

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SAN JOSE, CALIFORNIA, AUTHORIZING THE
EXECUTION, SALE AND DELIVERY OF ONE OR MORE
MULTIFAMILY HOUSING REVENUE NOTES IN AN
AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED
\$36,855,974, AND THE LOAN OF THE PROCEEDS
THEREOF FOR THE FINANCING OF ALUM ROCK FAMILY
HOUSING; AND APPROVING OTHER RELATED
DOCUMENTS AND ACTIONS**

WHEREAS, the City of San José (the “City”) is a municipal corporation and charter city duly organized and existing under a charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter of the City (the “Charter”); and

WHEREAS, the Charter provides that the City is authorized to issue revenue notes and bonds pursuant to California law and the City is authorized to issue revenue notes and bonds under Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code, as amended (the “Act”), which authorizes cities to issue revenue notes and bonds for the purpose of, among other things, financing the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing and capital improvements in connection with and determined necessary to such multifamily housing; and

WHEREAS, the Act provides that the proceeds of notes and bonds issued by a city may be loaned to a nongovernmental owner of multifamily housing to allow such owner, who

shall be responsible for the payment of such notes and bonds, to reduce the cost of operating such housing and to assist in providing housing for low income persons; and

WHEREAS, Alum Rock Family Housing, L.P., a California limited partnership (the “Borrower”), has requested that the City execute, sell and deliver one or more multifamily housing revenue notes for the purpose of financing the acquisition, construction and development of an 87-unit multifamily rental housing development located in the City to be generally known as Alum Rock Family Housing (the “Project”); and

WHEREAS, on April 14, 2020, the City received an allocation in the amount of \$36,855,974 (the “Allocation Amount”) from the California Debt Limit Allocation Committee in connection with the Project; and

WHEREAS, the City is willing to issue one or more Multifamily Housing Revenue Notes (as more fully described herein, the “Notes”), and to loan the proceeds thereof to the Borrower, who shall be responsible for the payment of such Notes, to allow the Borrower to assist in providing housing for low income persons; and

WHEREAS, the Borrower has advised the City that the Borrower and the initial purchaser of the Notes are expected to be related entities for purposes of the Internal Revenue Code of 1986, and the applicable Treasury Regulations promulgated thereunder (the “Code”), and bond counsel has advised the City that because of such arrangement, the issuer fees and/or annual monitoring fees in respect of the Notes may be required to be less than the fees specified in the policies of the City for the issuance of multifamily housing revenue bonds; and

WHEREAS, except in respect of issuer fees and annual monitoring fees, or as otherwise specifically authorized herein, the execution, sale and delivery of the Notes will be conducted in accordance with the City’s policies related thereto, and the City Council finds that the public interest and necessity require that the City at this time make arrangements for the sale of the Notes; and

WHEREAS, there has been prepared and filed with the City Clerk for consideration at this meeting the documentation required for the issuance and sale of the Notes, and such documentation is in substantially final form and an appropriate instrument to be executed and delivered for the purposes intended; and

WHEREAS, all acts, conditions and things required by the laws and Charter of the City and the laws of the State of California, including the Act, to exist, to have happened and to have been performed precedent to and in connection with the consummation of the financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is duly authorized and empowered, pursuant to each and every requirement of law, to authorize such financing and to authorize the execution of the documents related thereto, for the purposes, in the manner and upon the terms provided in this resolution;

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

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

2. Revenue notes in one or more series are hereby approved and authorized to be executed and delivered pursuant to, and in compliance with, the Act and the Funding Loan Agreement (hereinafter defined). The Notes are each to be designated as the "City of San José Multifamily Housing Revenue Note (Alum Rock Family Housing) Series 2020A," or such other series or subseries designation as set forth in the Funding Loan Agreement as finally executed. The Notes shall be issued in an aggregate principal amount not to exceed the Allocation Amount. The Notes shall be in the form set forth in and otherwise in accordance with the Funding Loan Agreement, and 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 Treasury Division Manager, or the 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.

3. The proposed form of Funding Loan Agreement (the “Funding Loan Agreement”), among the City, Bank of America, N.A., a national banking association, as funding lender (the “Funding Lender”) and U.S. Bank National Association (or such other financial institution selected by an Authorized Officer), as fiscal agent (the “Fiscal Agent”), on file with the City Clerk, is hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Funding Loan Agreement and the City Clerk is hereby authorized and directed to attest to the signature of any such Authorized Officer on said Funding Loan Agreement, in substantially said form, with such additions thereto or changes therein as approved by any Authorized Officer upon consultation with bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

The dated date, maturity date or dates (which shall not extend beyond 35 years from the date of original execution and delivery thereof), interest rate or rates (which shall not exceed 12% per annum), interest payment dates, denominations, form, registration privileges, manner of execution, place of payment, terms of prepayment and other terms of the Notes shall be as provided in the Funding Loan Agreement as finally executed.

4. The proposed form of Borrower Loan Agreement (the “Borrower Loan Agreement”), among the City, the Borrower and the Fiscal Agent on file with the City Clerk, is hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Borrower Loan Agreement and the City Clerk is hereby authorized and directed to attest to the signature of any such Authorized Officer on the Borrower Loan Agreement, in substantially said form, with such additions thereto or changes therein as approved by

any Authorized Officer upon consultation with bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

5. The proposed form of Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") by and among the City, the Fiscal Agent and the Borrower, on file with the City Clerk, is hereby approved. The City's Director of Housing and the Director of Finance are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Regulatory Agreement in substantially said form, with such additions thereto or changes therein as said officials may approve upon consultation with bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

6. Notwithstanding the policies of the City for the issuance of multifamily housing revenue bonds, if and for so long as necessary, upon the advice of bond counsel and with consultation from the City Attorney, to ensure that interest in respect of the Notes may be and remain excluded from gross income under the Code, any Authorized Officer is authorized to establish or agree to an issuance fee, an annual monitoring fee, or a combination thereof, in an amount or amounts lower than that which would otherwise be prescribed pursuant to such policies, such fees to be calculated by a rebate analyst, municipal advisor or similar person having expertise in such matters, such that the yield on the loan to the Borrower does not exceed the yield on the Notes by more than one-eighth of one percent (0.125%), as determined in accordance with the Code. Any Authorized Officer, for and in the name and on behalf of the City, is hereby authorized to make certifications and enter into covenants and agreements in connection with the foregoing as may be necessary to ensure the tax-exempt status of the Notes, including an agreement to refund any portions of such fees determined to have exceeded the foregoing limit.

7. All actions heretofore taken by the officers and agents of the City with respect to the financing of the Project and the execution, sale and delivery of the Notes 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 any of such Notes and related documents, a tax certificate and agreement and such other documents and agreements as described in the Funding Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreement and the other documents herein approved, which they, or any of them, may deem necessary or advisable in order to consummate the lawful execution and delivery of the Notes, subject to the conditions set forth herein, and to effectuate the purposes thereof and of the documents herein approved in accordance with this resolution and resolutions heretofore adopted by the City and otherwise in order to carry out the financing of the Project.

8. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this resolution, whether before or after the execution and delivery of any 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 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 and other documents approved herein.

9. If any Authorized Officer 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.

10. If any section, paragraph, or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any remaining provisions of this resolution.

11. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

12. This resolution shall take immediate effect from and after its adoption.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO

Mayor

ATTEST:

TONI J. TABER, CMC,

City Clerk