RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN JOSÉ APPROVING THE ISSUANCE OF TAX-
EXEMPT MULTIFAMILY HOUSING REVENUE NOTES
AND THE LOAN OF THE PROCEEDS THEREOF AND
APPROVING RELATED DOCUMENTS FOR THE
BLOSSOM HILL SENIOR APARTMENTS 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, "bonds" are defined in Health and Safety Code Section 52011, for the purposes of the Act, to include notes and any other limited obligation; 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") pursuant to a plan of finance 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 construction of the Project (as defined below) by the execution and delivery of the Governmental Lender Note (as defined below), the sole source of payment for each of which is to be a promissory note issued by Blossom Hill, L.P., a California limited partnership (the "Borrower"), all as authorized by the Act; 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, as amended, 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 Governmental Lender Note 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 Governmental Lender Note 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 Governmental Lender Note; 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 execute and deliver the Governmental Lender Note for the purpose of financing the acquisition, construction and development within the City of a multifamily seniors rental housing development known or to be known as Blossom Hill Senior Apartments (the "Project") located at 397 Blossom Hill Road, San José, California 95123; and

WHEREAS, the Borrower, as owner of the Project provided to the City the following information as a good faith estimate of the cost of the Governmental Lender Note financing and the City disclosed such information at a public hearing in accordance with Section 5852.1 of the California Government Code: (a) the true interest cost of the

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Governmental Lender Note, (b) the finance charge of the Governmental Lender Note, including all third party expenses, (c) the amount of proceeds received by the City for the issuance and delivery of the Governmental Lender Note less the finance charge of the Governmental Lender Note and any reserves or capitalized interest paid or funded with proceeds of the Governmental Lender Note and (d) the total payment amount (the "Financing Information"); and

WHEREAS, such Financing Information has been disclosed in connection with the City Council meeting in which this Resolution is approved; 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 JOSE 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 Funding Loan Agreement (hereinafter defined), limited obligation revenue notes of the City, designated as "City of San José Multifamily Housing Revenue Note (Blossom Hill Senior Apartments) Series 2021B" in an aggregate principal amount not to exceed $39,362,559 (the "Governmental Lender Note,"), or in one or more sub-designations as are provided in the Funding Loan

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Agreement are hereby authorized to be issued. The Governmental Lender Note 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"), in the form set forth in and otherwise in accordance with the Funding Loan Agreement (as hereinafter defined). The Program for the loan of the proceeds of the Governmental Lender Note to the Borrower is also authorized.

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

(a)   a Funding Loan Agreement among Wells Fargo Bank, National Association as initial funding lender (the "Funding Lender"), U.S. Bank National Association, as fiscal agent (the "Fiscal Agent") and the City, relating to the Governmental Lender Note (the "Funding Loan Agreement");

(b)   the Governmental Lender Note (in the form thereof attached to the Funding Loan Agreement referenced in paragraph (a) above);

(c)   a Project Loan Agreement among the City, the Fiscal Agent and the Borrower relating to the Funding Loan Agreement (the "Project Loan Agreement"); and

(d)   a Regulatory Agreement and Declaration of Restrictive Covenants by and among the City, the Fiscal Agent and the Borrower (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

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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 Governmental Lender Note, when executed, shall be delivered to the Fiscal Agent for authentication. The Fiscal Agent is hereby requested and directed to authenticate the Governmental Lender Note by executing the Fiscal Agent's certificate of authentication and registration appearing thereon, and to deliver the Governmental Lender Note, 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 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 Fiscal Agent. Such instructions shall provide for the delivery of the Governmental Lender Note in accordance with the Funding Loan Agreement upon receipt of the amount of the Funding Loan (as defined in the Funding Loan Agreement).

Section 5. 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 Governmental Lender Note 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 will comply with the applicable limits under 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 interest on the Governmental Lender Note, including an

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agreement to refund any portions of such fees determined to have exceeded the foregoing limit.

Section 6. 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 Governmental Lender Note 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 as to arbitrage and such other documents and agreements as described in the Funding Loan Agreement, Project Loan Agreement 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 Governmental Lender Note, subject to the conditions set forth herein, (ii) effectuate the purposes of the Governmental Lender Note 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 7. 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 Governmental Lender Note, 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 Governmental Lender Note or any redemption of the Governmental Lender Note, 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

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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, Project Loan Agreement and other documents approved herein.

Section 8. 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 9. This Resolution shall take effect immediately upon its adoption.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

_____
SAM LICCARDO
Mayor

ATTEST:

_____
TONI J. TABER, CMC
City Clerk

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