

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 (1860 ALUM ROCK APARTMENTS), SERIES 2023A-1 (TAX-EXEMPT)” IN A PRINCIPAL AMOUNT NOT TO EXCEED \$29,468,877 (THE “2023A-1 NOTE”) AND, (2) TAXABLE MULTIFAMILY HOUSING REVENUE NOTE DESIGNATED AS “CITY OF SAN JOSE MULTIFAMILY HOUSING REVENUE NOTE (1860 ALUM ROCK APARTMENTS), SERIES 2023A-2 (TAXABLE)” IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$4,000,000 (THE “2023A-2 NOTE” AND WITH THE 2023A-1 NOTE, THE “2023A NOTES”); (B) APPROVING THE LOAN OF 2023A NOTES PROCEEDS TO ALUM ROCK, L.P., A CALIFORNIA LIMITED PARTNERSHIP CREATED BY CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA COUNTY, A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION, TO FINANCE THE CONSTRUCTION AND DEVELOPMENT OF A 60-UNIT MULTIFAMILY DEVELOPMENT 1860 ALUM ROCK APARTMENTS LOCATED AT 1860 ALUM ROCK AVENUE IN SAN JOSE (“DEVELOPMENT”); (C) APPROVING IN SUBSTANTIALLY FINAL FORM THE FUNDING LOAN AGREEMENT, THE BORROWER LOAN AGREEMENT, REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, CONTINGENCY DRAW-DOWN AGREEMENT AND RELATED DOCUMENTS; AND (D) 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 2023A NOTES DOCUMENTS TOGETHER WITH ANY DOCUMENTS ANCILLARY TO THE 2023A NOTES

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, Alum Rock, L.P., a California limited partnership (the “Borrower”), has requested that the City issue and sell two 2023A Notes (defined below) for the purpose of financing costs of the construction by the Borrower of a 60-unit multifamily rental housing development to be located at 1860 Alum Rock Avenue in the City, currently identified as 1860 Alum Rock Apartments (the “Project”); and

WHEREAS, on August 4, 2022, the Director of Finance and the Director of Housing of the City executed Declaration No. 2022-2, expressing the intent of the City to issue the 2023A Notes to finance the construction of the Project; and

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

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WHEREAS, a public hearing was held before the Director of Finance of the City on March 27, 2023 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 2023A Notes and the financing and operation of the Project; and

WHEREAS, on March 27, 2023, the Mayor executed Certificate No. 2023-4, approving the issuance of the 2023A 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 November 30, 2022, the City received a private activity bond volume cap allocation in the amount of \$29,468,877 (the "Allocation Amount") from the California Debt Limit Allocation Committee in connection with the Project; 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 2023A 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 2023A 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 revenue note designated as “City of San José Multifamily Housing Revenue Note (1860 Alum Rock Apartments) Series 2023A-1 (Tax-Exempt)” (referred to herein as the “Tax-Exempt 2023A-1 Note”) in an aggregate principal amount not to exceed \$29,468,877 is hereby authorized to be issued, and a taxable multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (1860 Alum Rock Apartments) Series 2023A-2 (Taxable)” (referred to herein as the “Taxable 2023A-2 Note” and, together with the Tax-Exempt 2023A-1 Note as the “2023A Notes”), in an aggregate principal amount not to exceed \$4,000,000 is hereby authorized to be issued; provided that the aggregate principal amount of any federally tax-exempt obligations shall not exceed the Allocation Amount. The 2023A 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 Assistant Director of Housing, the Deputy Director, Debt & 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 2023A Notes (the “Funding Loan Agreement”) among the City, Citibank, N.A., a national banking association (the “Funding Lender”), and U.S. Bank Trust Company, National Association, 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 2023A 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.

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6. The proposed form of Contingency Draw-Down Agreement by and among the Borrower and the Funding Lender, 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 2023A 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 2023A Notes by executing the Fiscal Agent's certificate of authentication and registration appearing thereon, and to deliver the 2023A Notes, when duly executed and authenticated, to 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 2023A Notes to the Funding Lender, upon the initial advance by the Funding Lender of the purchase price of the 2023A 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 2023A 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 2023A 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.

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 2023A 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 2023A Notes or any prepayment of the 2023A 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 Project; 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.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk