

CHAPTER 2017-17

No. 271 AN ORDINANCE ESTABLISHING A TAX STABILIZATION AGREEMENT FOR 110 NORTH MAIN STREET, LLC LOCATED AT 169 CANAL STREET AND 100 NORTH MAIN STREET

Approved June 6, 2017

Be it ordained by the City of Providence:

WHEREAS, 110 North Main Street, LLC ("Project Site Owner") is the owner of certain real estate located in the City of Providence at 169 Canal Street and 100-110 North Main Street. The property located at 169 Canal Street is currently a surface parking lot upon which the Owner will construct a proposed 15 story mixed use building featuring commercial and residential uses (the "Canal Street Project"). Additionally, the Project Site Owner is prepared to make a significant investment in renovating and rehabilitating the property located at 100-110 North Main Street which is an existing mixed use historic building (the "North Main Street Project")(together the "Project Site"); and

WHEREAS, The Project Site Owner intends on making a significant investment in completing the Project Site which will enhance the tax base of the surrounding area and increasing receipts of sales and meal and beverage tax revenues through the new sales generated by potential commercial tenants; and

WHEREAS, The City of Providence envisions that the Project Site will generate both construction related jobs associated with the building of the Project and permanent jobs associated with the tenants that will occupy the Project Site within the City of Providence as well as protect, preserve and showcase the a historic building that has been central to the history of the City of Providence; and

WHEREAS, The Project Site will provide for additional quality housing opportunities for people who want to live downtown and housing opportunities to support the demand for housing in the downtown area generated by the development of the 195 corridor and other businesses downtown; and

WHEREAS, Rhode Island General Laws § 44-3-9 ("Act") authorizes, subject to certain enumerated conditions, the city council of a city for a period not to exceed twenty (20) years, to exempt and determine an amount of taxes to be paid on account of real and tangible property used for commercial and residential purposes, notwithstanding the valuation of the real estate, tangible property or the rate of tax; and

WHEREAS, This Tax Stabilization Agreement (the "Ordinance") has been determined by the City Council of the City of Providence to be fair, equitable and acceptable to the City; and

WHEREAS, It is in the best interest of the residents of the City of Providence to grant this Tax Stabilization Agreement in order to foster the rehabilitation.

Be It Ordained by the City of Providence:

Section 1. That the findings set forth in the preceding recitals are hereby made and confirmed.

Section 2. Definitions. The following terms shall have the meanings set forth herein:

(a) "Assessment" shall mean the value placed upon the improvements made by the Owner by the City of Providence Tax Assessor.

(b) "Commencement Date" shall be the effective date of this Ordinance.

- (c) "Personal Property" means any and all tangible personal property including, but not limited to all fixtures, furniture, equipment, furnishings, vehicles, computer hardware and software, informational systems and other personal property.
- (d) "Project Site" means, collectively, all of the real estate and buildings and improvements thereto located at 169 Canal Street (separately "Canal Street Project") and 100-110 North Main Street, (separately "North Main Street Project") Plat 10, Lots 706 and 707 respectively in the City of Providence.
- (e) "Project Site Owner" means an entity with the right and interest in and to the Project Site, or the individual lots identified as the Canal Street Project and North Main Street Project which collectively comprise the Project Site, (or portions thereof), including successors to units and/or sub-units or lots of the Project Site.
- (f) "Project Taxable Property" means collectively, the Project Site and all Real Property Improvements and Personal Property thereon.
- (g) "Real Property Improvements" means any structures or improvements including but not limited to buildings, parking lots/structures and related improvements to be constructed and developed on the Project Site.
- (h) "Stabilized Tax Payments" shall mean the payment of taxes pursuant to the schedules of payments detailed in Section 5 below.
- (i) "Termination Date" means the 20th anniversary of the December 31 in which the Project Site is first assessed pursuant to the schedule set forth in Section 5 below.

Section 3. Grant of Tax Stabilization Agreement. The City of Providence, in accordance with the General Laws of the State of Rhode Island and the Code of Ordinances for the City of Providence, is hereby authorized to grant and does grant the schedule of Incentivized Tax Payments pursuant to Section 5.

Section 4. Term. The term of this Ordinance shall be a period commencing upon the Commencement Date and terminating on the Termination Date.

Section 5. Tax Exemption and Stabilization Plan. Tax Payments due for the first three (3) years of the Term shall remain at the 2016 assessed value and tax rate (hereinafter the "Base Assessment"). During the first three years of the Term, the Project Site Owner must substantially complete construction on the Project Site, subject to a Force Majeure Event (as defined below). In the fourth tax year after the Commencement Date, full taxes shall begin phasing in. Beginning in the fourth tax year after the Commencement Date, the assessor shall issue a bill for the Base Assessment plus a percentage of the difference between the Base Assessment then current full value assessment as follows:

Canal Street Project

<u>Year</u>	Percentage of Difference between Base Assessment and Current Full Value Assessment
Year 4	6%
Year 5	12%
Year 6	18%
Year 7	24%
Year 8	30%
Year 9	36%
Year 10	42%
Year 11	48%
Year 12	54%
Year 13	60%
Year 14	66%
Year 15	72%
Year 16	78%
Year 17	84%
Year 18	90%
Year 19	96%
Year 20	99%

North Main Street Project

<u>Year</u>	Percentage of Difference between Base Assessment and Current Full Value Assessment
Year 4	6%
Year 5	12%
Year 6	18%
Year 7	24%
Year 8	30%
Year 9	36%
Year 10	42%
Year 11	48%
Year 12	54%
Year 13	60%
Year 14	66%
Year 15	72%
Year 16	78%
Year 17	84%
Year 18	90%
Year 19	96%
Year 20	99%

Following the conclusion of twenty full years, The Project Site Owner will be paying the full current assessment. Tax Payments in each year beginning in the fourth tax year after commencement shall be calculated by the then current valuation of the property and the current applicable real property tax rates.

Section 6. Payment of Taxes and Revenue Reporting.

(a) Stabilized Tax Payments due to the City, pursuant to the schedule listed in Section 5, may be made in either a lump sum during the first quarter of the applicable tax year or in equal quarterly installments. If the quarterly payments are to be made, they shall be due on the same dates that quarterly taxes are due for all other taxpayers in the City.

(b) The liability for the Stabilized Tax Payments due and owing under this Ordinance shall constitute an obligation of the Project Site Owner as it pertains to each lot of the Project Site, and the City shall be granted by the Project Site Owner, a first lien on the Project Taxable Properties, which lien shall be of the same priority and entitle the City to the same foreclosure remedies as the lien and foreclosure remedies provided under the applicable laws and ordinances with respect to real property and personal property taxes. The City agrees to provide Notice to Project Site Owner prior to exercising any foreclosure or other remedies available and the Owner of the Project Site shall have ninety (90) days to cure any alleged default under this Ordinance from the date upon which Notice of any alleged default is received from the City. Said Notice shall include, with specificity, the nature of any alleged default, and the actions which the City believes to be reasonably necessary to cure any alleged default under this Ordinance and be made pursuant to Section 10.1 of this Ordinance. Notice shall issue upon vote of the City Council upon receipt of notice of potential default. Notice shall be sent to the then current owner of the Project Site or the then current owner of the individual lot in default. Default as to either the Canal Street Project lot or the North Main Street Project lot shall not impact the non-defaulting lot.

(c) It is understood that the Stabilized Tax Payments made hereunder are deemed by the City to be tax payments, and the Project Site Owner shall be entitled to all of the rights and privileges of a taxpayer in the City, including, without limitation, the right to challenge and appeal any assessment and/or reassessment. It is further understood and agreed that the City's sole and exclusive recourse to Project Site Owner is limited to the City's first lien on the Project Taxable Properties, however, nothing herein shall be construed to limit the right of the City to foreclose or take any other judicial proceeding available at law for the collection of taxes.

(d) Stabilized Tax Payments not made by the Project Site Owner as they become due shall be subject to any and all penalties allowed under Rhode Island General Laws. Failure to receive a tax bill reflecting the payments pursuant to Section 5 shall not relieve Project Site Owner of its obligation to make Stabilized Tax Payments herein. If for any reason the Project Site Owner does not receive an appropriate tax bill, Project Site Owner shall have the responsibility and obligation to make reasonable inquiries to the City in order to have such a proper tax bill issued and thereafter to make payment of the same no later than the due dates provided herein. Stabilized Tax Payments shall be made by Project Site Owner directly to the City of Providence Tax Collector's Office.

(e) Any breach of the terms contained in this Section 6 as to only one of the two individual lots comprising the Project Site shall not impact the non-breaching project. By way of example, if there is a breach as to the North Main Street Project that is not cured following the appropriate notice and cure opportunity, then said breach shall not impact the terms of this Ordinance as it pertains to the Canal Street Project.

Section 7. Effect of Failure to Make Payments. The real property, tangible and personal property taxes payable to the City for the Project Site during the term of this Ordinance shall be based upon the schedules set forth in Section 5. This Ordinance is further conditioned upon Project Site Owner, whether now or in the future, remaining current on tax payments pursuant to Section 5. Failure to make said timely Stabilized Tax Payments may, at the discretion of the City of Providence following the Notice and the 90-day cure period set forth in Section 6(b) and 10.1, render this Ordinance null and void. The failure of the Project Site Owner to fail to make payments in accordance with the terms of this Tax Stabilization Agreement as to either the Canal Street Project or the North Main Street Project shall not impact the other project and shall only amount to a default as to the single project in question.

Section 8. Transfers. As long as the Project Site Owner or any successor or assignee owns or operates the Project Site, it will continue to pay Stabilized Tax Payments for the Project Site pursuant to this Ordinance.

(a) Project Site Owner or any successor or assignee, acknowledges and agrees that the Project Site will be subject to taxation pursuant to the terms of this Ordinance and thereafter subject to taxation pursuant to Rhode Island General Laws and the ordinances of the City of Providence. Project Site Owner, or any successor or assignee, agrees that the exemption and conditions under this Tax Stabilization Plan shall run with the land.

(b) In the event that a Project Site Owner transfers the Project Site in its entirety to a tax exempt entity in the first five years immediately following the expiration of this Ordinance, the Project Site Owner agrees that a percentage of the sale price will be paid to the City of Providence as follows: if the property is sold to a tax exempt entity in the first year immediately following the expiration of the Ordinance then the Project Site Owner shall pay five percent (5%) of the sale price to the City; if the property is sold to a tax exempt entity in the second year immediately following the expiration of the Ordinance then the Project Site Owner shall pay four percent (4%) of the sale price to the City; if the property is sold to a tax exempt entity in the third year immediately following the expiration of the Ordinance then the Project Site Owner shall pay three percent (3%) of the sale price to the City; if the property is sold to a tax exempt entity in the fourth year immediately following the expiration of the Ordinance then the Project Site Owner shall pay two percent (2%) of the sale price to the City; and if the property is sold to a tax exempt entity in the fifth year immediately following the expiration of the Ordinance then the Project Site Owner shall pay one percent (1%) of the sale price to the City. In the event that the Project Site Owner only transfer one of the two projects, namely either the Canal Street Project or the North Main Street Project, to a tax exempt entity within the first five years immediately following the expiration of this Ordinance, then the aforementioned payment schedule shall pertain only to the specific project being transferred and not the Project Site as a whole.

(c) The Property Owner further agrees to provide prior written notice to the City before any transfer of the Property.

Section 9. Employment and Contracts.

(a) Construction.

- i. MBE/WBE. Project Site Owner shall make a good faith effort to award to Minority Business Enterprises as defined in Rhode Island General Laws, Section 31- 14.1 ("MBE Act") no less than 10% of the dollar value of the construction costs for the Project (as determined in accordance with the rules and regulations promulgated pursuant to MBE Act). Project Site Owner shall make a good faith effort to award to Women Business Enterprises (WBE's) no less than 10% of the dollar value of the construction costs for the Project (as determined in accordance with Section 21-52 of the Code of Ordinances of the City of Providence). Project Site Owner will request the City MBE/WBE office and its Supplier Diversity Director to establish a list of qualified MBE/WBE companies in order to satisfy its MBE/WBE construction goals. In this manner, the City will assist Project Owner in meeting said goals. The process of participating with the MBE/WBE office and its Supplier Diversity Director shall begin upon passage in order to develop a designated MBE/WBE subcontractor list which will encourage MBE/WBE participation and joint ventures with other members with the construction industry.
- ii. Apprenticeship. Project Site Owner shall ensure that one hundred percent (100%) of the hours worked on the Project shall be performed by trade construction subcontractors who have or are affiliated with an apprenticeship program as defined in 29 C.F.R. § 29 et seq., unless otherwise provided below.

Project Site Owner shall make a requirement in the contracts between its Construction Manager and General Contractor and their subcontractors who have apprenticeship programs as defined in 29 C.F.R. § 29 that not less than ten percent (10%) of the total hours worked by the subcontractors' employees on the project are completed by apprentices registered in the aforementioned apprenticeship programs.

Project Site Owner shall as part of its contracts between its Construction Manager and General Contractor and their subcontractors require that the subcontractors submit to the Department of Planning and Development quarterly verification reports to ensure compliance with this section.

Project Site Owner, its Construction Manager or General Contractor or other authorized person/entity may petition the City of Providence Department of Planning and Development to adjust the apprenticeship work hour requirements to a lower percentage upon a showing that:

- a. compliance is not feasible because a trade or field does not have an apprenticeship program or cannot produce members from its program capable of performing the scope of work within the contract in keeping with the timelines provided for in the Project Site Owner's development schedule; or
 - b. compliance is not feasible because it would involve a risk or danger to human health and safety or the public at large; or
 - c. compliance is not feasible because it would create a significant economic hardship; or
 - d. compliance is not feasible for any other reason which is justifiable and demonstrates good cause.
- iii. Internal Revenue Service reporting. Except as provided under Rhode Island General Laws § 28-42-8, any person performing services at the Project Site shall annually receive either a W-2 statement or an IRS Form 1099.
- iv. First Source List. Pursuant to the City of Providence First Source Ordinance, the Project Owner shall enter into a First Source Agreement covering the hiring of employees necessary to complete the proposed Project and throughout the term of this Agreement. Project Owner shall work in conjunction with the Director of First Source Providence to develop the First Source Agreement.
- iv. "Buy Providence" Initiative. Project Site Owner will use good faith efforts to ensure that construction materials are purchased from economically competitive and qualified vendors located in the City of Providence. In furtherance of this effort, Project Site Owner will work with the City to develop a list of Providence vendors and subcontractors in order to create a preferred vendor list of qualified and economically competitive vendors for the construction of the Project. In order to further that effort, Project Site Owner will hold seminars upon passage of this Ordinance, with the Providence MBE/WBE office, the Supplier Diversity Director, the Director of First Source Providence and the Providence Chamber of Commerce to inform the local economy of the Project Site Owner's development plans in order to maximize the opportunities for Providence businesses to work with Project Site Owner in providing on-going services, equipment and materials. To be clear, nothing in the foregoing shall be construed so as to obligate Project Site Owner to purchase construction materials from any vendor that has not provided the lowest qualified bid in connection with the provision of such materials, as reasonably determined by Project Site Owner.

(b) Permanent Employment. In conjunction with its efforts pursuant to this Section and its ongoing efforts to provide equal employment opportunity without regard to race, color, religion, natural origin, sex, age or handicap, Project Site Owner shall liaise with the City and with the Director of First Source Providence to assist in the recruitment of qualified minority, women, and handicap applicants as well as those on the First Source List for all of its employment positions.

(c) Reporting. During the construction phase of the Project, Project Site Owner shall annually report to the City Council on its progress in complying with the provisions of this Ordinance, including but not limited to, Section 11. To be clear, the terms of this Section 10 shall apply to Project Site Owner and its Real Property Improvements at the Project Site, but shall not be deemed to apply to the tenants of the Project Site and/or the businesses conducted thereon.

Section 10. Default and Notice to Cure.

The following events shall constitute an event of default hereunder:

- (A) Failure of the Project Site Owner to pay any amount due under or with respect to the tax stabilization; or
- (B) Failure of the Project Site to record this Ordinance; or
- (C) Failure of the Project Site Owner to meet any of the performance obligations set forth in this Ordinance; or
- (D) Failure of the Project Site Owner to annually report as required by Section 9 above; or
- (E) Failure of the Project Site Owner to notify the City in writing prior to the transfer of the Property; or
- (F) Transfer of the Property Site by the Project Site Owner to a tax exempt entity during the term of this Ordinance; or
- (G) Failure of the Project Site Owner to comply with Section 9 above; or
- (H) Failure of the Project Site Owner to comply with any other material obligation or promise contained within any section or subsection of this Agreement; or
- (I) Failure of the Project Site Owner to comply with all state and local law regarding building and property maintenance codes, zoning ordinances, and building and/or trade permits; or
- (J) Failure of the Project Site Owner to remain current on any and all other financial obligations due and owing to the City of Providence.

Section 10.1. Notice and Cure Period. The City shall provide written notice to the Property Owner before exercising any of its rights and remedies in the event of an alleged default under the terms of this Agreement. The Project Site Owner shall have ninety (90) days to cure any alleged default under this Agreement, provided, however, that if the curing of such default cannot be accomplished with due diligence within ninety (90) days, then the Project Site Owner shall request an additional reasonable period of time from the City to cure such default as may be necessary provided that the Project Site Owner shall have commenced to cure such default within said period, such cure shall have been diligently pursued by the Project Site Owner and the City does not reasonably deem the taxes jeopardized by such further delay, all as determined by the City in its reasonable discretion.

Section 7.2. Agreed Upon Address for Purposes of Written Notice. All notices, requests, consents, approvals, and any other communication which may be or are required to be served or given (including changes of address for purposes of notice) shall be in writing and shall be sent registered or certified mail and addressed to the following parties set forth below:

If to: City of Providence
Office of the City Clerk
25 Dorrance St.
Providence, RI 02903
*Accompanied by 9 copies

If to: 100 North Main, LLC
401 E. Elm Street, Suite 150
Conshohocken, PA 19428

With a copy to:
Darrow Everett, LLP
Attn: Zachary Darrow, Esq.
One Turks Head Place, Suite 1200
Providence, RI 02903

Section 11. Agreement to establish a fund to be held in Trust by the Treasurer of the City of Providence. Upon passage of the Resolution Ratifying this Ordinance, the Property Owner shall contribute to a Trust Fund established by the City, of which the Treasurer shall be the trustee. The Fund shall be identified as the "City Council Parks and Recreation Fund." The City Council shall establish regulations pertaining to the disbursement of funds.

- (a) Payment of to the Fund. The Property Owner shall make annual payments to the Fund in the amount of five (5) percent of the total estimated abated tax for the term of the Agreement, for as long as this Agreement is in full force and effect, including any extensions should they be granted. Said annual payments will be payable on the anniversary of the commencement date in each subsequent tax year.
- (b) Investment and Distribution of the Fund. The trust fund will be invested by the Board of Investment, and an annual distribution of the investment shall be used to provide funds to the Department of Parks and to the Department of Recreation for capital improvements in neighborhood parks and recreation centers. Said annual distribution shall not supplant any funds that are provided to the Department of Parks or the Department of Recreation through the operating budget. The amount of the distribution shall not exceed four (4) percent. Distributions may never exceed the earnings in the year of distribution or reduce the corpus of the funds. The first payment from the fund shall begin in the fifth year after the establishment of the Agreement.

Section 12. Resolution of Calculation Disputes. Project Site Owner and the City of Providence agree that Project Site Owner retains the right to appeal the valuation or calculation of the taxes assessed from time to time.

Section 13. Severability. If any one section of this Ordinance is found to be unenforceable, then the other provisions herein shall continue to have the same force and effect as if the unenforceable provision were not passed as part of this Ordinance.

Section 14. Applicable Law. This agreement shall be construed under the laws of the State of Rhode Island.

Section 15. Effective Date. This Ordinance shall become effective immediately upon its passage by the City Council and approval by the Mayor.

IN CITY COUNCIL
MAY 24 2017
FIRST READING
READ AND PASSED, As Amended
[Signature] CLERK

IN CITY COUNCIL
COUNCIL
JUN 01 2017
FINAL READING
READ AND PASSED
[Signature] PRESIDENT
[Signature] CLERK

I HEREBY APPROVE.
[Signature]

Mayor
Date: 6/6/17

Vision Development
 169 Canal Street
 Plat 10 Lot 706 707

(Fiscal Impact)

20 Year TSA Projection

Year	Base Tax and/or Base Land Tax + % of Incr.				Tax Rate	Base Tax	Phased-In Tax	Proposed Total Tax	Payments at Full Taxation
	Value	Base Tax	Base Tax	Base Tax					
1	2,989,400	Base Tax	\$109,711	\$0	36.70	\$109,711	\$0	\$109,710.98	\$ 109,710.98
2	2,989,400	Base Tax	\$109,711	\$0	36.70	\$109,711	\$0	\$109,710.98	\$ 109,710.98
3	2,989,400	Base Tax	\$109,711	\$0	36.70	\$109,711	\$0	\$109,710.98	\$ 109,710.98
4	2,989,400	Base Tax	\$109,711	\$0	36.70	\$109,711	\$0	\$109,710.98	\$ 109,710.98
5	2,989,400	Base Tax	\$109,711	\$0	36.70	\$109,711	\$0	\$109,710.98	\$ 109,710.98
6	38,489,400	Base + 6.5%	\$109,711	\$84,685.25	36.70	\$109,711	\$84,685.25	\$194,396.23	\$ 1,412,560.98
7	38,489,400	Base + 13.0%	\$109,711	\$169,370.50	36.70	\$109,711	\$169,370.50	\$279,081.48	\$ 1,412,560.98
8	38,489,400	Base + 19.5%	\$109,711	\$254,055.75	36.70	\$109,711	\$254,055.75	\$363,766.73	\$ 1,412,560.98
9	39,644,082	Base + 26.0%	\$109,711	\$349,758.98	36.70	\$109,711	\$349,758.98	\$459,469.96	\$ 1,454,937.81
10	39,644,082	Base + 32.5%	\$109,711	\$437,198.72	36.70	\$109,711	\$437,198.72	\$546,909.70	\$ 1,454,937.81
11	39,644,082	Base + 39.0%	\$109,711	\$524,638.46	36.70	\$109,711	\$524,638.46	\$634,349.44	\$ 1,454,937.81
12	40,833,404	Base + 45.5%	\$109,711	\$631,938.10	36.70	\$109,711	\$631,938.10	\$741,649.08	\$ 1,498,585.93
13	40,833,404	Base + 52.0%	\$109,711	\$722,214.97	36.70	\$109,711	\$722,214.97	\$831,925.95	\$ 1,498,585.93
14	40,833,404	Base + 58.5%	\$109,711	\$812,491.84	36.70	\$109,711	\$812,491.84	\$922,202.82	\$ 1,498,585.93
15	41,650,072	Base + 65.0%	\$109,711	\$922,250.33	36.70	\$109,711	\$922,250.33	\$1,530,640.15	\$ 1,528,557.64
16	41,650,072	Base + 71.5%	\$109,711	\$1,014,475.36	36.70	\$109,711	\$1,014,475.36	\$1,124,186.34	\$ 1,528,557.64
17	41,650,072	Base + 78.0%	\$109,711	\$1,106,700.40	36.70	\$109,711	\$1,106,700.40	\$1,216,411.38	\$ 1,528,557.64
18	42,483,073	Base + 84.5%	\$109,711	\$1,224,758.04	36.70	\$109,711	\$1,224,758.04	\$1,334,469.02	\$ 1,559,128.78
19	42,483,073	Base + 91.0%	\$109,711	\$1,318,970.20	36.70	\$109,711	\$1,318,970.20	\$1,428,681.18	\$ 1,559,128.78
20*	42,483,073	Full Tax	\$109,711	N/A	36.70	\$109,711	N/A	\$1,559,128.78	\$ 1,559,128.78
								\$13,715,823.14	\$ 22,909,868.31

Savings to applicant: \$ 9,194,045.17