

**29720**

DATE: October 9, 2012

TO: Board of Acquisition and Contract

FROM: Edward Buroughs  
Commissioner of Planning

SUBJECT: Resolution authorizing an amendment to the agreement between the County of Westchester and Somers Senior LP, which supplemented a portion of the costs for construction of eleven (11) Fair and Affordable Housing Rental Units for senior citizen households at The Mews at Baldwin Place, Route 6, in the Town of Somers in order to release any rights of this real property in order to subordinate the HOME mortgage held by the County to the permanent financing, enter into a Intercreditor Agreement and modify the terms of the promissory note

On April 29, 2010, your Honorable Board approved a resolution to enter into an agreement with Somers Senior LP, to provide a grant from the Federal HOME Investment Partnership Program (HOME) in order to supplement a portion of the construction costs for eleven (11) fair and affordable rental units of senior housing for The Mews at Baldwin Place on Route 6 at 24-26 Clayton Boulevard in the Town of Somers. The term of the agreement is May 1, 2010 to April 30, 2013, and the amount of the grant is \$650,000.00. The units will be allocated to senior households with a range of incomes not to exceed 60% AMI for Westchester County and will have an affordability period for a minimum of 50 years.

The attached resolution authorizes the Count of Westchester to amend the above referenced agreement in order to release any rights in the real property located at 24-26 Clayton Boulevard in the Town of Somers to subordinate the HOME mortgage held by the County, to enter into an Intercreditor Agreement and to modify the terms of the promissory note secured by said mortgage by conditioning the Developer's obligation to make monthly interest-only payments throughout the loan repayment term depending on it having available cash flow after its payment of all monthly expenses. The real property know as The Mews at Baldwin Place Senior Housing Development will secure a HOME loan made by the County to Somers Senior, L.P. pursuant to HOME, to a new first mortgage proposed to be placed on the Development property.

The initial financing for the Development's construction included construction mortgage loans to Somers Senior L.P. secured by Development property as follows:

1. A first mortgage loan from TD Bank for the principal amount of \$10,500,000 (the "TD Bank Construction Loan"); and
2. A County HOME Mortgage (defined below) for the principal amount of \$650,000.

The Developer has now achieved all occupancy benchmarks to permit it to retire the TD Bank Construction Loan and replace it with permanent financing, secured by the Development property as follows:

1. A first mortgage loan from Community Preservation Corporation for the principal amount of \$3,000,000.00 (the "CPC First Mortgage");
2. A County HOME Mortgage (defined below) for the principal amount of \$650,000 and subordinated to the CPC First Mortgage; and
3. A Housing Trust Fund mortgage loan from New York State Housing Trust Fund Corporation for the principal amount of \$1,985,000 (the HTF Mortgage) and subordinated to the CPC First Mortgage in co-equal second position with the HOME Mortgage

The proposed HOME loan promissory note modification will state, any annual interest payments the Developer may be unable to make if they do not have available cash flow, will be deferred and added to the entire mortgage principal of \$650,000.00 and paid by the Developer at the end of the thirtieth year. Planning will conduct annual reviews of the Developer's audited financial statements, to determine whether there is, sufficient cash flow.

The goal and objective of the subordination request is to allow these affordable housing units to operate in a cost effective manner so the developer can continue to do maintenance and preserve the affordable housing units.

The HOME Mortgage and the HTF Mortgage will be subordinated to the CPC First Mortgage. Pursuant to an Intercreditor Agreement between the County and the HTF regarding their respective mortgages, both the HTF and the County will share a status as mortgagees in co-equal second position to the CPC First Mortgage. The Developer's obligation to repay the HTF Mortgage is also conditioned upon it having available cash flow to further assure the Development's financial viability. The anticipated refinance terms consist of the CPC First Mortgage loan in the principal amount of \$3,000,000 with a 30 year re-payment term at an annual interest rate of 5.05% is advantageous to the Development if compared to the \$16,500,000 TD Bank Construction Loan with a 24 month re-payment term at 5.25%. Department of Planning staff will monitor compliance with the affordability requirements.

It is recognized and understood that an Act of the Westchester County Board of Legislators is required to authorize the County of Westchester to release any rights in the real property located at 24-26 Clayton Boulevard, in the Town of Somers, necessary to subordinate a HOME mortgage held by the County on the real property comprising The Mews at Baldwin Place Senior Housing Development, enter into an Intercreditor Agreement and modify the terms of the promissory note secured by said mortgage. Legislation for this purpose was pending before the Board of Legislators at the time this resolution was submitted and is expected to be acted upon at the Board's regular meeting on October 29, 2012.

I recommend approval of this amendment.

EB/cp  
Attachment

**RESOLUTION**

UPON A COMMUNICATION FROM THE COMMISSIONER OF PLANNING, BE IT HEREBY

RESOLVED, that the County of Westchester is authorized to amend the agreement with Somers Senior LP, for the property located at The Mews at Baldwin Place/24-26 Clayton Boulevard in the Town of Somers in order to release any rights in the Property deemed necessary to subordinate the HOME Mortgage on the real property comprising the Development, and to modify the promissory note that secures the HOME Mortgage by conditioning the Developer's obligation to make annual interest only payments depending on it having available cash flow; with such interest to be calculated at 1% per annum and due at the end of the thirtieth year together with the entire mortgage principal, and it is further

RESOLVED: that the County Executive or his duly authorized designee is authorized to execute any documents and take any actions necessary to effectuate purposes hereof.

Original Agreement \$650,000.00  
This Amendment \$0.00  
  
TOTAL \$650,000.00  
  
AGREEMENT NUMBER C-HOME-09-84

Account to be Charged/Credited

		Major Program, Program & Phase	Object/	Trust	
Fund	Dept	Or Unit	Sub Object	Account	Dollars
263	19	173J	4380	T173	\$0.00

Budget Funding Year(s) FY 2009 Start Date May 1, 2010 End Date April 30, 2013  
(must match resolution)

Funding Source Tax Dollars \_\_\_\_\_

State Aid \_\_\_\_\_

**\$0.00** Federal Aid \$0.00 – U.S. Department of Housing and Urban Development  
(must match resolution)

Other \_\_\_\_\_