



Legislation Text

File #: 16-1308, **Version:** 1

Resolution to Approve the Modification of Deed Restrictions Placed on 350 S. Fifth as a Condition of Sale of the Formerly City-Owned Property to Fifth Fourth, LLC (**8 Votes Required**)

On October 17, 2013, the City entered into a Purchase and Sales Agreement and Rider (with subsequent amendment on December 26, 2013) for the sale of 350 S. Fifth to Fifth Fourth, LLC. Transfer of ownership was conditioned on a number of restrictions including a reversion of title in favor of the City if the Purchaser fails to obtain a final certificate of occupancy for a building consistent with Purchaser's Promised Use prior to January 1, 2018 (this date was later administratively extended to April 1, 2018 in accordance with the terms of the restrictions). The parties agreed that the negotiated and approved restrictions would run with the land and apply to any future purchaser. Fifth Fourth, LLC acquired ownership of the property on April 2, 2014. To date Fifth Fourth, LLC has not submitted plans to the City or initiated performance on the agreement or development of the site.

Fifth Fourth, LLC recently entered into an option agreement with The Habitat Group LLC ("Habitat") to acquire the property with the goal of developing the property into a market rate apartment building with commercial premises on the first floor and substantial landscaped open space, including a plaza and fountain. This is the second such agreement between Habitat and Fifth Fourth; Habitat determined not to move forward with their original option agreement after cursory investigation last year. However, after renewed discussions with the City, Habitat and its development team partner (CA Ventures and Hughes Properties) are requesting the City agree to remove or amend the existing Covenants/Deed restrictions. The development team identifies the restrictions as an impediment, limiting their ability to finance and develop the property. Attached is a letter dated September 20, 2016 from the development team comparing each of the restrictions on the site along with the development team's modification request.

In July, representatives for the developer met with Staff to discuss changes to the restrictions. Of note, the development team is requesting the removal of the City's right of reversion upon the later of: a) transfer of deed from Fifth Fourth, LLC to Habitat; b) receipt of a building permit; c) construction commencement no later than 12/31/18; or d) closing on a construction loan. The proposed office would be relocated to the fourth floor allowing above ground parking to be inserted into the second and third floors, the office would also be reduced from 16,000 to 14,000 square-feet. The proposed changes will eliminate the requirement that the developer be bound by the City's Design Review Board (DRB). Instead the developer will have the ability to "appeal" decisions of the DRB to the Planning Commission, who will make final determinations regarding the building design. The development team is also requesting that the requirement that the building be constructed to the best available standard for energy efficiency as defined by the city code be clarified that the standard will be set by the City's green building premiums in place at the time of plan submittal.

Staff requested Habitat provide a revised site plan and elevations indicating what is being proposed for the site. Also, that the team provided any inducements being offered to change the agreed upon terms. Attached is a rendering for the proposed building. Habitat is proposing to incorporate six to

eight 390 square-foot “micro-units” that will be targeted at 80% AMI as established by HUD guidelines and subsidized by the developer. Habitat is not proposing that the units be included in the revised restrictions but is assuring the City that they will provide them as part of the normal review and approval process.

The City entered into the agreement to sell with the restriction that a final certificate of occupancy is in place by a date certain, April 1, 2018, because it wanted development on the site. Failure to meet this requirement by the property owner would permit the City to pay the property owner, Fifth Fourth, LLC, the lower of the new appraised value or \$4.2 million and reacquire the parcel. The existing property owner had five years to meet this requirement but does not appear on track to do so. The Habitat development team indicates that they entered into an option to purchase the property from Fifth Fourth for over \$6 million. The new development team is offering performance and the workforce micro-units as inducement to revise the covenants agreed to by the purchaser.

Prepared by: Derek Delacourt, Community Services Area Administrator
Tom Crawford, CFO/Finance and Administrative Services Administrator

Approved by: Howard S. Lazarus, City Administrator

Whereas, The City of Ann Arbor was the fee owner of the real property located at and commonly known as 350 S. Fifth Avenue, Ann Arbor;

Whereas, Under the direction of Ann Arbor City Council, the City Administrator negotiated the sale of the property to Fifth Fourth, LLC subject to certain terms and conditions stated in adopted City Council Resolution R-13-331;

Whereas, The terms and conditions stated in City Council Resolution R-13-331 which were incorporated into the Purchase and Sale Agreement and Rider between the parties and subsequently as restriction of record as part of the warranty deed transferring title to the property to Fifth Fourth, LLC;

Whereas, Fifth Fourth, LLC has entered into an Option to Purchase Agreement with The Habitat Company LLC to acquire the property with the goal of developing the property; and

Whereas, The Habitat Company has submitted a request that the City for modification of certain deed restrictions and covenants for the development of the property which were reserved by the City at the time of sale or which would otherwise require City approval to modify, waive or remove;

RESOLVED, That City Council approve modification of the deed restrictions and covenant in the manner stated in the attached document titled “Dahlmann Covenants / Deed Restrictions and Habitat’s Requested Actions;” and

RESOLVED, That City Administrator and the City Attorney are authorized and directed to take all necessary administrative actions to prepare, submit for execution by the Mayor and City Clerk subject to approval as to substance by the City Administrator and approval as to form by the City Attorney., and record any documents necessary to amend the deed restrictions of record consistent with the modified terms requested.