

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE, CALIFORNIA, AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF MULTIFAMILY HOUSING REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$7,000,000 FOR THE PURPOSE OF MAKING A LOAN TO PROVIDE FINANCING FOR TAYLOR OAKS APARTMENTS; DETERMINING AND PRESCRIBING CERTAIN MATTERS RELATING THERETO; AND APPROVING AND AUTHORIZING RELATED ACTIONS AND THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS.**

*WHEREAS*, the City of San José (the “City”) is a municipal corporation and charter city duly organized and existing under a 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 of the City (the “Charter”); and

*WHEREAS*, the Charter provides that the City is authorized to issue revenue bonds pursuant to California law and the City is authorized to issue revenue bonds under Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the California Health and Safety Code, as amended (the “Act”), which authorizes cities to issue revenue bonds for the purpose of, among other things, financing the acquisition, rehabilitation and development of multifamily rental housing and capital improvements in connection with and determined necessary to such multifamily housing; and

*WHEREAS*, the Act provides that the proceeds of bonds issued by a city may be loaned to a nongovernmental owner of multifamily housing to allow such owner, who shall be responsible for the payment of such bonds, to reduce the cost of operating such housing and to assist in providing housing for low income persons; and

*WHEREAS*, Taylor Oaks Apartments Investors, L.P., a California limited partnership (the “Borrower”), has requested that the City sell and issue multifamily housing revenue bonds for the purpose of financing the acquisition, rehabilitation and development of a 59-unit multifamily rental housing project to be located in the City and to be generally known as Taylor Oaks Apartments (the “Project”); and

*WHEREAS*, the City is willing to issue not to exceed \$7,000,000 aggregate principal amount of its Multifamily Housing Revenue Bonds (as more fully described herein, the “Bonds”) and to loan the proceeds thereof to the Borrower, who shall be responsible for the payment of such Bonds, to allow the Borrower to assist in providing housing for low and very low income persons; and

*WHEREAS*, the issuance, sale and delivery of the Bonds 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 Bonds; and

*WHEREAS*, credit enhancement for the Bonds will be provided initially by the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America (“Freddie Mac”); and

*WHEREAS*, the Bonds will be sold by negotiated sale pursuant to a bond purchase agreement (the “Purchase Contract”) by and among the City, the Borrower and Citigroup Global Markets Inc. (the “Underwriter”) relating to the purchase of the Bonds by the Underwriter, which Purchase Contract is in the form posted on the agenda webpage for this meeting, together with the proposed form of the Official Statement for the Bonds (the “Official Statement”) that contains information to be used in connection with the marketing of the Bonds by the Underwriter; and

*WHEREAS*, there has been prepared and posted on the agenda webpage for this meeting the forms of other documentation required for the issuance and sale of the Bonds, and such documentation is in substantially final form and constitutes appropriate instruments to be executed and delivered for the purposes intended; and

*WHEREAS*, all acts, conditions and things required by the laws and Charter of the City and the laws of the State of California, including the Act, to exist, to have happened and to have been performed precedent to and in connection with the consummation of the financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is duly authorized and empowered, pursuant to each and every requirement of law, to authorize such financing and to authorize the execution of the documents related thereto, for the purposes, in the manner and upon the terms provided in this resolution;

*NOW, THEREFORE, BE IT RESOLVED* by the City Council of the City of San José that:

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

Section 2. Revenue bonds in two series are hereby approved and authorized to be issued pursuant to, and in compliance with, the Act and the Indenture (hereinafter defined), and in accordance with the Internal Revenue Code of 1986, subject to the condition set forth herein. The Bonds are to be designated as the “City of San José Multifamily Housing Revenue Bonds (Taylor Oaks Apartments), Series 2011A-1” and the “City of San José Multifamily Housing Revenue Bonds (Taylor Oaks Apartments), Series 2011A-2” in a combined aggregate principal amount not to exceed \$7,000,000. The Bonds shall be in the form set forth in and otherwise in accordance with the Indenture and shall be executed by the manual or facsimile signature of the City Manager, the Director of Housing, the Director of Finance, the Assistant Director of Finance, the Treasury Division Manager, or the Debt Administrator, or the designee of any of them (each, an “Authorized Officer”) and attested by the manual or facsimile signature of the City Clerk, in the form set forth in and otherwise in accordance with the Indenture. The public offering of the Bonds by the Underwriter in connection with the hereinafter defined Indenture and Financing Agreement is hereby approved.

Section 3. The City hereby approves the sale of the Bonds by the City by negotiation with the Underwriter pursuant to the Purchase Contract in the form posted on the agenda webpage for this meeting. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Purchase Contract in substantially said form, with such additions thereto and changes therein as any such Authorized

Officer may approve upon consultation with the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The City hereby approves the Official Statement in the form posted on the agenda webpage for this meeting, together with such changes or additions thereto as the Authorized Officers shall deem necessary, desirable or appropriate upon consultation with bond counsel or the City Attorney. Distribution of the Official Statement in connection with the negotiated sale of the Bonds is hereby approved. Each Authorized Officer is hereby authorized to execute the final form of the Official Statement with such changes or additions as any such Authorized Officer shall deem necessary, desirable or appropriate upon consultation with bond counsel or the City Attorney, and the execution of the final Official Statement by the City shall be conclusive evidence of the approval of any such additions and changes. The City hereby authorizes the distribution of the final Official Statement by the Underwriter.

Section 5. The proposed form of Trust Indenture (the "Indenture"), by and between the City and Wells Fargo Bank, National Association, as trustee (the "Trustee"), as posted on the agenda webpage for this meeting, is hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Indenture and the City Clerk is hereby authorized and directed to attest to the signature of any such Authorized Officer on said Indenture, in substantially said form, with such additions thereto or changes therein as approved by any Authorized Officer upon consultation with bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

The date, maturity date or dates (which shall not extend beyond September 1, 2051), interest rate or rates (which shall not exceed 12%), interest payment dates, denominations, form, registration privileges, manner of execution, place of payment, terms of redemption and other terms of the Bonds shall be as provided in the Indenture as finally executed.

Section 6. The proposed form of Financing Agreement (the "Financing Agreement"), by and among the City, Wells Fargo Bank, National Association, as trustee (the "Trustee"), and the Borrower, as posted on the agenda webpage for this meeting, is hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Financing Agreement in substantially said form, with such additions thereto and changes therein as any such Authorized Officer may approve upon consultation with bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. The proposed form of Intercreditor Agreement (the "Intercreditor Agreement"), by and among the City, the Trustee, Freddie Mac and Citibank, N.A., as construction lender, as posted on the agenda webpage for this meeting, is hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Intercreditor Agreement in substantially said form, with such additions thereto and changes therein as any such Authorized Officer may approve upon consultation with bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 8. The proposed form of Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") by and among the City, the Trustee and the Borrower, as posted on the agenda webpage for this meeting, is hereby approved. The City's Director of Housing and the Assistant Director of Finance are hereby authorized and directed,

for and in the name and on behalf of the City, to execute and deliver the Regulatory Agreement in substantially said form, with such additions thereto or changes therein as said officials may approve upon consultation with bond counsel and the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 9. The Bonds, when executed, shall be delivered to the Trustee for authentication, and the Trustee is hereby requested and directed to authenticate the Bonds by executing the Trustee's certificate of authentication appearing thereon, and to deliver the Bonds, when duly executed and authenticated, to or at the direction of the purchasers thereof in accordance with written instructions executed on behalf of each of the Authorized Officers, which said officers are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Trustee. Such instructions shall provide for the delivery of the Bonds to or at the direction of the purchasers thereof, upon payment of the purchase price thereof.

Section 10. 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 Bonds 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 and agreement and such other documents and agreements as described in the Indenture, the Financing Agreement, the Intercreditor Agreement and the other documents herein approved, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds, subject to the conditions set forth herein, and to effectuate the purposes thereof and of the documents herein approved in accordance with this resolution and resolutions heretofore adopted by the City and otherwise in order to carry out the financing of the Project.

Section 11. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this resolution, whether before or after the issuance of any Bonds, 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 Bonds or any redemption of the Bonds, 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 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 Indenture and other documents approved herein.

Section 12. If any of the 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.

Section 13. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

ADOPTED this \_\_\_rd day of August 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED, Mayor

ATTEST:

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DENNIS D. HAWKINS, CMC, City Clerk