

RESOLUTION NO. 73566

A RESOLUTION OF THE CITY OF SAN JOSE APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO AMENDED AN RESTATED REGULATORY AGREEMENT, RELATING TO THE CITY OF SAN JOSE VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE REFUNDING BONDS (KIMBERLY WOODS APARTMENTS) 1999 SERIES A AND AUTHORIZING THE EXECUTION AND DELIVERY OF AND APPROVING OTHER RELATED DOCUMENTS AND APPROVING OTHER RELATED ACTIONS IN CONNECTION THEREWITH

WHEREAS, Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code (the "Act") authorizes public agencies, including the City of San José (the "City"), to incur indebtedness for the purpose of providing multifamily residential housing for persons of low income;

WHEREAS, the City previously issued its \$16,050,000 initial principal amount of Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Kimberly Woods Apartments) 1999 Series A (the "Bonds") pursuant to the Act to provide refinancing for the acquisition, construction and development of a multifamily rental housing development, known as Kimberly Woods Apartments and located in the City of San José, California (the "Project"); and

WHEREAS, the City, BNY Western Trust Company (the "Original Trustee"), as predecessor to The Bank of New York Trust Company, N.A. (the "Trustee") and Kimberly Woods Associates, a California general partnership (the "Borrower") entered into an Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 1999 (the "Regulatory Agreement"), providing for certain requirements applicable to the Project; and

WHEREAS, the Borrower has requested the Regulatory Agreement be amended to clarify certain rent and occupancy provisions contained in the Regulatory Agreement; and

WHEREAS, the Regulatory Agreement may be amended and/or restated pursuant to the provisions of the Regulatory Agreement upon compliance with certain provisions thereof, which provisions shall be complied with prior to execution and delivery of such amendments; and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to the reissuance of the Bonds and amendment, execution and delivery of the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San José, as follows:

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

Section 2. The First Amendment To Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants (the "First Amendment") among the City, the Trustee

and the Borrower, in the form on file with the City Clerk, is hereby approved. The City Manager of the City or any Authorized Representative of the City (or a written designee of an Authorized Representative) are, and each of them acting alone is, hereby authorized and directed for and in the name of and on behalf of the City, to execute and deliver the First Amendment in said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the City including such additions or changes as are necessary or advisable in accordance with Section 3 hereof, the approval of such changes to be conclusively evidenced by the execution and delivery by the City of such First Amendment.

Section 3. All actions heretofore taken by the officers and agents of the City with respect to the amendment of the Regulatory Agreement pursuant to the provisions of the First Amendment and the execution and delivery of the First Amendment are hereby approved, confirmed and ratified, and the proper officers of the City, including the Authorized Representatives (or a written designee of an Authorized Representative), 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 amendment of the Regulatory Agreement in accordance with this Resolution and resolutions heretofore adopted by the City, including, but not limited to, the execution and delivery First Amendment, and any certificates, agreements or documents as may be necessary to further the purpose hereof, but which shall not create any obligation or liability of the City other than with respect to the revenues and assets derived from the proceeds of the Bonds or loan payments from the Borrower.

Section 4. This resolution shall take effect immediately upon its adoption.

ADOPTED this 12th day of December, 2006, by the following vote:

AYES:	CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE, NGUYEN, PYLE, REED, WILLIAMS; GONZALES
NOES:	NONE
ABSENT:	NONE
DISQUALIFIED:	NONE
VACANT:	DISTRICT 6

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk