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September 15, 2004

Housing Authority  
of the City of Sacramento  
Sacramento, California

Honorable Members in Session:

**SUBJECT: FIRST SUPPLEMENTAL BOND INDENTURE FOR FREMONT MEWS  
PROJECT**

**LOCATION & COUNCIL DISTRICT**

Block formed by 14<sup>th</sup> and 15<sup>th</sup>, P and Q streets; Council District 4

**RECOMMENDATION**

Staff recommends adoption of the attached resolution that authorizes the Executive Director or her designee to execute the First Supplemental Indenture and any other related documents for the Fremont Mews project.

**CONTACT PERSONS**

Darren Bobrowsky, Director, Development Services, 440-1454  
Leslie Fritzsche, Management Analyst, Development Services, 440-1301

**FOR COUNCIL MEETING OF - September 28, 2004**

**SUMMARY**

This report recommends approval of the First Supplemental Indenture to the mortgage revenue bonds that were issued for the Fremont Mews project located between 14<sup>th</sup>, 15<sup>th</sup>, P and Q streets (Please see Attachment I for location).

## **SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY**

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### **COMMISSION ACTION**

At its meeting of September 15, 2004, the Sacramento Housing and Redevelopment Commission adopted a motion recommending approval of the attached resolutions. The votes were as follows:

AYES: Burruss, Coriano, Gore, Harland, Hoag, Piatkowski, Stivers, Simon

NOES: None

ABSENT: Burns, McCarty

### **BACKGROUND**

The Fremont Mews project is located between 14<sup>th</sup>, 15<sup>th</sup>, P and Q streets in Sacramento's Central City. The project consists of the construction of a 119 unit multi-family apartment building. In December 2002, the Redevelopment Agency of the City of Sacramento approved \$2,000,000 in funding and the Housing Authority approved bond documents for the Fremont Mews project.

In November 2003, a bond closing for the project occurred with a bond amount of \$14,180,000. Since that time the rating agency for the bonds, Standard and Poor's, has requested certain amendments to the original bond indenture. These amendments are administrative in nature and are requested to cure any ambiguity or minor omission in the original indenture. The main amendments are as follows:

- 1) adds language stating that should there be a bankruptcy, the funds delivered to the Trustee and the use of such moneys to make payments would not violate the Bankruptcy Code.
- 2) adds the definition of Rating Agency.
- 3) requires that "at any time that the Bonds are rated by a Rating Agency, the Trustee shall give notice to the Rating Agency" upon the occurrence of certain events such as termination of the credit facility, redemption/defeasance of the bonds, any amendment to the indenture, loan agreement of other documents, and the appointment of any successor trustee.

The proposed Supplemental Indenture is attached as Attachment III for reference. The proposed changes do not affect the structure of the project nor the Agency's security.

## SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

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### FINANCIAL CONSIDERATIONS

The Redevelopment Agency of the City of Sacramento approved \$2,000,000 in Merged Downtown Housing Set-Aside Bonds for the Fremont Mews project. The Housing Authority of the City of Sacramento issued \$14,300,000 in bonds for the project. The actions outlined in this staff report do not affect the amount of Agency funding, the Housing Authority's bond amount nor the Agency's and Housing Authority's positions in the project.

### POLICY CONSIDERATIONS

The actions recommended in this report are administrative in nature and will satisfy the requirements requested by the rating agency for the bonds, Standard and Poors. The Fremont Mews project itself is consistent with the Central City Housing Strategy and the Merged Downtown Sacramento Redevelopment Project Area Implementation Plans.

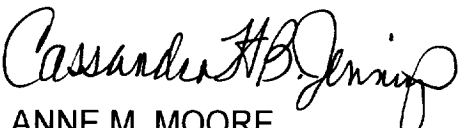
### ENVIRONMENTAL REVIEW

Compliance with CEQA is required at the time an agency proposes to carry out or approve a project. The agency's authorization to issue bonds and approve a loan for this project was previously determined to be exempt from CEQA under the infill development statutory and regulatory exemptions, and a Notice of Exemption was filed. The proposed action to modify the Indenture related to the bond financing does not substantially change the project. Therefore, no further environmental review is required.

### M/WBE CONSIDERATIONS

The items discussed in this report have no M/WBE impact; therefore, M/WBE considerations do not apply.

Respectfully submitted,

  
for ANNE M. MOORE  
Executive Director

Transmittal approved,

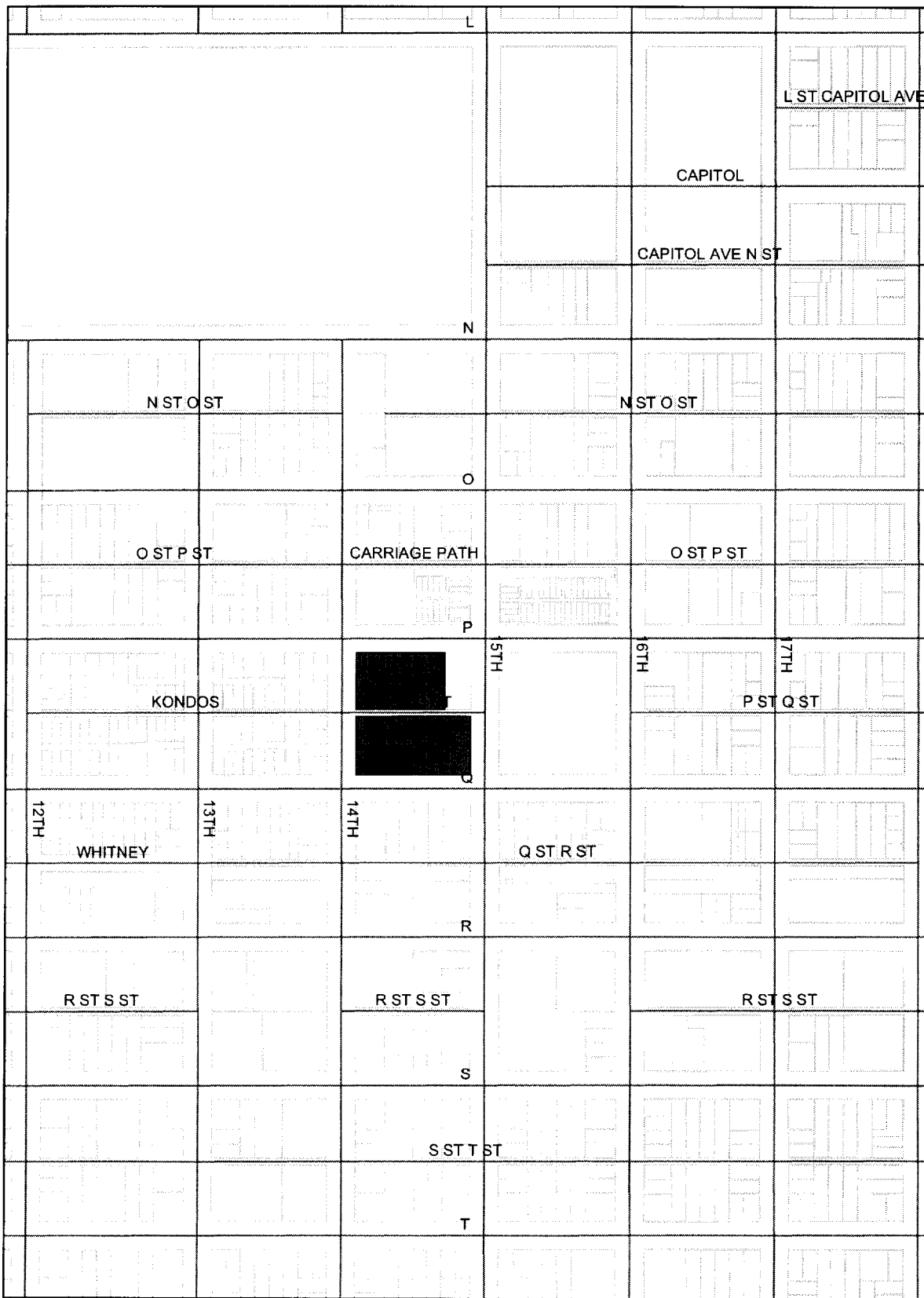
  
ROBERT P. THOMAS  
City Manager

## SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

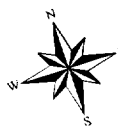
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# Fremont Mews Site Map



**Legend**

 Subject Site

**FIRST SUPPLEMENTAL INDENTURE**

**by and between**

**HOUSING AUTHORITY OF THE CITY OF SACRAMENTO,  
as Issuer,**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee**

**Relating to**

**\$14,300,000  
Housing Authority of the City of Sacramento  
Variable Rate Demand Multifamily Housing Revenue Bonds  
(Fremont Mews Apartments) 2003 Issue D**

**Dated as of September 1, 2004**

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**FIRST SUPPLEMENTAL INDENTURE**

THIS FIRST SUPPLEMENTAL INDENTURE, dated as of September 1, 2004 (this "First Supplemental Indenture"), by and between the HOUSING AUTHORITY OF THE CITY OF SACRAMENTO (the "Issuer"), a municipal corporation duly organized and existing under the laws of the State of California (the "State"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as trustee (together with its successors and assigns hereunder herein called the "Trustee"), is supplemental and amendatory to that certain Trust Indenture, dated as of November 1, 2003 (the "Indenture"), between the Issuer and the Trustee (all capitalized terms used but not otherwise defined herein shall have the respective meanings given to such terms in the Indenture).

## WITNESSETH:

WHEREAS, the Issuer has heretofore issued \$14,300,000 of its Variable Rate Demand Multifamily Housing Revenue Bonds (Fremont Mews Apartments) 2003 Issue D (the "Bonds") in accordance with Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California, the proceeds of which were used to make a loan to 15th and Q Limited Partnership, a limited partnership organized and existing under the laws of the State of California (the "Borrower"), to finance the acquisition and construction of a multifamily residential rental project located in the City of Sacramento and known as Fremont Mews Apartments (the "Project"); and

WHEREAS, Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P") has requested that the Issuer and the Trustee execute and deliver a supplemental indenture containing the provisions hereinafter set forth; and

WHEREAS, Sections 9.01(a) and 9.01(e) of the Indenture permit the Issuer and the Trustee to execute and deliver a supplemental indenture (a) to cure any ambiguity or formal defect or omission in the Indenture, and (b) for the purpose of obtaining or retaining a rating on the Bonds from Moody's or S&P, in each case, without the consent of, or notice to, the Owners of the Bonds, but with the consent of the Controlling Person, and with notice to the Servicer (as each of said terms are defined in the Indenture); and

WHEREAS, Wachovia Bank, National Association, as issuer of the irrevocable direct-pay letter of credit securing the Bonds (the "Bank"), is currently the Controlling Person and the Servicer, and the Bank has consented to and approved the entering into of this First Supplemental Indenture; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

## ARTICLE I AUTHORITY

Section 1.01. Supplemental Indenture. This First Supplemental Indenture is supplemental and amendatory to the Indenture.

Section 1.02. Authority for the First Supplemental Indenture. This First Supplemental Indenture is executed and delivered pursuant to and in accordance with Section 9.01(e) of the Indenture.

Section 1.03. Bank Consent Obtained. The Trustee certifies that notice of this First Supplemental Indenture was given to the Bank, as Controlling Person and Servicer under the Indenture, and the Bank has consented to the entering into of this First Supplemental Indenture.

## ARTICLE II AMENDMENTS TO THE INDENTURE

Section 2.01. Amendments to the Indenture. The provisions of the Indenture shall be amended, modified and supplemented as follows:

(a) The following definition contained in Section 1.01 of the Indenture is hereby amended and restated in its entirety to read as follows:

“Available Moneys” means (i) proceeds of the Bonds received from the original issuance and sale thereof; (ii) moneys drawn under the Credit Facility that are applied directly to the payment of principal or purchase price of, or premium, if any, or interest on the Bonds; (iii) moneys on deposit in any fund or account that have been continuously on deposit with the Trustee for a period of at least 123 days, or 367 days, in the case of an “insider” as defined in the Bankruptcy Code during which no petition in bankruptcy has been filed by or against the Borrower or the Issuer (or any “insider” as defined in the Bankruptcy Code) under the Bankruptcy Code, as now or hereafter in effect, or other applicable state or federal bankruptcy, insolvency, reorganization or similar law for the relief of debtors; (iv) moneys on deposit with the Trustee representing proceeds from the remarketing by the Remarketing Agent of Bonds to persons other than the Issuer, the Borrower or any Affiliate as described in Article V hereof, which, in each case, were at all times since their deposit with the Trustee held in a separate and segregated account or accounts or sub-account or sub-accounts in which no other moneys were at any time held; (v) any other moneys delivered to the Trustee, if, in the written opinion of Counsel experienced in bankruptcy law matters (which opinion shall be delivered to the Trustee at or prior to the time of the deposit or use of such moneys with the Trustee), **the use of such moneys to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code (or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court) and would not constitute an avoidable preferential payment under Sections 544, 547 or 550 of the Bankruptcy Code, recoverable from the Owners pursuant to Section 550 of the Bankruptcy Code in the event of an Event of Bankruptcy in respect**

of the Issuer or the Borrower or an Affiliate; and (vi) earnings derived from the investment of any of the foregoing. The Trustee may presume that no Event of Bankruptcy has occurred unless notified in writing to the contrary by the Borrower, the Bank or the Owners of not less than 25% in aggregate principal amount of Bonds Outstanding.

(b) The following definition is hereby added to Section 1.01 of the Indenture:

**“Rating Agency” means any nationally recognized statistical rating agency then maintaining a rating on the Bonds.**

(c) Section 4.04 of the Indenture is hereby amended and restated in its entirety to read as follows:

**“Section 4.04. Purchase in Lieu of Redemption. At the election of the Borrower upon a redemption in whole of the Bonds, by written notice to the Trustee and the Controlling Person given not less than five (5) Business Days in advance of such redemption date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date. The purchase price of Bonds so purchased in lieu of redemption shall be the principal amount thereof together with all accrued and unpaid interest to the date of redemption and shall be payable **from Available Moneys** on the date of redemption thereof. Bonds so purchased in lieu of redemption shall be registered to or upon the direction of the Borrower.”**

(d) References to Section 301(c) and Section 302(b) in the 5th and 6th sentences of Section 5.02(a) of the Indenture are hereby corrected to read Section 5.01(c) and 5.02(b), respectively.

(e) The 2nd sentence of Section 5.02(b) is hereby amended and restated in its entirety to read as follows:

**“The Trustee shall promptly (and in no event later than 10:00 a.m.) take all action necessary to draw on the Credit Facility **in accordance with its terms, such specified amount.**”**

(f) The following subparagraph is hereby added to Section 8.02 of the Indenture:

**(i) At any time that the Bonds are rated by a Rating Agency, the Trustee shall give notice by mail to that Rating Agency at its address (as specified in Section 12.08 hereof) promptly upon the occurrence of any of: (i) the termination of the Credit Facility, the extension or expiration of the Credit Facility or the substitution of any Alternate Credit Facility for the Credit Facility, (ii) a redemption, acceleration or defeasance of the Bonds in whole or in part (other than any mandatory sinking fund redemption), (iii) the conversion of the Bonds to the Fixed Rate mode, (iv) any amendment of or supplement to this Indenture, the Loan Agreement, the Loan Documents, the Credit Facility or any Facility Documents, and (v) the appointment of any successor trustee or separate trustee or co-trustee.**

(g) Sections 8.07 and 8.08 of the Indenture are hereby amended and restated in their entirety to read as follows:

“Section 8.07. Resignation of Trustee. The Trustee may resign at any time and be discharged of the duties and obligations created by this Indenture by giving not less than sixty (60) days' written notice to the Issuer, the Credit Facility Issuer and the Owners of the Bonds, and such resignation shall take effect upon the day specified in such notice, unless previously a successor shall have been appointed as provided in Section 8.08 of this Indenture, in which event such resignation shall take effect immediately on the appointment of and acceptance of duties by such successor. **Such resignation shall not be effective until a successor Trustee satisfying the requirements of Section 8.06 is appointed and has accepted its appointment.**”

“Section 8.08. Removal of Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing, signed by the Controlling Person and the Issuer and filed with the Trustee. **Such removal shall not be effective until a successor Trustee satisfying the requirements of Section 8.06 is appointed and has accepted its appointment.**

(h) The following is hereby added to Section 12.08 of the Indenture:

**Notices required to be given to the Rating Agency pursuant to Section 8.02 shall be sent to:**

**Standard & Poor's Rating Services  
38th Floor  
55 Water Street, 38th Floor  
New York, NY 10041  
Attention: Municipal Structured Surveillance  
Telephone: (212) 438-2021  
Facsimile: (212) 438-2151**

**ARTICLE III  
MISCELLANEOUS**

Section 3.01. Governing Law. This First Supplemental Indenture shall be governed and construed in accordance with the laws of the State of California.

Section 3.02. Headings. The headings herein are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

Section 3.03. Confirmation of Indenture. Except as amended hereby, the Indenture shall remain in full force and effect and is hereby ratified and confirmed in all respects. This First Supplemental Indenture shall be deemed to be an amendment to the Indenture and a supplemental indenture within the meaning of Article IX of the Indenture. All references in the Indenture to "this Indenture," "hereunder," "hereof," "herein," or other words of like import, and all references to the Indenture in any other agreement or document shall hereafter be deemed to refer to the Indenture as amended hereby.

Section 3.04. Execution in Several Counterparts. This First Supplemental Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Issuer and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this First Supplemental Indenture to be executed and delivered by duly authorized officers thereof, all as of the date first above written.

HOUSING AUTHORITY OF THE CITY OF  
SACRAMENTO

By: \_\_\_\_\_  
Executive Director

Attest:

\_\_\_\_\_  
Secretary

WELLS FARGO BANK, NATIONAL  
ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

Consented to:

WACHOVIA BANK, NATIONAL  
ASSOCIATION, as Controlling Person

By: \_\_\_\_\_  
Authorized Officer

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

**ADOPTED BY THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO**

ON DATE OF \_\_\_\_\_

**AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL  
INDENTURE RELATING TO THE VARIABLE RATE DEMAND MULTIFAMILY  
HOUSING REVENUE BONDS (FREMONT MEWS APARTMENTS) 2003 ISSUE D,  
AND AUTHORIZING THE EXECUTION AND DELIVERY OF AND APPROVING  
OTHER RELATED DOCUMENTS AND APPROVING OTHER RELATED ACTIONS IN  
CONNECTION THEREWITH**

WHEREAS, Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California, commencing with Section 34200 (the "Act"), authorizes housing authorities to incur indebtedness for the purpose of financing the acquisition, construction, rehabilitation and development of multifamily rental housing facilities to be occupied in part by persons of low and very low income;

WHEREAS, on November 13, 2003, the Housing Authority of the City of Sacramento (the "Authority") issued its Variable Rate Demand Multifamily Housing Revenue Bonds (Fremont Mews Apartments) 2003 Issue D in the original principal amount of \$14,300,000 (the "Bonds") pursuant to the Act and that certain Trust Indenture dated as of November 1, 2003 (the "Indenture"), between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"), and loaned the proceeds thereof to 15th & Q Limited Partnership, a California limited partnership, for the purpose of financing the acquisition, construction and equipping of a multifamily residential rental project located in the City of Sacramento and known as the Fremont Mews Apartments;

WHEREAS, Standard & Poor's, a division of The McGraw-Hill Companies ("S&P") is maintaining a rating on the Bonds and has requested certain amendments to the Indenture and it is desirable that the Authority enter into a supplemental indenture, in the respective form of, and for the reasons and purposes set forth in the First Supplemental Indenture between the Authority and the Trustee (the "First Supplemental Indenture");

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to the execution and delivery of the First Supplemental Indenture 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.

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**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: \_\_\_\_\_  
DATE ADOPTED: \_\_\_\_\_

BE IT RESOLVED BY THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO:

Section 1. The Authority hereby finds and declares that the above recitals are true and correct.

Section 2. The First Supplemental Indenture in the form presented to this meeting is hereby approved. The Chairperson, the Vice Chairperson or the Executive Director of the Authority (the "Designated Officers") are, and each of them acting alone, is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the First Supplemental Indenture, and the Secretary of the Board of the Authority or the Clerk is hereby authorized and directed for and in the name and on behalf of the Authority, to attest the Designated Officer's signature on the First Supplemental Indenture, in substantially said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the Authority, including such additions or changes as are necessary or advisable in accordance with Section 3 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the Authority of the First Supplemental Indenture.

Section 3. All actions heretofore taken by the officers and agents of the Authority with respect to the First Supplemental Indenture are hereby approved, confirmed and ratified, and the proper officers of the Authority, including the Designated Officers, are hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions, and execute and deliver any and all certificates, agreements and other documents, including but not limited to those described in the First Supplemental Indenture, which they, or any of them, may deem necessary or advisable in order to consummate the amendment of the Indenture, in accordance with this resolution and any resolution heretofore adopted by the Authority and in order to carry out the transactions contemplated by the First Supplemental Indenture.

Section 4. This resolution shall take effect immediately upon its adoption.

\_\_\_\_\_  
CHAIR

ATTEST:

\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
FOR CITY CLERK USE ONLY

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

DATE ADOPTED: \_\_\_\_\_