

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (1) APPROVING A COMBINED CONSTRUCTION-PERMANENT LOAN COMMITMENT OF UP TO \$39,551,066 AND A COMBINED LAND ACQUISITION LOAN OR ACQUISITION FUNDING COMMITMENT OF UP TO \$16,200,000 IN LOW- AND MODERATE-INCOME HOUSING ASSET FUNDS, MEASURE E FUNDS AND INCLUSIONARY FEE FUNDS, OR SUCH OTHER SPECIAL FUNDS AS THE CITY MAY DESIGNATE TO THE FOLLOWING DEVELOPMENTS: (i) AFFIRMED HOUSING GROUP OR AN AFFILIATED DEVELOPMENT ENTITY FOR THE KOOSER APARTMENTS, LOCATED AT 1371 KOOSER ROAD, WHICH IS BEING DEVELOPED TO PROVIDE 189 AFFORDABLE RENT-RESTRICTED APARTMENTS, AND TWO UNRESTRICTED MANAGER'S HOMES; (A) A TOTAL CONSTRUCTION-PERMANENT LOAN COMMITMENT OF UP TO \$19,551,066 WITH \$5,912,450 IN LOW- AND MODERATE-INCOME HOUSING ASSET FUNDS AND \$13,638,616 IN INCLUSIONARY FEE FUNDS; AND (B) A LAND ACQUISITION LOAN OR ACQUISITION FUNDING COMMITMENT OF UP TO \$9,700,000 IN INCLUSIONARY FEE FUNDS; AND (ii) COMMUNITY DEVELOPMENT PARTNERS OR AN AFFILIATED DEVELOPMENT ENTITY FOR THE 525 NORTH CAPITOL AFFORDABLE HOUSING DEVELOPMENT LOCATED AT 525 NORTH CAPITOL AVENUE, WHICH IS BEING DEVELOPED TO PROVIDE 158 AFFORDABLE RENT-RESTRICTED APARTMENTS, AND TWO UNRESTRICTED MANAGER'S HOMES FOR (A) TOTAL CONSTRUCTION-PERMANENT LOAN COMMITMENT OF UP TO \$20,000,000 WITH \$14,920,000 IN MEASURE E FUNDS AND \$5,080,000 IN INCLUSIONARY FEE FUNDS; AND (B) A LAND ACQUISITION LOAN OR ACQUISITION FUNDING COMMITMENT OF UP TO \$6,500,000 IN INCLUSIONARY FEE FUNDS; (2) AUTHORIZING A LOAN TO VALUE RATIO OF GREATER THAN 100% FOR THE DEVELOPMENTS; (3) AUTHORIZING THE DIRECTOR OF HOUSING, THE ACTING DIRECTOR OF HOUSING, OR THEIR DESIGNEE TO ACQUIRE 1371 KOOSER ROAD FROM AFFIRMED HOUSING GROUP FOR A PRICE NOT TO EXCEED \$9,700,000 AT THE TIME OF TRANSFER, TO ACCEPT

THE GRANT DEED, AND TO ENTER INTO A LONG-TERM GROUND LEASE OF THE SITE TO THE DEVELOPER FOR THE DEVELOPMENT; (4) AUTHORIZING THE DIRECTOR OF HOUSING, THE ACTING DIRECTOR OF HOUSING, OR THEIR DESIGNEE TO ACQUIRE 525 NORTH CAPITOL FROM COMMUNITY DEVELOPMENT PARTNERS FOR A PRICE NOT TO EXCEED \$6,500,000 AT THE TIME OF TRANSFER, TO ACCEPT THE GRANT DEED, AND TO ENTER INTO A LONG-TERM GROUND LEASE OF THE SITE TO THE COMMUNITY DEVELOPMENT PARTNERS OR AN AFFILIATED DEVELOPMENT ENTITY FOR THE DEVELOPMENT; (5) AUTHORIZING THE DIRECTOR OF HOUSING, THE ACTING DIRECTOR OF HOUSING, OR THEIR DESIGNEE TO NEGOTIATE AND EXECUTE DOCUMENTS AND DOCUMENT AMENDMENTS RELATED TO THE ACQUISITION AND DEVELOPMENT OF THE SITES, THE GROUND LEASING OF THE SITES AND ANY RIDERS TO THE GROUND LEASES REQUIRED BY GOVERNMENT ENTITIES; (6) AUTHORIZING THE LOAN TERMS TO ALLOW AN INCREASE IN THE RENTS AND INCOME RESTRICTIONS UP TO 60% OF AREA MEDIAN INCOME FOR NEW TENANTS IN PROJECT-BASED VOUCHER SUBSIDIZED APARTMENTS IN THE EVENT OF EXPIRATION OR TERMINATION OF PROJECT-BASED VOUCHERS AND FOR SOME OR ALL TENANTS IN THE EVENT OF FORECLOSURE, TO THE EXTENT THE CITY HAS DETERMINED SUCH INCREASE IS NEEDED FOR THE FEASIBILITY OF EITHER OF THE ABOVE DEVELOPMENTS AND ALLOWED BY OTHER FUNDS; (7) AUTHORIZING THE DIRECTOR OF HOUSING, THE ACTING DIRECTOR OF HOUSING, OR THEIR DESIGNEE TO NEGOTIATE AND EXECUTE LOAN DOCUMENTS AND ALL OTHER DOCUMENTS, INCLUDING ANY AMENDMENTS THERETO, RELATED TO CITY FINANCING FOR THE DEVELOPMENTS; AND (8) MAKING A DETERMINATION THAT, CONSISTENT WITH GOVERNMENT CODE SECTION 37364, AFTER ACQUISITION, THE SITES ARE TO BE LEASED BY THE CITY TO THE RESPECTIVE DEVELOPERS WITHOUT FIRST OFFERING THE SITE TO THE PUBLIC FOR ANY OTHER USE, SINCE THE SITES WILL BE RESTRICTED SO AS TO PROVIDE HOUSING AFFORDABLE TO PERSONS AND FAMILIES OF LOW OR MODERATE INCOME, AS DEFINED BY SECTION 50093 OF THE

**HEALTH AND SAFETY CODE OR AS DEFINED BY THE
UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT OR ITS SUCCESSORS, AND
THIS THIS USE IS IN THE CITY'S BEST INTERESTS**

WHEREAS, San José lacks a sufficient amount of affordable housing to meet residents' needs and during the City's Regional Housing Needs Allocation for the 2014-2022 (fifth cycle) Housing Element, the City only achieved 26% of the affordable housing production goal; and

WHEREAS, the City's Regional Housing Needs Allocation for the 2023-2031 (sixth cycle) Housing Element is 62,200 housing units of which fifty-five percent of these units must be affordable (i.e., for extremely low-, very low-, low-, and moderate-income households); and

WHEREAS, on December 20, 2021, under the City Council's direction, the Housing Department issued a \$150 million Notice of Funding Availability ("NOFA") for the development of affordable housing prioritizing the construction of affordable multifamily rental housing developments that will provide housing for extremely low-, very low-, and low-income individuals and families, with 45% of the allocated funding prioritized for extremely low-income housing; and

WHEREAS, in response to the NOFA, Affirmed Housing Group ("Affirmed") and Community Development Partners ("CDP") submitted development proposals for two affordable housing developments creating a total of 351 homes for extremely low-, very low-, and low-income individuals and families; and

WHEREAS, approval of the recommended actions will enable Affirmed and CDP (each a Developer, together "Developers") to assemble the financing for the development of the two Developments; and

WHEREAS, approval will also allow the Developers to move forward with joint Low-Income Housing Tax-Exempt Bond Allocation applications to the California Debt Limit Allocation Committee (“CDLAC”) and California Tax Credit Allocation Committee (“CTCAC”) on April 23, 2024; and

WHEREAS, Affirmed Housing proposes to develop, own, and manage the Kooser Apartments, a new family affordable housing development consisting of 191 units on a 1.62-acre site located at 1371 Kooser Road; and

WHEREAS, the City loan of up to \$19,551,066 will provide construction and permanent financing for the 189 affordable apartments and two manager’s apartments and the up to \$9,700,000 in City funding, which was the amount paid by Affirmed to purchase the site, will finance the City purchase of the land; and

WHEREAS, of the 189 affordable homes, 50 homes will be reserved for extremely low-income households earning up to 30% Area Median Income (“AMI”), 65 homes will be reserved for very low-income households earning up to 50% AMI, and 74 homes will be reserved for low-income households earning up to 60% AMI; and

WHEREAS, the City will acquire the site shortly before the start of construction upon approval of land acquisition funding through a City purchase and sale agreement with up to \$9,700,000 in Inclusionary Fee Funds; and

WHEREAS, staff recommends City Council authorize the Director of Housing, Acting Director of Housing, or their designee to negotiate and execute documents for a long-term ground lease of the Kooser site; and

WHEREAS, the long-term ground lease will enable the Developer to apply for Low Income Housing Tax Credits, a tax-exempt bond allocation, and other needed development financing tools; and

WHEREAS, the City will enter into a long-term, low-rent ground lease of the Site to Affirmed or an affiliated development entity for a term of 58 years, with an option to extend for another 15 years; and

WHEREAS, CDP or its affiliate proposes to develop, own, and manage the 525 North Capitol development, a new multigenerational affordable housing development consisting of 160 homes on a 0.96-acre site located at 525 North Capitol Avenue; and

WHEREAS, the 525 North Capitol development will consist of the construction of a new five-story residential building consisting of a ground-floor common area with a commercial kitchen, food pantry, and four stories of residential floors; and

WHEREAS, additional onsite amenities include a conference room, a computer lab, laundry facilities on each residential floor, and outdoor courtyards with outdoor seating, gardening boxes and tables to support food distribution; and

WHEREAS, the 525 North Capitol development consists of 158 affordable units comprised of 60 studios, 64 one-bedrooms, 26 two-bedrooms, and 8 three-bedrooms and two unrestricted manager's units; and

WHEREAS, of the 158 affordable homes, 71 homes will be reserved for extremely low-income households earning up to 30% AMI, 25 homes will be reserved for very low-income households earning up to 50% AMI, and 62 homes will be reserved for low-income households earning up to 60% AMI; and

WHEREAS, 65 of the proposed 158 affordable homes will be assisted by voucher subsidies including 25 homes for extremely low-income households that will be supported by Section 8 PBV's, 15 homes dedicated to permanent supportive housing to help chronically homeless individuals and families maintain permanent housing will also be supported by PBV's, and 25 homes available to homeless veteran households supported by Housing and Urban Development Veterans Affairs Supportive Housing (VASH) vouchers; and

WHEREAS, the 525 North Capitol development's construction period financing sources include \$9,989,367 in federal tax credit equity, \$2,368,089 in state tax credit equity, and a tax-exempt construction loan of \$65,764,281, of which \$5,987,468 will be paid off prior to completion with \$59,776,813 remaining during the construction period; and

WHEREAS, permanent financing includes \$39,957,470 in Federal tax credit equity, \$9,472,355 in State tax credit equity, a first lien position mortgage permanent loan of \$27,250,000, \$8,000,000 in County of Santa Clara Measure A funds, and \$4,000,000 in HCD Infill Infrastructure Grant funds to provide financing from construction to permanent; and

WHEREAS, the City's Construction-Permanent loan will be up to \$20,000,000, composed of \$14,920,000 in Measure E Funds and \$5,080,000 in Inclusionary Fee Funds, and will be secured by a deed of trust in second lien position; and

WHEREAS, the City's commitment as a gap lender will fill the 525 North Capitol development's financing need of up to \$26,500,000, which includes \$6,500,000 in acquisition funding; and

WHEREAS, CDP originally anticipated receiving a \$9,00,000 No Place Like Home (NPLH) funding award along with a \$6,500,000 Measure A funding award from the

County, however the County could only commit to \$4,000,000 in funding from Measure A funds and \$4,000,000 in funding from Affordable Housing for Intellectually and Developmentally Disabled funds; and

WHEREAS, as a result of the decrease in County funding CDP is requesting the City provide an additional \$5,000,000 to cover this gap; and

WHEREAS, with approval of land acquisition funding through a City purchase and sale agreement up to \$6,500,000 in Inclusionary Fee Funds the City will purchase the site from CDP; and

WHEREAS, the City will hold the fee interest in the site and ground lease the site to the developer, ensuring long term affordability; and

WHEREAS, it is anticipated the ground lease term will be 58 years, with an option to extend for another 15 years, and at the end of the term, the City will own the land and the building; and

WHEREAS, the combined total (construction-permanent and acquisition) funding commitment for the 525 North Capitol development will be up to \$26,500,000; and

WHEREAS, City's Loan to Value ("LTV") policy requires that the LTV ratio not exceed 100% in order to mitigate the City's risk of potential loss associated with a loan, however, the City now builds more deeply affordable developments than it did in the 1990's and early 2000's, so the LTV is not the ideal measure of stability for modern developments and City staff, recommend waiver of the LTV if a development's projected operating income is expected to be at least 1.15 times the required permanent mortgage payment; and

WHEREAS, it is expected that the LTV ratio for the Developments will exceed 100%, nevertheless, City staff recommend waiver of the LTV as both Developments projected operating income is expected to be at least 1.15 times the required permanent mortgage payment;

WHEREAS, once the Development sites are acquired by the City, they will become City property and pursuant to the Surplus Lands Act and its guidelines, the City must follow certain procedures in selling or ground leasing of City-owned property which require the offering of that property to the public, unless the sale or lease falls under an exemption; and

WHEREAS, one exception to the Surplus Lands Act and its guidelines is where the property is used to provide housing affordable to persons and families of low or moderate income as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors; and

WHEREAS, staff has recommended that based on the affordability requirements described above, the council make a determination that the properties will be used to provide housing affordable to persons and families of low or moderate income and that this use will be in the City's best interest; and

WHEREAS, approval of staff's recommended action, in the event of foreclosure or loss of PBV's, will allow the Developments to increase rents and income restrictions (but not exceed 30% of 60% of area median income) to ensure the continued financial feasibility of the Developments; and

WHEREAS, both increases to rent and income restrictions will apply to new tenants in PBV subsidized units in the event of expiration or termination of subsidy contracts, and

for some or all tenants in the event of foreclosure to the extent the City has determined such increases are needed for the feasibility of the Developments and allowed by other funding sources; and

WHEREAS, City Council approved the Affordable Housing Siting Policy which seeks to reverse the impacts of segregation in San José by implementing a “both/and” approach to building affordable housing encouraging sites in Affordable Housing Expansion Areas as well as other areas; and

WHEREAS, the Kooser Apartments development is located in an Affordable Housing Expansion Area and 525 North Capitol is located within a Continued Investment Area; and

WHEREAS, City staff is recommending these Developments for funding commitment approval, which will allow the Developers to move forward with joint Low-Income Housing Tax-Exempt Bond Allocation applications to the California Debt Limit Allocation Committee (“CDLAC”) and California Tax Credit Allocation Committee (“CTCAC”) on April 23, 2024;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

(1) Funding to Affirmed Housing Group or an affiliated development entity for the Kooser Apartments, located at 1371 Kooser Road, which is being developed to provide 189 affordable rent-restricted apartments, and two unrestricted manager’s homes is hereby approved as follows:

- (i) A total Construction-Permanent loan commitment of up to \$19,551,066 with \$5,912,450 in Low- and Moderate-Income

Housing Asset Funds and \$13,638,616 in Inclusionary Fee Funds;
and

- (ii) A land acquisition loan or acquisition funding commitment of up to \$9,700,000 in Inclusionary Fee Funds.

(2) Funding to Community Development Partners or an affiliated development entity for the 525 North Capitol affordable housing development located at 525 North Capitol Avenue, which is being developed to provide 158 affordable rent-restricted apartments, and two unrestricted manager's homes is hereby approved as follows:

- (i) A total Construction-Permanent loan commitment of up to \$20,000,000 with \$14,920,000 in Measure E Funds and \$5,080,000 in Inclusionary Fee Funds; and
- (ii) A land acquisition loan or acquisition funding commitment of up to \$6,500,000 in Inclusionary Fee Funds.

(3) A loan-to-value ratio of greater than 100% to Affirmed Housing Group or an affiliated development entity and Community Development Partners, or an affiliated development entity in conjunction with their respective development of the Kooser Apartments and 525 North Capitol Avenue apartments, is hereby authorized.

(4) The Director of Housing, the Acting Director of Housing, or their designee is hereby authorized to acquire 1371 Kooser Road from Affirmed Housing Group for a price not to exceed \$9,700,000 at the time of transfer, to accept the grant deed, and to enter into a long-term ground lease of the site to the developer for the development.

(5) The Director of Housing, the Acting Director of Housing, or their designee is hereby authorized to acquire 525 North Capitol from Community Development Partners for a price not to exceed \$6,500,000 at the time of transfer, to accept the grant deed, and to enter into a long-term ground lease of the site to the

Community Development Partners or an affiliated development entity for the development.

- (6) The Director of Housing, the Acting Director of Housing, or their designee is hereby authorized to negotiate and execute documents and document amendments related to the acquisition and development of the sites, the ground leasing of the sites and any riders to the ground leases required by government entities.
- (7) Loan terms to allow an increase in the rents and income restrictions up to 60% of Area Median Income for new tenants in Project-Based Voucher subsidized apartments in the event of expiration or termination of Project-Based Vouchers and for some or all tenants in the event of foreclosure and to the extent the City has determined such increase is needed for the feasibility of the above developments and allowed by other funds, is hereby authorized.
- (8) The Director of Housing, the Acting Director of Housing, or their designee is hereby authorized to negotiate and execute loan documents and all other documents, including any amendments thereto, related to City financing for the developments.
- (9) A determination that consistent with Government Code Section 37364, after acquisition, the Site can be leased to the Developer without first offering the Site to the public for any other use, since the Site will be restricted so as to provide housing affordable to persons and families of low or moderate income as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors is hereby made.

ADOPTED this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk