

City Clerk File No. Ord. 09-128

Agenda No. 3.A 1st Reading

Agenda No. _____ 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 09-128

TITLE:

ORDINANCE AUTHORIZING THE CONVEYANCE OF 90 VIRGINIA AVENUE TO THE JERSEY CITY COMMUNITY HOUSING CORPORATION, A NON PROFIT CORPORATION, TO REHABILITATE THE PROPERTY AS FOURTEEN UNITS OF LOW AND MODERATE INCOME CONDOMINIUM UNITS

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, the City of Jersey City (City) is the owner of a four-story building located within Block 1978, Lot 41.99, more commonly known by the street address of 90 Virginia Avenue; and

WHEREAS, this property is not needed for any municipal purposes; and

WHEREAS, the Jersey City Community Housing Corporation is a non profit, 501(c)3 corporation organized for the purpose of rehabilitating and operating property for families and persons of low and moderate income; and

WHEREAS, pursuant to N.J.S.A. 52:27D-301 et seq., the Fair Housing Act, the City may authorize the private sale of City property for the rehabilitation of affordable housing for nominal consideration, provided the property is sold to and remains occupied by families or persons of low and moderate income for a minimum period of thirty (30) years; and

WHEREAS, the Jersey City Community Housing Corporation has proposed to rehabilitate fourteen (14) units of low and moderate income housing and to commence construction no later than March 1, 2011 and complete the rehabilitation no later than November 1, 2012, all in accordance with the Developers Agreement attached hereto; and

WHEREAS, the Jersey City Community Housing Corporation agrees to maintain the housing as affordable within the meaning of the Fair Housing Act for a minimum period of thirty (30) years.

NOW, THEREFORE BE IT ORDAINED, by the Municipal Council of the City of Jersey City that:

1. The Mayor or Business Administrator is hereby authorized to execute a Developer's Agreement, Contract of Sale, Deed and any other documents appropriate or necessary to effectuate the transfer of Block 1978, Lot 41.99 more commonly known by the street address of 90 Virginia Avenue to the Jersey City Community Housing Corporation pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., provided the property remains affordable to families of low and moderate income for a minimum period of thirty (30) years.
2. The Developer's Agreement shall be in substantially the form attached, and subject to such modifications as Corporation Counsel or the Business Administrators deems appropriate or necessary.

- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. This ordinance shall take effect in the manner as prescribed by law.
- D. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All new material is underlined; words in ~~{brackets}~~ are omitted. For purposes of advertising only, new matter is indicated by **boldface** and repealed matter by *italic*.

RR/cw

APPROVED AS TO LEGAL FORM

APPROVED: _____

Corporation Counsel

APPROVED: _____
Business Administrator

Certification Required
Not Required

DEVELOPMENT AGREEMENT

THIS AGREEMENT, entered into this ____ day of _____, 2009, (Agreement) between the **CITY OF JERSEY CITY**, a public body corporate having its principal offices at 280 Grove Street, Jersey City, New Jersey 07302, [City] and _____, a corporation of the State of New Jersey with offices at _____, Jersey City, New Jersey 07305 [Developer].

WITNESSETH:

WHEREAS, the Developer is a non profit entity organized for the purpose of providing for the rehabilitation and operation of affordable low and moderate income housing within Jersey City and is recognized as a non profit entity pursuant to Section 501(c)(3) of the IRC; and

WHEREAS, the City of Jersey City, the owner of _____, desires to convey title to the Developer to enable the immediate [construction/rehabilitation] for _____ units of affordable housing [Property]; and

WHEREAS, pursuant to N.J.S.A. 52:27D-301 et seq of the Fair Housing Act, the City of Jersey City may authorize the private sale of City property for the [construction/rehabilitation] of affordable housing , provided the property is occupied by families or persons of low or moderate income at affordable rents, for a minimum period of 30 years; and

WHEREAS, Developer has submitted a proposal to the City to rehabilitate Project Premises in accordance with the terms of this Agreement; and

WHEREAS, the City has reviewed the proposal and have determined that it is in the city's best interests to select the Developer as the designated Developer for the Project Premises; and

WHEREAS, by Ordinance _____ adopted on _____, the City approved the conveyance of the Property to the Developer and the execution of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the parties hereto agree as follows:

DEFINITIONS

Agreement: This Agreement between the City and the Developer for the rehabilitation of the Property.

Applicable Law: Any and all federal, state and local laws, rules, regulations, statutes and ordinances applicable to the Property or Project.

Certificate of Occupancy: Document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133 and as defined in the New Jersey Administrative Code.

Construction Plans: All plans, drawings, specifications and related documents, including a construction progress schedule, in sufficient completeness and detail to obtain construction permits and to show that the Improvements to be constructed by Developer on the Property and the construction thereof will be in accordance with this Agreement.

Construction Timetable: That schedule appended hereto as Schedule C which designates the order and deadlines of acquisition, necessary approvals and development of the Project.

Days: Whenever the word "days" is used to denote time, it shall mean calendar days.

Deeds: Any deed of conveyance from the City to the Developer conveying any of the Property pursuant to this Agreement.

Effective Date: The date this Agreement is last executed by the City.

Events of Default: Defined in Section 8.01 herein.

Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

Financial Institution: A bank, savings bank, savings and loan association, mortgage lender or insurance company, pension fund, real estate investment trust, investment bank or similarly recognized reputable source of construction and permanent financing for the Project chartered under the laws of the United States of America, or any State thereof.

Force Majeure: As used herein **force majeure** shall mean acts of God, fire, earthquake, explosion, the elements, war, riots, mob violence, terrorism, or civil disturbance, inability to procure or a general shortage of labor, equipment or facilities, energy, materials or supplies in the open market, failure of transportation, strikes, walkouts, actions of labor unions, court orders, laws, rules, regulations or orders of governmental or public agencies, bodies and authorities, or any other similar cause not within the control of the Developer.

Governmental Approvals: Any approvals, authorizations, permits, licenses and certificates needed from governmental authorities having jurisdiction, whether federal, state, county or local, to the extent necessary to implement the Project in accordance with this Agreement.

Impositions: All taxes, assessments (including, without limitation, all assessments for public improvements or benefits), water, sewer or other rents, rates and charges, license fees, permit fees, inspection fees and other authorization fees and charges, in each case, whether general or special, which are levied upon any portion of the Property conveyed to the Developer or on any of the improvements constructed thereon.

Improvements: Consists of the project as more particularly described in Schedule B hereto and all other improvements constructed on or installed upon the Property in accordance with the approved Construction Plans, including all facilities and amenities, shown in such approved Construction Plans and approved if appropriate by the Planning Board as being on the Project Premises and used or to be used in connection with the buildings, including any parking or ancillary facilities. Improvements also comprise any and all facilities, amenities, on and off street parking, landscaping and fencing and enhancements required to be made to the Project Premises and the streets abutting and surrounding the Premises.

Insurance Requirements: All requirements set forth in the terms of any insurance policy(ies) covering or applicable to all or any part of the Project Premises or applicable to any Improvements thereon, or with respect to any portion of the Project Premises, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting all or any portion of the Project Premises, the Improvements thereon or the use or condition thereof.

NJDEP: The New Jersey Department of Environmental Protection.

Permitted Exceptions: Defined in Section 9.02 herein.

Planning Board: The City of Jersey City Planning Board and any successor thereto exercising similar functions in accordance with the Municipal Land Use Law. N.J.S.A. 40:55D-1 et seq.

Project Premises: Those certain parcels of property more particularly described on Schedule A, which include the City Parcel to be conveyed to Developer.

Survey: Defined in Section 2.05 herein.

Transfer: Any transaction by which a Transferee obtains an interest in the Project Premises, or in this Agreement by means of methods which include, but are not limited to, conveyance, transfer, lease, encumbrance, acquisition or assignment through sale, merger, consolidation, reorganization, foreclosure or otherwise, including the appointment of a trustee in bankruptcy or assignee for the benefit of creditors.

Transferee: Any party to whom an interest in the Project Premises, or rights in or under this Agreement is conveyed, transferred, leased, encumbered, acquired or assigned, by sale, merger, consolidation, reorganization, assignment, foreclosure or otherwise, including a trustee in bankruptcy or assignee for the benefit of creditors.

ARTICLE I
SALE & CONVEYANCE OF PROPERTY

1.01. Consideration. For and in consideration of the Price (defined below in Section 1.02), to be paid and satisfied as stipulated herein, and also in consideration of the covenants and agreements herein contained and to be performed by the Developer be and upon satisfaction of the additional contingencies to close title enumerated under Article XI, hereof, the City agrees to convey to the Developer, subject to the terms and provisions of this Agreement, the Project Premises as more particularly defined in Schedule "A."

1.02 Price and Payment Terms. The purchase price to be paid by the Developer to the City for conveyance of the Property at the Closing shall be _____ and the good and valuable consideration set forth herein.

1.03 Deed. Subject to the provisions of this Agreement, title to the Project Premises shall be conveyed to the Developer at the Closing by a Deed of Bargain and Sale with covenants against Grantor's Acts (Deed) which shall contain a metes and bounds description provided in accordance with the provisions of Section 2.05 hereof. The Deed shall contain such restrictions, covenants and conditions are required by the Fair Housing Act N.J.S.A. 52:27D-301 et seq., and this Agreement and the condition of said title so conveyed will be in accordance with the requirements of this Agreement. Rider(s) shall be attached to the Deed enunciating the covenants and restrictions that this Agreement imposes upon the land and said Riders shall be recorded as part of and simultaneously with the recording of the Deed. Developer's signature will be required on the Deed and any Riders thereto in acknowledgment thereof. The City further agrees to provide Developer an Affidavit of Title and other documentation normally required by a title insurance company.

1.04 Closing. The closing of title to the Project Premises (Closing) shall take place in accordance with the timetable set forth in Schedule "C", attached hereto, subject to the provisions of this Agreement. The Closing shall occur at a mutually agreeable time at the principal offices of the City identified in the recitals of this Agreement or at such other location as shall be mutually agreeable to the City and Developer.

1.05 Impositions. Unless otherwise set forth in this Agreement, Developer shall be responsible for any and all Impositions assessed against the Project Premises, upon from and after the date of closing of title to the Project Premises to Developer.

1.06 Provisions Not Merged with Deed. The City and the Developer acknowledge and agree that none of the provisions of the Agreement are intended to or shall be merged by reason of any Deed(s) transferring title to the Project Premises or portions thereof from the City to the Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of the Agreement.

1.07 Recordation of Documents. Upon the Closing, Developer shall file the Deed and any other related documents as determined by the City for recordation among the land records of the place in which the Project Premises is situate. The Deed(s) shall be by its terms expressly subject and subordinate to the provisions of this Agreement. The Developer shall pay all costs of such recordation and shall supply evidence of such recordation to the City.

ARTICLE II DEVELOPER'S RESPONSIBILITIES

2.01 Developer's Costs. The Developer shall be responsible for all costs incurred by the Developer in implementing the Project, and satisfying its obligations under this Agreement.

2.02 Acquisition Costs. The Developer further agrees to be fully responsible for and obligated to reimburse the City for all of the City's costs, if any, associated with the conveyance of the Property (Acquisition Costs). The Acquisition Costs shall include, without limitation, the following:

(a) legal fees, survey costs, title search and premium fees, appraisal fees (including fees of appraisers arising from their participation in preparation of a fair market disposition appraisal and other expenses related to the transfer of the City Parcel;

(b) any costs incurred by the City as a result of compliance with any environmental laws or regulations;

(c) costs of the City, if any, relating to any Developer financing of the Project; and

(d) any additional out-of-pocket third-party costs associated with the Project.

The Developer agrees to reimburse the City for all Acquisition Costs upon fourteen (14) days written notice from the City (complete with the presentation of itemized invoices, if any, and receipts therefor, if any) to the Developer given in accordance with the notice provisions of this Agreement. The City agrees that with respect to the Acquisition Costs referenced herein, in an effort to inform the Developer in advance of such costs the City shall provide to the Developer an estimated budget for contemplated Acquisition Costs and to the extent such costs may exceed the reported budget amounts, the City shall use its best and reasonable efforts to provide the

Developer with advance written notification of any change in a reported budget item. As to the reimbursement obligation, the Developer further acknowledges and agrees that the obligation to reimburse the City for all Acquisition Costs shall apply to all such costs incurred, whether prior to or subsequent to the termination of this Agreement, provided that with respect to such Acquisition Costs incurred after the termination of this Agreement, such costs are incurred in connection with actions undertaken by the City pursuant to this Agreement. The Developer's obligations pursuant to this Section 2.03 shall survive the termination of this Agreement.

2.04 Project Financing. Developer shall obtain and provide the City with written proof of financing and sufficient equity capital necessary to fund the balance of the Project budget as further required by Article IV hereof.

2.05 Survey. The Project Premises or smaller parcels thereof shall be conveyed by a metes and bounds description derived from Project Premises boundary and topographic surveys showing Project Premises lines of any properties being conveyed to Developer, existing grades, easements and utilities in and of the Project Premises to be conveyed and in and of the streets surrounding same. The survey(s) shall be ordered by the Developer and prepared at Developer's sole expense by a reputable land surveyor licensed in the State of New Jersey selected by the Developer (Survey). The Survey and the legal descriptions prepared therefrom shall be certified by the surveyor to the City and Developer and one reproducible and three copies of the Survey shall be delivered to each party hereto within thirty (30) days from the Effective Date of this Agreement.

2.06. Environmental Compliance and Remediation. The Developer agrees that with respect to the Project Premises, the Developer shall conduct such soils analyses, site investigations and other environmental evaluations necessary to determine the condition of the buildings, soils and subsurface conditions and the presence of hazardous wastes or substances (Environmental Due Diligence). Pursuant to and to the extent of its rights under the Law, the City agrees to furnish the Developer, its agents or designees, with access to any portion of the Project Premises, at any time and from time to time during the term of this Agreement for purposes of conducting Environmental Due Diligence should the need arise, provided the Developer furnished the City with reasonable written notice in advance of any such entry setting forth the Developer's intent to enter any portion of the Project Premises and with satisfactory evidence of liability insurance as required pursuant to Section 2.15 herein, insuring the Developer, the City and the City against claims for bodily injury, death and property damage arising from or attributable to such entry. To the extent the Environmental Due Diligence discloses the existence of environmental conditions on the Project Premises which require remediation or any governmental City with jurisdiction over the Project Premises requires or recommends any mitigation or remediation as a condition to the sale or development of the Project Premises, the Developer shall have thirty (30) days from the Effective Date of this Agreement to notify the City in writing of the Developer's intention to

