

CHAPTER 2018-7

No. 233 AN ORDINANCE ESTABLISHING A TAX STABILIZATION AGREEMENT FOR LAPHAM 290, LLC, 276 WESTMINSTER STREET, LLC, RWB ASSOCIATES, LLC AND CLEMENCE 91, LLC

Approved March 26, 2018

Be it ordained by the City of Providence:

WHEREAS, Lapham 290, LLC (“Lapham Owner”), 276 Westminster, LLC (“276 Owner”), RWB Associates, LLC (“RWB Owner”) and Clemence 91, LLC (“Clemence Owner”) (collectively the “Project Owners”) are the owners of certain real property located in the City at 290 Westminster Street, 276 Westminster Street, 270 Westminster Street and 91 Clemence Street, Assessor’s Plat 020, Lots 165,166,167,169 and 63; and

WHEREAS, Project Owners have proposed and committed to rehabilitated mostly vacant historic buildings into mixed use buildings featuring commercial and residential uses upon the thus returning the property to productive mixed use; and

WHEREAS, Under article 13, section 5 of the Rhode Island Constitution, the General Assembly retains exclusive power over matters relating to municipal taxation. Notwithstanding, and pursuant to Rhode Island General Laws § 44-3-9, the General Assembly has authorized the City of Providence, acting through its City Council and subject to certain enumerated conditions, to exempt or determine a stabilized amount of taxes to be paid on account of real and personal property for a period not to exceed twenty (20) years; and

WHEREAS, pursuant to the Providence Code of Ordinances, as amended, specifically Chapter 21, Article VIII, Section 21-169, the granting of the tax stabilization will inure to the benefit of the City of Providence and its residents by reason of:

- (A) The willingness of Project Owners to rehabilitate existing historic buildings and return them to useful service featuring commercial and residential uses thereby improving the physical plant of the City, which will result in a long-term economic benefit to the City and State; and
- (B) The willingness of Project Owners to commit by agreement to make a significant investment in the above-referenced property, by rehabilitating these historic buildings into mixed use buildings featuring commercial and residential uses in the heart of downtown Providence. This will enhance the tax base of the surrounding area, and generate significant tax revenues for the City of Providence.

NOW THEREFORE, in consideration of the mutual agreements and promises set forth herein and other good and lawful consideration the receipt of which is hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS.

“Property” shall collectively mean certain real property together with any and all buildings, structures, and/or improvements now or in the future located in the City at 290 Westminister Street, 276 Westminister Street, 270 Westminister Street and 91 Clemence Street, Assessor’s Plat 020, Lots 165,166,167,169 and 63.

“Property Owners” shall mean the respective entities with the legal or equitable right and/or interest in and/or to the Property or the individual lots that compromise the Property, including any and all successors and assigns.

SECTION 2. TAX STABILIZATION.

Section 2.1. Grant. The City, in accordance with R.I.G.L. § 44-3-9 and the City of Providence Code of Ordinances, does hereby grant a fifteen (15) year tax stabilization in favor of the Property Owners with respect to the Property.

Section 2.2. Term. The tax stabilization term shall be the period commencing on December 31, 2017 and terminating on December 31, 2031. (Tax Years 2018 - 2032).

Section 2.3. Plan. During the tax stabilization term as defined in Section 2.2 above, the City has determined the stabilized amount of taxes to be paid by the Property Owners with respect to the Property, notwithstanding the valuation of the Property or the then-current rate of tax as follows: For tax years 2018 through and including tax year 2020, the Property Owner shall make a tax payment equal to the taxes due and owing for the December 31, 2015 assessment value multiplied by the 2016 Tax Year tax rate (hereinafter the "Base Assessment Tax"). The parties hereto acknowledge that assessed values the parcels which comprise the Property as defined herein as the subject of tax appeals filed by the owners of the Property. In the course of said appeals, the parties have reached a settlement agreement resolving the appeals and the assessed values established in the settlement agreement shall be used to calculate the Base Assessment Tax. For each tax year thereafter, the Property Owners will pay the Base Assessment Tax plus a percentage of the difference between the Base Assessment Tax on the Property and the taxes due and owing on the then-current assessed value of the Property multiplied by the then-current rate. See "Tax Stabilization Plan" incorporated herein as if fully reproduced and attached hereto and as Exhibit A.

Section 2.4. Payment Deadlines. During the tax stabilization term as defined in Section 2.2 above and in accordance with the tax stabilization plan outlined in Section 2.3 above, stabilized tax payments shall be made in either a lump sum during the first quarter of the applicable tax year or in equal quarterly installments at the discretion of the Property Owners. If the Property Owners elects to make quarterly installments, each quarterly installment shall be due on the same date that quarterly taxes are due for all other taxpayers in the City of Providence. The failure of one of the Property Owners to make timely payments shall only impact said Property Owner. By way of example, if Lapham Owner fails to meet the requirements of this section, its failure shall only impact Lapham Owners respective property and not the remaining Property Owners.

Section 2.5. Obligation of Property Owners to Make Payment. During the tax stabilization term as defined in Section 2.2 above and in accordance with the tax stabilization plan outlined in Section 2.3 above, stabilized tax payments shall be an obligation of the Property Owners. It is understood that the stabilized tax payments made hereunder are deemed by the City to be tax payments, and the Property Owners 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.

Section 2.6. Non-Receipt of Stabilized Tax Bill. Failure by the City to send or failure by the Property Owners to receive a stabilized tax bill does not excuse the nonpayment of the stabilized tax nor affect its validity or any action or proceeding for the collection of the tax in accordance with this Agreement or otherwise.

Section 2.7. Recording of Agreement, Running with Land. Upon the execution of this Agreement, the Property Owners shall cause a Notice of this Agreement to be recorded at its expense in the City's official public land evidence records.

SECTION 3. PERFORMANCE OBLIGATIONS.

Section 3.1. Commencement of Performance.

Rehabilitation and/or construction shall commence within twelve (12) months of the effective date of this Agreement.

Section 3.2. Permits and Certificates of Occupancy.

Property Owners shall obtain all permits and certificates of occupancy as required by state and local law in connection with any and all intended construction or rehabilitation at the Property.

SECTION 4. TRANSFER OF THE PROPERTY.

Section 4.1. Transfer Generally. Stabilized tax payments shall be an obligation of the Property Owner during the tax stabilization term as defined in Section 2.2 above and in accordance with the tax stabilization plan outlined in Section 2.3 above. Additionally, in accordance with Section 2.7, the burdens and benefits of this Agreement will run with the land, and as for payment of taxes shall run in favor of the City regardless of any transfer of ownership. The Property Owners further agree to provide written notice to the City within thirty (30) days of any transfer of title to the real estate.

Section 4.2. Transfer to Tax Exempt Entities. In the event that one of the respective entities comprising the Property Owners transfers one of the lots comprising the Property to a tax exempt entity, this Agreement shall be void ab initio as it pertains to the respective lot being transferred and the owner thereof and any entity holding the legal right or legal interest in the that respective lot at the time of said transfer shall be liable for the full taxes due and owing from the Effective Date of this Agreement and forward. Transfer of an individual lot by an individual owning entity to a tax exempt entity shall not impact the validity or duration of this Agreement as it pertains to the other entities comprising the Property Owners and the other lots comprising the Property.

Section 4.3. Post-Expiration Transfers. In the event that one of the respective entities comprising the Property Owners transfers one of the lots comprising the Property to a tax exempt entity within five years from the end of the tax stabilization term, as defined in Section 2.2 above, the then respective entity owning the applicable lot at the time of said sale will pay the following: five percent (5%) of the sale price in said transfer if sold to a tax-exempt entity in the first year following the end of the Term; four percent (4%) of the sale price in said transfer if sold to a tax-exempt entity in the second year following the end of the Term; three percent (3%) of the sale price in said transfer if sold to a tax-exempt entity in the third year following the end of the Term; two percent (2%) of the sale price in said transfer if sold to a tax-exempt entity in the fourth year following the end of the Term; and one percent (1%) of the sale price in said transfer if sold to a tax-exempt entity in the fifth year following the end of the Term. Transfer of an individual lot by an individual owning entity to a tax exempt entity shall not impact the validity or duration of this Agreement as it pertains to the other entities comprising the Property Owners and the other lots comprising the Property.

SECTION 5. FURTHER ASSURANCES.

Section 5.1. MBE/WBE. Property Owners 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). Property Owners 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). Property Owners 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 Property 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.

Section 5.2. Internal Revenue Service reporting. Except as provided under R.I.G.L. § 28-42-8, any person performing services at the Property shall annually receive either a W-2 statement or an IRS Form 1099.

Section 5.3. First Source. Pursuant to the City of Providence First Source Ordinance, the Project Owners 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 Owners shall work in conjunction with the Director of First Source Providence to develop the First Source Agreement.

Section 5.4. "Buy Providence" Initiative. Property Owners 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, Property Owners 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 Property. In order to further that effort, Property Owners will hold seminars/meetings 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 Property Owners' development plans in order to maximize the opportunities for Providence businesses to work with Property Owners in providing on-going services, equipment and materials. To be clear, nothing in the foregoing shall be construed so as to obligate Property Owners 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 Property Owners.

Section 5.5. Apprenticeship. The Property Owners shall ensure that one hundred (100) percent 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. Up to twenty (20) percent of the hourly requirement may be waived if replaced with hours worked by qualified MBE/WBE companies registered in the State of Rhode Island. Certification of this waiver shall be reviewed and signed by the designated MBE/WBE coordinator within the department of purchasing. The Property Owners 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 (10) percent of the total hours worked by the subcontractors' employees on the project are completed by apprentices registered in the aforementioned apprenticeship programs.

The Property Owners shall as part of its contracts between its construction manager and general contractor and their subcontractors require that the subcontractors submit to the First Source Director quarterly verification reports to ensure compliance with this section.

The Property Owners, its construction manager or general contractor or other authorized person/entity may petition the First Source Director 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; 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.

SECTION 6. DEFAULT.

The following events shall constitute an event of default hereunder:

- (A) Failure of the Property Owners to pay any amount due under or with respect to the tax stabilization in accordance with Section 2 above; or
- (B) Failure of the Property Owners to record a Notice of this Agreement as required by and in accordance with Section 2 above; or
- (C) Failure of the Property Owners to meet any of the performance obligations set forth in Section 3 above; or
- (D) Failure of the Property Owners to annually report as required by Section 9 below; or
- (E) Failure of the Property Owners to notify the City in writing within thirty (30) days of the transfer of the Property; or
- (F) Transfer of the Property by the Property Owners outside of the terms of this Agreement; or
- (G) Failure of the Property Owners to comply with Section 5 above; or
- (H) Failure of the Property Owners to comply with any other obligation or promise contained within any section or subsection of this Agreement; or
- (I) Failure of the Property Owners 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 Property Owners to remain current on any and all other financial obligations to the City of Providence.

Default by an individual owning entity within the defined term Property Owners shall not constitute default as it pertains to the other entities comprising the Property Owners. By way of example, default by Lapham Owner shall not impact any of the other entities and shall only constitute default as it pertains to Lapham Owner.

SECTION 7. NOTICE AND CURE.

Section 7.1. Notice and Cure Period. The City Council shall provide written notice to the Property Owners before exercising any of its rights and remedies under Section 8 below. The Property Owners 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 Property Owners shall request an additional reasonable period of time from the Tax Assessor (and if an agreement on the period of time cannot be reached between the Property Owner and the Tax Assessor, then the Property Owner shall request such additional time from the City Council) to cure such default. Such reasonable request shall be granted provided that the Property Owners shall have commenced to cure such default within said period, such cure shall have been diligently pursued by the Property Owners and the City Council does not reasonably deem the taxes jeopardized by such further delay, all as determined by the City Council in its sole reasonable discretion. Default by an individual owning entity within the defined term Property Owners shall not constitute default as it pertains to the other entities comprising the Property Owners. By way of example, default by Lapham Owner shall not impact any of the other entities and shall only constitute default as it pertains to Lapham Owner.

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, or by nationally recognized overnight courier (such as Federal Express or UPS) 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: Lapham 290, LLC
46 Aborn Street, Providence, RI
Copy to:
Zachary Darrow, Esq.
Darrow Everett, LLP
One Turks Head Place, Suite 1200
Providence, RI 02903
- If to: 276 Westminster, LLC
46 Aborn Street, Providence, RI
Copy to:
Zachary Darrow, Esq.
Darrow Everett, LLP
One Turks Head Place, Suite 1200
Providence, RI 02903
- If to: RWB Associates, LLC
46 Aborn Street, Providence, RI
Copy to:
Zachary Darrow, Esq.
Darrow Everett, LLP
One Turks Head Place, Suite 1200
Providence, RI 02903
- If to: Clemence 91, LLC
46 Aborn Street, Providence, RI
Copy to:
Zachary Darrow, Esq.
Darrow Everett, LLP
One Turks Head Place, Suite 1200
Providence, RI 02903

SECTION 8. RIGHTS AND REMEDIES.

Section 8.1. Collection of Taxes. At any time during the tax stabilization term as defined in Section 2.2 of this Agreement, the City of Providence may pursue any and all rights and remedies arising under any state or local law, including but not limited to Chapters 7-9 of Title 44, and/or arising under this Agreement to collect stabilized taxes due and owing in accordance with the tax stabilization plan outlined in Section 2.3 above and/or to collect retroactive taxes pursuant to Section 8.1 above.

Section 8.2. City's Lien Remedies and Rights. Nothing herein contained shall restrict or limit the City's rights and/or remedies with respect to its first priority lien for taxes as provided under Title 44 of the Rhode Island General Laws. Rather, this Agreement shall be construed to provide a complete additional alternative method under contract law for the collection of taxes, and shall be regarded as supplemental and in addition to the powers conferred by other state and local laws.

Section 8.3. Waiver. Failure or delay on the part of the City to exercise any rights or remedies, powers or privileges at any time under this Agreement or under any state or local law shall not constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege thereunder.

Section 8.4. Property Owner's Rights. During the tax stabilization term as defined in Section 2.2, the Property Owner agrees to waive and forever forgo any and all of its rights and privileges under Title 44 of the Rhode Island General Laws, as they pertain to the Tax Payments due and owing pursuant to this Agreement, unless the assessment value of the Property increases by more than ten percent (10%) between any two City-wide revaluations (as referenced in R.I. Gen. Laws § 44-5-11.6) which occur during the term of this stabilization or if there is a substantial change in circumstances regarding the value of the Property. A substantial change in circumstances shall include a vacancy or partial vacancy at the Property, loss of use of the Property as a result of fire, flood or other force majeure, loss of revenue generated by the Property or decline in the real estate market such that it negatively impacts the value of the Property. Nothing herein shall be construed to limit the right of the Property Owner to pursue its rights and remedies under the terms of this Agreement.

SECTION 9. MISCELLANEOUS TERMS.

Section 9.1. Annual Progress Report. The Property Owners shall provide annual reports to the City on its progress in complying with the provisions of this Agreement, and one final report following the issuance of a certificate of occupancy for the work contemplated hereby (which reporting may be done on a Property by Property basis). Specifically, its report shall include a performance report on rehabilitation and/or improvements with evidence of final construction costs, status of stabilized tax payments, and evidence of employment compliance pursuant to Section 6 above. Upon receipt and review, the City may require and request reasonable additional non-confidential or proprietary information.

Section 9.2. Monitoring Fee. Within thirty (30) days of receiving a statement from the Tax Assessor, the Property Owners shall remit a monitoring/compliance fee to the City in the amount of 0.1 percent of the tax savings for each respective tax year during the term of this Agreement. By way of example only, if the tax savings for Year 3 is \$500,000, the monitoring fee for Year 3 shall be \$500.

Section 9.3. Agreement to Contribute to Parks and Recreation Trust Fund. Upon ratification of this Agreement by the City Council, the Property Owners shall, within thirty days of receiving a statement from the Treasurer, contribute to a Trust Fund established by the City of Providence, 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) Payments to the Fund. The Property Owners shall make annual payments to the Fund in the amount of Five (5) percent of the abated tax for each respective tax year, for as long as this Agreement is in full force and effect. Said annual payments will be payable on the last day of each subsequent tax year after the Commencement Date. If, for any reason, this Agreement is retroactively revoked, the payments to the fund shall remain and will not be forfeited back to the Property Owners due to a default. By way of example only, if the tax savings for Year 3 is \$500,000, the contribution for Year 3 shall be \$25,000.
- (b) Investment and Distribution of the Fund. The trust fund will be invested by the Board of Investment Commissioners, 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 and the Department of Recreation through the operating budget. Distributions may never exceed the earnings in the year of distribution or reduce the corpus of the fund. The first payment from the fund shall begin in the fifth year after the establishment of the fund.

Section 9.4 Severability. The sections of this Agreement are severable, and if any of its sections or subsections shall be held unenforceable by any court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining sections or subsections.

Section 9.5. Applicable Law. This Agreement shall be construed under the laws of the State of Rhode Island, the City of Providence Home Rule Charter, and the City of Providence Code of Ordinances, as amended.

Section 9.6. Modifications Amendments and/or Extensions. This Agreement shall not be modified, amended, extended or altered in any way by oral representations made before or after the execution of this Agreement. Any and all modifications, amendments, extensions or alterations must be in writing duly executed by all parties.

Section 9.7. Entire Agreement. This Agreement and all attachments, addenda, and/or exhibits attached hereto shall represent the entire agreement between City and the Property Owners and may not be amended or modified except as expressed in this document.

Section 9.8. Effective Date. This Agreement shall take effect upon passage of this Ordinance by the Providence City Council, and approval by the Mayor.

IN CITY COUNCIL
MAR 01 2018
FIRST READING
READ AND PASSED

Lou L. Hoyer CLERK

IN CITY
COUNCIL
MAR 15 2018
FINAL READING
READ AND PASSED

David A. Spitzer PRESIDENT
Lou L. Hoyer CLERK

I HEREBY APPROVE.

[Signature]

Mayor
Date: 3/26/18

Exhibit A

<u>Year</u>	Percentage of Difference between Base Assessment and Current Full Value Assessment
Year 4	8.33%
Year 5	16.66%
Year 6	24.99%
Year 7	33.32%
Year 8	41.65%
Year 9	49.98%
Year 10	58.31%
Year 11	66.64%
Year 12	74.97%
Year 13	83.30%
Year 14	91.63%
Year 15	95%

Exhibit A

<u>Year</u>	Percentage of Difference between Base Assessment and Current Full Value Assessment
Year 4	8.33%
Year 5	16.66%
Year 6	24.99%
Year 7	33.32%
Year 8	41.65%
Year 9	49.98%
Year 10	58.31%
Year 11	66.64%
Year 12	74.97%
Year 13	83.30%
Year 14	91.63%
Year 15	95%

Lapham 290, LLC
 Plat 20 Lot 165,166,167,169,63

270,276,290 Westminster Street 91 Clemence Street

15 Year TSA Projection

Year	Base Tax + %			Tax Rate	Base Tax	Phased-In Tax	Proposed Total Tax	Payments at Full Taxation
	Value	of Incr.						
1	4,005,600	Base Tax	\$36.70	\$147,005.52	\$0	\$147,005.52	\$ 147,005.52	
2	4,005,600	Base Tax	\$36.70	\$147,005.52	\$0	\$147,005.52	\$ 147,005.52	
3	4,005,600	Base Tax	\$36.70	\$147,005.52	\$0	\$147,005.52	\$ 147,005.52	
4	29,005,600	8.33%	\$36.70	\$147,005.52	\$76,427.75	\$223,433.27	\$ 1,064,505.52	
5	29,005,600	16.66%	\$36.70	\$147,005.52	\$152,855.50	\$299,861.02	\$ 1,064,505.52	
6	29,005,600	24.99%	\$36.70	\$147,005.52	\$229,283.25	\$376,288.77	\$ 1,064,505.52	
7	29,585,712	33.32%	\$36.70	\$147,005.52	\$312,804.86	\$459,810.38	\$ 1,085,795.63	
8	29,585,712	41.65%	\$36.70	\$147,005.52	\$391,006.08	\$538,011.60	\$ 1,085,795.63	
9	29,585,712	49.98%	\$36.70	\$147,005.52	\$469,207.30	\$616,212.82	\$ 1,085,795.63	
10	30,177,426	58.31%	\$36.70	\$147,005.52	\$560,071.06	\$707,076.58	\$ 1,107,511.54	
11	30,177,426	66.64%	\$36.70	\$147,005.52	\$640,081.21	\$787,086.73	\$ 1,107,511.54	
12	30,177,426	74.97%	\$36.70	\$147,005.52	\$720,091.37	\$867,096.89	\$ 1,107,511.54	
13	30,780,975	83.30%	\$36.70	\$147,005.52	\$818,552.66	\$965,558.18	\$ 1,129,661.77	
14	30,780,975	91.63%	\$36.70	\$147,005.52	\$900,407.93	\$1,047,413.45	\$ 1,129,661.77	
15	30,780,975	95%	\$36.70	\$147,005.52	\$933,523.44	\$1,080,528.96	\$ 1,129,661.77	
						\$8,409,395.21	\$ 13,603,439.96	

Savings to applicant:

(\$5,194,044.75)