



110385

DATE: January 24, 2025

TO: Board of Acquisition and Contract

FROM: Blanca P. Lopez, M.S.
Commissioner of Planning

SUBJECT: Resolution authorizing the County of Westchester 1) amend a certain Declaration of Restrictive Covenants to replace Migi Asset Acquisition, LLC as the Developer with Lifting Up Westchester, Inc. and other terms of the Declaration of Restrictive Covenants, and 2) enter into any and all agreements with Lifting Up Westchester, Inc. pursuant to the U.S. Department of Housing and Urban Development HOME-American Rescue Plan Program in an amount not to exceed \$3,250,000 commencing upon execution and terminating on fifty years thereafter for the acquisition and construction completion of fourteen (14) units of affordable residential rental housing that will affirmatively further fair housing located at 98 Washington Avenue in the Village of Pleasantville

On November 23, 2016, your Honorable Board approved a resolution (the "November 23rd Resolution") authorizing the County of Westchester (the "County") to enter into any and all agreements necessary to (i) purchase +/- 0.17 acre of real property located at 98 Washington Avenue, Village of Pleasantville, identified on the tax maps as Section 106.6, Block 1, Lot 44 (the "Property") from Migi Asset Acquisition, LLC, its successors or assigns ("Migi") or the current owner of record for an amount not to exceed \$1,800,000 which was funded from Capital Project BPL10 - New Homes Land Acquisition II; and (ii) convey fee title to the Property to the Developer, its successors or assigns for One (\$1.00) Dollar all in support of the construction of fourteen (14) affordable residential rental units that would affirmatively further fair housing (the "Affordable AFFH Units") to be constructed thereon (the "Development"), and to grant and accept all necessary property rights in connection therewith. The fourteen (14) units were to be affordable for households with incomes at or below 50% and 60% of the Westchester County Area Median Income ("AMI"). The November 23rd Resolution further authorized the County to enter into an agreement with the Developer to finance a portion of the development costs in support of the Development in an amount not to exceed \$993,000 from Capital Project BPL 50 - Fair and Affordable Housing.

The closing for the transaction took place on December 28, 2016, and construction of this Development was to be completed on or before June 30, 2020. Migi commenced, but failed to complete construction of the Development and the County Board of Legislators (the "Board of Legislators") authorized the commencement of litigation by the County against Migi by Act No. 41-2022 in connection with its default under the terms of its agreements with the County, including its failure to complete the construction of the Development.

Subsequently, the Board of Legislators authorized the settlement of the litigation, upon certain terms and conditions detailed in Act No. 88-2024 (the "Settlement"). As part of the Settlement, Lifting Up Westchester, Inc. has entered into an agreement with Migi for the purchase of the Property in the amount of \$2,100,000. Upon acquisition of the Property, LUW has agreed to complete the construction of the Affordable AFFH Units.

Authority is respectfully requested from your Honorable Board to amend the Declaration of Restrictive Covenants that was executed on December 28, 2016 and filed in the Office of the County Clerk, in order to replace Migi with Lifting Up Westchester, Inc., its successors and/or assigns or any entity created to carry out the purposes of the transaction ("LUW") as the Developer, amend certain terms and conditions contained in the Declaration of Restrictive Covenants including, but not limited to the affordability requirements, dates for construction completion, type of residential rental housing, and marketing requirements all as described below. The original plans and specifications for the construction of the Affordable AFFH Units will remain the same. It should be noted that the period of affordability of fifty (50) years contained in the Declaration of Restrictive Covenants will not begin until the certificates of occupancy are issued for the Development. Therefore, the fact that the original Declaration of Restrictive Covenants was filed in 2016 will not affect the length of the fifty (50) year period of affordability.

Further, authority is requested for the County to enter into an agreement with LUW in an amount not to exceed \$3,250,000 from the United States Department of Housing and Urban Development ("HUD") HOME-American Rescue Plan ("HOME-ARP") Program to assist in the purchase of the Property and the completion of the construction of the Development ("HOME-ARP Agreement"). The HOME-ARP Agreement will commence upon execution and terminate fifty years thereafter. Completion of the Development will occur within one year of the execution of the HOME-ARP Agreement. Further, pursuant to the requirements of the HOME-ARP Program, ten (10) of the Affordable AFFH Units will be available to households that are homeless and have an income at or below fifty (50%) percent of AMI, with priority given to those who are employed full time. Marketing of these units will be conducted through the County Continuum of Care program. The remaining four (4) units will be available to households with incomes at or below sixty (60%) percent of AMI. These units will be marketed through the County's approved marketing plan. In addition to the HOME-ARP Agreement, LUW will execute a Note and Mortgage as security (the HOME-ARP Agreement, Note and Mortgage together the "Loan Documents").

Pursuant to the terms of the Loan Documents, interest will accrue at 1%, compounded annually, commencing at closing and continuing for a term of fifty years (“HOME-ARP Loan Term”). At the end of the HOME-ARP Loan Term, the principal and accrued interest due and owing to the County will be payable to the County, unless LUW extends the Period of Affordability for a specified term, and only if such extension is approved by the County in its sole discretion at that time.

It should be noted that on November 9, 2023, your Honorable Board approved a resolution which authorized the County to enter into a grant agreement with HUD to accept a grant in the amount of approximately Four Million Five Thousand Fifty-Seven Dollars from the HUD HOME-ARP Program.

The goal and objective of the amendment to the Declaration of Restrictive Covenants and the execution of the Loan Documents is to facilitate the completion of the Development which will be safe, secure and energy efficient, and will provide rental opportunities for homeless households and those of lower income who may not otherwise be able to afford to live in Westchester County.

The Department of Planning staff will monitor and track the completion of the Development, as well as monitor compliance with the marketing and on-going affordability requirements.

Accordingly, I respectfully recommend approval of the attached Resolution.

BPL/lg/lac
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT - 02/03/2025 - RAYMOND SCULKY, SECRETARY

RESOLUTION

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

RESOLVED, that the County of Westchester (the "County") is hereby authorized to enter into an amendment to a Declaration of Restrictive Covenants executed by the County on December 28, 2016, and recorded in the Office of the Westchester County Clerk, in order to 1) replace Migi Asset Acquisition, LLC as the developer of fourteen (14) affordable residential rental units that will affirmatively further fair housing (the "Affordable AFFH Units"), with Lifting Up Westchester, Inc., its successors and/or assigns or any entity created for the purpose of the transaction ("LUW"), as the new developer; and 2) to amend the affordability requirements so that ten (10) of the Affordable AFFH Units will be available to households that are homeless and have an income at or below fifty (50%) percent of AMI, with priority given to those who are employed full time, with the marketing of these units conducted through the County Continuum of Care program and the remaining four (4) units will be available to households with incomes at or below sixty (60%) percent of AMI and marketed through the County's approved marketing plan, and to amend the construction completion date and any other terms necessary; and be it further

RESOLVED, that the County is authorized to enter into a loan agreement ("Agreement") with LUW in an amount not to exceed \$3,250,000 from the U.S. Department of Housing and Urban Development HOME-American Rescue Plan Program ("HOME-ARP") with a term commencing upon execution and terminating fifty years thereafter with construction being completed within one year of the execution of the Agreement; and be it further

RESOLVED, that LUW will executed a Note and Mortgage as security for the Agreement; and be it further

RESOLVED, that pursuant to the terms of the Agreement and the Note and Mortgage, interest will accrue at 1%, compounded annually, commencing at closing and continuing for fifty years (the "HOME-ARP Loan Term"); and be it further

RESOLVED, that at the end of the HOME-ARP Loan Term, the principal and accrued interest due and owing to the County will be payable to the County unless LUW extends the period of affordability for a specified term, and only if such extension is approved by the County in its sole discretion at that time; and be it 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.

Account to be Charged/Credited

		Major Program, Program & Phase	Object/ Sub Object	Trust Account	Dollars
Fund	Dept	Or Unit			
263	19	173W	4998	T173	\$3,250,000

Budget Funding Year(s) FY2021 Start Date: upon execution End Date: 50 years thereafter

Funding Source: Tax Dollars _____
 State Aid _____
 Federal Aid \$ 3,250,000 U.S. Department of Housing and Urban Development
 Other _____

\$ 3,250,000
 (must match resolution)

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APPROVED BOARD OF ACQUISITION & CONTRACT - 02/03/2025 - RAYMOND SCULKY, SECRETARY