

MEMORANDUM

TO: Review Attorneys DATE 3/25/86

FROM: Nancy Kramer & Mary Sabatini DiStephan *msd*

RE: Reverse Sliding Price Scales (those in which the price to inside purchasers rises with the number of such purchasers)

This office has been grappling with the issue of reverse sliding price scales offered to inside purchasers. These mechanisms are set up in a variety of ways, and have a number of different names: Special Funds, Decorating Allowances, Revolving Funds, etc. They all involve offering tenants the right to purchase their apartments at an indefinite price, which price will depend on the number of tenants who subscribe. (The greater the number of subscribers, the higher the price.)

In the past few months we accepted a number of reverse sliding price scales which were post 90-day exclusive purchase period and were presented in amendments. We were recently presented with the question of whether such a scale could be accepted as part of the Black Book. After a great deal of thought and discussion, with Fred and Deborah, our conclusion was that a reverse sliding price scale could be made part of the original offering if and only if it met certain criteria. These include: a preliminary 90-day exclusive purchase period at set prices; the right to rescind a reverse sliding scale subscription if the subscriber does not receive the lowest price possible; 30 days in which to exercise such right of rescission; explicit reference to the most favored nation clause; and painstaking clarity of language. A copy of the language that we finally accepted (for Lincoln Towers and other M.J. Raynes plans) is attached.

Fred, Deborah, and the two of us all have some concern about these reverse sliding price scales, particularly about whether they lend themselves to full disclosure. We believe that they do, but want to monitor them very carefully. As we have informed the attorneys involved, if we find that the disclosure is ineffective, we will reconsider our decision. In order to monitor plans with reverse sliding price scales, Nancy Kramer will review all such provisions and keep a record of them.

So, if you review a plan with a reverse sliding price scale or an amendment that contains one, please talk with Nancy before commenting on it.

SPECIAL FUND FOR TENANT PURCHASERS

Special Fund

In addition to the 25% Discounted Price Per Share afforded all Tenant-Purchasers, the Sponsor has created a special \$1,000,000 fund ("Special Fund") for the benefit of Tenant-Purchasers which will have the effect of reducing purchase prices below the already discounted Tenant-Purchaser's Price. To benefit from the Special Fund, a Tenant-Purchaser must subscribe for his Present Apartment during the 30-Day Exclusive Period which begins on the 91st day following the Presentation Date of the Plan and close in accordance with his Subscription Agreement and the Plan ("Participating Tenant-Purchaser"). The Special Fund will not be activated unless at least one Tenant-Purchaser subscribes during the 30-Day Exclusive Period.

If the Special Fund is activated, Tenant-Purchasers who subscribed during the 90-Day Exclusive Period will also benefit. See the subheading below entitled "Right to Benefit from Improved Terms" for more details.

Highest and Lowest Special Fund Price Per Share

The benefit a Participating Tenant-Purchaser will receive from the Special Fund will vary depending upon the total number of shares subscribed for. There, however, exists a highest and lowest price per share, which Participating Tenant Purchasers may rely upon, determined as follows:

Total Shares Offered for Sale	= 100,000*
25% Discounted Price Per Share	= \$100 per share
Special Fund	= \$1,000,000

- (i) if up to 22,000 shares are subscribed for, the price per share will be \$54, which is the lowest price per share a Participating Tenant-Purchaser will pay as a result of the Special Fund.
- (ii) if 100,000 shares are subscribed for, the price per share will be \$90, which is the highest price per share a Participating Tenant-Purchaser will pay as a result of the Special Fund.

How the Special Fund Price Per Share is Calculated

The Special Fund Price Per Share will be fixed as of the close of business on the last day of the 30-Day Exclusive Period, and calculated by the Selling Agent as follows:

*The total number of shares offered for sale reflects only the number of shares allocated to occupied apartments.

- (i) the Special Fund will be divided by the total number of shares subscribed for by all Tenant-Purchasers during the period commencing with the Presentation Date of the Plan and ending on the last day of the 30-Day Exclusive Period; and
- (ii) the resulting figure will be subtracted from the 25% Discounted Price Per Share.

For examples of how the Special Fund applies to typical apartments, see the Addenda to the Footnotes to Schedule A.

Notice of the Special Fund Price Per Share

Within five (5) business days after the expiration of the 30-Day Exclusive Period, the Sponsor will mail or personally deliver to all Participating Tenant-Purchasers a notice (the "Special Fund Notice") which will set forth:

- (i) the number of Participating Tenant-Purchasers;
- (ii) the number of shares subscribed for by all Tenant-Purchasers;
- (iii) the Special Fund Price Per Share for all Participating Tenant-Purchasers; and
- (iv) a right of rescission of the Subscription Agreement, if applicable, as more fully described below.

Offer of Rescission

Only in the event the Special Fund Price Per Share results in a Total Cash Payment that is more than \$54 (the lowest price per share), will those Participating Tenant-Purchasers who purchase during the 30-Day Exclusive Period have a right of rescission, exercisable for a period of thirty (30) days from the later of (i) the date of personal delivery of the Special Fund Notice, or (ii) five (5) days after the date the Special Fund Notice is mailed. Tenant-Purchasers who subscribe during the 90-Day Exclusive Period will not be afforded this right of rescission.

Any Participating Tenant-Purchaser desiring to rescind his Subscription Agreement must deliver to the Selling Agent, MRC/MJR Company, 488 Madison Avenue, New York, New York 10022, either by certified or registered mail, return receipt requested, or by personal delivery, within the aforesaid 30-day rescission period, his original executed Subscription Agreement and a Rescission Letter in the form set forth as Exhibit "A" to the Subscription Agreement, signed by all individuals who signed the Subscription Agreement.

In the event a Participating Tenant-Purchaser elects rescission, the Subscription Agreement shall be of no further force or effect and the shares allocated to the apartment may be sold to other parties under the terms of the Plan. The Down Payment shall be returned promptly without interest to any participating Tenant-Purchaser electing rescission.

General

Any money remaining in the Special Fund as a result of one or more Participating Tenant Purchaser's electing rescission in accordance with this Section shall be contributed by Sponsor to the Working Capital Fund. Any money remaining in the Special Fund as a result of any Tenant Purchaser defaulting under his Subscription Agreement or for any other reason failing to close title will be retained by Sponsor.

The amount of the Special Fund Price Per Share will not be changed once it has been determined. If the 25% Discounted Price Per Share is lowered by a future amendment to the Plan, however, Participating Tenant-Purchasers will benefit from the Special Fund AND WILL ALSO BENEFIT FROM THE LOWER PRICES OFFERED IN ANY SUCH AMENDMENT.

The Sponsor does not promise, guarantee or represent that: (i) it will declare the Plan effective if, at the end of the 30-Day Exclusive Period, 15% or more but less than 80% of the apartments have been subscribed for; and (ii) it will reduce prices by a future amendment to the Plan.

The Sponsor is of the opinion that appropriate governmental taxing authorities will require the reduction in Total Cash Payment resulting from the Special Fund to be reflected in the Participating Tenant Purchaser's cost basis. Tenant-Purchasers are advised to see the Section entitled "Attorney's Income Tax Opinion" set forth in Part I of the Plan for a more detailed discussion.

The Apartment Corporation has obtained an opinion from Sulzberger Rolfe, Inc. that the reasonable relationship requirement of Section 216(b)(2) of the Internal Revenue Code will be satisfied notwithstanding the fact that participation in the Special Fund may result in certain Tenant-Purchasers paying as little as \$54 per share for the shares allocated to their apartments.

While the Sponsor is in control of the Cooperative Board, the Working Capital Fund will not be used to reduce maintenance charges.

Right to Benefit from Improved Terms

In accordance with applicable regulations of the Department of Law, if, prior to the expiration of any exclusive purchase period which begins prior to the Closing Date, the Sponsor amends the terms and conditions of this offering to be more favorable to Tenant-Purchasers, a bona fide tenant who was in occupancy on the Presentation Date of this Plan and who executed and submitted a Subscription Agreement and the required down payment before the Sponsor amended the terms of this Plan, shall benefit from the more favorable terms and conditions. This benefit shall be extended to Tenant-Purchasers both in the 90-Day Exclusive Period and the 30-Day Exclusive Period who subscribe for the shares allocated to their Present Apartment or Offered Vacant Apartments.

Accordingly, bona fide tenants in occupancy who subscribed during the 90-Day Exclusive Period at the 25% Discounted Price Per Share shall benefit from any reduced Special Fund Price Per Share by participating in the Special Fund as Participating Tenant-Purchasers. However, those Tenant-Purchasers who subscribed during the 90-Day Exclusive Period will not be afforded the right of rescission which may be available to Participating Tenant-Purchasers as set forth herein.