



Legislation Text

File #: 3428-2023, Version: 1

BACKGROUND: Pursuant to Ordinance No. 2135-2023 passed July 24, 2023, the Department of Development on behalf of the City of Columbus, Ohio (“City”) entered into that certain First Amended and Restated Economic Development Agreement dated August 29, 2023 (the “Restated EDA”) with The North Market Development Authority, Inc. and NM Developer LLC (the “NM Developer”). Pursuant to Ordinance No. 3215-2021 passed July 25, 2022, the City entered into that certain North Market Workforce Housing Agreement dated August 29, 2023 (the “Housing Agreement”) with the NM Developer. Huntington National Bank (“Huntington”), a national banking association in its capacity as Administrative Agent of the Holders and Secured Parties of the indebtedness owed by NM Developer, pursuant to that certain Disbursing, Payment and Collateral Agreement, for completion of the North Market Development Project, requested the NM Developer to grant, assign, and transfer a security interest and all of its other right, title, and interest in and to the Restated EDA pursuant to that certain Security Agreement and Assignment of Amended and Restated Economic Development Agreement (the “EDA Assignment”) to the Administrative Agent to secure the full and prompt payment of any and all such indebtedness owed. Huntington in its capacity as Administrative Agent also requested the NM Developer to grant, assign, and transfer a security interest and all of its other right, title, and interest in and to the Housing Agreement pursuant to that certain Security Agreement and Assignment of North Market Workforce Housing Agreement (the “Housing Agreement Assignment”) to secure the full and prompt payment of any and all indebtedness owed by for completion of the North Market Development Project. Pursuant to the terms of the Restated EDA, the NM Developer may only assign the Restated EDA with the prior consent of the parties and any consent of the City must be authorized by City Council. While not required pursuant to the terms of the Housing Agreement, the NM Developer has also requested consent of the City to assign the Housing Agreement. In furtherance of the Restated EDA and the Housing Agreement, this Ordinance will authorize the Director of the Department of Development to acknowledge and consent to the EDA Assignment and the Housing Agreement Assignment to allow the NM Developer to assign the Restated EDA and Housing Agreement to Huntington in its capacity as Administrative Agent pursuant to the terms and conditions of the EDA Assignment and Housing Agreement Assignment.

FISCAL IMPACT: No funding is required for this legislation.

EMERGENCY JUSTIFICATION: Emergency legislation is requested in order to allow NM Developer LLC to maintain the project schedule for which construction has already commenced and move forward with the financial closing on the project, which financial commitment may expire at the end of 2023 if the City does not immediately consent to the assignment of the Restated EDA and the Housing Agreement and a significant public benefit of new public places, affordable housing, and jobs at the project site pursuant to the Restated EDA may cease to come to fruition.

To authorize the Director of the Department of Development to execute the Security Agreement and Assignment of First Amended and Restated Economic Development Agreement to allow NM Developer LLC to grant, assign, and transfer a security interest and all of its other right, title, and interest under such agreement to Huntington National Bank in its capacity of Administrative Agent as set forth in the Security Agreement; to authorize the Director of the Department of Development to execute the Security Agreement and Assignment of North Market Workforce Housing Agreement to allow NM Developer LLC to grant, assign, and transfer a security interest and all of its other right, title, and interest under such agreement to Huntington National Bank in its capacity of Administrative Agent as set forth in the Security Agreement; and to declare an emergency.

WHEREAS, pursuant to Ordinance No. 2135-2023 passed July 24, 2023, the City entered into the First Amended and Restated Economic Development Agreement dated August 29, 2023 (the “Restated EDA”) with The North Market Development Authority, Inc. and NM Developer LLC (the “NM Developer”); and

WHEREAS, pursuant to Ordinance No. 3215-2021 passed July 25, 2022, the City entered into the North Market Workforce Housing Agreement dated August 29, 2023 (the “Housing Agreement”) with the NM Developer; and

WHEREAS, Huntington National Bank (“Huntington”), a national banking association in its capacity as Administrative Agent of the Holders and Secured Parties of the indebtedness owed by the NM Developer for the project contemplated under the Restated EDA, has requested NM Developer to grant, assign, and transfer a security interest and all of its other right, title, and interest under the Restated EDA and the Housing Agreement to it; and

WHEREAS, the NM Developer may only assign the Restated EDA with the prior consent of the parties and any consent of the City must be authorized by City Council; and

WHEREAS, even though the Housing Agreement does not require the express, written approval of the City if assigned to one or more lenders or other providers of capital for the project contemplated under the Restated EDA, the NM Developer has also requested City consent for such assignment; and

WHEREAS, Huntington has also requested the NM Developer to grant, assign, and transfer a security interest and all of its other right, title, and interest under certain agreements (for the project contemplated under the Restated EDA) between the NM Developer and the NM Mixed-Use Project New Community Authority (the “Authority”) created for Parcel No. 010-307276 by City Council pursuant to Ohio Revised Code Chapter 349 and Resolution 0220X-2022 and Resolution 0134X-2023; and

WHEREAS, the Authority may consent to assign those certain agreements described herein for which it is a party without City consent; and

WHEREAS, in furtherance of the project contemplated under the Restated EDA, the City now desires to acknowledge and consent to the Security Agreement and Assignment of First Amended and Restated Economic Development Agreement (the “EDA Assignment”) and the Security Agreement And Assignment of the North Market Workforce Housing Agreement (the “Housing Agreement Assignment”) to allow the NM Developer to grant, assign, and transfer a security interest and all of its other right, title, and interest under the Restated EDA and the Housing Agreement to Huntington in its capacity as Administrative Agent; and

WHEREAS, an emergency exists in the usual daily operations of the Department of Development in that it is immediately necessary to authorize the Director of the Department of Development to execute the EDA Assignment and Housing Agreement Assignment to allow NM Developer LLC to maintain the project schedule for which construction has already commenced and move forward with the financial closing on the project, which financial commitment may expire at the end of 2023 if the City does not immediately consent to the EDA Assignment and Housing Agreement Assignment and a significant public benefit of new public places, affordable housing, and jobs at the project pursuant to the Restated EDA may cease to come to fruition, all for the immediate preservation of the public peace, health, property, and safety; **NOW, THEREFORE**,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. Restated EDA Assignment. That the Director of the Department of Development is hereby authorized to execute, acknowledge, and consent to the Security Agreement and Assignment of First Amended and Restated Economic Development Agreement by and between Huntington and the NM Developer to allow the NM Developer to grant, assign, and transfer a security interest and all of its other right, title, and interest under the Restated EDA to Huntington pursuant

to the terms and conditions of the EDA Assignment.

SECTION 2. Housing Agreement Assignment. That the Director of the Department of Development is hereby authorized to execute, acknowledge, and consent to the Security Agreement and Assignment of North Market Workforce Housing Agreement by and between the Huntington and NM Developer to allow the NM Developer to grant, assign, and transfer a security interest and all of its other right, title, and interest under the Housing Agreement to Huntington pursuant to the terms and conditions of the Housing Agreement Assignment.

SECTION 3. Effective Date. That for the reasons stated in the preamble hereto, which is hereby made a part hereof, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor or ten days after the passage if the Mayor neither approves nor vetoes the same.