

RESOLUTION NO. 20-242

A RESOLUTION OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, STATE OF NEW JERSEY, AUTHORIZING THE EXECUTION OF A DEVELOPER'S AGREEMENT WITH HRK AT RB, LLC REGARDING TWO NEW UTILITY POLES PROPOSED BY JCP&L TO SERVICE DEVELOPER'S PROPERTY

WHEREAS, the Borough previously granted certain approvals to Riverwalk Commons Red Bank, LLC for a development project located at 24-30 Mechanic Street, also identified as Block 29, Lot 5.01, and formerly identified as Block 29, Lots 5, 6, & 7, on the Borough's Tax Map (the "Developer's Property"); and

WHEREAS, HRK at RB, LLC (the "Developer") subsequently obtained ownership of the Property and its approvals; and

WHEREAS, per the Developer's approvals, electrical service must be provided to the Developer's Property by Jersey Central Power & Light ("JCP&L") through the Borough's existing rights-of-way on the Developer's Property and on 19-29 Mechanic Street, identified as Block 28, Lot 4 on the Borough's Tax Map (the "Second Property"); and

WHEREAS, the Developer requested that the Borough execute an Easement with JCP&L, attached hereto as Exhibit A, permitting JCP&L to construct two (2) new utility poles within the Borough's rights-of-way existing on the Developer's Property and the Second Property, which two (2) new utility poles are identified as #JC 216784a55316 & #JC 216784a55320 (the "New Utility Poles"); and

WHEREAS, in connection with its demand for the aforesaid Easement, JCP&L has represented to the Borough that there are no reasonable alternatives to providing electrical service to the Property, other than the installation of the New Utility Poles within the Borough's rights-of-way on the Developer's Property and the Second Property; and

WHEREAS, given the Borough's difficulties with and substantial charges from JCP&L to re-locate utility poles during the Borough's recent public improvements projects within its rights-of-way throughout the municipality, the Borough has expressed to the Developer its disapproval of accepting complete and full responsibility for the New Utility Poles benefitting the Developer's Property, as called for by the JCP&L Easement; and

WHEREAS, in accordance with its customary practice, JCP&L has failed and refused to accept any responsibility for the New Utility Poles within the Borough's rights-of-way beyond its ordinary legal and administrative liabilities under New Jersey law and through the New Jersey Board of Public Utilities; and

WHEREAS, the costs of a protracted legal challenge to JCP&L's position would not be beneficial to either the Developer or the Borough under the circumstances; and

WHEREAS, in resolution of the foregoing circumstances, the Borough and the Developer have agreed to share responsibility for the New Utility Poles in accordance with the terms and conditions of a Developer’s Agreement, which is attached hereto as Exhibit B; and

WHEREAS, the Borough Council desires to authorize the execution of the JCP&L Easement and the Developer’s Agreement attached hereto as Exhibits A & B.

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the Borough of Red Bank, County of Monmouth, State of New Jersey, that:

- 1. The Mayor is hereby authorized to execute, and the Clerk to attest to the execution of the Easement with JCP&L, attached hereto as Exhibit A, which Easement was reviewed and approved by the Borough Attorney.
- 2. The Mayor is hereby authorized to execute, and the Clerk to attest to the execution of the Developer’s Agreement with HRK AT RB, LLC, attached hereto as Exhibit B, which Agreement was reviewed and approved by the Borough Attorney.
- 3. This resolution shall become effective immediately.
- 4. A certified copy of this resolution, together with a copy of the Developer’s Agreement, shall be forwarded to the Borough Administrator, Planning and Zoning Department, and HRK AT RB, LLC.

	Motion	Yes	No	Abstain	Absent
Councilman Yassin		X			
Councilwoman Triggiano		X			
Councilman Ballard		X			
Councilman Yngstrom	Second	X			
Councilman Zipprich	Motion	X			
Councilwoman Horgan		X			

Dated: October 14, 2020

I hereby certify the above to be a true copy of a resolution adopted by the Council of the Borough of Red Bank, in the County of Monmouth, at a meeting held on October 14, 2020.

Pamela Borghi

Pamela Borghi, Municipal Clerk