

109908

DATE: November 13, 2024

TO: Board of Acquisition and Contract

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

SUBJECT: Resolution authorizing an amendment to a Declaration of Restrictive Covenants made by the County in connection with an affordable housing project located at 2500 Jacob's Hill Road in the Town of Cortlandt, in order to amend the length of affordability and remove the reverter clause on the affordable rental units.

On July 29, 2004, your Honorable Board approved a resolution authorizing the County of Westchester (the "County") to enter into a Declaration of Restrictive Covenants ("DRC") in connection with an affordable housing project located at 2500 Jacob's Hill Road (Section 23.16, Block 5 and Lot 2) in the Town of Cortlandt (the "Development") to provide 103 affordable rental units that affirmatively further fair housing ("AFFH" and collectively the "AFFH Units"). The AFFH Units have since been completed and are now occupied.

The attached resolution, if approved by your Honorable Board, will authorize the County to amend the DRC to remove the reverter clause. At the time this Development closed in 2004, it was commonplace for the County DRC to include a reverter clause. In the event of non-compliance with the DRC's restrictions, this clause would result in the property ownership reverting back to the County. However, the use of the DRC poses a significant risk to lenders who could see their liens disappear should the County decide to enforce the reverter clause.

At the time this Development closed in the late 1990's and early 2000's, the County placed reverters on a few developments before realizing that the reverter clause created issues for the developments to seek financing. In the case of this Development, the owner is seeking to refinance the existing debt with a new loan through a Federal National Mortgage Association ("Fannie Mae") or Federal Home Loan Mortgage Corporation ("Freddie Mac") execution. However, like most lenders, Freddie Mac and Fannie Mae will not permit the existence of a reverter clause. With this clause in the current DRC, the refinancing is unable to occur, causing potential harm to the ownership as they might not be able to repay the existing loan prior to its maturity.

In consideration of the removal of this clause, the Developer has agreed to extend the period of affordability from 40 years to 50 years. All other terms and conditions of the County DRC will remain in full force and effect.

I recommend approval of this Amendment.

BPL/dv/lg

Attachment

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RESOLUTION

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

RESOLVED, that the County of Westchester ("County") is authorized to amend a Declaration of Restrictive Covenants made by the County, on the affordable rental units that affirmatively further fair housing ("AFFH" and collectively the "AFFH Units") located at 2500 Jacob's Hill Road (as Section 23.16, Block 5 and Lot 2) in the Town of Cortlandt (the "Development"), in order to extend the length of affordability by ten years, for a total of fifty years, and to remove the reverter clause; and be it further

RESOLVED: that all remaining terms and conditions of the Declaration of Restrictive Covenants shall remain in full force and effect; 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.

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