

RESOLUTION NO. 2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA APPROVING A SUBORDINATION AGREEMENT WITH NEWPOINT REAL ESTATE CAPITAL, LLC, FOR ITS LOAN TO LAS HACIENDAS HOUSING ASSOCIATES, L.P. TO REFINANCE AND PAY OFF ITS EXISTING CONSTRUCTION LOAN

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES RESOLVE AS FOLLOWS:

Section 1. The City Council does hereby find determine and declare that:

(a) Pursuant to a Loan Agreement dated May 26, 2020, the City made a loan of \$718,445 of development impact fees and a construction loan of \$8,910,698 of low/mod housing set aside funds (as successor to the assets of the former redevelopment agency) to Las Haciendas Housing Associates, L.P. (“Borrower”) repayable from a percentage of net cash flow/residual receipts. The loan was to help finance a 77 unit apartment project (“Project”) with 37 units restricted to low income households at affordable rent by a recorded agreement with the City (“Regulatory Agreement”).

(b) The existing construction loan for the Project is coming due on November 7, 2024 and the Borrower is negotiating a refinancing loan or so-called “permanent loan” from NewPoint Real Estate Capital, LLC to refinance and pay off the construction loan. That new loan will be purchased by Freddie Mac (i.e., the Federal Home Loan Mortgage Corporation) and put into a pool of similar loans in order for Freddie Mac to issue mortgage-backed securities.

(c) Counsel for the new lender has provided the attached form of Freddie Mac Subordination Agreement as a document required from the City in order for the new loan to be made, and after repeated discussions with counsel to Freddie Mac, Freddie Mac counsel has reportedly said that no changes can be made to it because the loans in the securitization pool must have standard documentation (they can’t make special disclosures to securities purchasers regarding legal differences for certain loan documentation, like the Subordination Agreement).

(d) That form of Subordination Agreement provides for much more than simple subordination of the City’s deed of trust, but such scope is not unusual for commercial subordination agreements with one primary exception--it provides that upon a default under the City Regulatory Agreement that is not cured, the City may not exercise its right to accelerate its loan and if not paid, foreclose its junior deed of trust, without the consent of the new lender. That is the so-called “standstill provision”.

(e) In adopting this Resolution and approving the proposed Subordination Agreement, Council recognizes that: (1) it contains an unlimited “standstill” clause with certain impacts on the City’s rights under the Loan Agreement; (2) the refinancing lender in question requires that form of Subordination Agreement with unlimited standstill in order to make its new loan; (3) according to the Memo Regarding Las Haciendas Subordination Agreement from the

owner/borrower dated as of October 21, 2024, the owner/borrower is not able to get acceptable loan terms (amount; use; interest rate) from any other lender that would not require an unlimited standstill provision; and (4) since the City's deed of trust is currently subordinate to the construction loan deed of trust, if the construction loan is not timely repaid by refinancing, the existing senior construction loan deed of trust could be foreclosed, extinguishing the City's junior/subordinate deed of trust.

Section 2. The City Council hereby approves the Subordination Agreement in substantially the form attached hereto as Exhibit A and authorizes the City Manager to execute the Subordination Agreement on behalf of the City with such changes as are necessary or convenient to accomplish the purposes of the City's loan agreements for the Project and this Resolution. The City Manager is further authorized: 1) to enter into amendments to the Subordination Agreement to change, adjust, or clarify provisions of the Subordination Agreement that are appropriate to further the intended purposes of the Subordination Agreement and this Resolution; 2) for good cause, extend the time for performance of Developer's obligations under the City's Agreements with the Developer of the Project; and 3) approve on behalf of the City such subordination agreements or other amendments to the City's Agreements for the Project as necessary or convenient to integrate the Developer's affordable housing financing and Project financing with the terms of the City's Agreement.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 4th day of November, 2024.

James Stewart, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Resolution No. 2024- was duly and regularly adopted by the City Council of the City of Temecula at a meeting thereof held on the 4th day of November, 2024, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Randi Johl, City Clerk