



## Legislation Text

File #: 24-0508, Version: 1

**Dept/ Agency:** Economic and Housing Development

**Action:** ( ) Ratifying (X) Authorizing ( ) Amending

**Type of Service:** Execute and Approve a Modified Affordable Housing Agreement, Note and Mortgage for HOME Funds

**Purpose:** To authorize the execution and approval of a modified Affordable Housing Agreement with Southside View, LLC to construct a new multi-family residential and affordable housing development consisting of forty (40) affordable housing rental units (7 HOME subsidized by the City), upon property located at 654-668 South 11<sup>th</sup> Street (Block 2617, Lots 75, 74, 73, 72, 71, 70, 87, 69, 86, 88 and 85 (South Ward)).

**Entity Name:** Southside View, LLC

**Entity Address:** 1212 Springfield Avenue, Irvington, New Jersey 07111

**Grant Amount:** \$1,050,000.00

**Funding Source:** Federal HOME Program Funds

**Contract Period:** HOME Program Funds must be expended within forty-eight (48) months from the date of adoption

**Contract Basis:** ( ) Bid ( ) State Vendor ( ) Prof. Ser. ( ) EUS

( ) Fair & Open ( ) No Reportable Contributions ( ) RFP ( ) RFQ

( ) Private Sale (X) Grant ( ) Sub-recipient ( ) n/a

**List of Property:**

**(Address/Block/Lot/Ward)**

654-668 South 11<sup>th</sup> Street (Block 2617, Lots 75, 74, 73, 72, 71, 70, 87, 69, 86, 88 and 85 (South Ward))

**Additional Information:**

**WHEREAS**, by Resolution 7R2-i(AS), duly adopted on January 10, 2024 (the "Authorizing Resolution"), the Municipal Council (the "City"), approved and agreed to enter into and execute a Deed Restrictive Affordable Housing Agreement (the "AHA") with Southside View, LLC (the "Entity"), having its principal place of business at 1212 Springfield Avenue, Irvington, New Jersey 07111, subject to the express condition that the Entity purchases and acquires fee simple title to the Property, which shall be defined as having complete and permanent ownership of the land, as well as any buildings and other improvements on that land through a deed recorded with the Essex County Registrar's Office; and

**WHEREAS**, subject to the terms of the Authorizing Resolution and the express condition that the Entity purchases and acquires fee simple title to the Property (as defined herein), the City agreed to provide the Entity with Federal HOME Program Funds ("HOME Funds") in the form of a deferred zero percent (0%) interest bearing loan for a period of twenty (20) years pursuant to the Federal HOME Loan Program (24 C.F.R. part 92) and any amendments thereto (the "HOME Program"); and

**WHEREAS**, subject to the Authorizing Resolution and the express condition that the Entity purchases and acquires fee simple title to the Property (as defined herein), the AHA, as modified herein, shall continue to be for the amount of One Million Fifty Thousand Dollars and Zero Cents (\$1,050,000.00) in Federal HOME Program Funds for the South 11<sup>th</sup> Street Affordable Housing Project to be located at 654-668 South 11<sup>th</sup> Street (Block 2617, Lots 75, 74, 73, 72,

71, 70, 87, 69, 86, 88 and 85 (South Ward) of the Official Tax Map of the City of Newark, County of Essex, State of New Jersey (the "Property"), which shall include the construction of a new multi-family residential and affordable housing development consisting of forty (40) rental units (7 HOME subsidized by the City) (collectively, the "Project"), upon the Property. Units assisted with HOME Program funds provided by the City must be occupied by very low-income households; and

**WHEREAS**, subject to the Authorizing Resolution and the express condition that the Entity purchases and acquires fee simple title to the Property, the Entity agreed: (i) that seven (7) of the forty (40) rental apartment units to be constructed for the Project shall be designated by the City as HOME Program deed-restricted affordable housing units for use and occupancy by low income households earning 60% or less of Area Median Income ("AMI") (collectively, the "Affordable Housing Units"), and (ii) to construct the Affordable Housing Units in connection with the Project provided it receives an award of HOME Funds from the City in order to provide it with a financial subsidy for the construction of these Affordable Housing Units for the Project; and

**WHEREAS**, since the adoption of the Authorizing Resolution, the City and the Redeveloper have not executed the AHA, the Note and Mortgage and Security Agreement because the Redeveloper's counsel has requested that certain non-substantive terms and factual information in each of these documents be updated, modified or supplemented prior to execution, and the City has agreed to accept and make these modifications to the documents; and

**WHEREAS**, it is in the best interest of the City and the Department of Economic and Housing Development to establish contractual guarantees and procedures by which the City will ensure the Entity's compliance with the requirements of the HOME Program for the time and in the manner set forth in the AHA, as modified herein, for the receipt of said HOME Funds; and

**WHEREAS**, the Project is also located within an area in need of redevelopment as defined under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "LRHL"), and is governed by and is to be built as part of the City's First Amendment to the South Ward Redevelopment Plan, adopted on September 21, 2005, by Ordinance 6S&Fe(S), as amended to date (the "Redevelopment Plan"); and

**WHEREAS**, the Project currently has a significant funding gap that must be bridged in order to make the Project financially feasible; and

**WHEREAS**, N.J.S.A. 40A:12A-8(f) of the LRHL authorizes municipalities to provide grants or loans to redevelopers to provide financial assistance for the performance of redevelopment activities in order to implement redevelopment projects in accordance with redevelopment plans; and

**WHEREAS**, the Project continues to qualify for financial assistance since it is located within a redevelopment area and is being performed in order to implement an approved Redevelopment Plan; and

**WHEREAS**, the City continues to recognize the need to complete the above Project and to finance the making of a loan in the amount of One Million Fifty Thousand Dollars and Zero Cents (\$1,050,000.00) to the Entity for a term of thirty-two (32) years in compliance with other governmental lender requirements to be used as a subsidy to develop the Project, which such loan and funding to be made by the City is expressly contingent and conditioned upon the Entity's purchase and acquisition of fee simple title to the Property.

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

1. Subject to the Authorizing Resolution and the express condition that the Entity purchases and acquires fee simple title to the Property, the Mayor of the City of Newark and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development, are hereby authorized to enter into and execute a modified Deed Restrictive Affordable Housing Agreement (the "AHA") with Southside View, LLC (the "Entity"), copies of which are attached and made a part hereof, having its principal place of business at 1212 Springfield Avenue, Irvington, New Jersey 07111 for Federal HOME Program funds in the amount of One Million Fifty Thousand Dollars and Zero Cents (\$1,050,000.00) to subsidize the new construction of seven (7) of the approximately forty (40) affordable housing rental units to be constructed within the Project, each of which shall be for use and occupancy by low-income households earning 60% of AMI or less.

2. Subject to the Authorizing Resolution and the express condition that the Entity purchases and acquires fee simple title to the Property, the Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized to establish a declaration of covenants, conditions and restrictions to ensure that the Project remains affordable for a period of twenty (20) years in accordance with the HOME Program. Said covenants, conditions and restrictions shall run with the land and bind the Entity and any subsequent purchasers and owners, their heirs, executors, administrators and assigns and all persons claiming by, through or under their heirs, executors, administrators and assigns with the AHA, as modified herein, for a period of twenty (20) years.
3. Subject to the Authorizing Resolution and the express condition that the Entity purchases and acquires fee simple title to the Property, the Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized to establish and record a declaration of covenants, conditions and restrictions to ensure that the City shall be repaid the full amount of the HOME Funds disbursed to the Entity upon the occurrence of an event of default under the AHA, as modified herein, by the Entity by requiring the Entity to execute a separate modified HOME Mortgage and Security Agreement and HOME Mortgage Note, copies of which are attached hereto and made a part hereof, for the full amount of funding provided to the Entity in the AHA, as modified herein. Said covenants, conditions and restrictions shall run with the land and bind the Entity and any subsequent purchasers and owners, their heirs, executors, administrators and assigns and all persons claiming by, through or under their heirs, executors, administrators and assigns during the term of the AHA, as modified herein, and the City shall discharge such modified HOME Mortgage and lien in connection therewith upon its issuance of a Certificate of Completion for the Project.
4. The Entity shall be responsible for the recordation of the final fully executed and modified AHA and the related modified Mortgage and any amendments thereto in the Office of the Essex County Register's Office.
5. The modified HOME Mortgage and HOME Mortgage Note given by the Entity in favor of the City of Newark shall ensure compliance with all of the requirements of the HOME Program, pursuant to the HOME Program Statute and Regulations (24 C.F.R. Part 92).
6. Subject to the satisfaction in the sole discretion of the City of all of the terms, covenants and other conditions set forth in the AHA, as modified herein, and other documents and agreements executed and delivered by the Entity in connection herewith and the Project, the modified HOME Mortgage Note and the HOME Mortgage made in favor of the City shall be forgiven and discharged by the City upon the expiration of the twenty (20) year affordability period. Notwithstanding the foregoing, the loan will be required to be repaid in full at the end of the a thirty-two (32) year term or earlier if any of the terms, covenants and other conditions of the AHA, as modified herein, and/or other documents and agreements executed and delivered by the Entity in connection herewith and the Project have been violated and/or breached by the Entity or the Entity otherwise defaults with respect to their respective terms, covenants and/or conditions as provided therein.
7. Subject to the express condition that the Entity purchases and acquires fee simple title to the Property, the Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized to effectuate certain business terms and conditions related to the AHA, as modified herein, as permitted by New Jersey Law and may enter into subordination agreements, access and right of entry agreements and other relevant documents related to these fund allocations in forms subject to the approval of the Corporation Counsel. In addition, the Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized to enter into a maximum of two (2) six (6) month extensions of the term set forth in the AHA, as amended, and any contract timelines and milestones contained therein, provided that any contract timelines and milestones are not extended beyond the two (2) permitted six (6) month extensions, subject to full written disclosure (in the form of a signed memorandum to be submitted prior to adoption) to the Municipal Council by the Deputy Mayor/Director of the Department of Economic and Housing Development and the approval of the City's Corporation Counsel.
8. Subject to the Authorizing Resolution and the express condition that the Entity purchases and acquires fee simple title to the Property, disbursement of the Federal HOME Program Funds for the Project in the amount of One Million Fifty Thousand Dollars and Zero Cents (\$1,050,000.00) shall be subject to the terms and conditions set forth in the AHA, as modified herein, which is attached hereto and a made a part hereof.
9. The Entity must adhere to all milestones and timelines in the Project Schedule approved by the Department of Economic and Housing Development. The Property must conform to the City of Newark Design and Construction

Standards Guidelines for New Home Construction, including standards for environmental sustainability and energy efficiency, as established by the Department of Economic and Housing Development. Should the Entity fail to complete the Project within the specified time frame, then the City, in its sole discretion, in addition to any other remedy available by the AHA, as modified herein, or as allowed by law, may direct the Entity to repay all HOME Program Funds expended on the Project back to the City.

10. The term of the AHA, as modified herein, shall be for a period of twenty (20) years from the date of adoption of this authorizing Resolution by the Municipal Council. HOME Program Funds must be expended within forty-eight (48) months from the date of adoption.
11. The powers authorized in this resolution under Sections 1, 2, 3, 7 and 8 herein shall not become effective, unless and until the Entity provides the City with fee simple ownership of the Property in the form of a deed recorded in the Office of the Essex County Register's Office within ninety (90) days of the date of adoption of this Resolution. If the Entity does not provide such documentation to the City within such ninety (90) day period to the satisfaction of the City in its sole discretion, this Resolution shall become null and void without any further action or obligation of the City.
12. The Entity must remain in compliance with Municipal, State and Federal Laws including, but not limited to the City of Newark's Minority Set-Aside Ordinance (6S&Fd adopted on April 5, 1995) and its Affirmative Action Plan (7Rbp adopted on March 1, 1995) and Federal Executive Order 11246 (as amended by Executive Orders 1137 and 12086) with respect to the award of goods and services. The Entity has agreed to ensure that a minimum of 40% of the workers employed during the construction of the project shall be Newark residents and that 30% of all contractors, subcontractors and suppliers shall be Newark companies.
13. Units assisted with HOME Program Funds must be designated upon execution of the AHA, as modified herein, and must remain fixed units for the duration of the affordability period. Households seeking to occupy a HOME-assisted unit must be certified prior to occupancy and recertified annually.

### **STATEMENT**

Subject to the Authorizing Resolution and the express condition that the Entity purchases and acquires fee simple title to the Property and Project, this Resolution authorizes the Mayor of the City of Newark and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development to enter into and execute a HOME Affordable Housing Agreement with Southside View, LLC, HOME Mortgage and Security Agreement and HOME Mortgage Note, as modified herein, and having its principal place of business at 1212 Springfield Avenue, Irvington, New Jersey 07111, for Federal HOME Program Funds in the amount of \$1,050,000.00 to subsidize the construction of a new multi-family residential and affordable housing development consisting of forty (40) residential rental units (7 HOME subsidized by the City), upon the Property. The HOME assisted units must remain affordable for a period of twenty (20) years pursuant to the requirements under the HOME Program (24 C.F.R. Part 92).