Legislation Details (With Text)

File #:	Res 1359-2017	**Version:**	*	**Name:**	LU 543 - Penn South, Manhattan
Type:	Resolution			**Status:**	Adopted
				In control:	Committee on Finance
On agenda:	2/1/2017				
Enactment date:				**Enactment #:**	

Title: Resolution (1) approving an additional exemption from real property taxes for the properties located at 212-226 9th Avenue (Block 747, Lot 1), 311-351 West 24th Street (Block 748, Lot 1), 250-268 9th Avenue (Block 749, Lot 1), 313 8th Avenue (Block 749, Lot 24), 270-296 9th Avenue (Block 751, Lot 1) and 305 9th Avenue (Block 752, Lot 1) in Manhattan, pursuant to Section 125(1)(a-4) of the Private Housing Finance Law, (2) approving an Eighth Amendatory Agreement to the Contract between the City of New York and Mutual Redevelopment Houses, Inc., and (3) authorizing the Mayor or any Deputy Mayor or the Commissioner of the New York City Department of Housing Preservation and Development to execute the Eighth Amendatory Agreement when approved as to form by the Corporation Counsel and directing the City Clerk to attest to the same and to affix the seal of the City thereto. (L.U. No. 543)

Sponsors:

Indexes:

Attachments: 1. Housing Preservation and Development Letter, 2. Memorandum, 3. February 1, 2017 - Stated Meeting Agenda with Links to Files, 4. Hearing Transcript - Stated Meeting 2-1-17, 5. Minutes of the Stated Meeting - February 1, 2017

Date	Ver.	Action By	Action	Result
2/1/2017	*	Committee on Finance	Approved by Committee	
2/1/2017	*	City Council	Approved, by Council	Pass

THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 1359

Resolution (1) approving an additional exemption from real property taxes for the properties located at 212-226 9th Avenue (Block 747, Lot 1), 311-351 West 24th Street (Block 748, Lot 1), 250-268 9th Avenue (Block 749, Lot 1), 313 8th Avenue (Block 749, Lot 24), 270-296 9th Avenue (Block 751, Lot 1) and 305 9th Avenue (Block 752, Lot 1) in Manhattan, pursuant to Section 125(1)(a-4) of the Private Housing Finance Law, (2) approving an Eighth Amendatory Agreement to the Contract between the City of New York and Mutual Redevelopment Houses, Inc., and (3) authorizing the Mayor or any Deputy Mayor or the Commissioner of the New York City Department of Housing Preservation and Development to execute the Eighth Amendatory Agreement when approved as to form by the Corporation Counsel and directing the City Clerk to attest to the same and to affix the seal of the City thereto. (L.U. No. 543)

By Council Member Ferreras-Copeland

WHEREAS, The New York City Department of Housing Preservation and Development ("HPD") submitted to the Council of the City of New York its request dated January 26, 2017 that the Council of the City of New York approve an additional exemption from real property taxes for the properties located at 212-226 9th Avenue (Block 747, Lot 1), 311-351 West 24th Street (Block 748, Lot 1), 250-268 9th Avenue (Block 749, Lot

1), 313 8th Avenue (Block 749, Lot 24), 270-296 9th Avenue (Block 751, Lot 1) and 305 9th Avenue (Block 752, Lot 1) in Manhattan ("Exemption Area"), pursuant to Section 125(1)(a-4) of the Private Housing Finance Law; and

WHEREAS, The State Legislature, by enactment of Chapter 531 of the Laws of 2014, which added Section 125(1)(a-4) of the Private Housing Finance Law ("Article V Mutual Authorizing Legislation"), has authorized the local legislative body in a city having a population of one million or more to grant an additional tax exemption for a period of up to fifty years to a mutual redevelopment company for which the local legislative body has previously acted to extend the tax exemption for the maximum period provided for Section 125(1)(a-2) of the Private Housing Finance Law; and

WHEREAS, Such Article V Mutual Authorizing Legislation also provides that such grant of an additional tax exemption period shall take effect upon the expiration of the maximum period provided for in Section 125(1)(a-2) of the Private Housing Finance Law; and

WHEREAS, Such Article V Mutual Authorizing Legislation also provides that the amount of taxes to be paid by such mutual redevelopment company during any such period of tax exemption shall be not less than an amount equal to the greater of (i) ten per centum of the annual rent or carrying charges of the project minus utilities for the residential portion of the project, or (ii) the taxes payable by such company for the residential portion of the project during the tax year commencing July 1, 2000 and ending on June 30, 2001; and

WHEREAS, the Council of the City of New York, the local legislative body of the City of New York, has previously acted, pursuant to Res. No. 2044 of 2001, to extend the tax exemption for properties owned and operated by Mutual Redevelopment Houses, Inc. ("Housing Company") and located in the Exemption Area, pursuant to Section 125(1)(a-2) of the Private Housing Finance Law, for the maximum period provided in Section 125(1)(a-2) of the Private Housing Finance Law; and

WHEREAS, Such tax exemption pursuant to Section 125(1)(a-2) of the Private Housing Finance Law shall expire on June 30, 2022; and

WHEREAS, The City of New York, acting through the HPD Commissioner, ("City") entered into an agreement with the Housing Company, dated as of June 24, 2011 ("Sixth Amendatory Agreement"), which Sixth Amendatory Agreement was approved by the City Council on May 6, 2011 (Res. No. 813 of 2011); and

WHEREAS, In Section 1 of such Sixth Amendatory Agreement, the City and the Housing Company agreed to amend Paragraph 105 of that certain Agreement, dated as of July 1, 1987, between the Housing Company and the City, as amended by an Amendatory Agreement dated as of November, 1990, and further amended by a Second Amendatory Agreement dated as of July 1, 1995, and by a Third Amendatory Agreement dated as of August 22, 2001, and by a Fourth Amendatory Agreement dated as of October 6, 2005, and by a Fifth Amendatory Agreement dated as of January 17, 2006 (collectively, including the Sixth Amendatory Agreement, "City Agreement"), to add a new subparagraph (B) to Paragraph 105 of the City Agreement, to provide, among other things, that, subject to the enactment of the Article V Mutual Authorizing Legislation and the enactment of a resolution by the City Council:

"… the City agrees to and hereby does grant an additional exemption and exempts from local and municipal taxes, all of the value of the portion of the Redevelopment Project owned by the Housing Company which is taxed as residential pursuant to the terms of this Agreement, for the period commencing with the City's tax year July 1, 2022 through June 30, 2023, and continuing through the City's tax year July 1, 2029 through June 30, 2030, provided that the amount of taxes to be paid by the

Housing Company during each such tax year shall be an amount equal to the greater of (i) ten per centum of the annual rent or carrying charges of the Housing Company minus utilities for the residential portion of the Redevelopment Project or (ii) the taxes paid by the Housing Company for the residential portion of the Redevelopment Project in the City's tax year July 1, 2000 through June 30, 2001, in the total amount of $3,477,099.00 (the 'Additional Exemption') …" ;

and

WHEREAS, The Article V Mutual Authorizing Legislation has been enacted by the State Legislature; and

WHEREAS, The Council of the City of New York has determined that, given the tremendous growth in real property values in the Exemption Area, which has caused real property taxes to increase beyond the means of the primarily low- and moderate-income tenants who reside therein, it is in the interest of the City to assist the Housing Company in maintaining affordable rents and carrying charges by granting an additional exemption as authorized by Section 125(1)(a-4) of the Private Housing Finance Law; and

WHEREAS, The Council of the City of New York has considered the financial implications relating to the extended partial exemption from real property taxes; and

WHEREAS, The Council, acted, pursuant to Res. No. 658 of 2015, to approve a Seventh Amendatory Agreement between the Housing Company and the City, executed by the parties on May 8, 2015, which in part provided, "… pursuant to Private Housing Finance Law §125(1)(a-4), [of] an additional exemption from real property taxes, other than assessments for local improvements, of all of the residential portion of the Exemption Area for a period commencing with the City's tax year July 1, 2022 through June 30, 2023 and continuing through the City's tax year July 1, 2029 through June 30, 2030, provided, however, that the amount of taxes to be paid during such period of tax exemption shall not be less than an amount equal to the greater of (i) ten per centum of the annual rent or carrying charges of the project minus the utilities for the residential portion of the project, or (ii) $3,477,099.00, the taxes payable by the Housing Company for the residential portion of the project during the tax year commencing July 1, 2000 and ending on June 30, 2001."; and

WHEREAS, While Chapter 531 of the Laws of 2015 authorized an additional tax exemption for a total of fifty years, the Housing Company only sought and received from the Council in 2015 an extension of eight years, to June 30, 2030. However, the Housing Company is now eligible for a 35-year loan of approximately $190,000,000 (the "Loan") to be insured by the Federal Housing Administration of the United States Department of Housing and Urban Renewal ("HUD"). The Loan, which is expected to close in 2017, will enable Penn South to remain affordable throughout its 35-year term; and

WHEREAS, As conditions for providing the Loan, HUD will require the Housing Company to secure another extension of its tax exemption for an additional 22 years until June 30, 2052. HUD also will require the Housing Company to secure the authority to impose, at its discretion and without any further City Council approvals, carrying charge increases at the rate of one (1%) percent per year throughout the term of the Loan until 2052 ("1% Carrying Charge Increases"). These 1% Carrying Charge Increases would be in addition to any other increases previously or hereafter authorized by the Council. Finally, HUD will require the discretionary authority to mandate from time to time and without any further City Council approvals, that the Housing Company increase its carrying charges if necessary for purposes of paying expenses. All of these requirements also will necessitate amendments to the City Agreement; and

WHEREAS, Pursuant to Paragraph 206 of the City Agreement, the Housing Company currently shares with the City a portion of the surcharges collected from certain tenant-cooperators pursuant to Paragraphs 204

and 205 of the City Agreement. The Housing Company is also requesting an amendment to the City Agreement that will authorize its retention of the entire amount of such surcharges, commencing with those surcharges due from tenant cooperators based on their incomes for calendar year 2017. The Housing Company will use such funds to support its operations, maintenance and/or reserves for future capital projects in order to maintain the livable and affordable nature of the housing development; and

WHEREAS, HPD, which supervises the Housing Company, recognizes the importance of the preservation of the Exemption Area as an affordable housing development and the tax relief necessary for such preservation. HPD also supports the proposed Eighth Amendatory Agreement; now, therefore, be it

RESOLVED:

The Council of the City of New York hereby:

1. Approves, pursuant to PHFL § 125(1)(a-4), an additional exemption from real property taxes, other than assessments for local improvements, of all of the residential portion of the Exemption Area for the period commencing with the City's tax year July 1, 2030 through June 30, 2031 and continuing through the City's tax year July 1, 2051 through June 30, 2052, provided, however, that the amount of taxes to be paid during such period of tax exemption shall not be less than an amount equal to the greater of (i) ten per centum of the annual rent or carrying charges of the project minus the utilities for the residential portion of the project, or (ii) $3,477,099.00, the taxes payable by the Housing Company for the residential portion of the project during the tax year commencing July 1, 2000 and ending on June 30, 2001.

2. Approves, pursuant to PHFL Section 114, the proposed Eighth Amendatory Agreement between the City of New York and the Housing Company in substantially the form submitted, incorporating provisions concerning extension of the Housing Company's tax exemption to June 30, 2052, discretionary authority for the Housing Company to impose annual one (1%) percent increases in carrying charges, discretionary authority for HUD to mandate that the Housing Company increase its carrying charges if necessary for purposes of paying expenses and retention of collected surcharges, and authorizes the Mayor or any Deputy Mayor or the Commissioner of the Department of Housing Preservation and Development to execute the Eighth Amendatory Agreement, when approved as to form by the Corporation Counsel, and direct the City Clerk or Acting City Clerk to attest to the same and to affix the seal of the City thereto.

Office of the City Clerk, }
The City of New York } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of the City of New York on February 1, 2017, on file in this office.

_____
City Clerk, Clerk of Council

EIGHTH AMENDATORY AGREEMENT

This Eighth Amendatory Agreement dated as of _____ ___, 201__ by and between **THE CITY OF NEW YORK,** acting through the Commissioner of its Department of Housing Preservation and Development, 100 Gold Street, New York, New York 10038 and **MUTUAL REDEVELOPMENT HOUSES, INC.,** a corporation duly organized and existing under and by virtue of the Redevelopment Companies Law of the State of New York, having its principal place of business at 321 Eighth Avenue, New York, New York 10001 (hereinafter called the "Housing Company").

The parties refer to an Agreement dated as of July 1, 1987 between the Housing Company and the City (the "Agreement") as amended by an Amendatory Agreement dated as of November, 1990, and further amended by a Second Amendatory Agreement dated as of July 1, 1995, and by a Third Amendatory Agreement dated as of August 22, 2001, and by a Fourth Amendatory Agreement dated as of October 6, 2005, and by a Fifth Amendatory Agreement dated as of January 17, 2006, and by a Sixth Amendatory Agreement dated as of June 24, 2011, and by a Seventh Amendatory Agreement dated as of May 8, 2015 (which Agreement, Amendatory Agreement, Second Amendatory Agreement, Third Amendatory Agreement, Fourth Amendatory Agreement, Fifth Amendatory Agreement, Sixth Amendatory Agreement and Seventh Amendatory Agreement are hereinafter collectively called the "City Agreement").

The parties further refer to the Resolution of the New York City Council adopted on ___ __, 2017 (Resolution No. ___), a true copy of which is annexed hereto, approving an amendment to the City Agreement to modify its provisions regarding (a) real estate tax exemption, (b) adjustments to carrying charges, and (c) division of surcharge revenue.

NOW, THEREFORE, the parties hereto agree as follows:

1. Subparagraph (B) of Paragraph 105 of the City Agreement is hereby amended by replacing said Subparagraph (B) in its entirety with the following:

> "(B) Notwithstanding any provision herein to the contrary, the City agrees to and hereby does grant an additional exemption and exempts from local and municipal taxes, all of the value of the portion of the Redevelopment Project owned by the Housing Company which is taxed as residential pursuant to the terms of this Agreement, for the period commencing with the City's tax year July 1, 2022 through June 30, 2023, and continuing through the City's tax year July 1, 2051 through June 30, 2052, provided that the amount of taxes to be paid by the Housing Company during each such tax year shall be an amount

equal to the greater of (i) ten per centum of the annual rent or carrying charges of the Housing Company minus utilities for the residential portion of the Redevelopment Project or (ii) the taxes paid by the Housing Company for the residential portion of the Redevelopment Project in the City's tax year July 1, 2000 through June 30, 2001, in the total amount of $3,477,099.00."

2. Paragraph 206 of the City Agreement is hereby amended as follows:

a. Paragraph 206 is renumbered as "Paragraph 206A", and the following is inserted as the introductory text to subparagraph (a) of such renumbered paragraph:

"The provisions of this Paragraph 206A apply during the term of the Agreement solely to surcharges due and payable by tenant cooperators to the Housing Company before July 1, 2018."

b. A new Paragraph 206B is inserted immediately following subparagraph (b) of renumbered Paragraph 206A, to read as follows:

"206B. Surcharge Revenue.

"The provisions of this Paragraph 206 B apply during the term of the Agreement to surcharges due and payable by tenant cooperators to the Housing Company on or after July 1, 2018.

"During the term of the Agreement, commencing with surcharges due to be paid by tenant cooperators to the Housing Company on or after July 1, 2018, based on the tenant-cooperators' incomes for the preceding calendar year, beginning with their incomes for the calendar year 2017, the full amount of such surcharges collected annually by the Housing Company (the "Surcharge Revenue") shall be retained by the Housing Company to be applied to the operations, maintenance and/or reserves of the Housing Company. To aid in implementing the foregoing, and to help ensure compliance with the legal requirements applicable to the Housing Company and its shareholders, HPD shall compare the income information provided on the income affidavits filed annually by the Housing Company's shareholders with such shareholders' New York State income tax returns, and advise the Housing Company of any alleged discrepancies so that the Housing Company can take appropriate action to recover any surcharge underpayments. The Surcharge Revenue shall not be limited by the amount of real property tax exemption received by the Housing Company or the amount of real property tax exemption allocable to any particular apartment."

3. The caption to Article III of the City Agreement is hereby amended by deleting the words, "RENTAL ADJUSTMENTS", and replacing them with the words, "CARRYING CHARGE ADJUSTMENTS".

4. New Paragraph 302 is added to the City Agreement, as follows:

"302. Increases in Carrying Charges. Notwithstanding anything to the contrary contained in the Original Agreement or herein, and in addition to any increase in carrying charges

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previously or hereafter authorized, through June 30, 2052: (a) the Housing Company may increase its carrying charges annually by one (1%) percent per year; and (b) from time to time, while the Federal Housing Administration of the United States Department of Housing and Urban Development or any successor agency ("HUD") shall insure the first mortgage loan on the Housing Company's Redevelopment Project, HUD may require the Housing Company to increase its carrying charges as needed to provide the Housing Company with sufficient income to pay its expenses and obligations; in each such case, such increases may be implemented without the Housing Company's making application for approval to or receiving the approval of HPD or the City Council. The foregoing shall not diminish or affect the Housing Company's right to request the approval of the City Council for any other or greater increase in carrying charges from time to time or to request the approval of HPD to implement an increase or increases in carrying charges pursuant to any authorization given by the City Council."

5. The effective date of this Eighth Amendatory Agreement is the date first set forth above, which is the date by which this Eighth Amendatory Agreement has been fully executed by all parties.

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6. Except as expressly amended herein, the City Agreement shall remain in full force and effect until its termination pursuant to Paragraph 404 of the City Agreement.

ATTEST:

(City Clerk)

THE CITY OF NEW YORK

By:
Vicki Been, Commissioner
New York City Department of Housing Preservation and Development

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MUTUAL REDEVELOPMENT HOUSES, INC.

By:

, President

APPROVED AS TO FORM:

Amrita Barth
[Acting] Corporation Counsel
Date: January 25, 2017

Attachment: New York City Council Resolution No. , Adopted , 201 .

ACKNOWLEDGMENTS

State of New York)
: ss:
County of New York)

On the ___ day of _____ in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared Vicki Been, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

_____
Notary Public

State of New York)
: ss:
County of New York)

On the ___ day of _____ in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared ____ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

_____
Notary Public

State of New York)
: ss:
County of New York)

On the ___ day of _____ in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared ____ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

_____
Notary Public