RESOLUTION NO. 75178

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS AND THE LOAN OF THE PROCEEDS THEREOF FOR THE FINANCING OF BROOKWOOD TERRACE FAMILY APARTMENTS, 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; 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 and construction 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 issuing revenue bonds of the City to finance the acquisition, construction and equipping of multifamily rental housing, and has determined to borrow money for such purpose by the issuance of revenue bonds 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, Brookwood Terrace Family Apartments, L.P., a California limited partnership (the "Borrower"), has requested that the City issue and sell the Bonds (hereinafter defined) for the purpose of financing the acquisition and construction by the Borrower of an 84-unit multifamily rental housing development to be located at 1338-1350 East San Antonio Street in the City, to be known as Brookwood Terrace Family Apartments (the "Project"); and

WHEREAS, on May 21, 2009, the Director of Finance and the Director of Housing of the City executed Declaration No. 2009-4, expressing the intent of the City to issue the Bonds to finance the acquisition and construction by the Borrower of the Project; and

WHEREAS, a notice of a public hearing with respect to the proposed issuance of the Bonds has been published; and

WHEREAS, said public hearing was held before the Deputy Director of Finance of the City on June 11, 2009, at which an opportunity was provided for interested parties to present arguments for and against the issuance of the Bonds and the financing and operation of the Project; and

WHEREAS, on June 16, 2009, the Mayor executed Certificate No. 2009-5, approving the issuance of the Bonds for the Project for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended; and

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 JOSE THAT:

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

SECTION 2. Pursuant to the Act and the Indenture (hereinafter defined), revenue bonds of the City, designated as "City of San José, California Variable Rate Demand Multifamily Housing Revenue Bonds (Brookwood Terrace Family Apartments), Series 2009B" in an aggregate principal amount not to exceed $13,600,000 (the "Bonds"), are hereby authorized to be issued. The Bonds shall be executed by the manual or facsimile signature of the Assistant Director of Finance or her designee, the seal or facsimile of the seal of the City shall be reproduced thereon 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 referenced in Section 3 below.

SECTION 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 Assistant Director of Finance, or her 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 the City Clerk's designee, is hereby authorized and directed to attest the Assistant Director of Finance's (or her designee's) signature on the Indenture, in said form, with such additions thereto or changes therein as are recommended or approved by the Assistant Director of Finance or her designee 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, 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 4. The financing agreement among the Trustee, the City and the Borrower (the "Financing Agreement"), in the form on file with the City Clerk, is hereby approved. The Assistant Director of Finance, or her designee, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Financing Agreement in said form, with such additions thereto or changes therein as are recommended or approved by the Assistant Director of Finance or her designee 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 Financing Agreement.

SECTION 5. The regulatory agreement and declaration of restrictive covenants (the "Regulatory Agreement") among the City, the Trustee and the Borrower, in the form on file with the City Clerk, is hereby approved. The Assistant Director of Finance, or her

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 in said form, with such additions thereto or changes therein as are recommended or approved by the Assistant Director of Finance or her designee 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 the Regulatory Agreement.

The Director of Housing, or her designee, is hereby authorized and directed to co-sign the Regulatory Agreement for and in the name and on behalf of the City. The Assistant Director of Finance, or her designee, 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, without any need for further action by this City Council.

SECTION 6. The intercreditor agreement among the Trustee, the City, Freddie Mac and JPMorgan Chase Bank, N.A. (the "Intercreditor Agreement"), in the form on file with the City Clerk, is hereby approved. The Assistant Director of Finance, or her designee, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Intercreditor Agreement in said form, with such additions thereto or changes therein as are recommended or approved by the Assistant Director of Finance or her designee 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 Intercreditor Agreement.

SECTION 7. The bond purchase agreement with respect to the Bonds (the "Purchase Contract") among the Borrower, the City and RBC Capital Markets Corporation ("RBC"), in the form on file with the City Clerk, is hereby approved. The Assistant Director of Finance, or her designee, is hereby authorized and directed, for and in the name and on behalf of the City, to accept the offer of RBC to purchase the Bonds contained in the Purchase Contract (provided that the aggregate principal amount of the Bonds is not in excess of $13,600,000, and the initial interest rate on the Bonds is not in excess of the maximum rate permitted under the Indenture), and to execute and deliver the Purchase

Contract in said form, with such additions thereto or changes therein as are recommended or approved by the Assistant Director of Finance, or her designee, upon consultation with bond counsel and the City Attorney, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Purchase Contract.

SECTION 8. The official statement relating to the Bonds (the "Official Statement"), in the form on file with the City Clerk, is hereby approved. The underwriter of the Bonds is hereby authorized to distribute copies of the Official Statement to persons who may be interested in the purchase of the Bonds and is directed to deliver copies of the Official Statement to all actual purchasers of the Bonds.

SECTION 9. 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, to or upon the order of RBC in accordance with written instructions executed on behalf of the City by the Assistant Director of Finance, or her designee, which instructions such officer (or her designee) is 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 RBC in accordance with the Purchase Contract, upon payment of the purchase price therefor.

SECTION 10. The Director of Housing, or designee, is authorized to negotiate and execute an agreement with the City of San José Financing Authority related to the ground lease revenues of the Project and the ultimate disposition of the Project improvements and the site on which the Project is constructed, as more specifically set forth in the Joint Report of the Assistant Director of Finance and the Director of Housing dated October 22, 2009.

SECTION 11. City Staff have advised that the United States Treasury Department has recently announced a Multifamily Bond Credit Enhancement program (the "Treasury Program") applicable to certain multifamily housing revenue bonds. In the

event that the Assistant Director of Finance, following consultation with the City's financial advisor for the Bonds, determines that participation in the Treasury Program will be of benefit to the Project and will have no material detrimental impact on the rights and obligations of the City under the documents approved by this Resolution (collectively, the "Bond Documents"), the Assistant Director of Finance and the Director of Housing are hereby authorized, upon consultation with the City Attorney and Bond Counsel, to negotiate and approve changes to the Bond Documents as necessary or desirable to allow the Bonds to participate in the Treasury Program.

SECTION 12. 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 are hereby approved, confirmed and ratified, and the proper officers of the City, including the City Manager, the Director of Finance, the Assistant Director of Finance and the Director of Housing, or their designees, or any other "Authorized Representative" of the City (as such term is defined in the Indenture), are hereby authorized and directed, for and in the name and on behalf of the City, and in any event in addition to the authorization in Section 11 above, 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 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 Bond Documents and any certificates, agreements or documents as may be necessary to further the purpose hereof, or to evidence additional security for the Bonds, 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.

SECTION 13. This Resolution shall take effect immediately upon its adoption.

ADOPTED this 17th day of November, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, NGUYEN, PYLE, REED.

NOES: OLIVERIO.

ABSENT: NONE.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk