

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING THE ISSUANCE OF TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS AND THE LOAN OF THE PROCEEDS THEREOF AND APPROVING RELATED DOCUMENTS FOR THE MARKHAM PLAZA I PROJECT

WHEREAS, the City Charter of the City of San José (the “City”) permits the City 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 issue bonds for the purpose of financing the acquisition, construction, rehabilitation, refinancing or development 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 incurring indebtedness to finance the acquisition, construction, rehabilitation, refinancing or development of multifamily rental housing facilities, and has determined to borrow money for the purposes of financing the acquisition and rehabilitation of the Project (as defined below) by issuing a series of tax-exempt limited obligation revenue bonds (the “Senior Bonds”), the sole source of payment for which is to be a related promissory note issued by Markham Plaza I, LP, a California limited partnership (the “Borrower”), and a series of tax-exempt limited obligation revenue bonds subordinate to the Senior Bonds (the “Subordinate Bonds,” and together with the Senior Bonds, the “Bonds”), the sole source of payment for which is to be a related subordinate promissory note issued by the Borrower, all 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, the Borrower has requested that the City issue the Bonds for the purpose of financing the acquisition and rehabilitation within the City of a multifamily rental housing development known as Markham Plaza I (the “Project”); and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to the implementation of the Program and the consummation of the transactions contemplated by this resolution and the documents referred to herein now exist, have happened and have been performed in due time, form and manner as required by the Charter and laws of the City, and laws of the State of California, including the Act;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San José that:

Section 1. The City Council hereby finds and declares that the above recitals are true and correct.

Section 2. Pursuant to the Act and the Senior Indenture (as defined below), the Senior Bonds, designated as “City of San José Multifamily Housing Revenue Bonds (Markham Plaza I) Series 2019B-1,” are hereby authorized to be issued. Pursuant to the Act and the Subordinate Indenture (as defined below), the Subordinate Bonds, designated as “City of San José Multifamily Housing Revenue Bonds (Markham Plaza I) Subordinate Series 2019B-2,” are hereby authorized to be issued. The aggregate principal amount of the Bonds shall not exceed \$23,000,000.

Each series of Bonds shall be executed by the manual or facsimile signature of the City Manager, the Director of Housing, the Director of Finance or the Assistant Director of Finance, Treasury Division Manager and Debt Administrator or the designee of any of them (each, an “Authorized Officer”) and attested by the manual or facsimile signature of the City Clerk, in the form set forth in and otherwise in accordance with the related Indenture (as hereinafter defined). The Program for the loan of the proceeds of the Bonds to the Borrower is also authorized.

Section 3. The proposed forms of the following documents with respect to the Bonds (collectively, the “Documents”) between and/or among the City and the institutions named therein, on file with the City Clerk, are hereby approved:

- (a) an Indenture of Trust by and between U.S. Bank National Association, as trustee (the “Senior Trustee”), and the City, relating to Senior Bonds (the “Senior Indenture”);
- (b) a Subordinate Indenture of Trust between the U.S. Bank National Association, as trustee (the “Subordinate Trustee”), and the City, relating to the Subordinate Bonds (the “Subordinate Indenture” and, together with the Senior Indenture, the “Indentures”);
- (c) the Senior Bonds (in the form thereof attached to the Senior Indenture);
- (d) the Subordinate Bonds (in the form thereof attached to the Subordinate Indenture);
- (e) a Loan Agreement by and between the City and Borrower, relating to the Senior Indenture (the “Senior Loan Agreement”);
- (f) a Subordinate Loan Agreement among the City, Borrower and Subordinate Trustee, relating to the Subordinate Indenture (the “Subordinate Loan

Agreement” and, together with the Senior Loan Agreement, the “Loan Agreements”); and

- (g) the Regulatory Agreement and Declaration of Restrictive Covenants by and among the City, Borrower and U.S. Bank National Association, as trustee under each Indenture (the “Regulatory Agreement”).

Each of the Authorized Officers, acting alone, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Documents in said forms, 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, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Documents.

Section 4. The Senior Bonds, when executed, shall be delivered to the Senior Trustee for authentication. The Senior Trustee is hereby requested and directed to authenticate the Senior Bonds by executing the Subordinate Trustee’s certificate of authentication and registration appearing thereon, and to deliver the Senior Bonds, when duly executed and authenticated, to U.S. Bank National Association as purchaser, in accordance with written instructions executed on behalf of the City by any Authorized Officer, which instructions such officer (or such officer’s designee) is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Senior Trustee. Such instructions shall provide for the delivery of such Senior Bond in accordance with the Senior Indenture upon receipt of the amount of the Loan (as defined in the Senior Loan Agreement).

The Subordinate Bonds, when executed, shall be delivered to the Subordinate Trustee for authentication. The Subordinate Trustee is hereby requested and directed to authenticate the Subordinate Bonds by executing the Subordinate Trustee’s certificate of authentication and registration appearing thereon, and to deliver the Subordinate Bonds, when duly executed and authenticated, to Tully Gardens, L.P., as purchaser, in accordance with written instructions executed on behalf of the City by any Authorized Officer, which instructions such officer (or such officer’s designee) is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Subordinate Trustee. Such instructions shall provide for the delivery of such Subordinate Bond in accordance with the Subordinate Indenture upon receipt of the amount of the Subordinate Loan (as defined in the Subordinate Loan Agreement).

Section 5. All actions heretofore taken by the officers and agents of the City with respect to the financing of the Project and the sale and issuance of the Bonds are hereby approved, confirmed and ratified, and the proper officers of the City 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, including but not limited to an endorsement of a note and related documents, a tax certificate and agreement and such other documents and agreements as described in the Indentures, Loan Agreements and other documents herein approved,

that are required in connection with the financing of the Project or that such officers, or any of them, may deem necessary or advisable in order to (i) consummate the lawful issuance and delivery of the Bonds, subject to the conditions set forth herein, (ii) effectuate the purposes of the Bonds and of the documents herein approved in accordance with this resolution and resolutions heretofore adopted by the City or (iii) otherwise carry out the financing of the Project.

Section 6. All assignments, allonges, conveyances, reconveyances, consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this resolution, whether before or after any issuance of the Bonds, 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 Bonds or any redemption of the Bonds, may be given or taken by 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 Indentures, Loan Agreements and other documents approved herein.

Section 7. 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.

Section 8. This Resolution shall take effect immediately upon its adoption.

RD:EJM
9/5/19

ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk