

RESOLUTION NO.

A RESOLUTION OF THE CITY OF SAN JOSE (A) AUTHORIZING (1) THE ISSUANCE OF TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS DESIGNATED AS “CITY OF SAN JOSE MULTIFAMILY HOUSING REVENUE BONDS (BERRYESSA TOD), SERIES 2026A” (THE “2026A BONDS”), IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$82,584,672 AND (2) UPON MANDATORY TENDER OF THE 2026A BONDS AND CERTAIN OTHER CONDITIONS, THE ISSUANCE OF THE GOVERNMENTAL NOTES (AS DEFINED HEREIN); (B) APPROVING THE LOAN OF THE BOND PROCEEDS TO BERRYESSA AFFORDABLE HOUSING, L.P., A CALIFORNIA LIMITED PARTNERSHIP IN ORDER TO FINANCE THE CONSTRUCTION AND DEVELOPMENT OF A 195-UNIT MULTIFAMILY DEVELOPMENT CURRENTLY KNOWN AS BERRYESSA TOD, LOCATED AT 1565 MABURY ROAD IN THE CITY OF SAN JOSE; (C) APPROVING IN SUBSTANTIALLY FINAL FORM THE TRANSACTION DOCUMENTS (AS DEFINED HEREIN); (D) AUTHORIZING AND DIRECTING THE CITY MANAGER, DIRECTOR OF HOUSING, DIRECTOR OF FINANCE, ASSISTANT DIRECTOR OF FINANCE, DEPUTY DIRECTOR OF FINANCE – DEBT & TREASURY MANAGEMENT OR THEIR DESIGNEES, TO NEGOTIATE, EXECUTE AND DELIVER THE TRANSACTION DOCUMENTS TOGETHER WITH ANY AND ALL DOCUMENTS NECESSARY TO EXECUTE AND DELIVER THE BONDS AND THE GOVERNMENTAL NOTES, COMPLETE THE TRANSACTION CONTEMPLATED HEREIN AND IMPLEMENT THIS RESOLUTION, AND RATIFYING AND APPROVING ANY ACTION HERETOFORE TAKEN IN CONNECTION WITH THE 2026A BONDS AND THE GOVERNMENTAL NOTES; AND (E) AUTHORIZING THE LOAN TERMS TO ALLOW AN INCREASE IN THE RENTS AND INCOME RESTRICTIONS UP TO 60% OF AREA MEDIAN INCOME FOR NEW TENANTS IN PROJECT-BASED VOUCHER SUBSIDIZED APARTMENTS IN THE EVENT OF EXPIRATION OR TERMINATION OF PROJECT-BASED VOUCHERS AND FOR ALL TENANTS IN THE EVENT OF FORECLOSURE, TO THE EXTENT THE CITY HAS DETERMINED SUCH INCREASE IS NEEDED FOR THE FEASIBILITY OF THE DEVELOPMENT AND ALLOWED BY OTHER FUNDS

WHEREAS, the City of San José (the “City”) is a municipal corporation and charter city duly organized and existing under the Charter of the City (the “Charter”) pursuant to which the City has the right and power to make and enforce all laws and regulations with 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; 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 incur indebtedness for the purpose of financing the acquisition, construction and 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 purpose of financing the construction and development of the Project (as defined herein) by the execution and delivery of the 2026A Bonds and the Governmental Notes (as defined herein), 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 2026A Bonds will be payable solely from and secured by the Trust Estate (as defined in the Trust Indenture (as defined herein), consisting primarily of amounts received by the Borrower under the Loan Agreement (as defined herein) and evidenced by the Note (as defined herein) and various accounts and monies held under the Trust Indenture), and the 2026A Bonds will not be paid from or secured by the general taxing power of the City nor any other asset other than the Trust Estate; and

WHEREAS, Berryessa Affordable Housing L.P., a California limited partnership (the “Borrower”), intends to construct and develop a 195-unit (including two unrestricted manager units) multifamily rental housing project located at 1565 Mabury Road in the City of San José, currently known as “Berryessa TOD” (the “Project”); and

WHEREAS, the Development is to be funded by the 2026A Bond proceeds, tax credit equity, loans from state and local agencies, and other contributions; and

WHEREAS, the Borrower has requested the City to execute and deliver tax-exempt multifamily housing revenue bonds designated as “City of San José Multifamily Housing Revenue Bonds (Berryessa TOD), Series 2026A” in an aggregate principal amount not exceed \$82,584,672 and to loan the proceeds of the 2026A Bonds to the Borrower to finance the construction and development of the Project; and

WHEREAS, the Borrower has secured 49 Project-Based Vouchers to support the extremely low-income units with households earning less than 30 AMI; and

WHEREAS, the Berryessa TOD development will be subject to low-income housing tax credit restrictions; and

WHEREAS, the low-income housing tax credits, awarded by the California Tax Credit Allocation Committee, will be sold to private investors to generate tax credit equity, thereby reducing the amount of debt required and helping to maintain long-term affordability for low-income households; and

WHEREAS, in the event of a foreclosure or loss of Project Based Vouchers, approval of staff’s recommended action will also allow the development to increase rents and income restrictions (but not to exceed 30% of 60% of area median income (“AMI”) if and only to the extent the City has determined such increase is needed and only for the period of

time that the City determines is needed for the feasibility of the development and allowed by other funds to ensure the continued financial feasibility of the development; and

WHEREAS, both increases will apply to new tenants in Project Based Vouchers-subsidized units in the event of expiration or termination of subsidy contracts, and for all tenants in the event of foreclosure; and

WHEREAS, Government Code Section 8869.85 requires a local agency to file an application with the California Debt Limit Allocation Committee (“Committee”) prior to the issuance of tax-exempt multifamily housing revenue obligations and the City has filed such an application; and

WHEREAS, on August 5, 2025, the Committee originally adopted its Resolution No. 25-233 (as further revised by the Committee on November 13, 2025, and February 10, 2026) allocating to the Project \$82,584,672 of the State of California 2025 State ceiling for qualified private activity bonds to the City for the Project under Section 146 of the Internal Revenue Code of 1986; and

WHEREAS, on May 19, 2025, the Director of Finance and the Director of Housing of the City executed Declaration 2025-1, expressing the intent of the City to execute and deliver the 2026A Bonds to finance the construction and development of the Project; and

WHEREAS, a notice of a public hearing with respect to the proposed issuance of the 2026A Bonds was published on March 18, 2026; and

WHEREAS, a public hearing was held before the Director of Finance of the City on March 26, 2026 regarding the financing of the Project, at which an opportunity was provided for interested parties to present arguments for and against the issuance of the 2026A Bonds and the financing and operation of the Project; and

WHEREAS, on [REDACTED], 2026, the mayor of the City executed Certificate No. 2026-01, approving the issuance of the 2026A Bonds to provide financing for the Project for purposes of Government Code Section 147(f) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the 2026A Bonds will be executed and delivered pursuant to the Trust Indenture (the “Trust Indenture”), by and between the City and UMB Bank, National Association, as trustee (the “Trustee”), and the proceeds of the 2026A Bonds will be loaned to the Borrower pursuant to the Loan Agreement, by and between the City and the Borrower (the “Loan Agreement”) which will be evidenced by a promissory note to be executed and delivered by the Borrower (the “Note”); and

WHEREAS, the Trustee is authorized to receive, hold, invest and disburse Bond proceeds and other funds established under the Trust Indenture, authenticate the 2026A Bonds, apply and disburse payments to the bondholder(s) and pursue remedies on behalf of the bondholder(s); and

WHEREAS, the Borrower will use the proceeds of the 2026A Bonds exclusively to finance the costs of development and construction of the Project and the costs of executing and delivering the 2026A Bonds; and

WHEREAS, the City has determined it is in the best interest to issue the 2026A Bonds through a negotiated public sale with Lument Securities, LLC, as underwriter for the 2026A Bonds (the “Underwriter”); and

WHEREAS, the 2026A Bonds will be structured as rated cash collateralized bonds which will be secured by the Trust Estate held by the Trustee; and

WHEREAS, the 2026A Bonds are anticipated to be rated “Aa1” by Moody’s while publicly held; and

WHEREAS, Deutsche Bank AG, New York Branch (the “Construction Lender”) has agreed to provide a taxable construction loan (the “Construction Loan”) to the Borrower, a portion of the proceeds of which shall fund a collateral account held by the Trustee at such times and in such amounts as 2026A Bond proceeds are used to pay Project costs; and

WHEREAS, the 2026A Bonds will be subject to mandatory tender on a certain date expected to be approximately three years from the closing date of the 2026A Bonds (the “Fixed Mandatory Tender Date” and, together with any subsequent mandatory tender date, the “Mandatory Tender Date”) in accordance with the Trust Indenture, and on such Mandatory Tender Date, upon satisfaction of certain conditions set forth in the Forward Commitment Agreement among the Funding Lender (as defined below), the Construction Lender and the Borrower, (i) the 2026A Bonds will be repaid with amounts on deposit under the Trust Indenture, (ii) the 2026A Bonds will be removed from the book-entry system and converted to a physical note of the City (the “Governmental Note”) in the form attached to the Funding Loan Agreement (as defined below), which will be executed, delivered and become effective on the Mandatory Tender Date, and funded by a funding loan (the “Funding Loan”) from Deutsche Bank Securities Inc. as the Funding Lender (the “Funding Lender”) pursuant to the Funding Loan Agreement (the “Funding Loan Agreement”); provided, however, that if the conditions to the permanent loan conversion (i.e., stabilization of the Project) as set forth in Funding Loan Agreement have not occurred on the Mandatory Tender Date, the City will execute and deliver a second physical note (together with the Governmental Note, the “Governmental Notes”) which will become effective on the Mandatory Tender Date and will remain outstanding until such time that the conditions to the permanent loan conversion (i.e., stabilization of the Project) as set forth in Funding Loan Agreement have been fully satisfied, (iii) the Funding Loan Agreement (attached as an appendix to the Trust Indenture) and the Borrower Loan Agreement (attached as an appendix to the Trust Indenture) will be executed and delivered by the respective parties and become effective and shall supersede the Trust

Indenture and the Loan Agreement, respectively, (iv) the proceeds of the Funding Loan, along with other funds of the Borrower, will be deposited into a designated fund under the Trust Indenture or Funding Loan Agreement, as applicable, and the Construction Loan will be paid in full (or, in the case of the conditions to the permanent loan conversion (i.e., stabilization of the Project) not being fully satisfied on the Mandatory Tender Date, will be paid in an amount not less than the outstanding principal amount of the 2026A Bonds) with all security related to the Construction Loan to be released or assigned to secure the Funding Loan, and (v) the Borrower will execute one or two physical notes (collectively, the “Borrower Notes”), as applicable, to evidence its obligations under the Borrower Loan Agreement and a new security instrument (or an amended and restated security instrument) with respect to the Project to secure its obligations under the Borrower Loan Agreement, which Borrower Notes and security instrument will be assigned to and held by UMB Bank, National Association, as fiscal agent (the “Fiscal Agent”) under the Funding Loan Agreement to secure the Governmental Notes of the City (collectively, the “TEL Conversion”); and

WHEREAS, the Governmental Notes will be payable solely from and secured by the Security (as defined in the Funding Loan Agreement) consisting primarily of amounts received by the Borrower under the Borrower Loan Agreement and evidenced by the Borrower Notes (and various accounts and monies held under the Funding Loan Agreement), and the Governmental Notes will not be paid from or secured by the general taxing power of the City nor any other asset other than the Security; and

WHEREAS, if the TEL Conversion does not occur on the Fixed Mandatory Tender Date or any subsequent Mandatory Tender Date, then under the Trust Indenture the 2026A Bonds may be remarketed for a fixed rate and period as provided under the Trust Indenture and/or may be subject to redemption; and

WHEREAS, it is the intent of the City to enter into documentation to govern the issuance and sale of the 2026A Bonds being executed and delivered and the Governmental Notes

(when executed and delivered on the Mandatory Tender Date) (collectively, the “Transaction Documents”), including: (1) the Trust Indenture; (2) the Loan Agreement; (3) a regulatory agreement and declaration of restrictive covenants, by and between the City and the Borrower (the “Regulatory Agreement”), (4) a bond purchase agreement, by and between the City and the Underwriter (the “Bond Purchase Agreement”), (5) a preliminary official statement (the “Preliminary Official Statement”) and an official statement (the “Official Statement”), each with respect to the 2026A Bonds, (6) the 2026A Bonds, (7) the Funding Loan Agreement, (8) the Governmental Note and (9) the Borrower Loan Agreement; 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 COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The above recitals are true and correct.
2. In accordance with the Act and pursuant to the Trust Indenture, the execution and delivery of tax-exempt bonds designated as “City of San José Multifamily Housing Revenue Bonds (Berryessa TOD) Series 2026A” with an interest rate or rates, a maturity date or dates and other terms as provided in the finally executed Trust Indenture in an aggregate principal amount not to exceed \$82,584,672 is hereby authorized to be executed and delivered. The 2026A Bonds shall be in substantially the form set forth in and otherwise in accordance with the Trust Indenture, and shall be executed and delivered on behalf of City by the manual or

facsimile signature of the City Manager, the Director of Housing, the Director of Finance or the Assistant Director of Finance, the Deputy Director of Debt and Treasury Management, or the designee of any of them (each, an “Authorized Officer”), in the form set forth in and otherwise in accordance with the Trust Indenture. The Program for the loan of the proceeds of the 2026A Bonds and the Governmental Notes, as applicable, to the Borrower is also authorized.

3. In accordance with the Act and pursuant to the Funding Loan Agreement, the execution and delivery of the Governmental Notes, with an amount, interest rate or rates, a maturity date or dates and other terms as provided in the finally executed Funding Loan Agreement or Borrower Notes is hereby authorized to be executed and delivered. The Governmental Notes shall be in substantially the form set forth in and otherwise in accordance with the Funding Loan Agreement, and shall be executed and delivered on behalf of City by the manual or facsimile signature of an Authorized Officer, in the form set forth in and otherwise in accordance with the Funding Loan Agreement.
4. A change in the loan terms to allow an increase in the rents and income restrictions up to 60% of Area Median Income for new tenants in Project-Based Voucher subsidized apartments, in the event of expiration or termination of Project-Based Vouchers and for all tenants in the event of foreclosure, to the extent and only for the period of time the City has determined such increase is needed for the feasibility of the Development and is allowed by other funds is hereby authorized.
5. The form of each of the Transaction Documents, in substantially the form on file with the City Clerk, is hereby approved. Each of the Authorized Officers, acting alone, is hereby authorized, for and in the name and on behalf of the City, to execute and deliver each of the Transaction Documents in substantially said form, together with such additions thereto and changes therein as the Authorized Officer may approve or recommend upon consultation with bond counsel and the City

Attorney, including such additional or change as are necessary or advisable in accordance with Section 4 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Transaction Documents.

The date, maturity date or dates, interest rate or rates, interest payment dates, series designations, denominations, form, registration privileges, manner of execution, place of payment, terms of prepayment, and other terms of the 2026A Bonds and the Governmental Notes shall be as provided in the Trust Indenture and the Funding Loan Agreement (or Borrower Notes), as applicable, and as finally executed.

The Underwriter is hereby authorized to distribute the Preliminary Official Statement to prospective purchasers of the 2026A Bonds and to deliver an Official Statement in final form to the purchasers of the 2026A Bonds, in each case with such additions hereto and changes therein as the Authorized Officer may approve or recommend upon consultation with bond counsel and the City Attorney, including such additions or changes as are necessary or advisable in accordance with Section 4 hereof.

This Resolution hereby authorizes the 2026A Bonds to be sold to the Underwriter pursuant to the terms of the Bond Purchase Agreement and hereby authorizes, requests and directs the Trustee to authenticate the 2026A Bonds by executing the certificate of authentication attached to the 2026A Bonds and to deliver the 2026A Bonds to the Trustee, on behalf of the Underwriter, when duly executed and authenticated, on behalf of the City, when directed by an Authorized Officer to do so.

6. Any Authorized Officer executing a document approved herein, in consultation with bond counsel and the City Attorney, is authorized to approve and make such

modifications, changes or additions to Transaction Documents or other documents as may be necessary or advisable, and the approval of any modification, change or addition to any of the aforementioned agreements shall be evidenced conclusively by the execution and delivery thereof by such Authorized Officer upon consultation with bond counsel and the City Attorney. Further, any Authorized Officer, acting alone, is authorized to execute any assignment agreement related to any allonge, mortgage note, mortgage, deed of trust or other document related to the loan made to the Borrower from the proceeds of the 2026A Bonds or the Governmental Notes, as applicable.

7. All actions heretofore taken by the officers, employees and agents of City with respect to the execution and delivery of the 2026A Bonds and the Governmental Notes, are approved, confirmed and ratified, and the officers, employees and agents of City are authorized and directed, for and in the name and on behalf of 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, those documents described in the Transaction Documents 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 2026A Bonds and the Governmental Notes and to effectuate the purposes thereof and of the documents herein approved in accordance with this resolution and resolutions heretofore adopted by the City Council. 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.
8. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this resolution or otherwise appropriate in the administration of the 2026A Bonds, the Governmental Notes and the Program financed thereby, including without limitation any of the Foregoing

that may be necessary or desirable in connection with any amendment of such documents, any transfer of the Project, any substitution of security for the 2026A Bonds or the Governmental Notes, or any prepayment of the 2026A Bonds or the Governmental Notes may be taken or given by the Authorized Officers, and the Authorized Officers are hereby authorized and directed to give any such consent, approval, notice, order or request and to take any such action which such officer may deem necessary or desirable to further the purposes of this resolution; provided such action shall not create any obligation or liability of the City other than as provided in the Transaction Documents and other documents approved herein.

9. The 2026A Bonds, when executed by an Authorized Officer, shall be delivered to the Trustee for authentication. The Trustee is hereby requested and directed to authenticate the 2026A Bonds by executing the Trustee's certificate of authentication appearing thereon, and to deliver the 2026A Bonds, when duly executed and authenticated, in accordance with written instructions executed on behalf of the City by any Authorized Officer, which instructions each Authorized Officer is hereby authorized, for and in the name and on behalf of the City, to execute and deliver to the Trustee, on behalf of the Underwriter.

10. The Governmental Notes, when executed by an Authorized Officer, shall be delivered to the Fiscal Agent for authentication. The Fiscal Agent is hereby requested and directed to authenticate the Governmental Notes by executing the Fiscal Agent's certificate of authentication appearing thereon, and to deliver the Governmental Notes, when duly executed and authenticated, in accordance with written instructions executed on behalf of the City by any Authorized Officer, which instructions each Authorized Officer is hereby authorized, for and in the name and on behalf of the City, to execute and deliver to the Fiscal Agent, on behalf of the Funding Lender.

11. All actions heretofore taken by the officers and agents of the City with respect to the establishment of the Program and the sale and issuance of the 2026A Bonds and the issuance of the Governmental Notes are hereby approved, confirmed and ratified, and the proper officers of the City, including the Authorized Officers, 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 which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the 2026A Bonds and the Governmental Notes in accordance with this resolution, including, but not limited to, those certificates, agreements and other documents described in the documents approved by this resolution and any certificates, agreements or documents as may be necessary to carry out the financing of the Project.

12. All assignments, allonges, conveyances, reconveyances, consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents approved by this resolution, whether before or after the issuance of the 2026A Bonds and the Governmental 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 2026A Bonds and the Governmental Notes or any prepayment of the 2026A Bonds and the Governmental Notes, may be given or taken by any of 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 in consultation with the City Attorney 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 Trust Indenture,

the Loan Agreement, the Funding Loan Agreement, the Borrower Loan Agreement and the other documents approved herein.

13. 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.
14. 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 sections, paragraphs or provisions of this resolution.
15. This resolution shall take effect upon its adoption.

ADOPTED this _____ day of _____, 2026, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk