

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF A MULTIFAMILY HOUSING REVENUE NOTE, AND THE LOAN OF THE PROCEEDS THEREOF FOR THE FINANCING OF THE 1ST AND ROSEMARY FAMILY APARTMENTS; AND APPROVING OTHER RELATED DOCUMENTS AND ACTIONS.

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 in 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 and execute and deliver revenue notes 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 and execute and deliver revenue notes for the purpose of, among other things, financing the construction and development of multifamily rental housing and capital improvements in connection with and determined necessary to such multifamily housing; and

WHEREAS, “Bonds” are defined in Section 52011 of the California Health and Safety Code, for the purposes of the Act, to include notes and any other limited obligations; and

WHEREAS, the Act provides that the proceeds of bonds or notes issued or delivered 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 or notes, to reduce the cost of operating such housing and to assist in providing housing for low income persons; and

WHEREAS, 1st and Rosemary Family Housing, L.P., a California limited partnership (the “Borrower”), has requested that the City execute and deliver a multifamily housing revenue note for the purpose of financing the construction and development of a 186-unit multifamily rental housing project to be located in the City and to be generally known as 1st and Rosemary Family Apartments (the “Project”); and

WHEREAS, under and pursuant to Resolution No. 76008 (the “Original Resolution”), adopted on September 27, 2011, the City authorized the issuance of its multifamily housing revenue note in an aggregate principal not to exceed \$30,700,000 to provide financing for the Project; and

WHEREAS, under the Original Resolution, the City declared its official intent to use proceeds of indebtedness to reimburse the Reimbursement Expenditures (as defined herein) in an aggregate principal not to exceed \$30,700,000; and

WHEREAS, the City wishes to increase the amount of its multifamily housing revenue note to an aggregate principal amount not to exceed \$35,500,000, and to also increase the use proceeds of indebtedness to reimburse the Reimbursement Expenditures in an aggregate principal amount not to exceed \$35,500,000;

WHEREAS, the City is willing to execute and deliver not to exceed \$35,500,000 aggregate principal amount of its Multifamily Housing Revenue Note (as more fully described herein, the “Note”) and to loan the proceeds thereof to the Borrower, who shall be responsible for the payment of such Note, to allow the Borrower to assist in providing housing for low income persons; and

WHEREAS, the execution and delivery of the 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 execution and delivery of the Note; and

WHEREAS, there has been prepared and posted on the agenda webpage for this meeting forms of all of the documentation required for the execution and delivery of the Note, and such documentation is in substantially final form and constitutes appropriate instruments to be executed and delivered for the purposes intended; and

WHEREAS, the City, in the course of assisting the Borrower in financing the Project, expects that the Borrower has paid or may pay certain expenditures (the "Reimbursement Expenditures") in connection with the Project within 60 days prior to the adoption of this resolution and prior to the execution and delivery of the Note for the purpose of financing costs associated with the Project on a long-term basis; and

WHEREAS, Section 1.103-8(a)(5) and Section 1.150-2 of the Treasury Regulations require the City to declare its reasonable official intent to reimburse prior expenditures for the Project with proceeds of a subsequent tax-exempt borrowing; and

WHEREAS, the City wishes to declare its intention to authorize the execution and delivery of the Note for the purpose of financing costs of the Project (including reimbursement of the Reimbursement Expenditures, when so requested by the Borrower upon such terms and condition as may then be agreed upon by the City, the Borrower and the Funding Lender (as hereinafter defined)) in an aggregate principal amount not to exceed \$35,500,000; 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 JOSE THAT:

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

2. The Note is hereby approved and authorized to be executed and delivered pursuant to, and in compliance with, the Act and the Funding Loan Agreement (hereinafter defined), and in accordance with the Internal Revenue Code of 1986, subject to the condition set forth herein. The Note is to be designated as the “City of San José Multifamily Housing Revenue Note (1st and Rosemary Family Apartments), Series 2012C,” in an aggregate principal amount not to exceed \$35,500,000. The Note shall be in the form set forth in and otherwise in accordance with the Funding Loan Agreement and shall be executed by the manual or facsimile signature of the City Manager, the Director of Housing, the Acting Director of Finance, the Acting Assistant Director of Finance, the Treasury Division Manager, or the 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.

3. The proposed form of Funding Loan Agreement (the “Funding Loan Agreement”), by and among the City, Citibank, N.A., as funding lender (the “Funding Lender”) and Wells Fargo Bank, National Association, as fiscal agent (the “Fiscal Agent”), in the form 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 Funding Loan

Agreement and the City Clerk is hereby authorized and directed to attest to the signature of any such Authorized Officer on said Funding Loan Agreement, 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 March 1, 2052), interest rate or rates (which shall not exceed 7%), interest payment dates, denominations, form, registration privileges, manner of execution, place of payment, terms of prepayment and other terms of the Note shall be as provided in the Funding Loan Agreement as finally executed.

4. The proposed form of Borrower Loan Agreement (the “Borrower Loan Agreement”), by and between the City and the Borrower, in the form 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 Borrower Loan 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.

5. The proposed form of Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”) by and among the City, the Fiscal Agent and the Borrower, in the form posted on the agenda webpage for this meeting, is hereby approved. The City’s Director of Housing and the Acting 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.

6. The Note, when executed, shall be delivered to the Fiscal Agent for authentication; and the Fiscal Agent is hereby requested and directed to authenticate the Note by executing the Fiscal Agent's certificate of authentication appearing thereon, and to deliver the Note, 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 Fiscal Agent. Such instructions shall provide for the delivery of the Note to or at the direction of the purchasers thereof, upon payment of the purchase price thereof.

7. The City hereby determines that it is necessary and desirable to provide financing for the Project (including reimbursement of the Reimbursement Expenditures) by the execution and delivery of the Note pursuant to the Act, in aggregate principal amounts not to exceed \$35,500,000. This resolution is being adopted by the City for purposes of establishing compliance with the requirements of Section 1.103-8(a)(5) and Section 1.150-2 of the Treasury Regulations. In such regard, the City hereby declares its official intent to use proceeds of indebtedness to reimburse the Reimbursement Expenditures.

8. All actions heretofore taken by the officers and agents of the City with respect to the financing of the Project and the execution and delivery of the 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 and agreement and such other

documents and agreements as described in the Funding Loan Agreement, the Borrower Loan Agreement 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 Note, 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.

9. 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 execution and delivery of any 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 Note or any prepayment of the 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 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 and other documents approved herein.

10. 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.

11. This resolution amends and supersedes the Original Resolution in its entirety, and any provisions of this resolution that have been added or omitted or changed in comparison to the

Original Resolution are intended to be amended, and any provisions of this Resolution that duplicate provisions of the Original Resolution are intended to ratify and confirm such provisions.

ADOPTED this 27th day of March, 2012, 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