



City of Pittsburgh

510 City-County Building
414 Grant Street
Pittsburgh, PA 15219

Text File

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Bill No: 2019-1873, **Version:** 2

Committee: Committee on Intergovernmental Affairs

Status: Passed Finally

Resolution to ~~rescind~~ amend Resolution 648 of 2018 and to authorize the City of Pittsburgh to alternately execute and record a Declaration of Condominium along with the Housing Authority of the City of Pittsburgh and the Urban Redevelopment Authority of Pittsburgh as Declarants for ~~the condominium to be known as the "Pittsburgh Governmental Center, a Condominium"~~ a condominium or other ownership structure at the property located at 412 Boulevard of the Allies ("the Property"); and further authorizing the execution and filing, as may be required, of all related instruments or documents necessary enter into a tenancy in common agreement; or to convert the Property into units and to ensure compliance with the Pennsylvania Uniform Condominium Act, 68 Pa.C.S.A. §§3101 et seq., or the Pennsylvania Planned Community Development Act, 68 Pa. C.S. §§ 5101 et seq.; or enter a lease agreement(s) with the City as landlord and either, or both, the URA and HACP as tenants in the event they do not fulfill their obligations in consideration of their respective ownership interest in the Property; and further authorizing the City to organize and operate, or otherwise participate in an owners' organization to be organized in compliance with applicable law.

WHEREAS, pursuant to that certain Purchase and Sale Agreement dated as of July 11, 2018, between 420 Allies, LLC, a Delaware limited liability company and the City of Pittsburgh ("City") Housing Authority of the City of Pittsburgh ("HACP") and Urban Redevelopment Authority of Pittsburgh ("URA") (also referred to herein as "the Parties") acquired as tenants-in-common designated undivided interests in the property located at 412 Boulevard of the Allies (formerly 420 Boulevard of the Allie), Block 1-M, Lot 150 in the 1st Ward, City of Pittsburgh, Commonwealth of Pennsylvania, (the "Property") together with the improvements thereon and certain fixtures, equipment and personal property related thereto; and

WHEREAS, the City issued a General Obligation Note in the maximum aggregate principal amount of Forty Million Dollars (\$40,000,000.00) (the "Note") for the purposes of acquiring and undertaking the build-out of the Property; and

WHEREAS, the City, HACP, and URA entered into a Financing Cooperation Agreement effective as of August 1, 2018, (the "Financing Cooperation Agreement") to set forth their understanding of their respective rights and duties related to the acquisition of the Property, the Pre-Closing Authorizations, the Financing Legislation and the Financing Security (as such terms are defined in the Financing Cooperation Agreement); and

WHEREAS, the Financing Cooperation Agreement was amended on September 20, 2018 in order to clarify the time and process for establishing a more formalized ownership structure for the Property and the Parties' right and obligations related thereto; however, it has not been filed yet with the City Clerk in accordance with City Resolution 501 of 2018 due to incomplete exhibits and the Parties contemplate that it will

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be further amended in order to set forth the terms and conditions of: (1) the funding for the acquisition and build out of the respective Parties interests in the Property; (2) the repayments from the URA and HACP to the City; (3) the City's administrative fee for servicing the advance of said funds; and (4) the security instruments and guarantees of the HACP and URA provided in exchange for the City's lending of funds; and

WHEREAS, the Financing Cooperation Agreement originally contemplated that City, HACP, and URA would execute a tenant-in-common agreement ("TIC") to specify their respective ownerships, duties and responsibilities for the Property; and

WHEREAS, pursuant to Resolution 648 of 2018, effective September 28, 2018, City Council authorized the City to enter into a TIC with the HACP and URA, subject to stated conditions including, inter alia, the creation of a contribution mechanism by which each entity would contribute a share of operating expenses relating to its percentage ownership of the Property and the establishment of a capital investment fund to provide for the long-term capital maintenance of the Property and its essential components; and

WHERERAS, during the process of finalizing the TIC, the HACP represented that the U.S. Department of Housing and Urban Development ("HUD") was going to require the Property to be divided into condominium units and common areas to facilitate the ability of HACP to make its property interests subject to a Declaration of Trust in favor of HUD such that HACP can use HUD funds to pay for its commitments to the City and to the Property, and in turn, HUD will be granted an interest in HACP public housing property supported by federal funds; and

WHEREAS, to that end, in lieu of finalizing the TIC, the Parties instead now seek to conform to the requirements of the Pennsylvania Uniform Condominium Act, 68 Pa.C.S.A. §§3101 et seq., or the Pennsylvania Planned Community Development Act, 68 Pa. C.S. §§ 5101 et seq., (the "Act") in order to create a condominium ownership structure pursuant to which the City, HACP, and URA, as joint Declarants, will each participate in the condominium association, hold title to one or more individual condominium units, and have an interest in common elements (either in the title or as a member of an association); and

WHEREAS, in addition to the condominium options, the City also wishes to retain the ability to re-enter into the originally negotiated TIC, and also to retain its right to revoke the ownership shares of the HACP and the URA, if they are unable to fulfill their ownership commitments; and

WHEREAS, the City now seeks authority to execute, file and record all required and related instruments or documents necessary to ensure compliance with the ownership structure authorized to date, or the ownership structure if adopted under either the Pennsylvania Uniform Condominium Act, 68 Pa.C.S.A. §§3101 et seq., or the Pennsylvania Planned Community Development Act, 68 Pa. C.S. §§ 5101 et seq.,

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. Resolution 648 of 2018, effective September 28, 2018, is hereby amended. The recitals above

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are hereby incorporated and made part of this resolution.

Section 2. In lieu of entering into a tenants in common agreement, the Mayor and Director of the Department of Finance of the City are hereby authorized to execute and record a Declaration of Condominium (the "Declaration") as a joint Declarant with the HACP and URA for the condominium to be known as the "Pittsburgh Governmental Center, a Condominium" at the Property located at 412 Boulevard of the Allies. The Declaration shall be subject to all applicable requirements of the Pennsylvania Uniform Condominium Act, 68 Pa.C.S.A. §§3101 et seq. (the "Condo Act."). The Declaration shall likewise conform to the requirements of the Note and the Financing Cooperation Agreement, as amended. Amendments to the Declaration, including changes to the Plat and Plan, shall be undertaken in compliance with the Condo Act and notice shall be provided to City Council.

The Mayor and Director of the Department of Finance of the City of Pittsburgh are hereby authorized to enter into one of the following ownership structures:

- 1- A tenant in common agreement, as originally authorized by Resolution 648 of 2018
- 2- A Declaration of Condominium as a joint Declarant with the HACP and URA for the condominium at 412 Boulevard of the Allies. The Declaration shall be subject to all applicable requirements of the Pennsylvania Uniform Condominium Act, 68 Pa.C.S.A. §§3101 et seq.
- 3- A Declaration of Condominium as a joint Declarant with the HACP and URA for the condominium at 412 Boulevard of the Allies. The Declaration shall be subject to all applicable requirements of the Pennsylvania Planned Communities Act, 68 Pa. C.S. §§ 5101 et seq.
- 4- The City as the sole owner of 412 Boulevard of the Allies, with the HACP and the URA as tenants.

Section 3. Regardless of the ownership structure entered into between the City, the HACP, and the URA, it shall fully conform to the requirements of the Note and the Financing Cooperation Agreement, as amended. The finalized ownership structure shall be filed with the City Clerk. Any subsequent amendments to the structure, including changes to the Plat and Plan, shall be undertaken in compliance with all applicable laws, and shall also be filed with the City Clerk.

Section 3.4. The City shall require that the following terms and conditions are included in the final agreements, instruments or documents governing the owners of the Property, in whatever ownership structure ultimately reached, including but not limited to any Declaration or the Bylaws of a condominium association, subject to applicable law:

All revenue from any telecommunications leases or advertising leases or any revenue generated by use of the common areas by non-owner(s), or, non-affiliated entities (as defined by the Parties) at the Property (the "Property Revenue") shall be deposited into a Building Investment Fund ("BIF"), held by the City, or its designee, for the purposes set forth herein. All funds deposited in the BIF shall belong to all of the owners and be for the use and benefit of all the owners, in accordance with their respective percentage ownership interests in the Property. The BIF shall be separated into two accounts: (1) the Operating Account, and (2) the Capital Reserve Account.

(1) Operating Account. The BIF fund shall include an Operating Account for the Property's

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management, routine maintenance and repairs, pursuant to agreement by the Parties. Certain funds from this account may be transferred to an account for the Property Manager, per agreement by the Parties and pursuant to applicable law. Unless otherwise directed by a proper decision made by the Parties, each Party agrees to fund the Operating Account proportionate to its percentage ownership interest in an amount reasonably necessary to operate the Property based upon a dollar amount set by the Parties pursuant to condominium association processes and procedures pursuant to applicable law and/or Bylaws. Said dollar amount shall be applied on a per square foot basis for the entire Property in the first year, with a two percent (2%) increase annually. The account may consist of Property Revenue and each respective governing body's annual budget authorizations and appropriations, and,

(2) Capital Reserve Account. The BIF fund shall also include a Capital Reserve Account pursuant to agreement by the Parties. The Capital Reserve Account shall be created for the long-term capital maintenance of the building structures and its essential components, so as to insure its future integrity and safe operation of the Property. Specific expenses paid from this fund include, but are not limited to, (1) HVAC repair and replacement; (2) Elevator reconditioning and replacement; (3) Roof repair and replacement; and (4) other repairs to Major Building Components as determined by the City Co-Owner to clearly preserve the safe continued operation of the Property. Unless otherwise directed by a proper decision made by the Parties, each Co-Owner agrees to fund said Capital Reserve Account proportionate to its percentage ownership interest in an amount equivalent to a total of sixty-five cents (\$0.65) per square foot for the entire Property in the first year, with a two percent (2%) increase annually. The account may consist of Property Revenue and each respective governing body's annual budget authorizations and appropriations.

Additionally, to the extent operating or capital expenses exceed available funding, the City, URA, and HACP shall each remain financially responsible for the maintenance of its unit(s) in the event space therein is leased to another entity unable to meet financial obligations assigned to it, and all Property Revenue shall be deposited into the BIF as received.

Section 4.5. The Mayor and the Director of the Department of Finance are further authorized to execute and file, as may be required, all related instruments or documents necessary to ensure compliance with the ~~Condo Act~~ **relevant ownership structure.** The City, through the Mayor and Director of the Department of Finance, is further authorized to execute all documents, instruments, or agreements required to participate in the unit owners' organization (i.e. condominium association), to be organized in compliance with the ~~Condo Act, the Planned Community Development Act, or and~~ other applicable law(s).