

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING (A) THE REFINANCING OF THE HUFF AVENUE APARTMENTS; (B) THE DIRECTOR OF HOUSING TO NEGOTIATE AND EXECUTE A HOUSING AND URBAN DEVELOPMENT (“HUD”) REQUIRED AMENDMENT TO THE CITY’S EXISTING AFFORDABILITY RESTRICTION THAT INCLUDES AN OVERRIDE OF ANY CITY TERMS THAT CONFLICT WITH ANY HUD DOCUMENT AND LIMIT THE CITY’S RIGHT TO MAKE CLAIMS INCLUDING CLAIMS FOR EXCESS RENTS, DAMAGES AND CITY FEES AS PROVIDED IN THE EXISTING AFFORDABILITY RESTRICTION TO SURPLUS CASH ONLY AND OTHER AMENDMENTS TO CITY’S LOAN DOCUMENTS IN ORDER TO ENABLE REFINANCING OF THE PROPERTY’S SENIOR LOAN AND PAYOFF OF THE CITY LOAN; AND (C) THE DIRECTOR OF HOUSING TO NEGOTIATE AND EXECUTE A PAYMENT GUARANTY FROM THE SANTA CLARA COUNTY HOUSING AUTHORITY GUARANTYING THE ABILITY OF THE CITY TO EXERCISE ITS RIGHT TO CLAIM AND RECEIVE PAYMENT FOR EXCESS RENTS, FEES, AND OTHER MONETARY PENALTIES IN THE EVENT THAT THE BORROWER VIOLATES THE AFFORDABILITY RESTRICTION

WHEREAS, built in 1997, Huff Avenue Apartments (“Project”) located at 3021 Huff Avenue (“Property”) consists of 72 apartments with a mix of 40 two-bedroom, 28 three-bedroom and four (4) four-bedroom apartments affordable to 36 very-low and 36 low-income households and families, and Santa Clara County Housing Authority (“SCCHA” or “Sponsor”) is the developer and Sponsor of Huff Avenue LLC, a California limited liability company (“Borrower”); and

WHEREAS, the City’s Affordability Restriction expires on March 20, 2052, and the Property was originally financed with (1) equity derived from the sale of low-income housing federal and state tax credits of \$10,320,000; (2) a City of San José (“City”) loan

of \$989,181; and (3) a senior loan of \$3,969,000 from ARCS Commercial Mortgage; and

WHEREAS, the City's loan, which was funded with 20% Redevelopment Funds, has a current balance of \$36,000 and is paid by 75% of annual net cash flow after payment of expenses, bears 2.5% interest compounding annually, and is due in full at maturity on March 12, 2027; and

WHEREAS, in September 2020, the Borrower submitted a proposal to the City to refinance the Property in order to take advantage of the current low interest rates to reduce financing costs, rehabilitate the Property and augment the cash flow; and

WHEREAS, the refinance proposal is to obtain a new senior loan from a Department of Housing and Urban Development ("HUD") insured 223 loan in the amount of \$9,000,000 ("HUD Loan"), which would be used to pay off the existing senior loan and City loan of approximately \$3,302,439, to pay fees and closing costs of \$294,871, rehabilitate the Property at an estimated cost of \$4,677,194 and increase replacement reserves as required HUD by in the amount of \$725,496; and

WHEREAS, the proposed HUD 223 Loan of \$9 million will bear an interest rate of approximately 2.65% with a maturity of ~~2035~~ years, with required monthly payments of principal and interest in the amount of ~~\$50,227,32,903~~ based on a ~~2035~~-year amortization, and the existing ARCS Commercial Mortgage loan, with monthly payments of \$25,572, at 6.685% interest rate will mature on August 1, 2036; and

WHEREAS, the City would need to allow the HUD Loan documents to limit the City's right to exercise its claim to excess rents, City fees and other monetary penalties in the case of noncompliance under the existing Affordability Restriction, however, the City

Affordability Restriction will not be subordinate to the HUD Loan and will survive in the event that HUD forecloses; and

WHEREAS, the City's current Underwriting Guidelines regarding subordination of the City Affordability Restriction do not specifically allow carve-outs of certain provisions from the Affordability Restriction as part of a refinance without City Council approval, and therefore, City Council approval is necessary for the proposed refinance transaction which will allow the HUD refinancing to proceed; and

WHEREAS, the Santa Clara County Housing Authority is a public agency that shares the City's mission of creating, maintaining, and preserving housing affordable to low-income residents in San José, has demonstrated consistency with the City's policy priorities, is in good standing, has no unresolved issues of material non-compliance on any of its existing deals with the City; it has submitted its financial documents for review by the City; and, its affiliate, Borrower, plans to retain the sole ownership stake in the Property for the foreseeable future; and

WHEREAS, the Property is in fair to good physical condition and currently structurally sound, and the Borrower will spend approximately \$4,677,200, funded from the refinancing proceeds, for substantial critical and non-critical repairs, replacements and upgrades including exterior building facade improvements, replacement of exterior cladding, roof (incl. gutters and downspouts), windows, exterior doors, building exterior lighting, signage, ADA parking and site improvements, landscape in central court area, conversion of four units to be ADA accessible and two units to have visual and hearing impairment alarms; and

WHEREAS, the refinance proposal results in a net positive financial benefit to the Property with a HUD Loan loan-to-value of 38%, with a debt coverage ratio of not less than 1.15, meeting the City's parameters, further, because the HUD Loan is

conservatively underwritten, the size of the loan does not present additional risk to the City or the Project; and

WHEREAS, although monthly payments of the new senior loan will increase by ~~\$24,6557,334~~, the increased loan size will provide funds for much needed rehabilitation of the Property, and the increased replacement reserve amount will ensure that the Property will preserve and extend its economic life; and

WHEREAS, the City's Affordability Restriction will not be subordinated to the HUD Loan; and the City will agree to give HUD rights to excess rents, fees, and other monetary penalties which will be mitigated to some degree by having SCCHA, a public entity, provide a payment guaranty to the City in the case of noncompliance of the Affordability Restrictions; and

WHEREAS, the HUD required amendment is a significant limitation on the City's ability to enforce its restrictions and requires the City to agree that any terms of the HUD documents will override the City affordability restriction terms and includes within those overriding documents items that HUD has not provided to the City, so it is not possible to fully assess the scope of the changes to the City restriction, and the HUD required amendment also requires the City to limit any claims it may make under the affordability restriction to surplus cash, potentially limiting the City's remedies; and

WHEREAS, normally such a request would be rejected, however, staff has recommended that in this instance the City Council authorize this significant departure from the City guidelines because (a) this Project offers unique benefits to the City in the form of an offer to significantly extend the years of affordability and (b) the risks of the potential detriment to the Project as an override of the City's terms is reduced because the Developer's sponsor is the SCCHA, which has the same affordable housing mission that City; and

WHEREAS, as consideration for making the requested changes, Borrower has agreed to the following: (1) an extension of the Property's term of affordability by at least 25 years; (2) a Payment Guaranty to be executed by SCCHA, guarantying the City's claim to excess rents, fees, and other monetary penalties against the Borrower, which Payment Guaranty shall terminate on the earlier of the maturity date of the HUD Loan or the HUD Loan payoff; and (3) payoff of the existing City loan; and

WHEREAS, this action gives Borrower the City's consent to refinance the Huff Avenue Apartments with new limits on City's existing Affordability Restriction and allows the City to preserve the longevity of the Affordability Restrictions by adding 25 more years to an existing restricted affordable rental property, Huff Avenue Apartments, while allowing the Borrower to reduce the Property's debt service payments and generate stronger cash flows; and

WHEREAS, the City desires to authorize the Borrower to refinance the Property's existing senior loan and payoff the City loan with HUD loan proceeds, authorize significant HUD required limits on the City Affordability Restriction, as the City will receive a substantial benefit that it could not otherwise obtain due to the Borrower's agreement to extending the City's 55-Year Affordability Restriction for an additional 25 years;

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

- a. The refinancing of the Huff Avenue Apartments ("Property"), a 72-unit affordable apartment development located at 3021 Huff Avenue in San José, owned by Huff Avenue LLC, a California limited liability company ("Borrower"), an affiliate of the Santa Clara County Housing Authority, a public body, corporate and politic that is

also the Project sponsor, by the U.S. Department of Housing and Urban Development ("HUD") is hereby consented to;

- b. The Director of Housing is authorized to negotiate and execute a HUD required amendment to the City's existing affordability restriction that includes an override of any City terms that conflict with any HUD document and limit the City's right to make claims including claims for excess rents, damages and City fees as provided in the existing Affordability Restriction to surplus cash only and other amendments to the City's loan documents in order to enable refinancing of the Property's senior loan and payoff of the City loan; and
- c. The Director of Housing is authorized to negotiate and execute a Payment Guaranty from the Santa Clara County Housing Authority guarantying the ability of the City to exercise its right to claim and receive payment for excess rents, fees, and other monetary penalties in the event that the Borrower violates the Affordability Restriction.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk