



DATE: March 20, 2023

TO: Mayor and Members of the City Council

VIA: Stefan Chatwin, City Manager
Marlene Subhashini, Assistant City Manager

FROM: Denise Bazzano, Assistant City Attorney
Sofia Mangalam, Community Development Director

DEPARTMENT: Community Development

SUBJECT: CONSIDERATION OF SUBORDINATION AGREEMENT
BETWEEN THE CITY OF FOSTER CITY, AS THE SUCCESSOR
HOUSING AGENCY TO THE COMMUNITY DEVELOPMENT
AGENCY OF THE CITY OF FOSTER CITY, AND WALKER &
DUNLOP, LLC AND PWM RESIDENTIAL VENTURE LP
RELATING TO REFINANCING FOR MARLIN COVE
APARTMENTS; AND AUTHORIZING MAYOR TO EXECUTE
SUBORDINATION AGREEMENT

RECOMMENDATION

It is recommended that the City Council approve the attached Resolution (Attachment 1) approving the Subordination Agreement between the City of Foster City, as the Successor Housing Agency to the Community Development Agency of the City of Foster City, and Walker & Dunlop LLC and PWM Residential Venture LP relating to refinancing for Marlin Cove Apartments; and authorizing the Mayor to execute the Subordination Agreement.

EXECUTIVE SUMMARY

At the request of PWM, City staff have worked with PWM to negotiate revisions to the Subordination Agreement so that certain financing through Fannie Mae, which is now maturing, can be replaced with new Fannie Mae financing. PWM is requesting that Foster City again subordinate the Deed of Trust to the new Fannie Mae.

BACKGROUND

In November 1999, the Community Development Agency of the City of Foster City ("Redevelopment Agency") entered into a Disposition and Development ("DDA") with M.H. Podell Company for the development of the mixed-use Marlin Cove project ("Project") located at 1000-1098 Foster City Boulevard. The Project consisted of both commercial/retail and residential components, including affordable housing. M.H. Podell Company subsequently assigned its rights to the residential portion of the Project to an affiliate entity, PWM Residential Ventures, LLC¹ in February, 2000.

The acquisition of the property used for the Project was partially financed with a \$5,355,682 grant from the Redevelopment Agency. Pursuant to the terms of the DDA, PWM entered into an Affordable Housing Covenant dated August 7, 2000 ("Covenant"). Pursuant to the DDA, the obligations under the Covenant are secured by a 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 (collectively, the "Deed of Trust"). The Deed of Trust is a mechanism for enforcing the obligations under the Covenant.

PWM also relied upon bonds from the California Statewide Communities Development Authority to finance the acquisition, construction and development of the Project (the "Bonds"). In 2003, the Bonds were reissued and the proceeds of the Bonds were used for a loan from California Statewide Communities Development Authority to PWM 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 the Redevelopment Agency to subordinate the Deed of Trust, which essentially means that PWM's obligations to Fannie Mae and Wells Fargo Bank would be primary and PWM's obligations to the Redevelopment Agency under the Deed of Trust would be secondary or junior to the primary obligations.

On June 29, 2011, State Assembly Bill ABx1 26 was signed by the Governor calling for the dissolution of redevelopment agencies in the State of California. As a result of ABx1 26, the City Council adopted Resolution No. 2012-2 on January 9, 2012, to become the Successor Agency to the former Redevelopment Agency, electing to handle the affairs and winding-down of the Redevelopment Agency. On that date, the City Council also agreed to become the Successor Housing Agency, and take over the housing assets and obligations of the former Redevelopment Agency. 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

¹ PWM Residential Ventures LLC converted from a limited liability company to a limited partnership and is now known as PWM, Residential Venture, LP (collectively referred to as "PWM")

the housing assets of the redevelopment agency. On January 31, 2012, the Redevelopment Agency was formally dissolved.

In 2013, the Bonds were retired and PWM refinanced the Project with multifamily financing from Walker & Dunlop, LLC ("2013 Financing").

ANALYSIS

The 2013 Financing is maturing in 2023 and PWM intends to enter into a Multifamily Loan and Security Agreement with Walker & Dunlop, LLC to replace the 2013 Financing, and execute a note to be secured by a Multifamily Mortgage, Deed of Trust or Deed to Secure Debt. As part of this refinancing, PWM is requesting that the City of Foster City as the Successor Housing Agency, enter into a new Subordination Agreement to provide that the Walker & Dunlop Security Instrument will have priority over the Deed of Trust.

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. In this case, City staff believes the findings can be made because without subordination of the Deed of Trust, an economically feasible alternative for refinancing is not reasonably available to PWM. Subordination is a very common requirement for commercial loans. Additionally, 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.

City staff and the City Attorney's Office has worked with PWM to negotiate revisions to the Subordination Agreement although the substantive terms of the Subordination Agreement remain largely the same as the 2013 agreement. 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.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The approval of this Subordination Agreement is not subject to review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, et seq. and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et. seq.), including without limitation, Public Resources Code section 21065 and California Code of Regulations 15378 as this is not a "project" that may cause a direct, or reasonably foreseeable indirect, physical change in the environment.

FISCAL IMPACT

There is no fiscal impact related to this item.

CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Smart Planning, Development, and the Local Economy

ATTACHMENTS:

Attachment 1 – Resolution

Attachment 2 – Proposed Subordination Agreement