

MEMORANDUM

Agenda Item No. 8(K)(1)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: February 7, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving a loan to Landmark Development Corp. or related entity in an amount not to exceed \$2,099,844.00 of Documentary Stamp Surtax Program and/or State Housing Incentives Partnership Funds, all based upon prepayment by Landmark Development Corp. of a previous surtax loan, for development of the Windmill Farms Housing Development; and authorizing the County Mayor to execute conditional loan commitments and other agreements necessary to accomplish the purposes of this resolution

Resolution No. R-64-23

The accompanying resolution was prepared by the Public Housing and Community Development Department and placed on the agenda at the request of Prime Sponsor Commissioner Danielle Cohen Higgins.



Geri Bonzon-Keenan
County Attorney

GBK/ks

Date: February 7, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: Resolution Approving a Loan of Prepaid Documentary Stamp Surtax Loan Funds and/or State Housing Incentives Partnership Funds to Landmark Development Corp., or related entity, for the Development of the Windmill Farms Affordable Housing Project

Executive Summary

The purpose of this item is to seek approval of the Board of County Commissioners (Board) to loan \$2,099,844.00 in Documentary Stamp Surtax (Surtax) funds and/or State Housing Incentives Partnership (SHIP) funds to Landmark Development Corp. for the development of the Windmill Farms affordable housing project. The funding available from the repayment of the Sunrise Commons, Ltd., loan will provide funds needed to address rising construction costs for Windmill Farms. Windmill Farms is a planned new construction, 274-unit affordable housing development that will be located a half-mile from the South Dade Transitway Bus Rapid Transit Station being constructed at SW 244th Street.

Recommendations

It is recommended that the Board:

- Allocate \$2,099,844.00 of Surtax and/or SHIP funds from prepaid loans from a prior completed affordable housing project to Landmark Development Corp., or related entity, for the development of the Windmill Farms affordable housing project. The Surtax loan consists of funds prepaid by Sunrise Commons, Ltd., a related entity of Landmark Development Corp., in accordance with section 17-02 of the Code of Miami-Dade County, Florida;
- Authorize the County Mayor or the County Mayor's designee to execute the conditional loan commitments, in substantially the form attached to the resolution as Exhibit A, standard shell contracts, agreements, loan documents, and amendments necessary to accomplish the purposes set forth in this resolution; and
- Authorize the County Mayor or County Mayor's designee, upon a determination that such actions are in the best interest of the County, to subordinate and/or modify the terms of contracts, amendments, and loan documents so long as such modifications are approved by the County Attorney's Office as to form and legal sufficiency and are not substantially inconsistent with this resolution and to exercise the termination, waiver, acceleration, or other provisions in said agreements and documents.

Scope

Windmill Farms is a planned affordable housing development located at the Northeast Corner of the intersection of Southwest 242nd Street and Southwest 129th Avenue in Miami-Dade County, Florida 33032, in Commission District 8, represented by Commissioner Danielle Cohen Higgins. Windmill

Farms will consist of the new construction of 274 units in two buildings. The funds recommended for allocation in this item are pre-paid loans from a prior completed affordable housing project.

Delegation of Authority

This item requests a delegation of authority to the County Mayor or the County Mayor's designee to: (1) execute conditional loan commitments, standard shell contracts, agreements, loan documents, and amendments necessary to accomplish the purposes set forth in this legislation; (2) upon a determination that such actions are in the best interest of the County, to subordinate and/or modify the terms of contracts, amendments, and loan documents so long as such modifications are approved by the County Attorney's Office as to form and legal sufficiency and are not substantially inconsistent with this resolution; and (3) to exercise termination, waiver, acceleration, and other provisions in said agreements and documents.

Fiscal Impact/Funding Source

This item will not have a negative fiscal impact on the County's general fund. This item is allocating prepaid Surtax funds to Landmark Development Corp., or related entity, for the Windmill Farms affordable housing project.

Track Record/Monitor

The project will be monitored by Michael Liu, Director, Public Housing and Community Development Department (the Department).

Background

Surtax funds in the amount of \$2,099,844.00 were awarded to Sunrise Commons, Ltd., a related entity of Landmark Development Corp. through Resolution Nos. R-641-07 and R-647-08. Sunrise Commons is a completed 106-unit affordable housing development. In 2009, Miami-Dade County substituted a portion of the Surtax 2008 funds with State Housing Initiatives Partnership (SHIP) funds in the amount of \$1,490,420.00, and \$609,424.00 in Surtax funds remained in the loan. The maturity date of the loan was December 31, 2038, however, the borrower paid the loans in full on November 15, 2022, as summarized in Table 1, below.

Table 1.

Loan #	Project Name	Funding Source	Loan Amount	Maturity Date	Pay-Off Amount	Pay-Off Date
54707	Sunrise Commons	SHIP	\$1,490,420	12/31/2038	\$1,490,420	11/15/2022
36177	Sunrise Commons	Surtax	\$609,424	12/31/2038	\$609,424	11/15/2022
			\$2,099,844		\$2,099,844	

On October 7, 2022, the Department received a request from Sunrise Commons, Ltd., to redeploy a total of \$2,099,844.00 of Surtax funds that were prepaid from Sunrise Commons Apartments to the Windmill Farms project (Attachment 1). The item recommends that the Board approve \$2,099,844.00 of Surtax and/or SHIP funds to support the development of the Windmill Farms affordable housing project. The

prepaid loan program is designed to expedite the development of affordable housing projects by making those funds available again for new projects faster.

An approval by the Board on June 9, 2022 awarded \$6,600,000.00 in 2021 Documentary Stamp Surtax funds to Windmill Farms. The need for the additional funds is a result of recent increasing construction costs. The gap needed to be filled can be redeployed from the Sunrise Commons Ltd., Surtax loan. This prepayment and reloan structure is permitted by Section 17-02 of the Miami-Dade County Code of Ordinances, which provides that any developer which repays its County loan in full before the date on which the loan is due may, upon approval of the Board, have the repaid funds loaned to them, or a related entity, for additional eligible affordable housing projects, without the need to compete again for those funds.

Upon approval of this item, a conditional loan commitment in substantially the form attached as Exhibit A to the resolution will be issued to Landmark Development Corp., or related entity, for the development of the Windmill Farms affordable housing project.

The Windmill Farms affordable housing project will be subject to a full credit underwriting analysis, including subsidy layering review, and must receive a favorable recommendation from the underwriter and show written financing commitments for the total development costs, all prior to the financial closing of the loan approved herein for the release of loaned funds. The loan shall be subject to those terms for loans issued in accordance with Section 17-02 of the Miami-Dade County Code of Ordinances and as set forth in the FY 2021 Request for Applications (RFA), as may be modified to change at the discretion of the County Mayor or County Mayor's designee based upon the credit underwriting analysis.



Morris Copeland
Chief Community Services Officer

Attachments



October 7, 2022

Via Electronic Mail

Mrs. Leyani Sosa
Miami-Dade County
Department of Public Housing and
Community Development
701 NW 1st Court, 14th Floor
Miami, Florida 33136

RE: Sunrise Commons – (i) Early Repayment of Loan i/a/o \$2,099,844 from Miami-Dade County to Sunrise Commons, Ltd. and (ii) Re-Allocation to Windmill Farms Apartments, LLC

Dear Mrs. Sosa:

Thank you for taking the time to talk with me recently regarding the above referenced. Landmark Development Corp. developed Sunrise Commons Apartments, and is the developer of the proposed Windmill Farms Apartments. Sunrise Commons, Ltd. is the borrower under the above referenced loan, which does not mature until December 31, 2038 ("Existing County Loan"). At this time, Sunrise Commons, Ltd. is planning on the early repayment of the Existing County Loan. Consistent with County Ordinance 17-02, Landmark Development Corp. (the developer of Sunrise Commons and Windmill Farms) is hereby requesting the re-allocation of the Existing County Loan in the amount of \$2,099,844 from Sunrise Commons, Ltd. to Windmill Farms Apartments, LLC, the owner of the proposed Windmill Farms Apartments.

Windmill Farms Apartments is a 274-unit new construction affordable housing development, located in Princeton, Miami-Dade, and was awarded \$6,600,000 in Surtax under the County's FY 2021 Request for Applications. Construction cost increases are currently placing significant challenges on the delivery of affordable housing.

We would appreciate any assistance you can provide in submitting this request to the Board of County Commissioners so that these funds can be used to facilitate the development of Windmill Farms Apartments.

Thank you in advance for your assistance.

Sincerely,

Landmark Development Corp.

Francisco Rojo
Vice President

cc. Mr. James McCall, Miami-Dade PHCD
Mrs. Maria Rodriguez-Porto, Miami-Dade PHCD
Mr. Clarence Brown, Miami-Dade PHCD



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: February 7, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(K)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(K)(1)
2-7-23

RESOLUTION NO. _____ R-64-23

RESOLUTION APPROVING A LOAN TO LANDMARK DEVELOPMENT CORP. OR RELATED ENTITY IN AN AMOUNT NOT TO EXCEED \$2,099,844.00 OF DOCUMENTARY STAMP SURTAX PROGRAM AND/OR STATE HOUSING INCENTIVES PARTNERSHIP FUNDS, ALL BASED UPON PREPAYMENT BY LANDMARK DEVELOPMENT CORP. OF A PREVIOUS SURTAX LOAN, FOR DEVELOPMENT OF THE WINDMILL FARMS HOUSING DEVELOPMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE CONDITIONAL LOAN COMMITMENTS AND OTHER AGREEMENTS NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS RESOLUTION

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board ratifies and adopts the matters set forth in the accompanying justification memorandum as if fully set forth herein.

Section 2. This Board authorizes, pursuant to the provisions of section 17-02 of the Code of Miami Dade County, a loan in an amount not to exceed \$2,099,844.00 of Documentary Stamp Surtax Program and/or State Housing Incentives Partnership funds to Landmark Development Corp., or related entity, for the development of Windmill Farms, a planned new construction, 274-unit, two building apartment community, located at the Northeast Corner of the intersection of Southwest 242nd Street and Southwest 129th Avenue in Miami-Dade County,

Florida 33032, in Commission District 8 and serving residents with incomes ranging from 33 to 60 percent of Area Median Income. The loan awarded in this item represents an equal amount of loaned funds which were prepaid by Sunrise Commons, Ltd., an affiliate of Landmark Development Corp.

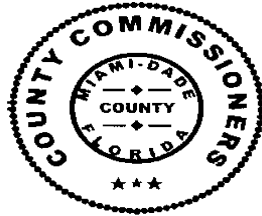
Section 3. This Board authorizes the County Mayor or County Mayor's designee to execute conditional loan commitments in substantially the form attached hereto as Exhibit A, standard shell contracts, standard shell loan documents, amendments, and other agreements necessary to fulfill the purposes of this resolution.

Section 4. This Board further authorizes the County Mayor or County Mayor's designee, upon a determination that such actions are in the best interest of the County, to subordinate and/or modify the terms of contracts, agreements, amendments, and loan documents so long as such modifications are approved by the County Attorney's Office and are not substantially inconsistent with this resolution and to exercise the termination, waiver, acceleration, or other provisions set forth therein.

The foregoing resolution was offered by Commissioner **Anthony Rodriguez**, who moved its adoption. The motion was seconded by Commissioner **Danielle Cohen Higgins** and upon being put to a vote, the vote was as follows:

	Oliver G. Gilbert, III, Chairman	aye	
	Anthony Rodríguez, Vice Chairman	aye	
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 7th day of February, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

LUIS G. MONTALDO, CLERK AD INTERIM

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "Shannon D. Summerset-Williams", written over a horizontal line.

Shannon D. Summerset-Williams

Miami-Dade County Conditional Loan Commitment

Date

To: Landmark Development Corp., or related entity (the "Borrower")

Re: Windmill Farms
Northeast Corner of the intersection of Southwest 242nd Street and Southwest 129th Avenue in Miami-Dade County, Florida 33032, in unincorporated Miami Dade County ("the Property")

Dear Borrower:

We are pleased to advise you that on _____, the Board of County Commissioners (BCC) approved a Conditional Loan Commitment for development activity at the above-listed property (the "Property"). The loan is conditionally committed for the payment of hard construction cost as a portion of the development costs to construct the affordable housing units on the Property. This Conditional Loan Commitment is made based upon the request submitted by the Borrower and is subject to the following terms and conditions:

Borrower: Landmark Development Corp., or related entity

Project: Windmill Farms is a new construction, 274-unit affordable housing community, to be developed at the Northeast Corner of the intersection of Southwest 242nd Street and Southwest 129th Avenue in Miami-Dade County, Florida 33032, in Commission District 8. The development will serve 31 units at or below 33 percent of Area Median Income (AMI) and 243 units at or below 60 percent of AMI.

Loan Amount: The loan shall be in an amount of not-to-exceed **\$2,099,844.00** as approved by the BCC in Resolution _____ for the Windmill Farms affordable housing community, and includes all terms and conditions of such BCC approval, including project scope, activity type and, for federal funds, national objective to be achieved (the "Loan"). The loan amount may be decreased as determined by the Mayor or the Mayor's designee, based upon Underwriting (defined below) and information and documentation provided by Borrower.

Conditions: The Loan is conditioned upon the terms, conditions and requirements set forth below (the "Conditions"). The County shall not issue a final unconditional loan commitment, enter into a funding contract, close on the Loan or disburse the Loan funds until all the Conditions are met.

Collateral: Upon satisfaction of the Conditions, Miami-Dade County (County) and Borrower will enter into a funding contract and loan agreement. The Loan shall be evidenced by a promissory note and secured by a construction/permanent mortgage with assignment of leases and rents, a collateral assignment of leases and rents, a collateral assignment of construction documents, a rental regulatory agreement (where applicable), and any other security or collateral as deemed appropriate by the Mayor or Mayor's designee, in his or her sole discretion, with approval of the County Attorney's Office. Borrower shall additionally be required to provide the County with an environmental indemnification agreement, a UCC-1, title affidavit, partnership affidavit (if applicable), corporate resolution approving the loan documents, opinion of counsel, certification of borrower to borrower's counsel, and title policy making the County an insured. The Collateral shall be determined based upon financial feasibility and subsidy layering underwriting to be performed by County staff in an internal process and by an independent underwriter and paid for by Borrower

(“Underwriting”) following review of a current title search. Additional forms of security may be required if liens, encumbrances, restrictions or covenants exist on the Property which the Mayor or Mayor’s designee determines, in his or her sole discretion, threaten the County’s Collateral. The Mayor or Mayor’s designee shall determine, in his or her sole discretion and in consultation with the County Attorney’s Office, whether the Collateral provided by Borrower is sufficient to close and disburse the Loan.

Interest Rate: Loan terms, including the interest rate, are those set forth in the terms for repaid loans for Multi-family rental projects. Those terms are **0%** interest during construction - years 1 and 2-and **0.75%** interest-only payments for years 3–30 from development cash flow. Full principal is due at maturity; and as modified prior to closing by the Mayor or Mayor’s designee in accordance with the results of Underwriting.

Repayable: There will be no penalty for prepayment of the Loan (payment of Loan balance before the end of the repayment term). Repayment terms are those set forth in the FY 2021 RFA for repaid loan funds in accordance with Section 17-02 of the Code. All terms may be modified prior to closing by the Mayor or Mayor’s designee in accordance with the results of Underwriting. The prepayment of any Loan shall not affect the term of affordability set forth in the Rental Regulatory Agreement or in any of the other Loan Documents.

Term: The Loan will be for 30 years, or as may be established prior to closing by the Mayor or Mayor’s designee in accordance with the results of Underwriting.

Conditions:

1. Underwriting, as explained above, shall include financial feasibility review, subsidy layering review, and credit review. Underwriting is performed to protect the County’s scarce affordable housing funds and is performed to ensure that the Project has sufficient financing to be completed timely and that the Project is not over-subsidized, meaning the Loan is not needed or the Loan Amount is too high. The County reserves the right to reduce the Loan Amount subject to Underwriting. The County further reserves the right to refuse to issue a final, unconditional loan commitment to Borrower or to enter into a contract for the Loan or to close on the Loan in the event that Underwriting determines that the project is financially unfeasible or otherwise is unfeasible. The costs of Underwriting are to be paid by Borrower.
2. Borrower must prove control of the Property through purchase or lease, as evidenced by a deed or lease and recorded memorandum of lease in Borrower’s name. Absence of any threat of foreclosure, taking by eminent domain, or pending bankruptcy are additionally required.
3. Borrower must provide the County with written financing commitments showing committed financing for the entire Development Cost of the Project, including any gaps between the Loan and the overall costs to develop the Project. The Development Cost of the Project means the total cost of completing the entire Project, from acquisition to the issuance of Certificate of Occupancy, including but not limited to the costs for acquisition, design and planning, zoning and variances, financing costs, legal costs, construction, and permitting. In the event of a dispute as to what amount constitutes the actual Development Cost, Borrower and County will use the amount determined by Underwriting to be the Development Cost.
4. Conformance of the Project with the County legislation approving the Loan.
5. Complete plans and specifications of the Project.
6. Payment and performance bond in the amount of the entire construction budget or otherwise in conformance with applicable law. Where a payment and performance bond is not required by law, the Mayor or Mayor’s designee may alternatively accept – at the Mayor or Mayor’s designee’s sole discretion – a letter of credit in an amount acceptable to the Mayor or Mayor’s designee.
7. Appraisal of the Property showing that the value of the Project and Property, when completed, exceeds the total amount of debt from all sources to be secured by the Project, unless waived by the Mayor or Mayor’s designee.

8. A Phase I environmental report requiring no further action.
9. Such other conditions which are customary and reasonable for a loan of this nature, such as adhering to all Federal, State and local regulations, ordinances, codes and standards.
10. Meeting all requirements of the State Housing Initiatives Partnership ("SHIP"), Documentary Surtax or Home Investment Partnerships Program ("HOME") program, as applicable, and County resolutions and ordinances governing affordable housing development.
11. Compliance with Resolution No. R-346-15, establishing a maximum total development cost per unit; and, where applicable, Resolution No. R-343-15, establishing a maximum amount of total development costs that may be paid with Documentary Surtax funds.
12. The Loan, if SHIP or Surtax funds, may only be used for the development of affordable housing for residents with household incomes not greater than 140% of AMI. The Loan, if HOME or CDBG funds, may only be used for the development of affordable housing for residents with household incomes not greater than 80% of AMI.
13. Pursuant to the Miami-Dade Board of County Commissioners' Resolution No. R-34-15, Developers, its agents and/or representatives, shall provide written notice to the County related to the availability of rental opportunities, including, but not limited to, the number of available units, bedroom size, and rental prices of such rental units at the start of any leasing activity; requiring the developer advertise the information described in newspapers of general circulation.
14. This loan is conditioned on the repayment of the Sunrise Commons SHIP loan in the amount of \$1,490,420.00 and on the repayment of the Surtax loan in the amount of \$609,424.00.

This Conditional Loan Commitment will expire in six (6) months if not extended by Miami-Dade County. An extension of this Conditional Loan Commitment may be granted at the sole and absolute discretion of Miami-Dade County. Any extension granted will be contingent upon compliance with and in accordance with Resolution No. R-232-14, as applicable and must be signed by the Mayor or Mayor's Designee to be valid. If the loan does not close prior to the expiration or extension of this Conditional Loan Commitment, the funds will be subject to recapture and allocated to other projects. This Conditional Loan Commitment is not assignable. This Conditional Loan Commitment is the sole and complete agreement between the parties as to the terms of the Loan described herein. The terms of this Conditional Loan Commitment may only be changed in writing in a document signed by the Mayor or the Mayor's designee. No representations, written or verbal, of Miami-Dade County employees, or others purporting to act on behalf of Miami-Dade County, may change the terms of this Commitment.

Miami-Dade County wishes to thank you for your proposal and the opportunity to provide financing for this development, and we look forward to closing this transaction.

Sincerely,

Miami-Dade County

Daniella Levine Cava, Mayor

Date: _____

c: Morris Copeland, Chief Community Services Officer

Approved as to Form and Legal Sufficiency

Shannon Summerset-Williams, Assistant County Attorney

Date _____