D) APPROVING THE PAYMENT OF CLOSING COSTS IN ACCORDANCE WITH SANTA CLARA COUNTY CUSTOM, AND THE BUYER'S AGENT FEE IN THE AMOUNT OF 2.5% OF THE SALES PRICE OF \$588,000, OR \$14,700, TO EXP REALTY OF CALIFORNIA, INC., OR A SIMILAR AGENT, IN ACCORDANCE WITH COUNCIL POLICY 7-6; AND (E) AUTHORIZING THE CITY MANAGER, OR HER DESIGNEE, TO NEGOTIATE AND EXECUTE A PURCHASE AND SALE AGREEMENT, A QUITCLAIM DEED, AND ALL OTHER DOCUMENTS NECESSARY TO COMPLETE THE TRANSACTION

WHEREAS, on April 4, 2000, the City Council adopted the Executive Home Loan Program, which allowed the City of San José ("City") to offer loans in amounts up to \$250,000 to the City's Executive Senior Staff and Council appointees to assist in relocating to San José; and

WHEREAS, on December 14, 2004, the City Council adopted Resolution No. 72450 approving the appointment of Barbara Attard as the City's Independent Police Auditor; for this appointment, Ms. Attard relocated to San José and purchased the residential condominium located at 435 North 2nd Street, Unit 213 ("Property") for \$350,000, obtaining a \$250,000 loan through the City's Executive Home Loan Program, along with a \$100,000 first mortgage loan from Suntrust Mortgage Company; and

WHEREAS, at the end of the four-year appointment, the City Council did not renew Ms. Attard's contract as the Independent Police Auditor, and under the terms of the City's program and loan documents, Ms. Attard's loan repayment was due within six months of termination, or by July 1, 2009; and

WHEREAS, on May 8, 2009, Ms. Attard notified the City that she had attempted to sell the Property in order to repay the outstanding loans, but due to the declining economic conditions, the value of the Property had dropped below the total outstanding debt; and

WHEREAS, on August 4, 2009, the City Council adopted Resolution No. 75010 accepting the deed to the Property in lieu of foreclosure, repaying the first loan to Suntrust Mortgage Company and settling the City Executive Home Loan, for a total settlement amount of \$348,939; and

WHEREAS, the City retained Realty World, a local real estate brokerage and property management firm, to manage the Property and rent the condominium to an individual tenant, until the tenant moved out in July 2016; and

WHEREAS, the City determined that the Property was nonessential to the City and attempted to sell the Property in 2017, however the sale was not completed and the unit has been vacant since July 2016; and

WHEREAS, San José Municipal Code Chapter 4.20 permits the sale of City-owned surplus property upon the City Council finding and determining that the property is not needed for, nor adaptable to, municipal purposes; and

WHEREAS, owning a residential condominium unit is not consistent with the City's mission and core services, and the City's General Fund Structural Deficit Elimination Plan calls for the sale of nonessential City-owned properties; and

WHEREAS, while Council Policy 7-13, “Policy for the Sale of Surplus Property with Provisions Relating to Affordable Housing”, generally governs the sale of City-owned property, City staff recommends that the City Council waive strict compliance with Council Policy 7-13 in this transaction given that this is a unique property that the City typically does not typically own or possess (a single, residential condominium unit) which is not developable in any manner; and

WHEREAS, the Surplus Land Act, the state law which also generally governs the sale of government-owned real property, also does not apply to this transaction as the City does not own the Property in fee simple as it is a condominium (fractional fee ownership) and is not developable; and

WHEREAS, the City has used a competitive process to reach the terms of this proposed sale by listing and marketing the Property on the open market, has held open houses, and reviewed all offers received from the public; and

WHEREAS, on May 10, 2022, the City received an offer from Kim Cosmas, a proposed “owner-occupant” via her real estate agent, Charlene Browne from eXp Realty of California, Inc., to purchase the Property for \$588,000, which was the listing price and was determined by City staff to be the Property’s fair market value; and

WHEREAS, the industry standard 2.5% commission for the buyer’s agent was offered in the Property’s listing and is consistent with Council Policy 7-6, “Sales Commissions, Real Estate”; and

WHEREAS, the City desires to declare the Property as surplus to the needs of the City and authorize the City Manager or her designee to negotiate and execute a Purchase

and Sale Agreement, a Quitclaim Deed, and all other documents necessary to facilitate the sale of the Property to Kim Cosmas for the amount of \$588,000;

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

- A. The residential condominium unit located at 435 North 2nd Street, Unit 213, in San José (APN 249-73-047) is hereby declared surplus to the needs of the City in accordance with San José Municipal Code Chapter 4.20, as the Property is not needed for, nor adaptable to, municipal purposes.
- B. The procedures required under Council Policy 7-13 are hereby waived for this transaction.
- C. The sale of the residential condominium unit to Kim Cosmas, or other qualified buyer, for no less than \$588,000, is hereby approved.
- D. The payment of closing costs in accordance with Santa Clara County custom and the buyer's agent fee in the amount of 2.5% of the sales price of \$588,000, or \$14,700, to eXp Realty of California, Inc., or a similar agent, in accordance with Council Policy 7-6, is hereby approved.
- E. The City Manager, or her designee, is hereby authorized to negotiate and execute a Purchase and Sale Agreement, a Quitclaim Deed, and all other documents necessary to complete the transaction.

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ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk