

RESOLUTION NO. 75547

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE EXECUTION AND DELIVERY OF LOAN DOCUMENTS RELATING TO FINANCING FOR THE KINGS CROSSING APARTMENTS AND APPROVING OTHER RELATED DOCUMENTS AND ACTIONS

WHEREAS, the City Charter of the City of San José (the "City") permits the City 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 issue bonds for the purpose of financing the acquisition, construction and equipping of multifamily rental housing facilities;

WHEREAS, "bonds" are defined in Health and Safety Code Section 52011, for the purposes of the Act, to include notes and any other limited obligation; 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 incurring indebtedness to finance the acquisition, construction and equipping of multifamily rental housing, and has determined to borrow money for such purpose by the execution and delivery of the Governmental Lender Note (as defined below), the sole source of payment for which is to be a promissory note (the "Borrower Note") issued by Kings Crossing, L.P., a California limited partnership (the "Borrower"), all 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, the Borrower has requested that the City execute and deliver the Governmental Lender Note for the purpose of financing the construction within the City of a multifamily rental housing development to be known as the Kings Crossing Apartments (the "Project"); and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to the implementation of the Program and the consummation of the transactions contemplated by this resolution and the documents referred to herein now 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:

1. The City Council hereby finds and declares that the above recitals are true and correct.
2. Pursuant to the Act and the Funding Loan Agreement (hereinafter defined), a limited obligation revenue note of the City, designated as "*City of San José Multifamily Housing Revenue Note (Kings Crossing Apartments) Series 2010C*," in an aggregate principal amount not to exceed \$25,380,000 (the "Governmental Lender Note"), is hereby authorized to be issued. The Governmental Lender Note shall be

executed by the manual or facsimile signature of the City Manager, the Director of Housing, the Director of Finance or the Assistant Director of Finance, Treasury Division Manager and 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 Funding Loan Agreement (as hereinafter defined).

3. The following documents with respect to the Governmental Lender Note (collectively, the "Documents") between and/or among the City and the institutions named therein, in the forms on file with the City Clerk, are hereby approved:

- (a) the Funding Loan Agreement (the "Funding Loan Agreement") between the City and Wells Fargo, National Association, as fiscal agent (the "Fiscal Agent");
- (b) the Governmental Lender Note (in the form thereof attached to the Funding Loan Agreement referenced in paragraph (a) above);
- (c) the Borrower's Loan Agreement (the "Loan Agreement") between the City and the Borrower;
- (d) the Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") among the City, the Fiscal Agent and the Borrower; and
- (e) the Assignment of Deed of Trust and other loan documents (the "Assignment") between the City and the Fiscal Agent.

Each of the Authorized Officers, acting alone, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Documents in said forms, with such additions thereto or changes therein as are recommended or approved by any Authorized Officer 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 Documents.

4. The Governmental Lender Note, when executed, shall be delivered to the Fiscal Agent for authentication. The Fiscal Agent is hereby requested and directed to authenticate the Governmental Lender Note by executing the Fiscal Agent's certificate of authentication and registration appearing thereon, and to deliver the Governmental Lender Note, when duly executed and authenticated, to Citibank, N.A., as funding lender (the "Funding Lender"), in accordance with written instructions executed on behalf of the City by any Authorized Officer, 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 Fiscal Agent. Such instructions shall provide for the delivery of the Governmental Lender Note in accordance with the Funding Loan Agreement upon receipt of the Funding Loan Amount (as defined in the Borrower Loan Agreement).

5. All actions heretofore taken by the officers and agents of the City with respect to the establishment of the Program and the issuance of the Governmental Lender Note are hereby approved, confirmed and ratified, and the proper officers of the City, including but not limited to the Authorized Officers, and 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 Governmental Lender Note to the Funding Lender 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 Funding Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreement, the Assignment and the other documents herein approved 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 Governmental Lender Note.

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

ADOPTED this 31st day of August, 2010, by the following vote:

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

NOES: OLIVERIO.

ABSENT: LICCARDO.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk