

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY AS THE SUCCESSOR HOUSING AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF FOSTER CITY APPROVING A SUBORDINATION AGREEMENT AND AUTHORIZING THE MAYOR TO EXECUTE THE SUBORDINATION AGREEMENT

CITY OF FOSTER CITY

WHEREAS, COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF FOSTER CITY ("Redevelopment Agency") approved a resolution authorizing Redevelopment Agency to enter into a Disposition and Development Agreement dated November 15, 1999 between Redevelopment Agency and M.H. PODELL COMPANY ("Podell"), which was amended by the First Amendment to Disposition and Development Agreement dated as of June 4, 2001 and the First Implementation Agreement to the Disposition and Development Agreement dated February 22, 2000 (collectively, the "DDA"). The DDA provided for a mixed-use development consisting of a residential component, including affordable housing, and a commercial component; and

WHEREAS, Podell assigned its rights under the DDA to PWM Residential Venture LLC, a California limited liability company ("PWM LLC") by that certain Assignment of Disposition and Development Agreement dated February 22, 2000 by and between Podell and Redevelopment Agency; and

WHEREAS, the acquisition of the property was partially financed with a \$5,355,682 grant from the Redevelopment Agency (the "Grant"). Developer was only required to repay the Grant if there was a Material Event of Default under the DDA or the Covenant (as defined below); and

WHEREAS, PWM LLC also relied upon bonds from the California Statewide Communities Development Authority to finance the acquisition, construction and development of the Project (the "Bonds"); and

WHEREAS, pursuant to the DDA, PWM LLC entered into an Affordable Housing Covenant dated August 7, 2000 recorded in the Official Records of the County of San Mateo County, California, as subsequently amended at various times (the "Covenant"); and

WHEREAS, pursuant to the DDA, the obligations under the Covenant are secured by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing recorded in the Recording Office on August 11, 2000 as Instrument No. 2000-099216, as subsequently supplemented and modified at various times (collectively, the "Deed of Trust") and the Deed of Trust is a mechanism for enforcing the obligations under the Covenant; and

WHEREAS, the Bonds were reissued in 2003 and the proceeds of the Bonds were used for a loan from California Statewide Communities Development Authority to PWM LLC that was secured by a Multifamily Deed of Trust Assignment of Rents, Security Agreement and Fixture Filing, dated as of November 1, 2003, which was assigned to Fannie Mae and Wells Fargo Bank. At that time, Fannie Mae and Wells Fargo Bank required Redevelopment Agency to subordinate the Deed of Trust; and

WHEREAS, Health and Safety Code Section 34176(a) allows a city that authorized the creation of a redevelopment agency to elect to retain the responsibility for performing housing functions previously performed by and the housing assets of the redevelopment agency; and

WHEREAS, pursuant to Resolution No. 2012-2, adopted by the City Council of the City of Foster City ("City Council") on January 9, 2012, the City of Foster City elected to act as the housing successor to Redevelopment Agency ("Successor Housing Agency"); and

WHEREAS, housing successors now have authority to enforce affordability covenants pursuant to Health and Safety Code Section 34176(c); and

WHEREAS, the Covenant and Deed of Trust are housing assets that the City has retained; and

WHEREAS, in 2013, the Bonds were retired and PWM LLC refinanced the Project with financing from Walker & Dunlop, LLC ("Walker & Dunlop"). This financing is hereafter referred to as the "2013 Financing." The City's Deed of Trust was subordinated to the 2013 Financing; and

WHEREAS, PWM LLC converted from a limited liability company to a limited partnership and is now known as PWM RESIDENTIAL VENTURE, LP ("PWM LP"); and

WHEREAS, the 2013 Financing is maturing in 2023 and PWM LP intends to enter into a Multifamily Loan and Security Agreement with Walker & Dunlop to replace the 2013 Financing, and execute a note to be secured by a Multifamily Mortgage, Deed of Trust or Deed to Secure Debt ("Walker & Dunlop Security Instrument"); and

WHEREAS, Walker & Dunlop requires PWM LP to enter into a Subordination Agreement by and among Walker & Dunlop, PWM LP, and Successor Housing Agency (the "Subordination Agreement"), the terms of which provide that the Walker & Dunlop Security Instrument will have priority over the Deed of Trust; and

WHEREAS, the Covenant shall retain priority over the Walker & Dunlop Security Instrument and is not affected by the proposed Subordination Agreement; and

WHEREAS, Health and Safety Code Section 33334.14 permits subordination of redevelopment agency affordability restrictions provided that: (i) the agency makes a

finding that alternative financing is not reasonably available on economically feasible terms without subordination, and (ii) the agency obtains written commitments to protect its investment in the event of a default; and

WHEREAS, the proposed Subordination Agreement provides the Successor Housing Agency with rights to receive notice and to cure defaults arising under the Walker & Dunlop Security Instrument.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOSTER CITY, AS THE SUCCESSOR HOUSING AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF FOSTER CITY, as follows:

1. The City Council hereby approves the Subordination Agreement.
2. The City Council finds that without subordination of the Deed of Trust, an economically feasible alternative for refinancing is not reasonably available to PWM LP and that the terms of the Subordination Agreement provide the Successor Housing Agency with reasonable means of protecting the Successor Housing Agency's investment in the event of default;
3. The Mayor is authorized to execute the Subordination Agreement in substantially the form attached to the staff report, subject to minor, technical conforming changes as may be approved by the City Attorney.

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the regular meeting held on the 20th day of March, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JON FROOMIN, MAYOR

ATTEST:

PRISCILLA SCHAUS, CITY CLERK