



Legislation Text

File #: 19-0099, Version: 1

Dept/ Agency: Law

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

Purpose: Pre-Litigation Settlement

Docket No.: N/A

Claimant: New Spring Urban Renewal Properties, LLC.

Claimant's Attorney: Andrew J. Camelotto, Esq., Gibbons Law

Attorney's Address: One Gateway Center, Newark, New Jersey 07102-5310

Settlement Amount: \$184,204.24 as of January 23, 2019, plus interest and fees and other related charges due up to the date of redemption of tax lien

Funding Source: N/A

Additional Comments:

Invitation: Corporation Counsel

WHEREAS, New Spring Urban Renewal Properties, LLC ("New Spring"), with its current business address located at 189-237 Springfield Avenue, Newark, New Jersey 07103, filed an application, dated September 25, 2015, seeking a long term tax abatement under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et. seq., for a fifteen (15) year term for a project consisting of a Sonic Drive-In Restaurant (the "Project") on real property commonly known as 217-237 Springfield Avenue, Newark, New Jersey and designated as Block 2502, Lot 1.01 on the City of Newark Tax Map (the "Property"); and

WHEREAS, finding that the relative benefits of the Project outweighed the costs associated with the tax exemption and that without the tax abatement the Project would not be undertaken, on November 2, 2016, the Newark Municipal Council adopted Ordinance 6PSF-c approving a fifteen (15) year long term tax abatement and authorizing the execution of a Financial Agreement for a project consisting of a Sonic Drive-In restaurant; and

WHEREAS, on January 24, 2017, the City and New Spring executed a Financial Agreement (the "Financial Agreement"), which provided, among other things, that New Spring would pay an Annual Service Charge during the term of the Financial Agreement equal to two percent (2%) of Total Project Costs (as defined in the Financial Agreement) (the "ASC"); and

WHEREAS, New Spring made certain tax payments from the effectiveness of the Financial Agreement through the fiscal year 2017 based on tax bills received from the City and relating to the Project and the Property; and

WHEREAS, sometime in 2017, the City determined that New Spring had not been paying the full amount of the ASC with respect to the Project; and

WHEREAS, sometime thereafter, the City requested full payment of what it believed was owed by New Spring for the prior tax years; and

WHEREAS, the prior amounts calculated by the City were in part based on an agreement other than the Financial Agreement which resulted in an alleged annual service charge in excess of \$52,000.00, for the Project and the Property; and

WHEREAS, the City sold a Tax Lien Certificate or Tax Lien Certificates for the Property (collectively, the "Tax Certificate") to a third party or third parties for the amount of taxes or payments in lieu of taxes that the City believed had not been paid by New Spring with respect to the Project and the Property; and

WHEREAS, as of today's date, the Tax Certificate remains outstanding against the Property; and

WHEREAS, to avoid litigation and to promote the successful redevelopment of the Property and operation of the Project, New Spring and the City worked together to reach an agreement on the final amount of the Total Project Costs for the Project, the correct ASC for the Project and the Property based on the terms of the Financial Agreement and the Long Term Tax Exemption Law, and the correct outstanding amount owed by New Spring for the prior tax years; and

WHEREAS, at the request of the City, New Spring caused a certified public accountant to certify that the Total Project Costs for the Project, as defined by the Financial Agreement and in accordance with the Long Term Tax Exemption Law, are \$1,293,857.53 ("TPC"); and

WHEREAS, based on the TPC, and in accordance with the Financial Agreement and the Long Term Tax Exemption Law, the ASC for the Project and the Property is equal to Twenty-Five Thousand Eight Hundred Seventy-Seven Dollars and Fifteen Cents (\$25,877.15) ("Confirmed ASC"); and

WHEREAS, based on the Confirmed ASC, the total amount to be paid by New Spring to bring current all payments in lieu of taxes, tax and other payments due to the City with respect to the Property and the Project through the second quarter of 2018 is equal to \$59,521.33 (the "Back Payment"); and

WHEREAS, New Spring has delivered a check in the full amount of the Back Payment in escrow to DeCotiis FitzPatrick & Cole, LLP, the City's outside counsel for this matter; and

WEREAS, New Spring has agreed that the Back Payment may be immediately released from escrow by the City's outside counsel and paid to the City upon completion of the Redemption (as defined below); and

WHEREAS, the City has agreed to fully redeem the Tax Certificate at the City's cost by the City Tax Collector, with assistance from the Department of Finance/Administration, taking the following actions: (i) calculating the amount required to fully redeem the Tax Certificate, including any and all interest, penalties, fees and related costs associated with the redemption of the Tax Certificate, and confirming such amount with the appropriate lien holder or holders, (ii) paying all redemption moneys to the lien holder or holders required to fully redeem/payoff the Tax Certificate, (iii) delivering to New Spring or New Spring's counsel, Gibbons P.C., a certificate of redemption, duly executed and in a form sufficient for recording with the Essex County Register's Office, (iv) obtaining the surrendered and cancelled Tax Certificate from the lien holder or holders, and (v) taking any and

all other actions required to cancel the Tax Certificate and discharge it of record (collectively, the "Redemption"), all in accordance with applicable law; and

WHEREAS, the City has also agreed to revise the current tax bills or payment in lieu of tax statements representing the quarterly ASC in accordance with the Confirmed ASC for the Project in accordance with the Financial Agreement (the "Corrected Statements"), and New Spring commenced payment of the quarterly amount of the Confirmed ASC as of the third quarter of 2018; and

WHEREAS, the City has determined that New Spring should not be responsible for any interest, fees, penalties or costs associated with or related to the Redemption except for the Back Payment; and

WHEREAS, the City has determined that entering into a settlement agreement ("Settlement Agreement") confirming the effectiveness of the Financial Agreement, approving the Confirmed ASC, and authorizing the Redemption is critical to promoting the redevelopment of the Property, to avoiding litigation and to furthering the success of the Project, and that such actions will serve the best interest of the City and its residents.

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 Corporation Counsel, is hereby authorized to enter into and execute the Settlement Agreement with New Spring Urban Renewal Properties, LLC, with its current business address located at 189-237 Springfield Avenue, Newark, New Jersey 07103, in the form attached hereto which shall confirm the effectiveness of the Financial Agreement, approve the Confirmed ASC, and authorize the Redemption.
2. Any one of the Mayor and/or any representative of the Department of Economic and Housing Development and/or any representative of the Department of Finance and/or any representative of the Department of Administration and/or the City Tax Collector is/are hereby authorized on behalf of the City to effectuate and facilitate the Redemption, and any such representatives may enter into any related documents which they deem necessary to effectuate the Redemption.
3. All prior acts of the Mayor and/or the Director of the Department of Economic and Housing Development and/or the Department of Finance and/or the Department of Administration with respect to any or all of the Project, the Property, the Financial Agreement, the Corrected Statements and the Redemption are hereby ratified and approved, except to the extent such prior acts are inconsistent with this Resolution or the Settlement Agreement.
4. This Resolution shall take effect immediately.

STATEMENT

Resolution authorizing a settlement, without the need for litigation, between the City and New Spring Urban Renewal Properties, LLC, to confirm the effectiveness of a Financial Agreement for a Long Term Tax Abatement on the real property commonly known as 217-237 Springfield Avenue, Newark, New Jersey and designated as Block 2502, Lot 1.01 ("Property") on the City of Newark Tax Map, approve the Confirmed Annual Service Charge for said Long Term Tax Abatement, and authorize the Redemption of a Tax Lien Certificate that City sold on the Property.