



Legislation Text

File #: 16-1083, Version: 1

Dept/ Agency: Economic and Housing Development

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

Type of Service: Loan agreement and acceptance of Promissory Note

Purpose: Construction of a mixed use project known as the “One Theater Square Project”, consisting of a 22 story structure with 245 rental residential units (24 of which shall be affordable to households earning 50% or less of area median income), 285 parking spaces, 10,794 sq. ft. of common area, approximately 16,391 sq. ft. of retail space and approximately 1,108 sq. ft. of retail/office space.

Entity Name: Two Center Street Urban Renewal, L.L.C.

Entity Address: c/o Dranoff Properties, Inc., 755 South Broad Street, Philadelphia, Pennsylvania 19147

Loan Amount: Amount not to exceed \$11,830,000.00

Funding Source: Motor Vehicle Rental Tax Revenue Bonds, Series 2015; Community and Economic Development Dedicated Trust Fund

Loan Term: The Thirty Fifth anniversary of the date of final certificate of occupancy

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

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

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

Additional Information:

Property Address: 34-40 Park Place, Block 125, Lot 26, Central Ward

WHEREAS, the New Jersey Economic Stimulus Act of 2009, specifically N.J.S.A. 40:48H-1 et seq. (the “Municipal Motor Vehicle Rental Tax Law”) authorized certain municipalities to impose a tax on the rental of motor vehicles within designated industrial zones within such municipality (the “Rental Tax”) and to use the proceeds thereof for certain eligible purposes related to redevelopment purposes, as defined in the Municipal Motor Vehicle Rental Tax Law, specifically N.J.S.A. 40:48H-2.b (the “Eligible Purposes”); and

WHEREAS, pursuant to Ordinance 6PSF-i, adopted by the Municipal Council on May 5, 2010, as amended by the hereinafter-defined Bond Ordinance (collectively, the “Tax Ordinance”), the City of Newark (the “City”) authorized the imposition of a Rental Tax on motor vehicle rental transactions that occur within certain designated industrial zones of the City; and

WHEREAS, pursuant to and in accordance with the provisions of the Municipal Motor Vehicle Rental Tax Law, specifically N.J.S.A. 40:48H-6, the City is authorized to issue bonds for the purpose of financing Eligible Purposes, which bonds may be payable from and secured by Rental Tax proceeds; and

WHEREAS, pursuant to Ordinance 6PSF-a , adopted by the Municipal Council on February 4, 2015 (the “Bond Ordinance”), the City authorized the issuance of not to exceed \$16,000,000.00 aggregate principal amount of Motor Vehicle Rental Tax Revenue Bonds, Series 2015 (the “Series

2015 Bonds”), the proceeds of which were to be used to fund (i) the making of capital grants by the City in an aggregate amount not to exceed \$13,400,000.00 in support of the several redevelopment projects listed on Exhibit A to the Bond Ordinance (the “Designated Projects”), in each case up to the maximum grant amount indicated therein for such Designated Project, (ii) the establishment of reserves to secure payment of debt service on the Series 2015 Bonds and (iii) the payment of costs of issuance of the Series 2015 Bonds; and

WHEREAS, in accordance with Bond Ordinance, the Municipal Motor Vehicle Rental Tax Law and the Local Redevelopment and Housing Law, P.L.1992, c.79, and the acts amendatory thereof and supplemental thereto, as codified in N.J.S.A. 40A:12A-1 et seq.(the “LRHL”), the City authorized and approved the sale and issuance of the Series 2015 Bonds in the aggregate principal amount of \$13,490,000.00 pursuant to the Bond Ordinance, a bond resolution adopted by the Municipal Council of the City on March 4, 2015, 7R5-a (the “Bond Resolution”), which Bond Resolution approved and authorized the execution of a Trust Indenture by and between the City and the Trustee thereunder (the “Trust Indenture”); and

WHEREAS, the Series 2015 Bonds were issued by the City pursuant to the Bond Resolution and Trust Indenture on March 31, 2015; and

WHEREAS, the Bond Ordinance authorized the issuance of the Series 2015 Bonds to finance the making of certain capital grants by the City for Eligible Purposes in support of the designated Eligible Projects, and (ii) the appropriation of the proceeds of such Series 2015 Bonds to make such capital grants; and

WHEREAS, the Bond Ordinance contemplated that the terms of the grants to be made in respect of said designated Eligible Projects and related grant agreements be approved by resolutions adopted, or to be adopted, by the Municipal Council from time to time; and

WHEREAS, the City now desires to expand the purposes for which the Series 2015 Bond proceeds may be utilized in support of the Designated Projects to include contributions, payments, subsidies, loans and grants to mirror the definition of Eligible Purposes contained in the Motor Vehicle Rental Tax Statute and the purposes for which the Series 2015 Bonds may be applied pursuant to the LRHL; and

WHEREAS, on July 18, 2016 the City will finally adopt an amendment to the Bond Ordinance (the “Amendatory Bond Ordinance”) to expand the type of financial support permitted to be given to the Designated Projects to include Eligible Purposes, including but not limited to, loans, contributions, subsidies, payments and grants; and

WHEREAS, the City desires to approve, adopt and authorize the execution and delivery of a First Supplemental Indenture of Trust between the City and U.S. Bank, National Association as Trustee (the “First Supplemental Indenture of Trust”) which amends the definitional section of the Trust Indenture to reflect the amendment to the Bond Ordinance to permit, *inter alia*, contributions, loans, subsidies, in addition to grants; and

WHEREAS, the Trust Indenture may be amended or supplemented without the consent of the owners of the Bonds pursuant to the provisions of Article XIII of the Trust Indenture Sections (a)(i) and (a)(ii) thereof, which Sections permit supplemental indentures to (i) cure any ambiguity, supply

any omission or cure or correct any defect or inconsistent provision in the Trust Indenture and to (ii) insert such provisions clarifying matters or questions arising under the Trust Indenture as are necessary or desirable and are not contrary to or inconsistent with the Trust Indenture, respectively; and

WHEREAS, in connection with the final adoption of the Amendatory Bond Ordinance and the approval and adoption of a First Supplemental Indenture of Trust to permit loans to the Designated Projects, the Municipal Council of the City desires to authorize and approve a loan in the amount of \$11,830,000.00 (the "Loan") to the Redeveloper Entity known as Two Center Street Urban Renewal, L.L.C. (the "Redeveloper") for a Designated Project known as One Theater Square (the "Project") as described in Exhibit A to the Bond Ordinance and the Revised Exhibit A to the Amendatory Bond Ordinance; and

WHEREAS, in connection with the Loan from the City to the Redeveloper, the City desires to approve and authorize the execution and delivery by the City of a Loan Agreement between Two Center Street Urban Renewal, L.L.C. and the City (the "Loan Agreement"), a Subordinate Leasehold Mortgage and Security Agreement between Two Center Street Urban Renewal, L.L.C. and the City (the "Mortgage"), a Promissory Note given by Two Center Street Urban Renewal, L.L.C. to the City (the "Note") and a Loan Purchase Option Agreement between the City and the Optionee, an affiliate of Two Center Street Urban Renewal, L.L.C. (the "Loan Purchase Option Agreement"); and

WHEREAS, in connection with the undertaking of the Project, the Redeveloper has secured financing from other sources to pay the majority of the costs of constructing the Project (and other related costs) and receipt of such additional financing sources by the Redeveloper require that the City approve, authorize, execute and deliver additional agreements, documents and certificates in connection therewith including but not limited to as follows: 1) a Pledge and Assignment Agreement given by the City of Newark to the New Jersey Economic Development Authority and U.S. Bank National Association, as Trustee and Assignee (the "Pledge and Assignment Agreement") in connection with Redevelopment Area Bonds ("RAB's") to be issued by the New Jersey Economic Development Authority ("NJEDA") to fund a portion of the costs of the Project, pursuant to which Pledge and Assignment Agreement the City will pledge a portion of the Annual Service Charge paid by the Redeveloper to the City pursuant to the Financial Agreement between the Redeveloper and the City (the "Financial Agreement") to the payment of the principal of and interest on the RAB's; and 2) a Subordination and Intercreditor Agreement by and among Fifth Third Bank, The Prudential Life Insurance Company of America and the City of Newark acting through the Department of Economic and Housing Development and Two Center Street Urban Renewal, L.L.C. (the "Subordination and Intercreditor Agreement").

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

Section 1. Pursuant to the provisions of and subject to the validity of the Amendatory Bond Ordinance and the First Supplemental Indenture of Trust, the City hereby ratifies and confirms the appropriation in the amount of \$9,500,000.00 from the proceeds of the Motor Vehicle Rental Tax Revenue Bonds, Series 2015, to fund a portion of the Loan to the Project as described in the Revised Exhibit A to the Amendatory Bond Ordinance. In addition, the City hereby authorizes and appropriates the amount of \$2,330,000.00 from the Community and Economic Development Trust Fund to fund a portion of the Loan to the Redeveloper for the Project. The total Loan to the Redeveloper shall be in the amount of \$11,830,000.00 and such loan proceeds shall be applied

solely to the costs of the Project in accordance with the terms of the Loan Agreement (as hereinafter defined) approved by the City herein. The Chief Financial Officer is hereby authorized and directed to (a) certify that the \$2,330,000.00 in Loan funds appropriated hereby is available in the Community and Economic Development Dedicated Trust Fund, and (b) to provide evidence of the availability of funds pertaining to the remainder of the Loan in the amount of \$9,500,000.00.

Section 2. The First Supplemental Indenture of Trust required to be approved and adopted as a result of the adoption of the Amendatory Bond Ordinance to provide for the Loan to the Redeveloper for Eligible Purposes of the Project shall be substantially in the form attached to this Resolution as Exhibit A and made a part hereof, and is hereby approved and the Mayor, Deputy Mayor of Economic and Housing Development of the City are each hereby authorized and directed to execute and deliver the First Supplemental Indenture of Trust with such changes, revisions or alterations therefor as may be approved by the officer executing the same after consultation with the City's Corporation Counsel and/or Bond Counsel to the City ("Bond Counsel"), such approval to be conclusively evidenced by the execution thereof.

Section 3. The Loan Agreement between the City and Two Center Street Urban Renewal, L.L.C. (the "Loan Agreement"), which Loan Agreement reflects the terms and conditions of the Loan shall be substantially in the form attached to this Resolution as Exhibit B and made a part hereof, and is hereby approved and the Mayor, Deputy Mayor of Economic and Housing Development of the City are each hereby authorized and directed to execute and deliver the Loan Agreement with such changes, revisions or alterations therefor as may be approved by the officer executing the same after consultation with the City's Corporation Counsel and/or Bond Counsel, such approval to be conclusively evidenced by the execution thereof.

Section 4. The Subordinate Leasehold Mortgage and Security Agreement between the City and Two Center Street Urban Renewal, L.L.C. (the "Mortgage"), which Mortgage reflects the terms and conditions of the Loan shall be substantially in the form attached to this Resolution as Exhibit C and made a part hereof, and is hereby approved and the Mayor, Deputy Mayor of Economic and Housing Development of the City are each hereby authorized and directed to execute and deliver the Mortgage with such changes, revisions or alterations therefor as may be approved by the officer executing the same after consultation with the City's Corporation Counsel and/or Bond Counsel, such approval to be conclusively evidenced by the execution thereof.

Section 5. The Promissory Note from Two Center Street Urban Renewal, L.L.C. to the City (the "Note"), which Note reflects the terms and conditions and amount of the Loan, shall be substantially in the form attached to this Resolution as Exhibit D and made a part hereof, and is hereby approved.

Section 6. The Loan Purchase Option Agreement between the City and an Optionee, an affiliate of Two Center Street Urban Renewal, L.L.C. (the "Loan Purchase Option Agreement"), which Loan Purchase Option Agreement reflects the terms and conditions for the purchase of the Loan shall be substantially in the form attached to this Resolution as Exhibit E and made a part hereof, and is hereby approved and the Mayor, Deputy Mayor of Economic and Housing Development of the City are each hereby authorized and directed to execute and deliver the Loan Purchase Option Agreement with such changes, revisions or alterations therefor as may be approved by the officer executing the same after consultation with the City's Corporation Counsel and/or Bond Counsel, such approval to be conclusively evidenced by the execution thereof.

Section 7. The Pledge and Assignment Agreement given by the City to the New Jersey Economic Development Authority and U.S. Bank National Association, as Trustee and Assignee (the "Pledge and Assignment Agreement") in connection with a Redevelopment Area Bond Financing to be undertaken by the New Jersey Economic Development Authority, which Pledge and Assignment Agreement shall be substantially in the form attached to this Resolution as Exhibit F and made a part hereof, and is hereby approved and the Mayor, Deputy Mayor/Director of the Department of Economic and Housing Development or the Chief Financial Officer of the City are each hereby authorized and directed to execute and deliver the Pledge and Assignment Agreement with such changes, revisions or alterations therefor as may be approved by the officer executing the same after consultation with the City's Corporation Counsel and/or Bond Counsel, such approval to be conclusively evidenced by the execution thereof.

Section 8. The Subordination and Intercreditor Agreement by and among the City acting through Department of Economic and Housing Development, Fifth Third Bank, The Prudential Life Insurance Company of America and Two Center Street Urban Renewal, L.L.C. (the "Subordination and Intercreditor Agreement"), shall be substantially in the form attached to this Resolution as Exhibit G and made a part hereof, and is hereby approved and the Mayor, Deputy Mayor of Economic and Housing Development of the City are each hereby authorized and directed to execute and deliver the Subordination and Intercreditor Agreement with such changes, revisions or alterations therefor as may be approved by the officer executing the same after consultation with the City's Corporation Counsel and/or Bond Counsel, such approval to be conclusively evidenced by the execution thereof.

Section 9. The Mayor, Deputy Mayor/Director of the Department of Economic and Housing Development, the Chief Financial Officer, the Business Administrator of the City are each hereby designated, authorized and directed to determine any other matters or details relating to the Loan to the Redeveloper for the Designated Project and to do or perform or cause to be done or performed any and all acts as such officers or the City's Corporation Counsel and/or Bond Counsel may deem necessary or appropriate, and are hereby authorized and directed to execute and deliver, among other things, any and all instruments, opinions, affidavits, certificates, resolutions, agreements, documents or other papers as may be deemed necessary and appropriate.

Section 10. This resolution and the approvals and authorizations of the agreements described herein shall take effect upon the validity and effectiveness of the Amendatory Bond Ordinance.

STATEMENT

Resolution Authorizing a loan in the amount of \$11,830,000.00 to Two Center Street Urban Renewal, L.L.C., to fund a portion of the costs of the One Theater Square project and in connection therewith, approving and authorizing the execution and delivery, as applicable, by the city of *Inter Alia*, the first supplemental trust indenture, a loan agreement, a subordinate leasehold mortgage and security agreement, a not, a loan purchase option agreement, a pledge and assignment agreement and a subordination and intercreditor agreement.

CERTIFICATION

I, Kenneth Louis, City Clerk of the City of Newark, in the County of Essex, State of New Jersey, DO HEREBY CERTIFY that the foregoing is a true and compared copy of an original resolution now on file and of record in my office which was duly adopted at a regular meeting of the Municipal Council of the City of Newark, County of Essex, State of New Jersey, on the 7th day of July, 2016, at which meeting a quorum was present and acting throughout.

I DO HEREBY FURTHER CERTIFY that said Municipal Council consists of _____ members and that _____ members thereof were present and said members voted affirmatively for the meeting and that _____ members voted affirmatively for the adoption of said resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this ____ day of _____, 2016.

SEAL

Kenneth Louis, City Clerk

EXHIBIT A

First Supplemental Indenture of Trust

EXHIBIT B

Loan Agreement

EXHIBIT C

The Subordination Leasehold Mortgage and Security Agreement

EXHIBIT D

Note

EXHIBIT E

Loan Purchase Option Agreement

EXHIBIT F

Pledge and Assignment Agreement

EXHIBIT G

Subordination and Intercreditor Agreement

