

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (A) AUTHORIZING AN INCREASE OF UP TO \$1,651,122 FROM \$13,947,984 TO \$15,999,106 IN THE CITY COUNCIL-APPROVED CONSTRUCTION-PERMANENT LOAN COMMITMENT TO THE DEVELOPER; (B) AUTHORIZING A CHANGE IN CITY LOAN TERMS TO ALLOW AN INCREASE IN THE DEVELOPMENT'S RENTS AND INCOME UP TO 60% AREA MEDIAN INCOME (LOW-INCOME) FOR ALL TENANTS IN THE EVENT OF FORECLOSURE, TO THE EXTENT THE CITY HAS DETERMINED SUCH INCREASE IS NEEDED FOR FEASIBILITY OF THE DEVELOPMENT AND ALLOWED BY OTHER FUNDS; (C) AUTHORIZING THE DIRECTOR OF HOUSING TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE GROUND LEASE TO MODIFY THE BASE LEASE TERM AS MAY BE REQUIRED BY THE HOUSING AND COMMUNITY DEVELOPMENT REGULATIONS SO LONG AS THE TOTAL POTENTIAL TERM OF THE LEASE AND OPTION IS NOT INCREASED; (D) MAKING A DETERMINATION THAT, CONSISTENT WITH GOVERNMENT CODE SECTION 37364, THE PROPERTY CAN BE LEASED WITHOUT FIRST OFFERING THE PROPERTY TO THE PUBLIC FOR ANY OTHER USE, SINCE THE PROPERTY WILL BE USED TO PROVIDE HOUSING AFFORDABLE TO PERSONS AND FAMILIES OF LOW OR MODERATE INCOME, AS DEFINED BY SECTION 50093 OF THE HEALTH AND SAFETY CODE OR AS DEFINED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ITS SUCCESSORS, AND THAT THIS USE IS IN THE CITY'S BEST INTEREST; AND (E) AUTHORIZING THE DIRECTOR OF HOUSING TO NEGOTIATE AND EXECUTE LOAN DOCUMENTS, LEASE DOCUMENTS, AMENDMENTS, AND ALL OTHER DOCUMENTS TO THESE ACTIONS

WHEREAS, on June 2, 2017 the City of San José ("City") Council authorized a predevelopment loan to Satellite Affordable Housing Associates, a California nonprofit corporation ("Developer") in the amount of \$200,000; and

WHEREAS, on February 5, 2019, the City Council authorized a funding commitment for a construction-permanent loan up to \$11,623,320 in Low and Moderate Income Housing Assets Funds for a Construction/Permanent Loan to the Developer or its affiliate, for the development of eighty-seven unit affordable rental project (“The Arya” or “Development”); and

WHEREAS, on May 11, 2020, the City Council authorized an increase of \$1,924,664 resulting in a total commitment of up to \$13,947,984, which increase enabled the City to submit the California Debt Limit Allocation Committee application without a funding gap for the Development; and

WHEREAS, based on Keyser Marston Associates 2019 “Review of Affordable Housing Development Costs”, cost of mid-rise affordable housing development in San José averaged \$652,000 per unit or 11% more than the average cost of non-San José projects, and affordable housing development costs have continued to climb significantly in this market since then and furthermore in 2020 due to the economic impact of the pandemic; and

WHEREAS, The Arya’s current per unit development cost is 15% higher than the 2019 average at \$748,859, and the Arya is not receiving any funding from the County and relies solely on funding from the City and California Department of Housing and Community Development; and

WHEREAS, the City is financing 24% of the total development costs and requesting an increasing in the loan to ensure the long term feasibility of The Arya; this will result in the City loan exceeding the \$125,000 per unit requirement indicated under its 2018 multifamily underwriting guidelines, for a total of \$179,300 per unit; and

WHEREAS, staff is recommending City Council authorization to further increase the City Loan commitment by \$1,651,122 to \$15,599,106, to enable the Arya to close its current funding gap; and

WHEREAS, the City will require that all non-manager units be restricted to Affordable Rent and that 18 units be restricted to households with incomes that do not exceed 30% Area Median Income (“AMI”), 38 units restricted to households with incomes that do not exceed 50% AMI, and 30 units be restricted to households with incomes that do not exceed 60% AMI; and

WHEREAS, staff is recommending City Council authorization for a change in the City Loan terms to allow an increase in the Development’s rents and income up to 60% AMI (low-income) for all tenants in the event of foreclosure, to the extent the City has determine such increase in needed for feasibility of the Development and allowed by other funds; and

WHEREAS, the City, as the Housing Successor to the former redevelopment agency, wishes to sell or lease property acquired with redevelopment funds for affordable housing purposes it must comply with Health and Safety Code Section 33433, which requires the City Council to approve of the proposed sale or lease agreement after a public hearing and upon findings that the consideration that the City will receive for lease of the Site is not less than the fair reuse value for the proposed use, with the covenants and conditions; and

WHEREAS, in December 2019, the City Council approved the ground lease of the City property located at 226 Balbach Street (now 500 Almaden Boulevard) (“Property”) for affordable housing purposes, authorizing an option to ground lease to Developer or its affiliate for the Arya affordable housing project; and

WHEREAS, under the recent amendments to the Surplus Lands Act, the City must follow certain procedures in selling or ground leasing of City property which require the offering of that property to the public, unless the sale or lease falls under an exemption that applies when the property is to be leased for housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors, and the Council has previously determined in its funding commitment actions and other approvals that this use is in the City's best interest; and

WHEREAS, staff is recommending that City Council make a determination consistent with Government Code Section 37364, that the Property can be leased without first offering the Property to the public for any other use, since the Property will be used to provide housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors, and that this use is in the City's best interests;

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

- a. An increase of up \$1,651,122 from \$13,947,984 to \$15,999,106 in the City Council-approved construction-permanent loan commitment to Satellite Affordable Housing Associates, a California nonprofit corporation, or its affiliate is hereby authorized.
- b. A change in City Loan terms to allow an increase in the Development's rents and income up to 60% Area Media Income (low-income) for all tenants in the event of foreclosure, to the extent the City has determined such increase is needed for feasibility of the development and allowed by other funds, is hereby authorized.
- c. The Director of Housing is hereby authorized to negotiate and execute an amendment to the ground lease to modify the base lease term as may be

required by the Housing and Community Development regulations so long as the total potential term of the lease and option is not increased.

- d. Consistent with Government Code Section 37364, is determined that this property can be leased without first offering the property to the public for any other use, since the property will be used to provide housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors, and that this use is in the City's best interests.
- e. The Director of Housing is hereby authorized to negotiate and execute loan documents, lease documents, amendments, and all other documents related to these actions.

ADOPTED this ____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk