

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (1) APPROVING A CONSTRUCTION-PERMANENT LOAN COMMITMENT OF UP TO \$9,450,000 AND AN ACQUISITION FUNDING COMMITMENT OF UP TO \$5,200,000 FROM MEASURE E REAL PROPERTY TRANSFER TAX ALLOCATIONS FOR PACIFIC SOUTHWEST COMMUNITY DEVELOPMENT CORPORATION OR AN AFFILIATED DEVELOPMENT ENTITY IN CONJUNCTION WITH CRP AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT LLC OR AFFILIATED ENTITIES FOR DRY CREEK CROSSING, LOCATED AT 2388 S. BASCOM AVENUE, WHICH WILL PROVIDE 63 AFFORDABLE RENT-RESTRICTED APARTMENTS AND ONE UNRESTRICTED MANAGER'S APARTMENT; (2) AUTHORIZING A LOAN-TO-VALUE RATIO OF GREATER THAN 100% FOR THIS DEVELOPMENT; (3) AUTHORIZING THE DIRECTOR OF HOUSING TO ACQUIRE THE 2388 S. BASCOM AVENUE SITE FOR A PRICE NOT TO EXCEED \$5,200,000 AND TO GROUND LEASE THE SITE TO THE DEVELOPER FOR THIS DEVELOPMENT; (4) AUTHORIZING THE DIRECTOR OF HOUSING OR DIRECTOR'S DESIGNEE TO NEGOTIATE AND EXECUTE DOCUMENTS AND DOCUMENT AMENDMENTS RELATED TO THE ACQUISITION AND DEVELOPMENT OF THE SITE, AND GROUND LEASING OF THE SITE, INCLUDING A DEED ACCEPTANCE AND ANY RIDERS TO THE GROUND LEASES REQUIRED BY GOVERNMENTAL ENTITIES AND TO EXECUTE LENDER'S CONSENT TO THESE RIDERS; (5) AUTHORIZING THE DIRECTOR OF HOUSING OR DIRECTOR'S DESIGNEE TO NEGOTIATE AND EXECUTE LOAN DOCUMENTS AND ALL OTHER DOCUMENTS, INCLUDING ANY AMENDMENT THERETO, RELATED TO CITY FINANCING FOR THIS DEVELOPMENT; AND (6) MAKING A DETERMINATION THAT, CONSISTENT WITH GOVERNMENT CODE SECTION 37364, AFTER ACQUISITION, THE 2388 S. BASCOM AVENUE SITE IS TO BE LEASED TO THE DEVELOPER WITHOUT FIRST OFFERING THE SITE TO THE PUBLIC FOR ANY OTHER USES, SINCE THE SITE WILL BE RESTRICTED TO PROVIDE AFFORDABLE HOUSING TO PERSONS AND FAMILIES OF LOW OR MODERATE INCOME, AS**

**DEFINED BY SECTION 50093 OF THE HEALTH AND SAFETY CODE OR AS DEFINED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ITS SUCCESSORS, AND THAT THIS USE IS IN THE CITY'S BEST INTERESTS**

**WHEREAS**, on December 20, 2021, under the City of San José (“City”) Council’s direction, the Housing Department issued a \$150 million Notice of Funding Availability (“NOFA”) for the development of affordable housing for extremely low, very low, and low income individuals and families, prioritizing 45% of the funding for extremely low-income housing; and

**WHEREAS**, in response to the NOFA released by the City, Pacific Southwest Community Development Corporation (“PSCDC”) in conjunction with CRP Affordable Housing and Community Development LLC ( “CRP”) submitted a development proposal with a request for commitment of funding in the amount of up to \$14,650,000, composed entirely of Measure E Funds; and

**WHEREAS**, the City loan of up to \$9,450,000 will provide construction and permanent financing for the 63 affordable apartments and one manager’s apartment (the “Development”) and the up to \$5,200,000 in City funding will provide an acquisition loan or finance the City purchase of the land, which was appraised at \$5.2 million as of January 22, 2022; and

**WHEREAS**, of the 63 affordable apartments, 18 apartments will be available to individuals and families earning up to 30% AMI, 21 will be available for individuals and families earning up to 50% AMI, 13 apartments will be available for individuals and families earning up to 60% AMI, and 11 apartments will be available for individuals and families earning up to 70% AMI; and

**WHEREAS**, City's Loan to Value ("LTV") policy requires that the LTV ratio not exceed 100% in order to mitigate the City's risk of potential loss associated with a loan, however, the City now builds more deeply affordable developments than it did in the 1990's and early 2000's, so the LTV is not the ideal measure of stability for modern developments and City staff, recommend waiver of the LTV if a development's projected operating income is expected to be at least 1.15 times the required permanent mortgage payment; and

**WHEREAS**, it is expected that the LTV ratio for the Development will significantly exceed 100%; and

**WHEREAS**, in order to receive the City loan or financing for the development purchase, Pacific Southwest Community Development Corporation or an affiliated development entity in conjunction with CRP Affordable Housing and Community Development LLC or affiliated entities (collectively, Developer ) will be subject to the City Ground Lease Policy to allow CRP to execute the current Purchase Agreement with the seller; and

**WHEREAS**, staff recommends City Council authorize the Director of Housing to negotiate and execute documents for a long-term ground lease of the Dry Creek Crossing site; and

**WHEREAS**, the long-term ground lease will enable the Developer to apply for Low Income Housing Tax Credits, a tax-exempt bond allocation, and other needed development financing tools; and

**WHEREAS**, the City will enter into a long-term, low-rent ground lease of the Site to the Developer for the Development for a term of 65 years, with an option to extend for another 15 years; and

**WHEREAS**, once the Dry Creek Crossing Site is acquired by the City, it will become City property and pursuant to the Surplus Lands Act and its guidelines, the City must follow certain procedures in selling or ground leasing of City-owned property which require the offering of that property to the public, unless the sale or lease falls under an exemption; and

**WHEREAS**, one exception to the Surplus Lands Act and its guidelines is where the property is used to provide housing affordable to persons and families of low or moderate income as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors; and

**WHEREAS**, staff has recommended that based on the affordability requirements described above, the council make a determination that the property will be used to provide housing affordable to persons and families of low or moderate income and that this use will be in the City's best interest; and

**WHEREAS**, City Council approved the Affordable Housing Siting Policy which seeks to reverse the impacts of segregation in San José by implementing a "both/and" approach to building affordable housing encouraging sites in Affordable Housing Expansion Areas as well as other areas ; and

**WHEREAS**, the Development is located in an Affordable Housing Expansion Area; and

**WHEREAS**, City staff is recommending this NOFA selected development for funding commitment approval, which will allow Developer to move forward with its Low-Income Housing Tax-Exempt Bond Allocation application to California Debt Limit Allocation Committee in February 2023;

**NOW, THEREFORE,** BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

- a. A total funding commitment of up to \$14,650,000 to Pacific Southwest Community Development Corporation or an affiliated development entity in conjunction with CRP Affordable Housing and Community Development LLC or affiliated entities for Dry Creek Crossing, located at 2388 S. Bascom Avenue, which is being developed to provide 63 affordable rent-restricted units, and 1 unrestricted manager's apartment from the City's Measure E Real Property Transfer Tax fund, which commitment includes an amount not to exceed \$9,450,000 in a Construction-Permanent Loan commitment and an amount not to exceed \$5,200,000 for a land acquisition loan or to finance the City purchase of the land, as set forth in the Memorandum from the Housing and Budget Departments, dated as of January 9, 2023 is hereby authorized.
- b. A loan-to-value ratio of greater than 100% to Pacific Southwest Community Development Corporation or an affiliated development entity in conjunction with CRP Affordable Housing and Community Development LLC or affiliated entities, is hereby authorized.
- c. The Director of Housing is hereby authorized to acquire the 2388 S. Bascom Avenue site for a price not to exceed \$5,200,000 and to ground lease the site to the Developer for the Development.
- d. The Director of Housing or Director's designee, is hereby authorized to negotiate and execute documents and document amendments related to the acquisition and development of the site and the ground leasing of the site, including a deed acceptance and any riders to the ground leases.
- e. The Director of Housing or the Director's designee is hereby authorized, to negotiate and execute loan documents and all other documents, including any amendments thereto, related to City financing for the Development.

- f. A determination that consistent with Government Code Section 37364, after acquisition, the Site can be leased to the Developer without first offering the Site to the public for any other use, since the Site will be restricted so as to provide housing affordable to persons and families of low or moderate income as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors is hereby made.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk