



Legislation Details (With Text)

File #: 24-0467 **Version:** 1 **Name:** Bergen Street Redevelopment Subordination Agreement

Type: Resolution **Status:** Adopted

File created: 3/25/2024 **In control:** Economic and Housing Development

On agenda: 4/10/2024 **Final action:** 4/10/2024

Title: Dept./ Agency: Economic and Housing Development
 Action: () Ratifying (X) Authorizing (X) Amending
 Type of Service: Private Sale/Redevelopment/Subordination Agreement
 Purpose: An Agreement to subordinate the City’s rights of reverter by entering into a Third Amendment to the Agreement for Sale and Redevelopment of Land and two (2) Amended and Restated Deeds in order to permit construction financing necessary for the redevelopment of an affordable rental housing project.
 Entity Name: Bergen Street Redevelopment Urban Renewal, LLC
 Entity Address: 935 Bergen Street, Newark, New Jersey 07102
 Sale Amount: \$0.00
 Cost Basis: () \$ PSF () Negotiated (X) N/A () Other:
 Assessed Amount: \$0.00
 Appraised Amount: \$0.00
 Contract Period: Not Applicable
 Contract Basis: () Bid () State Vendor () Prof. Ser. () EUS
 () Fair & Open () No Reportable Contributions () RFP () RFQ
 () Private Sale () Grant () Sub-recipient (X) n/a
 List of Property:
 (Address/Block/Lot/Ward)
 1057-1059 Bergen Street/Block 3660/Lot 11/South Ward
 1037-1047 Bergen Street/Block 3661/Lots 3/Additional Lots 5 and 8/South Ward
 Additional Information:
 Resolution 7R3-b adopted on December 5, 2012, authorized the Private Sale/Redevelopment Agreement.

 Resolution 7R2-s(AS) adopted on June 21, 2017, authorized the First Amendment to the Private Sale/Redevelopment Agreement.

 Resolution 7R2-c adopted on September 2, 2020, authorized the Second Amendment to the Private Sale/Redevelopment Agreement.

 This Third Amendment to the Agreement for Sale and Redevelopment of Land will provide for the construction financing necessary for the redevelopment of an affordable rental housing project.

Sponsors: Council of the Whole

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
4/10/2024	1	Municipal Council		

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Resolution 7R2-s(AS) adopted on June 21, 2017, authorized the First Amendment to the Private Sale/Redevelopment Agreement.

Resolution 7R2-c adopted on September 2, 2020, authorized the Second Amendment to the Private Sale/Redevelopment Agreement.

This Third Amendment to the Agreement for Sale and Redevelopment of Land will provide for the construction financing necessary for the redevelopment of an affordable rental housing project.

WHEREAS, pursuant to Resolution 7R3-b duly adopted on December 5, 2012, the Mayor and the Deputy Mayor/Director of the Department of Economic and Housing Development were authorized to enter into and execute an Agreement for the Sale and Redevelopment of Land, dated as of June 25, 2013, as amended by that First Amendment to the Redevelopment Agreement, dated as of June 21, 2017 (Resolution 7R2-s(AS)), and as further amended by that certain Second Amendment to Redevelopment Agreement, dated as of September 2, 2020 (Resolution 7R2-c) (collectively, the "Agreement") with Bergen Street Redevelopment Urban Renewal, LLC (the "Redeveloper") for the sale of land owned by the City of Newark located at 1057-1059 Bergen Street and 1037-1047 Bergen Street, and identified on the official tax map of the City as Block 3660, Lot 11 and Block 3661, Lots 3, 5 and 8, and (collectively, the "Properties"), for an aggregate purchase price equal to Seventy Thousand Nine Hundred EightyEight Dollars and Twenty Cents (\$70,988.20) for the development and construction of the Properties to create forty-five (45) units affordable rental housing; and

WHEREAS, the Redeveloper acquired each of the Properties from the City by two (2) Quit Claim Deeds, dated on June 30, 2017, and each recorded in the Essex County Registers Office on July 20, 2017 as Instrument Number 2017062927 and Instrument Number 2017062928, respectively (collectively, the "Deeds"); and

WHEREAS, such sale was authorized pursuant to N.J.S.A. 40A:12-13 which requires that such conveyance be subject to the condition that title to the Property revert back to the City under Section 605 A of the Agreement and Section 2 of each of the Deeds in the event of a Default as defined in Section 602 of the Agreement (collectively, the "Reverter Right"); and

WHEREAS, as a result of various unforeseen delays, environmental remedial costs and other circumstances beyond the control of the Redeveloper, which have been shown to the satisfaction of the City and the Department of Economic and Housing Development, the City has agreed to temporarily waive certain existing defaults that have occurred under the Agreement and the other agreements and documents executed and delivered in connection with the Project, until January 25, 2025, pursuant to the terms and conditions of that certain Letter Agreement, dated as of January 25, 2024, and the other agreements and documents executed and delivered in connection with the Project; and

WHEREAS, this action by the City shall ensure that the development and construction of the Project continues and completion remains financially feasible for the benefit of the City and its residents; and

WHEREAS, the Redeveloper has secured construction financing from Crown Bank (the "Senior Lender") in the approximate principal amount of \$5,900,000.00 (the "Loan"), to develop and complete the Project, which Loan will be evidenced by a Promissory Note in the principal amount of the Loan, and will be secured by a Mortgage on the Properties ("Mortgage"); and

WHEREAS, as a condition of the above Loan, the Senior Lender has requested that the City subordinate the Reverter Right to the rights of the Senior Lender with respect to the Mortgage; and

WHEREAS, pursuant to N.J.S.A. 40:60-51.2, "Any municipality is authorized and empowered, by resolution of the Governing Body thereof, to waive, release, modify or subordinate any terms, covenants, conditions, limitations or reverters imposed in sales and conveyances of lands as to the erection, alteration or demolition of buildings or any other use to be made of land heretofore imposed by said municipality to accomplish the purposes for which such lands were sold and conveyed either at public or private sale including those set forth pursuant to Section 21 of P.L.1971, c. 199 (C.40A:12-21), but only after public hearing held before such Governing Body, of the holding of which notice describing the lands in question, and the terms, covenants, conditions, limitations or reverters to be waived, released, modified or subordinated, and, if to be modified or subordinated, describing the manner in which the same shall be modified or subordinated, shall first have been given by advertisement published once each week for two weeks in a newspaper published in said municipality or, if no newspaper be published therein, then in a newspaper circulating in such municipality, provided, however, that the power herein granted shall not be exercised to impair any vested or contractual rights of third parties"; and

WHEREAS, the Mayor and/or his designee the Deputy Mayor/Director of the Department of Economic and Housing Development determined that the Project is in the best interest of the City and recommends that the City execute and deliver a Third Amendment to Redevelopment Agreement, two (2) Amended and Restated Deeds and the Subordination Agreement in favor of the Senior Lender for recording on the Properties thereby subordinating the City's Reverter Right contained therein to that of the rights of the Senior Lender with respect to the Mortgage, so as to develop, construct and complete the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

1. The Mayor and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized, empowered and directed to enter into, execute, deliver and record a Third Amendment to Redevelopment Agreement, two (2) Amended and Restated Deeds and a Subordination Agreement with Crown Bank, the Senior Lender, in the forms attached hereto or such other forms reasonably acceptable to the parties, related to the Properties located at and 1057-1059 Bergen Street, Newark, New Jersey, as shown on the official tax map of the City as Block 3660, Lot 11 and 1037-1047 Bergen Street, Newark, New Jersey, as shown on the official tax map of the City as Block 3661, Lots 3, 5 and 8, , which are located in the South Ward, to permit the development and construction of the Properties as affordable rental housing.
2. Notice in accordance with N.J.S.A. 40:60-51.2 of the subordination of the City's Reverter Right and Senior Lender's mortgage with respect to the Properties has been duly given by publication as required by law and holding a public hearing on said resolution at a Meeting of the Municipal Council on April 10, 2024, in the Council Chamber located at City Hall, 920 Broad Street, Newark, New Jersey.
3. The Deputy Mayor/Director of the Department of Economic and Housing Development shall place filed copies of the fully executed Third Amendment to Redevelopment Agreement, two (2) Amended and Restated Deeds and the Subordination Agreement with the Office of the City Clerk.

STATEMENT

This Resolution authorizes the Mayor of the City of Newark and/or designee, the Deputy Mayor/Director of the Department of Economic and Housing Development to subordinate the City's Reverter Right through the execution, delivery and recording of the Third Amendment to Redevelopment Agreement, two (2) Amended and Restated Deeds and the Subordination Agreement, in accordance with N.J.S.A. 40:60-51.2, to enable the Redeveloper to obtain financing necessary for the development of the Properties as an affordable rental housing project located at 1057-1059 Bergen Street, Newark, New Jersey, as shown on the official tax map of the City as Block 3660, Lot 11 and 1037-1047 Bergen Street, Newark, New Jersey, as shown on the official tax map of the City as Block 3661, Lots 3, 5 and 8 located in the South Ward.