



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 13-2066, Version: 1

Dept/ Agency: Economic & Housing Development

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

Type of Service: Resolution Endorsing a limited waiver of compliance with the provisions of Section 10.03 of the Financial Agreement authorized by Ordinance 6PSFE January 19, 2011.

Purpose: Waives non-compliance with terms of Financial Agreement resulting from the failure to obtain a postponement of a mortgage in favor of Crown Bank.

Additional Information:

810 Broad Street/Block 165/ Lot 11/East Ward

Financial Agreement approved by Ordinance 6PSFE adopted January 19, 2011.

WHEREAS, the New Jersey Economic Development Authority (the "Authority") is issuing its Redevelopment Area Taxable Bonds (810 Broad St Urban Renewal Company LLC - 2013 Project) in an aggregate principal amount not to exceed \$4,700,000.00 (the "Bonds"), for the purpose of making a loan to 810 Broad St Urban Renewal Company LLC (the "Redeveloper"); and

WHEREAS, the Bonds are being sold by the Authority to The Prudential Insurance Company of America (the "Purchaser"); and

WHEREAS, the Bonds are secured by a pledge of the "Pledged Annual Service Charge" payable by the Redeveloper under the Financial Agreement approved by Ordinance 6PSFE January 19, 2011 and dated September 22, 2011 (the "Financial Agreement") between the City of Newark (the "City") and the Redeveloper, which Financial Agreement also provides for the payment of the "Unpledged Annual Service Charge" by the Redeveloper to the City (such Pledged Annual Service Charge and Unpledged Annual Service Charge being collectively referred to herein as the "Annual Service Charge"); and

WHEREAS, in connection with the Bonds, various documents have been executed by various parties (including, but not limited to, the City), and various legal opinions have been executed by counsel to various parties (including, but not limited to, counsel to the City); and

WHEREAS, in order to ensure the first-lien status of the Financial Agreement, and in order to comply with the requirements of Section 10.03 of the Financial Agreement that any mortgages granted by the Redeveloper in respect of the property subject to the Financial Agreement be subordinate to the lien of the Financial Agreement, such documents include, inter alia, postponements of various mortgages, which were of record prior to the time the Financial Agreement was recorded; and

WHEREAS, at the request of the City and its counsel, the Redeveloper and its counsel have made numerous requests to obtain a postponement of a mortgage that has previously been granted in favor of Crown Bank (the "Crown Bank Mortgage") vis-à-vis the Financial Agreement; and

WHEREAS, notwithstanding said requests, to date Crown Bank has failed to deliver said postponement of the Crown Mortgage; and

WHEREAS, following negotiation and consultation with the intended loan participants, Crown Bank has agreed to execute the requested postponement of the Crown Bank Mortgage, provided it is placed in escrow and not delivered until project completion, which arrangement is acceptable to the Redeveloper, the Authority, and the Purchaser ; and

WHEREAS, although the Redeveloper, the Authority and the Purchaser agree that the Financial Agreement shall have a first-lien status, the failure to obtain such postponement prior to closing raises an issue regarding the first-lien status of the Financial Agreement vis-à-vis the Crown Bank Mortgage, and as such may: (i) impair the security of the Purchaser and the City in respect of their entitlement to the Annual Service Charge; and (ii) constitute a breach of the provisions of said Section 10.03 of the Financial Agreement; and

WHEREAS, the issuance of the Bonds has heretofore been delayed several times for various reasons, and the Redeveloper has indicated that it has exhausted all other funds and will not be able to proceed with the construction of the Project, unless the Bonds are issued immediately, so as to provide needed funds to pay contractors and thereby enable the uninterrupted construction of the Project; and

WHEREAS, each of the Authority and the Purchaser has represented to the City that it is willing to proceed with the issuance of the Bonds notwithstanding the failure of Crown Bank to deliver a postponement of the Crown Bank Mortgage vis-à-vis the Financial Agreement, and are each willing to bear any and all risks as may result from the absence of such postponement; and

WHEREAS, the City is willing to waive the possible breach of Section 10.03 of the Financial Agreement, and to accept (equally with the Purchaser) the risk that lien of the Financial Agreement may not be paramount vis-à-vis the Crown Mortgage, but only on the condition that each of the Authority, the Purchaser and the Redeveloper execute a Hold Harmless Agreement for the benefit of the City and its counsel, in substantially the form attached hereto (the "Hold Harmless Agreement"); and

WHEREAS, in view of the assurances and indemnification provided by the Authority, the Purchaser and the Redeveloper, the City is willing to grant a limited waiver of the provisions of Section 10.03 of the Financial Agreement in order to permit the Bonds to be issued and sold as soon as possible.

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

1. The City hereby grants a limited waiver of compliance with the provisions of Section 10.03 of the Financial Agreement, approved by Ordinance 6PSFE January 19, 2011 to the extent any noncompliance results, or may result, from the failure on the part of the Redeveloper to obtain a postponement of the Crown Mortgage vis-à-vis the Financial Agreement, provided the Authority, the Purchaser and the Redeveloper all execute the Hold Harmless Agreement in substantially the form attached hereto..

2. This resolution shall take effect immediately.

STATEMENT

This resolution hereby authorizes a limited waiver of noncompliance with certain terms of a Financial Agreement with 810 Broad St Urban Renewal Company LLC, 45 Academy Street, Suite 205, Newark, New Jersey 07102 (the "Redeveloper"), resulting from the failure to obtain a postponement of a mortgage in favor of Crown Bank. (EAST WARD)