



Legislation Text

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071375

Original

000270, 020423, 020798, 020968, 021013, 021220, 021294, 030390, 040948, 050122, 060304, 061496

The Chair

Resolution authorizing City entry into a settlement agreement with Kilbourn Tower, LLC regarding amounts owed under an Agreement for Sale and a Note concerning the parcel at 923 E. Kilbourn Street and a vacated right-turn bypass that the City sold to KT in 2003.

This resolution permits City entry into a settlement agreement with Kilbourn Tower, LLC (“KT”) to allow the City to obtain the \$950,000 purchase price KT still owes the City for the City’s sale of the Property to KT. The City sold to KT so KT could build the Kilbourn Tower condominiums. This resolution also allows the City to conditionally return certain deposit amounts it holds, and it provides for the City conditionally waiving interest otherwise due the City on the purchase price.

Whereas, The City of Milwaukee (“City”), (i) by Common Council Resolution File No. 000270 approved vacation of the right-turn-bypass part of the Property, (ii) by Resolution File No. 020423 approved an out-of-program agreement for public-improvement alterations necessitated by KT’s project, (iii) by Resolution File No. 020798 approved an ordinance and subterranean space lease allowing KT to develop underground parking beneath East Kilbourn and North Prospect Avenues, (iv) by Resolution File No. 020968 declared the Property surplus and authorized its sale to KT, (v) by Resolution File No. 021013 approved an ordinance and first amendment to Detailed Planned Development for the KT project, (vi) by Resolution File No. 021220 directed that \$700,000 of the \$950,000 Property-sale price be transferred to the Neighborhood Improvement Development Corporation (“NIDC”) for financing city-wide development and rehabilitation of affordable housing for low and moderate-income families, and directed NIDC to recommend by May 1, 2003 a project or projects for use of the funds, (vii) by Resolution File No. 021294 approved an ordinance and airspace lease allowing a part of KT’s building to extend over the lot line of the Property, (viii) by Resolution File No. 030390, authorized DPW to issue a permit allowing for occupancy of the eastbound lanes along the median of East Kilbourn Avenue for KT construction purposes, (ix) by Resolution File No. 040948 approved an ordinance and second amendment to Detailed Planned Development, (x) by Resolution File No. 050122, approved a special privilege to KT for planters in the public right-of-way, (xi) by Resolution File No. 061496 approved construction of improvements to the median at East Kilbourn Avenue and authorized assessing KT (and its successors in interest) and the Property and interests therein for the project, and (xii) by Resolution File No. 060304, directed DPW to restore the median with KT reimbursing the City; and

Whereas, Per Resolution 020968, the City and KT entered into an “Agreement for Sale” dated as of March 21, 2003 (“Development Agreement”), pursuant to which the City sold to KT for \$950,000 (the “Purchase Price”) the Property; and

Whereas, Per Development Agreement Sec. 1, KT gave City a Purchase Money Note dated May 22, 2003 for \$950,000 (i.e. the amount of the Purchase Price) (the “Note”) that included terms concerning when the Purchase Price was to be paid, and, repayment of the Note was guaranteed by two separate “Personal Guaranty” documents, each also dated May 22, 2003 - with one from Ted Kellner (“Kellner”) and one from Joel Lee (“Lee”), and with each guarantor, respectively, guaranteeing to City 50% of KT’s obligations to make

payment to City as required by the Note; and

Whereas, Per Development Agreement Sec. 3, KT paid to the City a Performance Deposit in the amount of \$70,000 (the “Deposit”) to secure KT’s duty to construct what is now known as the Kilbourn Towers Condominium (“KT Condo”) and to secure KT’s duty to cover \$250,000 in landscaping upgrades of the East Kilbourn Avenue Boulevard near the KT Condo (the “Blvd. Work”); and

Whereas, The \$250,000 for the Blvd. Work was a material component of the Purchase Price; and

Whereas, KT has not paid the Note asserting the City is in breach of the Development Agreement for allowing construction of the University Club Tower Condominiums (“U-Club Condo”) to the immediate south of the Property; and

Whereas, The City has asserted that KT is in breach of the Development Agreement and Note for, among other things, not obtaining the City’s consent before re-financing a loan between KT and M&I and for not timely paying the Note with interest (the Purchase Price); and

Whereas, The City did the Blvd. Work as contemplated by Resolution 060304; and

Whereas, DCD and KT negotiated the “Settlement Agreement and Release” that is part of this file (the “Settlement Agreement”); and

Whereas, Under the Settlement Agreement, KT would pay the City \$250,000 of the \$950,000 Purchase Price upon signing the Settlement Agreement (this portion of the Purchase Price covers the Blvd. Work) and cause M&I to issue an irrevocable letter of credit to unconditionally pay to City the remaining \$700,000 of the \$950,000 Purchase Price by December 28, 2008, whereupon the City would return the \$32,440.62 that KT paid DPW as a deposit for certain utility work, the City would return the \$70,000 performance deposit, the City would waive the over-\$300,000 in interest that has accrued on the Purchase Price at the default rate of interest, and KT and City would mutually release one another from claims and lawsuits; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the DCD Commissioner is authorized and directed to sign on behalf of the City, and to cause the City to enter, the Settlement Agreement, as drafted and made part of this file; and, be it

Further Resolved, That, upon receipt of the sums due City under the Settlement Agreement, the DPW Commissioner and proper City officials are authorized to apply so much of the \$250,000 payment under the Settlement Agreement as needed to cover the special assessments and expenses associated with the Blvd. Work, and to forward any balance remaining to the appropriate City officers for deposit into the City’s general fund; and, be it,

Further Resolved, That, after City receives payment of the full \$950,000 Purchase Price, the proper City officials are authorized to return to KT the \$32,440.62 balance remaining regarding the KT utility-work deposit, and to return to KT the \$70,000 performance deposit, and to issue and record against the Property a Certificate of Completion - all as contemplated by the Settlement Agreement; and, be it,

Further Resolved, That, concerning Common Council Resolution File No. 021220, the \$700,000 payment that KT must cause M&I to pay to City under the Settlement Agreement, via the letter of credit, shall continue to be segregated for application by NIDC for financing city-wide development and rehabilitation of affordable

housing for low and moderate-income families, providing, however, that any such use by NIDC must first be approved by the Common Council, and NIDC is again directed to recommend to the Council, this time by July 1, 2008, a project or projects for such use of those funds.

Department of City Development

City Attorney Office

GH:ms

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