

## RESOLUTION NO. 74157

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ AUTHORIZING THE ISSUANCE OF SUBORDINATE MULTIFAMILY HOUSING REVENUE BONDS AND THE LOAN OF THE PROCEEDS THEREOF FOR THE REFUNDING OF A PORTION OF THE BONDS PREVIOUSLY ISSUED TO FINANCE THE ALMADEN FAMILY APARTMENTS PROJECT AND APPROVING OTHER RELATED DOCUMENTS AND ACTIONS

**WHEREAS**, the City Charter of the City of San José (the “City”) provides that the City is authorized to issue revenue bonds pursuant to California law;

**WHEREAS**, Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California, as amended (the “Act”), authorizes cities to issue revenue bonds for the purpose of financing or refinancing development of multifamily rental housing for persons of low and moderate income;

**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 issuing revenue bonds of the City to finance the development of multifamily rental housing for persons of low and moderate income, and has determined to issue revenue bonds for such purpose as authorized by the Act;

**WHEREAS**, the City Council hereby finds and declares that this resolution is being adopted pursuant to the powers granted by the Act;

**WHEREAS**, Almaden Family Housing Partners, L.P., a California limited partnership (the “Borrower”), has requested that the City issue and sell the Bonds (hereinafter defined) for the purpose of refunding a portion of the Senior Bonds (as hereinafter defined) previously issued to finance the construction and equipping of the Almaden Family Apartments Project (the “Project”);

**WHEREAS**, the Bonds will be sold by negotiated sale, and the proposed form of the bond purchase agreement relating to the purchase by SHS Capital, L.P., a Colorado limited partnership (the “Purchaser”), of the Bonds has been made available to the City;

**WHEREAS**, the Bonds are subject to redemption on or before the Conversion Date (as defined in the Indenture), and the Borrower has requested that the City issue and sell the Bonds (hereinafter defined) for the purpose of refunding the Senior Bonds in part;

**WHEREAS**, the City previously issued its Variable Rate Demand Multifamily Housing Revenue Bonds (Almaden Family Apartments Project), Series 2003D (the “Senior Bonds”) pursuant to a Trust Indenture, dated as of November 1, 2003 (the “Senior Indenture”), between the City and Wells Fargo Bank, National Association, as trustee (in such capacity, the “Senior Trustee”);

**WHEREAS**, the Borrower has requested the City to amend the Senior Indenture to provide for the issuance of additional parity debt thereunder under certain circumstances set forth in such amendment;

**WHEREAS**, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Bonds and the implementation of the Program as contemplated by this resolution and 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 THAT:**

1. The City Council hereby finds and declares that the above recitals are true and correct.
2. Pursuant to the Act and the Indenture (hereinafter defined), revenue bonds of the City, designated as “City of San José, California Subordinate Multifamily Housing Revenue Bonds (Almaden Family Apartments Project) Series 2007B” in an aggregate principal amount not to exceed \$7,000,000 (the “Bonds”) are hereby

authorized to be issued. The Bonds shall be executed by the manual or facsimile signature of the City Manager, the Deputy Director of Finance, or the Director of Finance (or any such officer's designee), 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 (as hereinafter defined).

3. The trust indenture (the "Indenture") between the City and Wells Fargo Bank, National Association (the "Trustee"), in the form on file with the City Clerk, is hereby approved. The City Manager, the Deputy Director of Finance or the Director of Finance (or any such officer's designee), 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, or such officer's designee, is hereby authorized and directed to attest such officer's signature (or the signature of such officer's designee) on the Indenture, in said form, with such additions thereto or changes therein as are recommended or approved by the City Manager, the Deputy Director of Finance or the Director of Finance upon consultation with bond counsel and the City Attorney, including such additions or changes as are necessary or advisable in accordance with Section 11 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Indenture.

The date, maturity dates, interest rate or rates and method of calculation thereof, interest payment dates, denominations, form, registration privileges, manner of execution, place of payment, terms of redemption, remarketing, tender and other terms of the Bonds, shall be as provided in the Indenture as finally executed.

4. The loan agreement among the City, the Trustee and the Borrower (the "Loan Agreement"), in the form on file with the City Clerk, is hereby approved. The City Manager, the Deputy Director of Finance or the Director of Finance (or any such officer's designee), is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Loan Agreement in said form, with such additions thereto or changes therein as are recommended or approved by the City Manager, the Deputy Director of Finance or the Director of Finance upon consultation with bond counsel and the City Attorney, including such additions or changes as are necessary or

advisable in accordance with Section 11 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Loan Agreement.

5. The first amendment to regulatory agreement and declaration of restrictive covenants (the "Regulatory Agreement Amendment") among the City, the Trustee and the Borrower, in the form on file with the City Clerk, is hereby approved. The City Manager, the Deputy Director of Finance, the Director of Housing or the Director of Finance (or any such officer's designee), is hereby authorized and directed for and in the name of and on behalf of the City, to execute and deliver the Regulatory Agreement Amendment in said form, with such additions thereto or changes therein as are recommended or approved by the City Manager, the Deputy Director of Finance, the Director of Housing or the Director of Finance upon consultation with bond counsel and the City Attorney, including such additions or changes as are necessary or advisable in accordance with Section 11 hereof, the approval of such changes to be conclusively evidenced by the execution and delivery by the City of such agreement.

The Director of Housing, or such officer's designee, is hereby authorized and directed to co-sign the Regulatory Agreement Amendment for and in the name and on behalf of the City. The City Manager, the Deputy Director of Finance or the Director of Finance and the Director of Housing are hereby authorized to grant the consent of the City to a sale or transfer of the Project as described in the Regulatory Agreement Amendment, without any need for further action by this City Council.

6. The City hereby approves the sale of the Bonds by the City to the Purchaser pursuant to a Bond Purchase Contract relating to the Bonds (the "Bond Purchase Agreement") in the form on file with the City Clerk, together with such additions thereto and changes therein as the City Manager, the Director of Finance or the Deputy Director of Finance shall deem necessary, desirable or appropriate upon consultation with bond counsel and the City Attorney, the execution of which by the City shall be conclusive evidence of the approval of any such additions and changes; provided that the interest rate on the Bonds shall not exceed 6.5% per annum, the final maturity date shall not be later than November 15, 2037, and the aggregate principal

amount thereof shall not be more than \$7,000,000. The City Manager, the Director of Finance or the Deputy Director of Finance each acting alone, are hereby authorized and directed to execute the final form of the Bond Purchase Agreement for and in the name of and on behalf of the City upon the submission of offers by the Purchaser to purchase the Bonds, which offers are acceptable to the City Manager, the Director of Finance and the Deputy Director of Finance and consistent with the requirements of this Resolution. The Purchaser shall not receive a fee or a discount for purchasing the Bonds.

7. The City hereby approves the form of the First Supplemental Trust Indenture (the "Supplemental Indenture") with respect to the Senior Bonds, by and between the City and the Senior Trustee on file with the City Clerk of the City, together with such additions thereto and changes therein as the City Manager, the Director of Finance or the Deputy Director of Finance shall deem necessary, desirable or appropriate upon consultation with bond counsel and the City Attorney, the execution of which by the City shall be conclusive evidence of the approval of any such additions and changes. The City Manager, the Director of Finance or the Deputy Director of Finance, each acting alone, are hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest, the final form of the Supplemental Indenture for and in the name of and on behalf of the City.

8. The City hereby approves the form of the Subordinate Intercreditor Agreement by and among the City, the Senior Trustee, the Trustee and Fannie Mae (the "Intercreditor Agreement") on file with the City Clerk of the City, together with such additions thereto and changes therein as the City Manager, the Director of Finance or the Deputy Director of Finance shall deem necessary, desirable or appropriate upon consultation with bond counsel and the City Attorney, the execution of which by the City shall be conclusive evidence of the approval of any such additions and changes. The City Manager, the Director of Finance or the Deputy Director of Finance, each acting alone, are hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest, the final form of the Intercreditor Agreement for and in the name of and on behalf of the City.

9. The City hereby approves the form of the Subordinate Promissory Note by the Borrower to the City (the "Note") on file with the City Clerk of the City, together with such additions thereto and changes therein as the City Manager, the Director of Finance or the Deputy Director of Finance shall deem necessary, desirable or appropriate upon consultation with bond counsel and the City Attorney, the endorsement of which by the City for the benefit of the Trustee and Fannie Mae shall be conclusive evidence of the approval of any such additions and changes. The City Manager, the Director of Finance or the Deputy Director of Finance, each acting alone, are hereby authorized and directed to endorse, and the City Clerk is hereby authorized and directed to attest, the final form of the Note for and in the name of and on behalf of the City.

10. The Bonds, when executed, shall be delivered to the Trustee for authentication. The Trustee is hereby requested and directed to authenticate the Bonds by executing the Trustee's certificate of authentication and registration appearing thereon, and to deliver the Bonds, when duly executed and authenticated, upon payment of the applicable purchase price therefor, to or at the order of the Purchaser, or its designee in accordance with written instructions executed on behalf of the City by the City Manager, the Deputy Director of Finance or the Director of Finance (or any such officer's designee), 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 Trustee.

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 Bonds and the execution of the Supplemental Indenture are hereby approved, confirmed and ratified, and the proper officers of the City, including the City Manager, the Deputy Director of Finance, the Director of Finance and the Director of Housing, or their designees, 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 Bonds and the Supplemental Indenture in accordance with this Resolution and

resolutions heretofore adopted by the City in order to carry out the Program including, but not limited to, those certificates, agreements and other documents described in the Indenture, the Loan Agreement, the Regulatory Agreement Amendment, the Supplemental Indenture and the Bond Purchase Agreement 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.

12. This Resolution shall take effect immediately upon its adoption.

ADOPTED this 11<sup>th</sup> day of December, 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CORTESE, LICCARDO,  
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: CONSTANT

DISQUALIFIED: NONE

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk