

CHAPTER 2014-36

**No. 465 AN ORDINANCE EXTENDING EXISTING TAX
STABILIZATION PLANS FOR HARRISBURG ASSOCIATES,
LLC, LERNER ASSOCIATES, LLC, THE ALICE BUILDING,
LLC AND PEERLESS LOFTS, LLC.**

Approved October 23, 2014

Be it ordained by the City of Providence:

WHEREAS, pursuant to the General Laws of the State of Rhode Island §44-3-9, as amended, the City Council is authorized, subject to certain enumerated conditions, to exempt and determine a stabilized amount of taxes to be paid on account of real property used for commercial purposes, notwithstanding the valuation of the real estate or the rate of tax; and

WHEREAS, Harrisburg Associates, LLC, Lerner Associates, LLC, the Alice Building, LLC and Peerless Lofts LLC have each made application under, and each has satisfied the previously mentioned certain enumerated conditions as required by the Rhode Island General Laws and the City of Providence;

WHEREAS, Harrisburg Associates, LLC and Lerner Associates, LLC, owners of the property located at 220-226 Westminster Street, 232-234 Westminster Street and 93 Eddy Street, on Assessor's Plat 20, Lots 155, 156, and 203 and located at 210 Westminster Street, on Assessor's Plat 20, lot 154, (hereinafter referred to as the "210 Westminster Project" and the "220 Westminster Project"), previously applied for, and were granted, a Tax Stabilization Plan by the City Council under Chapter 2002-40, Ordinance No. 615 on November 8, 2002 for commercial buildings which have been rehabilitated and converted to residential units to increase the availability of apartment units in the Downcity Arts and Entertainment District in the City of Providence; and

WHEREAS, the Tax Stabilization Plan granted to Harrisburg Associates, LLC and Lerner Associates, LLC for the 210 Westminster Project and the 220 Westminster Project is scheduled to expire on December 31, 2015 and Harrisburg Associates, LLC and Lerner Associates, LLC are requesting additional relief in the form of a Tax Stabilization Plan, the terms of which are contained herein; and

WHEREAS, Alice Building, LLC, owner of the property located 236 Westminster Street, Assessor's Plat 20, Lot 157, (hereinafter referred to as the "Alice Building Project") applied for, and was granted, a Tax Stabilization Plan by the City Council under Chapter 2001-55, Ordinance No. 729, on December 28, 2001, for a commercial building which has been rehabilitated and converted to residential units to increase the availability of apartment units in the Downcity Arts and Entertainment District in the City of Providence; and

WHEREAS, the Tax Stabilization Plan granted to Alice Building, LLC for the Alice Building Project is scheduled to expire on December 31, 2014 and Alice Building, LLC is requesting additional relief in the form of a Tax Stabilization Plan, the terms of which are contained herein; and

WHEREAS, Peerless Lofts, LLC, owners of the property located at 225-239-249 Westminster Street, on Assessor's Plat 20, Lots 29, 116, 117, 138, 23, 24, and 29, (hereinafter referred to as the "Peerless Building Project"), applied for, and were granted, a Tax Stabilization Plan by the City Council under Chapter 2002-44, Ordinance No. 647, on November 22, 2002, for a commercial building which has been rehabilitated and converted to residential units to increase the availability of apartment units in the Downcity Arts and Entertainment District in the City of Providence; and

WHEREAS, the Tax Stabilization Plan granted to Peerless Keen Partners for the Peerless Building Project is scheduled to expire on December 31, 2015 and Peerless Lofts, LLC is requesting additional relief in the form of a Tax Stabilization Plan, the terms of which are contained herein; and

WHEREAS, these Projects have created jobs, increased residential living in the Downcity Arts and Entertainment District, and have attracted valuable tenants and businesses to relocate into the Downcity Arts and Entertainment District; and

WHEREAS, these Projects have generated tax revenues, increased the value of the tax base of the City and otherwise generated considerable benefits to the City; and

WHEREAS, while these Projects have created employment opportunities, increased the residential occupancy downtown, enhanced the City's tax base and generated the promised benefits to the City as contemplated by their respective Tax Stabilizations Plans, these Projects have suffered serious financial setbacks and hardships as a result of the collapse of the real estate and financial markets over the past several years; and

WHEREAS, the financial collapse and real estate crisis have placed the Projects in need of continued cooperation from the City of Providence by extending their respective Tax Stabilization Plans for a period of five (5) years; and

WHEREAS, granting extensions of the Projects' respective Tax Stabilization Plans will benefit the City by preserving the continued integrity and sustainability of the Projects, allow the Projects to continue to maintain existing and attract new investors, businesses and tenants to the Downcity Arts and Entertainment District and maintain the great strides towards revitalization of the Downcity Arts and Entertainment District started, in large part, by these Projects; and

WHEREAS, granting these extensions will also benefit the City by increasing the amount of taxes paid in connection with the Projects over the five (5) year extension period by utilizing the then current rates and assessments, with the established percentage paid each year increasing up to full payment by the end of each such five (5) year extension; and

WHEREAS, granting the extensions of the Project's respective Tax Stabilization Plans will enable the Project Owners to work with new lenders to secure and maintain the financing that is essential to the survival and long term fiscal health of these Projects so that they can continue to generate benefits to the City; and

WHEREAS, a lack of relief will jeopardize the continued operation of these Projects, potentially causing a devaluation of surrounding property values, a loss of residential tenants downtown and an increased vacancy rate for real estate in the Downcity Arts and Entertainment District; and

WHEREAS, the strengthening of these Projects will benefit the other economic development initiatives Downcity by continuing to provide accessible housing opportunities to residents working in the downtown area, attracting new investment, and bolstering surrounding development initiatives, especially those who will be working in the Knowledge District as it continues to develop; and

WHEREAS, it is for those reasons that it is in the best interests of the residents of the City of Providence to grant an extension of the Tax Stabilization Plans to enable these Projects to continue to grow the City's tax base, support the many local businesses located within the Projects and the businesses and residents that rely on those businesses located within the Projects, promote mixed-use residential living in the downtown area, and continue to attract new businesses and investors to the City.

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) "Commencement Date" shall mean the date upon which each respective Project's original Tax Stabilization Plan expires (as extended by prior state legislation).
- (b) "Personal Property" means any and all tangible personal property, including, but not limited to all fixtures, equipment, furnishings, vehicles and other personal property, now or hereafter located at each of the Project Sites.
- (c) "220 Westminster Project Owners" means Harrisburg Associates, LLC and Lerner Associates, LLC or any entity with the right, and interest in and to the 220 Westminster Project Site (or portion thereof), including successors to units and/or subunits of the 220 Westminster Project Site.
- (d) "210 Westminster Project Owners" means Harrisburg Associates, LLC and Lerner Associates, LLC or any entity with the right, and interest in and to the 210 Westminster Project Site (or portion thereof), including successors to units and/or subunits of the 210 Westminster Project Site.
- (e) "Alice Building Project Owner" means Alice Building, LLC or any entity with the right, and interest in and to the Alice Building Project Site (or portion thereof), including successors to units and/or subunits of the Alice Building Project Site.
- (f) "Peerless Building Project Owner" means Peerless Lofts LLC or any entity with the right, and interest in and to the Peerless Building Project Site (or portion thereof), including successors to units and/or subunits of the Peerless Building Project Site.

- (g) "220 Westminster Project Site" means 220-226 Westminster Street, 232-234 Westminster Street and 93 Eddy Street, on Assessor's Plat 20, Lots 155, 156, and 203 in the City of Providence.
- (h) "210 Westminster Project Site" means 210 Westminster Street, on Assessor's Plat 20, lot 154 in the City of Providence.
- (i) "Alice Building Project Site" means 236 Westminster Street, Assessor's Plat 20, Lot 157 in the City of Providence.
- (j) "Peerless Building Project Site" means 225-239-249 Westminster Street, on Assessor's Plat 20, Lots 29, 116, 117, 138, 23, 24, and 29 in the City of Providence.
- (k) "Project Sites" means the collective properties located at the 210 Westminster, 220 Westminster, Alice Building and Peerless Building Project Sites.
- (l) "Project Taxable Properties" means, collectively, the Project Sites, the Real Property Improvements and the Personal Property thereon and therein, together constituting the Projects.
- (m) "Real Property Improvements" means any structures or improvements including, but not limited to buildings and related improvements to be constructed or developed on the Project Sites.
- (n) "Projects" means, collectively, the 210 Westminster Project Site, 220 Westminster Project Site, Alice Building Project Site and the Peerless Building Project Sites, and the Real Property Improvements thereon and the Personal Property therein.
- (o) "Stabilized Tax Payments" means, with respect to the Project Taxable Properties, the amounts listed in Section 8 below.
- (p) "Termination Dates" means December 31 of the last year in which Stabilized Tax Payments are payable hereunder, as per the attached schedule for each of the Projects.

Section 3. Term. The term of this agreement shall be for a period commencing on the Commencement Date and terminating on the Termination Date for each of the respective Projects.

Section 4. Transfers. As long as any of the Project Owners owns or operates the respective facilities located at the Project Sites, it will continue to pay taxes in accordance with the attached schedule. The Project Owners, and all successors and assignees, agree that this property will be subject to full taxation at the expiration of the tax treaty. The Project Owners, or

any successors or assignees, agree that the exemptions and conditions under the Tax Stabilization Plans shall run with the land. The Project Owners also agree not to transfer the properties to a tax-exempt entity or to allow any transfer by any subsequent transferee to a tax-exempt entity during the term of the tax treaty. The Project Owners agree that the property covered by this Ordinance be transferred only to a tax paying entity so long as this agreement is in effect. In the event that the property covered by this Ordinance is transferred to a tax-exempt entity, the Project Owners will be responsible to make payments in lieu of taxes to the City of Providence equal to the amount of taxes which would have been paid to the City of Providence if such prohibition against transfer to a tax-exempt entity had not been violated. In the event that a Project Owner transfers a Project Site to a tax exempt entity within the five year period immediately following the expiration of this Ordinance, the Project Owner agrees to pay a percentage of the sale price to the City of Providence as follows; five percent (5%) of the sale price if the Project Site is sold to a tax exempt entity in the first year following expiration; four percent (4%) of the sale price if sold to a tax exempt entity in the second year; three percent (3%) of the sale price if sold to a tax exempt entity in the third year; two percent (2%) of the sale price if sold to a tax exempt entity in the fourth year; and one percent (1%) of the sale price if sold to a tax exempt entity in the fifth year. Notwithstanding anything to the contrary herein or in the tax treaty used in connection herewith, the provisions of this Section shall continue to be given full force and effect until such time as the same shall be amended or terminated by majority vote of the Providence City Council. Any alleged breach under the terms of this Section 4 shall be subject to a ninety (90) day notice and cure period (or such additional time, provided that it is impracticable to cure same within 90 days) for the Project Owner to remedy the breach.

Section 5. Payment of Taxes.

- (a) The Project Owners shall make Stabilized Tax Payments as prescribed in the schedule in Section 8 to the City in lieu of all other real property and personal property taxes and the City agrees to accept the Stabilized Tax Payments in lieu of such real property and personal property taxes on the Project Taxable Properties.
- (b) Stabilized Tax Payments due to the City, pursuant to the terms of this agreement, 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 are to be made, they shall be due on the same dates that quarterly taxes are due for all other taxpayers in the City.

- (c) It is understood by the parties that Stabilized Tax Payments made hereunder are deemed by the City to be tax payments, and the Project Owners shall be entitled to all the rights and privileges of a tax payer in the City.
- (d) The liability for Stabilized Tax Payments due and owing under this agreement shall constitute an obligation of each Project Owner as to its respective Project Site, and the City shall be granted by each Project Owner, as to its respective Project Site, a lien on the Project Taxable Property of each Project Site, which lien shall be 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 the Project Owner of each applicable respective Project Site prior to the exercising any foreclosure or other remedies available and the applicable Project Owner shall have ninety (90) days thereafter (or such additional time if a cure within such time frames is not reasonably practicable) 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.
- (e) Stabilized Tax Payments not made by the Project Owners as they become due shall, following the notice and cure period set forth in Section 5(d) hereof, be subject to any and all penalties allowed under Rhode Island General Laws. Failure to receive a stabilized tax bill shall not relieve the Project Owners of their applicable obligations to make Stabilized Tax Payments herein. If for any reason the Project Owners do not receive an appropriate stabilized tax bill, the Project Owners shall have the responsibility and obligation to make reasonable inquiries to the City in order to have such a stabilized 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 the respective Project Owners of the respective Project Sites directly to the City of Providence Tax Collector's Office.

Section 6. Satisfaction of Obligations. The City agrees that so long as the Stabilized Payments are made by the Project Owners in accordance with the terms of this agreement, the City shall, during the term of this agreement, accept said payments in full satisfaction of the obligations of the Project Owners as to the payments of any and all taxes and property assessments to the City which would otherwise be levied upon or with respect to the respective Project Taxable Properties.

Section 7. Purpose. The City of Providence has entered into this extension of the above described tax treaties in order to ensure that these Projects, despite the delays caused by the recent real estate and financial crisis, continue to create and maintain jobs, grow the tax base, provide accessible housing opportunities for residents who wish to live in the DOWNCITY Arts and Entertainment District, and maintain existing and attract new investors and businesses into the downtown area and revitalize the Westminister neighborhood. These Projects were significantly impacted by the real estate and financial collapse which transpired in 2007 and 2008, and the recession that followed for years thereafter. The original Tax Stabilization Plans previously referenced above which were entered into in 2001 and 2002 were not made in contemplation of the economic crisis which has injured the local, state and national economies for several years following the collapse. As a result, these Projects need extension of their Tax Stabilization Plans to ensure their continued viability and sustainability, secure the necessary refinancings, and maintain existing and further attract new tenants and investors to the downtown area and continue to enhance the tax base in the City and reasonably phase all Projects into paying full assessed taxes.

As required by law, each of these buildings was a former commercial building that has been converted primarily for residential use as apartments. These buildings will continue to be utilized for that purpose.

If the treaty is rendered null and void as to one or more particular Project Sites for any reason then the respective applicable Project Owner would be required to pay all taxes and fees due and owing as if no extension of this treaty had been entered. The respective Project Owners shall have ninety (90) days following receipt of written notice from the City to cure any alleged default or violation of the terms of this agreement with respect to their particular Project Site prior to the treaty being declared null and void with respect to said particular Project Site.

Section 8. Tax Stabilization Extension Plans. Stabilized Tax Payments shall be made pursuant to the following schedule as set forth below for each Project. The charts below reflect the percentage of the full taxes, which would have otherwise been paid, that the respective Project Owners shall pay each year. For example, in Year 1 the Project Owners will pay twenty five (25) percent of the then current full value assessment. These payments have been increased from the previously stabilized values under the previous Tax Stabilization Plan for each Project. The payment amounts are dynamic and shall be calculated according to the then current tax rates and the valuation of the properties in the event that the City changes the rates or conducts a revaluation.

220 Westminster Project

Year	Percent of Stabilized Assessment Exemption
Year 1	25%
Year 2	40%
Year 3	55%
Year 4	70%
Year 5	95%

210 Westminster Project

Year	Percent of Stabilized Assessment Exemption
Year 1	25%
Year 2	40%
Year 3	55%
Year 4	70%
Year 5	95%

Alice Building Project

Year	Percent of Stabilized Assessment Exemption
Year 1	25%
Year 2	40%
Year 3	55%
Year 4	70%
Year 5	95%

Peerless Building Project	
Year	Percent of Stabilized Assessment Exemption
Year 1	25%
Year 2	40%
Year 3	55%
Year 4	70%
Year 5	95%

Section 9. Tax Rates and Back Taxes. The parties agree that the real property taxes payable to the City by the Projects during the term of this Ordinance shall be based upon the real property tax rates and assessments, established by the City in the ordinary course, in effect for the City during each year of the Tax Stabilization Plans. The dollar amounts paid pursuant to the percentages in the charts above shall be dynamic according to the current tax rates and the valuation of the Project Sites. This extension of the Tax Stabilization Plans is further conditioned upon the Project Owners not owing back taxes at any time to the City of Providence or, if back taxes are owed, then remaining current on a payment plan approved by the Tax Collector or Tax Assessor. In the event of a Project Owner owing back taxes or becoming delinquent on a payment plan, the impact shall only pertain to that specific Project Owner’s extension and not the extensions granted to the other Project Owners. More generally, a default under this ordinance by one Project Owner shall only affect that Project Owner’s respective Project Site and shall not affect this Ordinance as it applies to the other Project Sites and Project Owners. Failure to make timely payments may render this extension of the Tax Stabilization Plans null and void subject to a ninety (90) notice and day cure period.

Section 10. Notices. All notices required under this Ordinance shall be sent to Cornish Associates, LLP at 46 Aborn Street #4, Providence, RI 02903 with a copy also sent to DarrowEverett, LLP at One Turks Head Place, Providence, RI 02903.

Section 11. Effective Date. This Ordinance shall become effective for each individual Project upon the expiration of the Project’s current Tax Stabilization Plan.

Section 12. Applicable Law. This agreement shall be construed under the laws of the State of Rhode Island.

Section 13. Changes in Rhode Island General Laws. Notwithstanding any amendments or additions made by the Rhode Island General Assembly to Section 44-3-9 or any other statute governing tax stabilization, by virtue of their petition to the Providence City Council for a five (5) year extension of the existing Tax Stabilization Plans, the four project owners agree that there will be no requests for additional periods of stabilized tax payments following the expiration of the extended Tax Stabilization Period set forth herein.

IN CITY COUNCIL
OCT 02 2014
FIRST READING
READ AND PASSED
Lois L. Hayes CLERK
ACTING

IN CITY
COUNCIL
OCT 16 2014
FINAL READING
READ AND PASSED
Will M. [Signature] PRESIDENT
Lois L. Hayes CLERK
ACTING

I HEREBY APPROVE.

Agil Tavelle
Mayor
Date: 10/23/14