

County Council Of Howard County, Maryland

2011 Legislative Session

Legislative Day No. 10

Resolution No. 145- 2011

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION adopted pursuant to the Maryland Economic Development Revenue Bond Act providing for the consent by Howard County, Maryland to (1) the transfer of the 634-unit residential rental housing facility located in Elkridge, Maryland known as the "Sherwood Crossing Apartments," by WLA Sherwood Investors VI, L.L.C. to KMF Sherwood Crossing, LLC (the "Purchaser"), the costs of which facility were refinanced with the proceeds of the County's Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Sherwood Crossing Apartments) Series 2003, and (2) the assumption by the Purchaser of the borrower's surviving obligations under Amended and Restated Regulatory Agreement relating to such bonds; authorizing the County to enter into an amendment to such Regulatory Agreement; making certain findings; and authorizing the County Executive and other County officials to do all acts and execute all documents necessary in connection therewith.

Introduced and read first time Sept. 6, 2011.

By order Stephen M LeGendre
Stephen M. LeGendre, Administrator

Read for a second time at a public hearing on Sept. 19, 2011.

By order Stephen M LeGendre
Stephen M. LeGendre, Administrator

This Resolution was read the third time and was Adopted , Adopted with amendments , Failed , Withdrawn , by the County Council on October 3, 2011.

Certified By Stephen M LeGendre
Stephen M. LeGendre, Administrator

Approved by the County Executive October 12, 2011.

Ken Ulman
Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law. TEXT IN ALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

RECITALS

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On June 27, 1985, Howard County, Maryland, a body politic and corporate and a political subdivision of the State of Maryland (the "County"), issued and sold its Howard County, Maryland Multifamily Housing Revenue Bonds (Sherwood Crossing Limited Partnership Project) 1985 Series A, in the original principal amount of \$32,500,000, dated as of June 1, 1985 (the "Prior Bonds") pursuant to and in accordance with the Maryland Economic Development Revenue Bond Act (the "Act"). The County caused the proceeds of the Bonds to be deposited with Irving Trust Company, as trustee (the "Prior Trustee"), pursuant to a Trust Indenture dated as of June 1, 1985, and caused the Prior Trustee to make a loan to Sherwood Crossing Limited Partnership in the principal amount of \$32,500,000 (the "Prior Loan"), for the purpose of financing a portion of the cost of the acquisition and construction of a certain facility within the geographical boundaries of the County (the "Facility").

The Facility is a residential rental housing community known as the Sherwood Crossing Apartments. It consists of and includes:

- (a) approximately 44 acres of land located at 6731 Old Waterloo Road, in Elkridge, Maryland, together with any and all improvements existing thereon,
- (b) 21 two- and three-story buildings containing approximately 634 one-, two- and three-bedroom residential rental apartment units, and facilities functionally related and subordinate thereto (collectively, the "Buildings"),
- (c) such equipment and machinery, and any or all other improvements therein, as may be necessary or useful in connection with the operation of the Facility, and
- (d) such other interests in land as may be necessary or suitable for the foregoing, including roads and rights or access, utilities and other necessary site preparation facilities.

1 Pursuant to Council Resolution 187-2002, adopted by the County Council of the
2 County on December 16, 2002 and approved by the County Executive of the County on
3 December 18, 2002, the County approved the transfer of ownership of the Facility to
4 Sherwood Crossing Apartments, LLC, a Delaware limited liability company (“Sherwood
5 Crossing Apartments, LLC”), and the assumption of the obligations under the documents
6 then in place to secure the Prior Bonds (the “Prior Bond Documents”) by Sherwood
7 Crossing Apartments, LLC. On December 31, 2002, Sherwood Crossing Apartments,
8 LLC purchased the Facility and assumed the obligations under the Prior Bond
9 Documents.

10 Further, on March 12, 2003, Sherwood Crossing Apartments, LLC requested that
11 the County issue new Bonds to allow it to repay a portion of the Prior Loan and refund
12 the Prior Bonds in their entirety. Pursuant to Council Resolution No. 36-2003 of the
13 2003 Legislative Session, approved by the County Executive of the County on May 7,
14 2003, the County issued the \$23,635,000.00 Howard County, Maryland Variable Rate
15 Demand Multifamily Housing Revenue Refunding Bonds (Sherwood Crossing
16 Apartments) Series 2003 (the “Bonds”). The terms of the Bonds were established
17 pursuant to a Trust Indenture dated as of July 15, 2003 (the “Trust Indenture”) between
18 the County and The Bank of New York (now The Bank of New York Mellon), as Trustee
19 (the “Trustee”), and the loan funded by the Bonds (the “Loan”) was made pursuant to a
20 Financing Agreement dated as of July 15, 2003, among the County, Sherwood Crossing
21 Apartments, LLC, and the Trustee (the “Financing Agreement”). Fannie Mae is the
22 “Credit Provider” with respect to the Bonds.

23 In order to ensure that (1) the Facility would be a project for “residential rental
24 property” as described in Section 103(b)(4)(A) of the Internal Revenue Code of 1954, as
25 amended, and the regulations thereunder, and (2) interest on the Bonds would be exempt
26 from federal income taxation, Sherwood Crossing Apartments, LLC, the County, and the

1 Trustee entered in an Amended and Restated Regulatory Agreement dated as of July 18,
2 2003 (the “Regulatory Agreement”). The Bonds, the Indenture, the Financing
3 Agreement, the Regulatory Agreement, and all other documents evidencing and securing
4 the Bonds and the Loan and all amendments and supplements to any of the foregoing are
5 referred to herein as the “Bond Documents”.

6 Section 2.5 of the Regulatory Agreement provides in part that:

7 “SECTION 2.5. Limitation Upon Transfer or Other Disposition of Mortgaged
8 Property. The Owner will not sell, convey, transfer or otherwise dispose of the
9 Mortgaged Property without obtaining the prior written consent of the Issuer, which
10 consent shall be conditioned solely upon receipt of evidence satisfactory to the Issuer that
11 (a) the Owner’s purchaser or transferee has assumed in writing and in full the Owner’s
12 duties and obligations under the Regulatory Agreement, provided that such consent shall
13 not be required for any transfer to or by the Credit Provider upon or following
14 foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan and (b)
15 until the Loan has been paid in full, the requirements of the Transaction Documents
16 relating to such transfer have been satisfied.”

17 Pursuant to Council Resolution 37-2010, adopted by the County Council of the
18 County on May 3, 2010, and approved by the County Executive of the County on May 4,
19 2010, the County approved the transfer of ownership of the Facility to WLA Sherwood
20 Investors VI, L.L.C., a Delaware limited liability company (the “Seller”), and the Seller’s
21 assumption of the obligations under the Regulatory Agreement and the other Bond
22 Documents. On May 19, 2010, the Seller purchased the Facility and assumed the
23 obligations of Sherwood Crossing Apartments, LLC under the Regulatory Agreement
24 and the other Bond Documents.

25 The County has received a letter dated August 1, 2011 on behalf of KMF
26 Sherwood Crossing, LLC, a Delaware limited liability company (“KMF”). Pursuant to
27 this letter, KMF has advised the County that it will repay the Loan and cause the Bonds
28 to be redeemed in full upon the closing of the sale by the Seller to KMF. Because the
29 Regulatory Agreement will remain in effect after the redemption of the Bonds and the
30 repayment of the Loan until the end of the Qualified Project (as defined in the Regulatory

1 Agreement), KMF has requested that the County consent to the transfer of the Facility
2 from the Seller to KMF and to the assumption of all of the Seller's obligations under the
3 Regulatory Agreement by KMF which survive the redemption of the Bonds. KMF has
4 also advised the County that it will be financing its purchase of the Facility with a new
5 mortgage loan from Fannie Mae and that Fannie Mae will require, as condition to its
6 making of such mortgage loan, that the Regulatory Agreement be amended to provide in
7 effect that Fannie Mae will have substantially the same rights thereunder as KMF's
8 mortgage lender as it currently has under the Regulatory Agreement as the Credit
9 Provider for the Bonds.

10 The County is willing to (a) consent to (1) the transfer of the Facility to KMF and
11 (2) the assumption of the Seller's obligations with respect to the Regulatory Agreement
12 by KMF, and (b) enter into an amendment to the Regulatory Agreement to provide in
13 effect that Fannie Mae will have substantially the same rights thereunder as KMF's
14 mortgage lender as it currently has under the Regulatory Agreement as the "Credit
15 Provider for" the Bonds.

16 Now therefore, in accordance with the Act:

17 **Section 1. Be it resolved by the County Council of Howard County,**
18 **Maryland,** That the words and terms used in this Resolution (including the Recitals set
19 forth above) that are defined in the Act shall have the meanings indicated in the Act,
20 unless the context clearly requires a contrary meaning.

21 **Section 2. And be it further resolved by the County Council of Howard**
22 **County, Maryland,** That acting pursuant to the Act, it is hereby found and determined as
23 follows:

- 24 (1) KMF will be a "facility user" within the meaning of the Act.
25 (2) The Facility is and continues to be a "facility" within the meaning of the
26 Act.

27

1 **Section 3. And be it further resolved by the County Council of Howard**
2 **County, Maryland,** That the County shall (a) consent to the transfer of the Facility to
3 KMF and the assumption by KMF of all of the Seller's obligations under the Regulatory
4 Agreement which survive the redemption of the Bonds, and (b) enter into an amendment
5 to the Regulatory Agreement to provide in effect that Fannie Mae will have substantially
6 the same rights thereunder as KMF's mortgage lender as it currently has under the
7 Regulatory Agreement as the Credit Provider for the Bonds, by executing and delivering
8 such documents and certificates as the County Executive may determine to be necessary
9 to evidence such consent and amendment, subject to compliance by KMF with the
10 applicable provisions of Section 2.5 of the Regulatory Agreement. (In determining
11 whether any or all of such requirements have been complied with, the County Executive
12 may, in his discretion, rely upon the advice of Miles and Stockbridge P.C., Bond
13 Counsel; and any such determination by the County Executive shall be conclusive.)

14 **Section 4. And be it further resolved by the County Council of Howard**
15 **County, Maryland,** That the County Executive and the other officials of the County are
16 hereby authorized and empowered to do any and all such acts and execute on behalf of
17 the County such documents and certificates as the County Executive may determine to be
18 necessary or desirable in connection with (a) the giving of such consent, (b) the
19 amendment of the Regulatory Agreement as described in this Resolution and (c) any
20 other matters related thereto, subject to the limitations set forth in the Act, the Bond
21 Documents and this Resolution. All such documents and certificates shall be executed in
22 the name of the County and on its behalf by the County Executive by his manual
23 signature or, for tax-related documents (if any), by the Director of Finance of the County
24 by his manual signature; and, if such document or certificate is to be under seal, the
25 corporate seal of the County or a facsimile thereof shall be impressed or otherwise
26 reproduced thereon and attested by the Chief Administrative Officer of the County by his
27 manual signature. The final approval of such certificates and documents, and of the

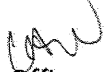
1 related transaction, shall be evidenced by the manual signature of the County Executive
2 or, if applicable, the Director of Finance upon such certificates and documents.

3 **Section 5. And be it further resolved by the County Council Of Howard**
4 **County, Maryland,** That the provisions of this Resolution are severable, and if any
5 provision, sentence, clause, section or part hereof is held to be illegal, invalid or
6 unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity
7 or unconstitutionality, or inapplicability shall not affect or impair any of the remaining
8 provisions, sentences, clauses, sections, or parts of this Resolution or their application to
9 other persons or circumstances. It is hereby declared to be the legislative intent that this
10 Resolution would have been passed if such illegal, invalid or unconstitutional provision,
11 sentence, clause, section or part had not been included herein, and if the person or
12 circumstances to which this Resolution or any part hereof are inapplicable had been
13 specifically exempted therefrom.

14 **Section 6. And be it further resolved by the County Council of Howard**
15 **County, Maryland,** That this Resolution shall take effect on the date of its approval by
16 the County Executive.

MEMORANDUM

To: Lonnie Robbins
Chief Administrative Officer, Department of County Administration
Tom Carbo
Deputy Director, Housing and Community Development

From: Laura Neuman 
Chief Executive Officer

DATE: August 15, 2011

Re: **SHERWOOD CROSSING APARTMENTS - Request for Howard County Approval**

This memo is testimony in support of the proposed sale of Sherwood Crossing Apartments that is expected to be before the County Council for resolution authorizing the transfer of ownership of the 634-unit residential rental housing facility located in Elkridge, Maryland known as the "Sherwood Crossing Apartments". This transfer by WLA Sherwood Investors VI, LLC (the "Seller") will be to an affiliate of Klingbeil Capital Management, Ltd. (the "Purchaser") at which time the Seller will retire the outstanding Refunding Bonds (Sherwood Crossing Apartments) Series 2003.

The Howard County Economic Development Authority Incentives Committee met on August 2, 2011 to review the request by Thomas Lewis (attorney for the Seller). The Committee voted unanimously to support and recommend approval by the Howard County Council of the resolution authorizing the sale.

The County's approval by resolution in no way shall subject the County to financial obligation or liability. The transfer of ownership will result in the following:

- (1) The assumption by the Purchaser of all of the Seller's obligations under the Regulatory Agreement related to the Bonds; making certain findings; and authorizing the County Executive and other County officials to do all acts and execute all documents necessary in connection therewith.
- (2) Low and Moderate Income Housing Units will continue to comprise at least 20% of the total housing project for the duration of the "Qualified Project Period." Those rental units will be available to individuals or families with a gross median income not exceeding 80%.

**Howard County
Housing and Community Development Board**

**Recommendation of Approval of Sale of
Sherwood Crossing Apartments**

**Resolution HCD No. 01-08-2011
Meeting Date: August 18, 2011**

WHEREAS, pursuant to Section 13.202 of the Howard County Code, the Howard County Housing and Community Development Board is authorized to review and make recommendations regarding housing-related industrial revenue bonds;

WHEREAS, the Department of Housing and Community Development has received an application from WLA Sherwood Investors VI, LLC, the current owner of Sherwood Crossing Apartments, a 634-unit rental apartment community located in Elkridge, Maryland, to transfer the development to Klingbeil Capital Management, Ltd., or its affiliate;

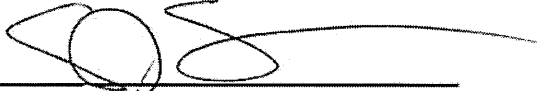
WHEREAS, Sherwood Crossing Apartments was financed in part with proceeds of Howard County-issued housing revenue bonds and is subject to a Regulatory Agreement requiring that at least 20% of dwelling units are rented to persons of low or moderate income (80% of the area median income);

WHEREAS, the bonds will be redeemed upon closing of the sale and the Regulatory Agreement will be assumed by the buyer and remain in place for the remainder of its term, which is until August 17, 2013;

WHEREAS, the Board has reviewed the application and finds that it is in the best interests of the citizens of Howard County.

THEREFORE, BE IT RESOLVED that the Housing and Community Development Board recommends that the County Council approve the sale of Sherwood Crossing Apartments as proposed.

Approved by the Housing and Community Development Board this 18th day of August, 2011.



Stacy L. Spann, Director and Secretary

