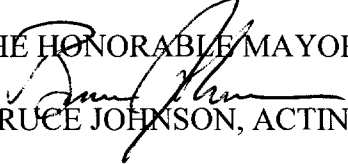


City of Alexandria, Virginia

MEMORANDUM

DATE: SEPTEMBER 2, 2011

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM:  BRUCE JOHNSON, ACTING CITY MANAGER

SUBJECT: CONSIDERATION OF RELEASE OF COVENANT, IN THE EVENT OF FORECLOSURE OR DEED IN LIEU OF FORECLOSURE, FOR BEASLEY SQUARE APARTMENTS

ISSUE: Technical amendments to the Declaration of Restrictive Covenants and Deed of Easement (Declaration) for Beasley Square Apartments.

RECOMMENDATION: That City Council:

- 1) Agree to a release of the Declaration of Restrictive Covenants and Deed of Easement, in the event of foreclosure or deed in lieu of foreclosure, for Beasley Square, LLC related to its permanent financing for Beasley Square Apartments with the Virginia Housing Development Authority (VHDA) as the new first trust lender, with the understanding that the City's interest in the property as affordable housing will remain protected through a right to cure in the unlikely event of a default;
- 2) Accept from VHDA the ability to assume, purchase, pay-off or assign the right to purchase the VHDA loan, with the City being required to reimburse VHDA up to \$4,900 for interest accrued, if at some point in the future, the City does not exercise the option to purchase or pay-off the VHDA loan; and
- 3) Authorize the City Manager to execute all necessary documents.

BACKGROUND: Since 2005, City Council has approved a rezoning and a development special use permit (DSUP), as well as a total loan package of \$1,139,000 for predevelopment and construction of Beasley Square, an 8-unit Senior Housing project. During the construction phase of the project, as authorized by Council, the City's loan was subordinate to Beasley Square's first trust loan with Virginia Community Capital (VCC). With the construction of the property completed, Beasley Square is now able to close on its planned permanent financing with VHDA. As always anticipated, the City will continue as a junior lender in priority and will execute a subordination agreement in VHDA's favor.

Over the summer months, staff from the Office of Housing and the City Attorney's Office have participated in discussions with Beasley Square, LLC and VHDA and their respective counsel in preparation for the permanent loan closing, including the circulation, review and revision of legal documents among the parties. Given recent national issues related to residential mortgage defaults, lenders have instituted new technical requirements to better protect their loans. As a result, VHDA's legal counsel requested that language be added to the documents signed by the City that would release its 2008 Declaration of Restrictive Covenants (Declaration) and Deed of Easement in the unlikely case of default by Beasley Square, LLC a loan foreclosure by VHDA or deed in lieu of foreclosure. This is a new policy of VHDA, and is similar to the request that was approved by City Council in June 2011 for ARHA's Quaker Hill permanent financing closing with VHDA. The Declaration is a restrictive covenant on the land that ensures that the property will continue to be used as affordable housing. A release is required so that, in the event of a foreclosure or deed in lieu of foreclosure, the Declaration would not operate as a restriction on the title of the property and VHDA might recover its investment by selling the property on the open market without this restriction on its future use.

DISCUSSION: The Declaration requires that property be preserved for affordable housing purposes, "until the first occurring of (i) 40 years or (ii) the period of lease by Beasley or (iii) until otherwise approved by Alexandria City Council." As stated in bold, the explicit language of the Declaration requires approval of City Council for a release of the covenant absent the other conditions having been met. A release of the Declaration will remove the requirement that the property continue as affordable housing upon a foreclosure by or deed in lieu of foreclosure

A foreclosure or deed in lieu of foreclosure is unlikely given that all of the parties (Beasley Square, LLC, the City and VHDA) involved in the financing transaction are in the business of preserving affordable housing, enjoy collaborative and cooperative working relationships and would be highly motivated to seek alternative resolutions to avoid foreclosure and preserve the property's long term affordability. However, in the unlikely event of a default by Beasley Square, LLC, the City, through its loan documents, has the ability to cure any default by Beasley Square, LLC.

VHDA is also willing to provide the City with the right to assume, purchase, pay-off or assign its right to purchase the VHDA loan (through a rider to VHDA's deed of trust for the property). The City will be given a 60 day review period for analysis of the option to purchase or pay-off VHDA's loan. If the City decides not to exercise the option to purchase or pay-off the VHDA loan, VHDA would require the City to pay up to \$4,900 (i.e., about \$82 per day) in interest on the VHDA loan. (In the Quaker Hill transaction, VHDA did not require that the City reimburse it for choosing not to exercise these options.) Given the City's loan amount to Beasley is \$1.1 million, having an option to assure purchase, pay-off, or assign for just \$82 per day for a 60 day period is a reasonable cost given the benefit of the option.

FISCAL IMPACT: No cost for agreeing to the release of the Declaration in the event of foreclosure or deed in lieu. If the City elects to have the VHDA rider executed, and the City decides not to purchase or pay-off the VHDA loan, a maximum total interest payment of about \$82 per day or \$4,900 for the full 60 day option period would be incurred.

STAFF:

Mark Jinks, Deputy City Manager

Mildrilyn Davis, Director, Office of Housing

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Christina Zechman Brown, Assistant City Attorney