

CHAPTER 2017-31

No. 329 AN ORDINANCE ESTABLISHING A TAX STABILIZATION AGREEMENT FOR 78 FOUNTAIN JV OWNER, LLC LOCATED AT 78 FOUNTAIN STREET

Approved July 31, 2017

Be it ordained by the City of Providence:

WHEREAS, 78 Fountain JV Owner, LLC (“FJV”) is the owner of certain real property located in the City at 78 Fountain Street, 93 Washington Street and 66 Fountain Street, Assessor’s Plat 025, Lots 454, 455 and 164; and

WHEREAS, FJV has proposed and committed to construct a new approximately 146, 493 square foot mixed use building featuring commercial and residential uses upon the existing surface parking lot, thus returning the property to productive mixed use in accordance with the construction plans already submitted to the City by FJV; 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 FJV to construct a new approximately 146, 493 square foot mixed use building featuring commercial and residential uses upon the existing surface parking lot, 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 FJV to commit by agreement to make a significant investment in the above-referenced property, by constructing a new approximately 146, 493 square foot mixed use building featuring commercial and residential uses upon the existing surface parking lot. 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 mean certain real property together with any and all buildings, structures, and/or improvements now or in the future located in the City at 78 Fountain Street, 93 Washington Street and 66 Fountain Street, Assessor’s Plat 025, Lots 454, 455 and 164.

“Property Owner” shall mean an entity with the legal or equitable right and/or interest in and/or to 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 twenty (20) year tax stabilization in favor of the Property Owner 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, 2036. (Tax Years 2018- 2037).

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 Owner 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"). For each tax year thereafter, the Property Owner 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 Owner. If the Property Owner 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.

Section 2.5. Obligation of Property Owner 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 Owner. It is understood that the stabilized tax payments made hereunder are deemed by the City to be tax payments, and the Property 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.

Section 2.6. Non-Receipt of Stabilized Tax Bill. Failure by the City to send or failure by the Property Owner 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 Owner 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 Owner 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 Owner further agrees to provide prior written notice to the City before any transfer. .

Section 4.2. Transfer to Tax Exempt Entities. In the event that the Property Owner transfers the Property to a tax-exempt entity, this Agreement shall be void ab initio and any entity holding the legal right or legal interest in the Property 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.

Section 4.3. Post-Expiration Transfers. In the event that the Property Owner transfers 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 existing Property Owner 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.

SECTION 5. FURTHER ASSURANCES.

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

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

Section 5.5. Apprenticeship. The Property Owner 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 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 (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 Owner 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 Owner, 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 Owner 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 Owner to record a Notice of this Agreement as required by and in accordance with Section 2 above; or
- (C) Failure of the Property Owner to meet any of the performance obligations set forth in Section 3 above; or
- (D) Failure of the Property Owner to annually report as required by Section 9 below; or
- (E) Failure of the Property Owner to notify the City in writing prior to the transfer of the Property; or

- (F) Transfer of the Property by the Property Owner outside of the terms of this Agreement; or
- (G) Failure of the Property Owner to comply with Section 5 above; or
- (H) Failure of the Property Owner to comply with any other obligation or promise contained within any section or subsection of this Agreement; or
- (I) Failure of the Property 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 Property Owner to remain current on any and all other financial obligations.

SECTION 7. NOTICE AND CURE.

Section 7.1. Notice and Cure Period. The City Council shall provide written notice to the Property Owner before exercising any of its rights and remedies under Section 8 below. The Property 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 Property Owner shall request an additional reasonable period of time from the City Council to cure such default as may be necessary provided that the Property Owner shall have commenced to cure such default within said period, such cure shall have been diligently pursued by the Project Owner 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 discretion which shall not be unreasonably withheld.

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: 78 Fountain JV Owner, 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 of privilege thereunder.

SECTION 9. MISCELLANEOUS TERMS.

Section 9.1. Annual Progress Report. The Property Owner shall provide annual reports to the City on its progress in complying with the provisions of this Agreement. Specifically, its report shall include a performance report on rehabilitation and/or improvements with evidence of final construction costs, status of stabilized tax payments, evidence of employment compliance pursuant to Section 6 above, and overall financial well-being. Upon receipt and review, the City may require and request additional information.

Section 9.2. Monitoring Fee. The Property Owner shall remit a monitoring/compliance fee to the City in the amount of 0.1 percent of the tax savings pursuant to this Agreement each respective tax year during the term of this Agreement. Said fee shall be used to provide the needed resources to the City Tax Assessor's Office, and by extension to the City Solicitor's Office, to monitor and review compliance with this ordinance as well as enforce the provisions contained herein.

Section 9.3. Agreement to Contribute to Parks and Recreation Trust Fund. Upon ratification of this Agreement by the City Council, the Property Owner shall 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 Owner shall make annual payments to the Fund in the amount of the annual proportion of Five (5) percent of the total estimated abated tax, 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 Owner due to a default.
- (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. Resolution of Calculation Disputes. Property Owner and the City of Providence agree that Property Owner retains the right to appeal the valuations of the Property or calculation of the taxes assessed from time to time.

Section 9.5. 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 9.6. 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 9.7. 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 9.8. Entire Agreement. This Agreement and all attachments, addenda, and/or exhibits attached hereto shall represent the entire agreement between City and the Property Owner and may not be amended or modified except as expressed in this document.

Section 9.9. 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

JUL 06 2017
FIRST READING
READ AND PASSED, As Amended

Law L. Hays
CLERK

IN CITY

COUNCIL

JUL 20 2017
FINAL READING
READ AND PASSED

Sabrina Mats
PRESIDENT
Law L. Hays
CLERK

I HEREBY APPROVE.

[Signature]

Mayor

Date: 7/31/17

Exhibit A

<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%

78 Fountain JV Owner LLC
78 Fountain Street

(Fiscal Impact)

Plat 25 Lots 164,454,455

20 Year TSA Projection

Year	Base Tax and/or Base Land Tax + %				Tax Rate	Base Tax	Phased-In Tax	Proposed Total		Payments at Full Taxation
	Value	of Incr.	Base Tax	Tax				Tax		
1	2,499,400	Base Tax	\$91,728	\$0	36.70	\$91,728	\$0	\$91,727.98	\$ 91,727.98	
2	2,499,400	Base Tax	\$91,728	\$0	36.70	\$91,728	\$0	\$91,727.98	\$ 91,727.98	
3	2,499,400	Base Tax	\$91,728	\$0	36.70	\$91,728	\$0	\$91,727.98	\$ 91,727.98	
4	2,499,400	Base Tax	\$91,728	\$0	36.70	\$91,728	\$0	\$91,727.98	\$ 91,727.98	
5	2,499,400	Base Tax	\$91,728	\$0	36.70	\$91,728	\$0	\$91,727.98	\$ 91,727.98	
6	49,943,079	Base + 6.5%	\$91,728	\$113,176.90	36.70	\$91,728	\$113,176.90	\$204,904.88	\$ 1,832,911.00	
7	49,943,079	Base + 13.0%	\$91,728	\$226,353.79	36.70	\$91,728	\$226,353.79	\$318,081.77	\$ 1,832,911.00	
8	50,941,941	Base + 19.5%	\$91,728	\$346,679.04	36.70	\$91,728	\$346,679.04	\$438,407.02	\$ 1,869,569.23	
9	50,941,941	Base + 26.0%	\$91,728	\$462,238.73	36.70	\$91,728	\$462,238.73	\$553,966.71	\$ 1,869,569.23	
10	50,941,941	Base + 32.5%	\$91,728	\$577,798.41	36.70	\$91,728	\$577,798.41	\$669,526.39	\$ 1,869,569.23	
11	51,960,779	Base + 39.0%	\$91,728	\$707,940.72	36.70	\$91,728	\$707,940.72	\$799,668.70	\$ 1,906,960.59	
12	51,960,779	Base + 45.5%	\$91,728	\$825,930.84	36.70	\$91,728	\$825,930.84	\$917,658.82	\$ 1,906,960.59	
13	51,960,779	Base + 52.0%	\$91,728	\$943,920.96	36.70	\$91,728	\$943,920.96	\$1,035,648.94	\$ 1,906,960.59	
14	52,999,995	Base + 58.5%	\$91,728	\$1,084,222.52	36.70	\$91,728	\$1,084,222.52	\$1,175,950.50	\$ 1,945,099.82	
15	52,999,995	Base + 65.0%	\$91,728	\$1,204,691.69	36.70	\$91,728	\$1,204,691.69	\$1,947,749.82	\$ 1,945,099.82	
16	52,999,995	Base + 71.5%	\$91,728	\$1,325,160.86	36.70	\$91,728	\$1,325,160.86	\$1,416,888.84	\$ 1,945,099.82	
17	54,059,994	Base + 78.0%	\$91,728	\$1,475,973.56	36.70	\$91,728	\$1,475,973.56	\$1,567,701.54	\$ 1,984,001.78	
18	54,059,994	Base + 84.5%	\$91,728	\$1,598,971.36	36.70	\$91,728	\$1,598,971.36	\$1,690,699.34	\$ 1,984,001.78	
19	54,059,994	Base + 91.0%	\$91,728	\$1,721,969.16	36.70	\$91,728	\$1,721,969.16	\$1,813,697.14	\$ 1,984,001.78	
20*	55,141,194	Full Tax	\$91,728	N/A	36.70	\$91,728	N/A	\$2,023,681.82	\$ 2,023,681.82	
								\$17,032,872.13	\$ 29,265,037.98	

Savings to applicant:

\$ 12,232,165.85

78 Fountain JV Owner LLC
78 Fountain Street

(Fiscal Impact)

Plat 25 Lots 164,454,455

*Full taxation begins