

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (A) AUTHORIZING THE ISSUANCE OF A: (1) TAX-EXEMPT MULTIFAMILY HOUSING REVENUE NOTE DESIGNATED AS “CITY OF SAN JOSE MULTIFAMILY HOUSING REVENUE NOTE (THE CHARLES) SERIES 2023B-1” IN A PRINCIPAL AMOUNT NOT TO EXCEED \$44,565,052 (THE “TAX-EXEMPT 2023B-1 NOTE”) AND (2) TAXABLE MULTIFAMILY HOUSING REVENUE NOTE DESIGNATED AS “CITY OF SAN JOSE MULTIFAMILY HOUSING REVENUE NOTE (THE CHARLES) SERIES 2023B-2 (TAXABLE)” IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$12,000,000 (TOGETHER WITH THE 2023A-1 NOTE, THE “2023B NOTES”); (B) APPROVING THE LOAN OF 2023B NOTE PROCEEDS TO KEYES, L.P., A CALIFORNIA LIMITED PARTNERSHIP CREATED BY CHARITIES HOUSING DEVELOPMENT CORPORATION OF SANTA CLARA COUNTY, A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION, TO FINANCE THE ACQUISITION, CONSTRUCTION AND DEVELOPMENT OF A 99-UNIT MULTIFAMILY DEVELOPMENT TO BE KNOWN AS THE CHARLES AND LOCATED AT 551 KEYES STREET IN SAN JOSE; (C) APPROVING IN SUBSTANTIALLY FINAL FORM THE FUNDING LOAN AGREEMENT, THE PROJECT LOAN AGREEMENT, AND THE REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, AND RELATED DOCUMENTS; AND (D) AUTHORIZING AND DIRECTING THE CITY MANAGER, DIRECTOR OF HOUSING, DIRECTOR OF FINANCE, ASSISTANT DIRECTOR OF HOUSING, ASSISTANT DIRECTOR OF FINANCE, DEPUTY DIRECTOR, DEBT AND TREASURY MANAGEMENT, OR THEIR DESIGNEES, TO EXECUTE AND DELIVER THE 2023B NOTE DOCUMENTS TOGETHER WITH ANY DOCUMENTS ANCILLARY TO THE 2023B NOTES**

**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 and notes of the City to finance the construction 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 Borrower has advised the City that the Borrower and the initial purchaser of the 2023B Notes are expected to be related entities for purposes of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder (the “Code”), and bond counsel has advised the City that because of such arrangement, the issuer fees and/or annual monitoring fees in respect of the 2023B Notes may be required to be less than the fees specified in the policies of the City for the issuance of multifamily housing revenue bonds; and

**WHEREAS**, except in respect of issuer fees and annual monitoring fees, or as otherwise specifically authorized herein, the execution, sale and delivery of the 2023B Notes 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 sale of the 2023B Notes; 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**, Keyes, L.P., a California limited partnership (the “Borrower”), has requested that the City issue and sell two Notes (defined below) for the purpose of financing the costs of the acquisition, construction and development by the Borrower of a 99-unit multifamily rental housing development to be located at 551 Keyes Street in the City, currently identified as The Charles (the “Project”); and

**WHEREAS**, on August 4, 2022, the Director of Finance and the Director of Housing of the City executed Declaration No. 2022-3, expressing the intent of the City to issue the 2023B Notes to finance the construction of the Project; and

**WHEREAS**, a notice of a public hearing with respect to the proposed issuance of the Tax-Exempt 2023B-1 Note was published on March 15, 2023; and

**WHEREAS**, a public hearing was held before the Director of Finance of the City on March 27, 2023, regarding the financing of the Project, at which an opportunity was provided for interested parties to present arguments for and against the issuance of the Tax-Exempt 2023B-1 Note and the financing and operation of the Project; and

**WHEREAS**, on March 27, 2023, the Mayor executed Certificate No. 2023-2, approving the issuance of the Tax-Exempt 2023B-1 Note to provide financing for the Project for purposes of Section 147(f) of the Code, as amended; and

**WHEREAS**, on November 30, 2022, the City received a private activity bond volume cap allocation in the amount of \$44,565,052 (the “Allocation Amount”) from the California Debt Limit Allocation Committee in connection with the Project; and

**WHEREAS**, pursuant to Section 5852.1 of the California Government Code, the City, as a conduit financing provider, has received certain representations and good faith estimates from the Borrower and has disclosed such good faith estimates which will be attached to the staff report to the City Council in connection with the authorization of the issuance of the 2023B Notes; 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 2023B Notes 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 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 (defined below), a tax-exempt multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (The Charles) Series 2023B-1” (referred to herein as the “Tax-Exempt 2023B-1 Note”), in an aggregate principal amount not to exceed \$44,565,052, is hereby authorized to be issued and a taxable multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (The Charles) Series 2023B-2 (Taxable) (referred to herein together with the Tax-Exempt 2023B-1 Note as the “2023B Notes”), in an aggregate principal amount not to exceed \$12,000,000, is hereby authorized to be issued; provided that the aggregate principal amount of any federally tax-

exempt obligations shall not exceed the Allocation Amount. The 2023B Notes shall be executed by the manual or facsimile signature of the City Manager, the Director of Housing, the Assistant Director of Housing, the Director of Finance, the Assistant Director of Finance, the Deputy Director, Debt and Treasury Management, 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 funding loan agreement with respect to the 2023B Notes (the “Funding Loan Agreement”) among the City, Wells Fargo Bank, National Association, a national banking association (the “Funding Lender”), and U.S. Bank Trust Company, National Association, as fiscal agent (the “Fiscal Agent”), in the form on file with the City Clerk, is hereby approved. Each of the Authorized Officers, acting alone, is hereby authorized, for and in the name and on behalf of the City, to execute and deliver the Funding Loan Agreement in said form, together 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, including such additions or changes as are necessary or advisable in accordance with Section 8 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Funding Loan Agreement. The date, maturity date, interest rate, interest payment dates, form, place of payment, principal amount, terms of prepayment and other terms of each of the 2023B Notes shall be as provided in the Funding Loan Agreement as finally executed.
4. The project loan agreement among the City, the Fiscal Agent and the Borrower (the “Project Loan Agreement”), in the form on file with the City Clerk, is hereby approved. Each of the Authorized Officers, acting alone, is hereby authorized,

for and in the name and on behalf of the City, to execute and deliver the Project Loan Agreement in said form, together 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, including such additions or changes as are necessary or advisable in accordance with Section 8 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Project Loan Agreement.

5. The regulatory agreement and declaration of restrictive covenants (the “Regulatory Agreement”) between the City and the Borrower, in the form on file with the City Clerk, is hereby approved. Each of the Authorized Officers, acting alone, is hereby authorized 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 any Authorized Officer upon consultation with bond counsel and the City Attorney, including with such additions or changes as are necessary or advisable in accordance with Section 8 hereof, the approval of such changes to be conclusively evidenced by the execution and delivery by the City of the Regulatory Agreement.
  
6. The 2023B Notes, when executed by an Authorized Officer, shall be delivered to the Fiscal Agent for authentication. The Fiscal Agent is hereby requested and directed to authenticate the 2023B Notes by executing the Fiscal Agent’s certificate of authentication and registration appearing thereon, and to deliver the 2023B Notes, when duly executed and authenticated, to the Funding Lender in accordance with written instructions executed on behalf of the City by any Authorized Officer, which instructions each Authorized Officer is hereby authorized, 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 2023B

Notes to the Funding Lender, upon the initial advance by the Funding Lender of the purchase price of the 2023B Notes.

7. Notwithstanding the policies of the City for the issuance of multifamily housing revenue bonds, if and for so long as necessary, upon the advice of bond counsel and with consultation from the City Attorney, to ensure that interest in respect of the Tax-Exempt 2023B-1 Note may be and remain excluded from gross income under the Code, any Authorized Officer is authorized to establish or agree to an issuance fee, an annual monitoring fee, or a combination thereof relating to the 2023B Notes in an amount or amounts lower than that which would otherwise be prescribed pursuant to such policies, such fees to be calculated by a rebate analyst, municipal advisor or similar person having expertise in such matters, such that the yield on the loan to the Borrower will comply with the applicable limits under the Code. Any Authorized Officer, for and in the name and on behalf of the City, is hereby authorized to make certifications and enter into covenants and agreements in connection with the foregoing as may be necessary to ensure the tax-exempt status of the interest on the Tax-Exempt 2023B-1 Note, including an agreement to refund any portions of such fees determined to have exceeded the foregoing limit.
  
8. 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 2023B Notes are hereby approved, confirmed and ratified, and the proper officers of the City, including the Authorized Officers, 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 2023B Notes in

accordance with this Resolution, including but not limited to those certificates, agreements and other documents described in the documents approved by this Resolution and any certificates, agreements or documents as may be necessary to carry out the financing of the Project.

9. All assignments, allonges, conveyances, reconveyances, consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents approved by this Resolution, whether before or after the issuance of the 2023B Notes, 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 2023B Notes or any prepayment of the 2023B Notes, may be given or taken by any of 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, the Project Loan Agreement and the other documents approved herein.
  
10. If any of the Authorized Officers 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.



ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk