

**BOROUGH OF RED BANK**

**COUNTY OF MONMOUTH**

**RESOLUTION NO. 13-79**

**RESOLUTION AUTHORIZING THE  
ACCEPTANCE OF A MAINTENANCE GUARANTEE  
REGARDING COUNT BASIE THEATRE,  
BLOCK 43, LOTS 3, 4 AND 7**

Ms. Lewis offered the following resolution and moved its adoption:

**WHEREAS**, on May 23, 2012, under Resolution No. 12-107, the Borough of Red Bank accepted a performance guarantee from Count Basie Theatre (the "Applicant"), with respect to site plan approval and bulk variances for property located at 95 Monmouth Street, Block 43, Lots 3,4 and 7 on the tax map of the Borough of Red Bank (the "Development Project"); and

**WHEREAS**, the Developer had posted the following in accordance with the aforementioned Resolution and the Borough's Development Ordinances:

- a. One Hundred Percent (100%) of the performance guarantee in the form of cash in the amount of \$98,290.00; and
- b. An inspection escrow in the amount of \$4,100.00; and

**WHEREAS**, the Applicant requested that it be able to draw down on the cash bond that it had posted for the Development Project; and

**WHEREAS**, based on the Applicant's request, the Borough Engineer updated the Performance Guarantee for the Development Project through August 30, 2012 and recommended that \$95,180.00 of the cash guarantee be released, and the balance of the cash guarantee in the amount of \$3,110.00 be retained until the project is completed and accepted (the "Retained Performance Guarantee"); and

**WHEREAS**, under Resolution No. 12-94, the Governing Body of the Borough of Red Bank authorized the release of \$95,180 of the cash guarantee; and the acceptance of \$3,110.00 of the Retained Performance Guarantee; and

**WHEREAS**, in a report dated February 8, 2013, the Borough Engineer confirmed that the Developer had satisfactorily completed the bonded improvements and recommended the release of the Retained Performance Guarantee and the posting of two year maintenance guarantee either in the form of cash or a maintenance bond; and

**WHEREAS**, the Developer has posted a two year cash maintenance guarantee in the amount of \$9,839.00 in the form of a check in the amount of \$6,729 and the Retained Performance Guarantee in the amount of \$3,110 (the "Maintenance Guarantee"); and

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Red Bank that the Director of the Borough's Planning and Zoning Department is authorized to accept the Maintenance Guarantee as follows:

- a. The Retained Performance Guarantee is released and the Director of the Borough's Planning and Zoning Department is authorized to accept the proceeds from the Retained Performance Guarantee in the amount of \$3,110 as a portion of the required Maintenance Guarantee; and
- b. the Director of the Borough's Planning and Zoning Department is authorized to accept the check from the Developer in the amount of \$6,279, which represents the balance of the required Maintenance Guarantee; and

**BE IT FURTHER RESOLVED** that the Chief Financial Officer and the Director of Planning and Zoning are authorized and requested to take appropriate steps to implement this resolution; and

**BE IT FURTHER RESOLVED** that the Borough Clerk shall forward certified true copies of this resolution to the Borough Engineer, the Director of Planning and Zoning, the Chief Financial Officer

and to the Applicant or its attorney.

Seconded by Ms. Horgan and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Ms. Lewis	( x )	( )	( )	( )
Mr. Zipprich	( )	( )	( x )	( )
Mr. DuPont	( )	( )	( )	( x )
Ms. Horgan	( x )	( )	( )	( )
Ms. Lee	( x )	( )	( )	( )
Mr. Murphy	( )	( )	( )	( x )

Dated: March 27, 2013