

CHAPTER 2009-59

No. 483

AN ORDINANCE IN AMENDMENT OF CHAPTER 2005-22, NO. 110 DATED MARCH 23, 2005, ESTABLISHING AND GRANTING A TAX STABILIZATION PLAN FOR INTERCONTINENTAL FUND IV WATERPLACE, LLC, WITH RESPECT TO ASSESSOR'S PLAT 19, LOT 102 OF THE CITY OF PROVIDENCE

Approved November 16, 2009

Be it ordained by the City of Providence:

WHEREAS, The City Council, pursuant to Section 44-3-9 of the Rhode Island General Laws, as amended, and Sections 21-160 through 21-170.1 of the Code of Ordinances of the City of Providence, has the authority to exempt real and personal property used for manufacturing, commercial, and/or residential purposes from the payment of property taxes, or to stabilize said taxes, if the granting of the exemption or stabilization plan inures to the benefit of the City of Providence by reason of physical improvements within the City which will result in long-term economic benefit, and/or by reason of the willingness of a commercial enterprise to construct new buildings or to replace, reconstruct, convert, expand, retain or remodel existing buildings; and

WHEREAS, The City Council, pursuant to R.I. Gen. Laws Sec. 44-3-9, as amended, has the authority to exempt and/or stabilize said taxes for a term not to exceed twenty (20) years; and

WHEREAS, Capitol Hill Properties, LLC ("Former Applicant") previously made application for a tax stabilization plan and in response thereto the City Council enacted a tax stabilization agreement to the benefit of the Former Applicant with respect to the Project Site (as hereinafter defined), designated as Chapter 2004-3, No. 3 An Ordinance Establishing And Granting A Tax Stabilization Plan For Capitol Hill Properties, LLC, With Respect To Assessor's Plat 19, Lot 102 Of The City Of Providence; and

WHEREAS, Intercontinental Fund IV Waterplace, LLC, a Massachusetts limited liability company (defined below as the "Project Owner") the long term ground lessee from Capital Properties, Inc., of the Project Site (as hereinafter defined) and successor in interest to the Former Applicant, has made application for amendment and restatement of the tax stabilization granted to the Former Applicant under said Rhode Island General Laws and applicable ordinances of the City of Providence, as set forth in Exhibit A attached hereto and incorporated by reference, and has satisfied each condition of same; and

WHEREAS, There is underdeveloped land located at 18 Park Row West, formerly known as 18 American Express Plaza, to be changed to 100 Exchange Street, 200 Exchange Street and 400 Exchange Street, and more specifically described as Assessor's Plat 19, Lot 102, also being Parcel 2 in The Capital Center Special Development District, so-called; and

WHEREAS, The Project Owner has evidenced a willingness to construct:

- o a multi-level four hundred and seventy (470) car parking space structure ("Parking Garage");
- o a seventeen (17) story residential apartment building of approximately one hundred fifty thousand (150,000) square feet of gross building area containing one hundred five (105) apartment units along with ten thousand five hundred eighty (10,580) square feet of retail space on the ground floor ("Park Side");
- o a nineteen (19) story residential apartment building of approximately one hundred sixty thousand (160,000) square feet of gross building area containing one hundred six (106) apartment units along with five thousand twenty-five (5,025) square feet of retail space on the ground floor ("River Tower");
- o a fifteen (15) story, one hundred and sixty-two (162) room hotel of approximately one hundred twenty-five thousand (125,000) square feet of gross building area ("Hotel"); and
- o a twelve (12) story residential apartment building of approximately one hundred and ten thousand (110,000) square feet of gross building area containing ninety (90) apartment units ("Park Row West");

WHEREAS, The Project (as hereinafter defined) will cause an increase in the tax base of the City of Providence, an increase in expenditures by hotel guests and residents in the City of Providence and will increase employment opportunities in the City of Providence; and

WHEREAS, The City Council has determined it is in the best interest of the residents of the City of Providence to grant such tax stabilization pursuant to the below stated plan (hereinafter called the "Agreement") to induce the development of The Capital Center Special Development District, and such tax stabilization will inure to the long-term benefit of the City of Providence,

NOW, THEREFORE, BE IT RESOLVED:

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 be upon passage of this ordinance.
- (b) "Personal Property" means any and all tangible personal property, including, but not limited to, all fixtures, equipment, furnishings, and other personal property, now or hereafter located at the Project Site (as hereinafter defined).
- (c) "Phase I" of the Project means and shall consist of the Parking Garage, Park Side and River Tower.
- (d) "Phase II" of the Project means and shall consist of the Hotel and Park Row West, and/or may include an office building in addition to and/or in lieu of these or other uses.
- (e) "Project" means the Project Site (as hereinafter defined), the Real Property Improvements (as hereinafter defined), and Personal Property.
- (f) "Project Owner" means Intercontinental Fund IV Waterplace, LLC, a Massachusetts limited liability company, its successors and assigns, which is (i) either the lessee or sublessee under a ground lease with Capital Properties, Inc. of the Project Site (as hereinafter defined), and/or (ii) which holds legal title to the Real Property Improvements (as hereinafter defined) or Personal Property.

(g) "Project Site" means the property located at and having a Providence address of 18

Park Row West, formerly known as 18 American Express Plaza, to be changed to 100 Exchange Street, 200 Exchange Street and 400 Exchange Street, and more specifically described as Assessor's Plat 19, Lot 102, in the Land Evidence Records for the City of Providence, also being Parcel 2 of The Capital Center Special Development District.

(h) "Project Taxable Properties" means, collectively, the Project Site as proposed, the Real Property Improvements (as hereinafter defined), and the Personal Property, together constituting the Project.

(i) "Real Property Improvements" means all structures, buildings and material improvements, including an appropriate proration of the land value, currently proposed to be located at the Project Site. Any material additional improvements involving the construction of any additional buildings, building additions or units in any improvement, shall require an amendment to this ordinance, except as provided herein.

(j) "Stabilized Assessment" means:

(1) The Project Site together with any and all existing infrastructure improvements thereon shall be the City of Providence tax assessment value as of December 31, 2004, as shown on Exhibit B attached hereto and incorporated by reference.

(2) The Real Property Improvements shall be assessed as follows:

Phase I

o Parking Garage: \$4,700,000.00 as shown on Exhibit B hereof, with each additional parking space over the contemplated four hundred seventy (470) being assessed at a value of \$10,000.00, it being agreed that if the aggregate number of parking spaces constructed is more or less than the contemplated four hundred seventy (470), the assessed value shall be increased or reduced by \$10,000 for each such parking space contract or not constructed.

- o Park Side (Apartments): \$14,175,000.00 as shown on Exhibit B hereof, with each additional apartment unit over the contemplated one hundred five (105) being assessed at a value of \$135,000.00, it being agreed that if the aggregate number of apartment units constructed is less than the contemplated one hundred five (105), the assessed value shall be reduced by \$135,000.00 for each such apartment unit not constructed, with any retail space, initially determined to be ten thousand five hundred eighty (10,580) square feet, being assessed at \$84.95 per square in addition to the apartment valuation.
- o River Tower (Apartments): \$14,310,000.00 as shown on Exhibit B hereof, with each additional apartment unit over the contemplated one hundred six (106) being assessed at a value of \$135,000.00, it being agreed that if the aggregate number of apartment units constructed is more or less than the contemplated one hundred six (106), the assessed value shall be increased or reduced by \$135,000.00 for each such apartment unit constructed or not constructed, with any retail space, initially determined to be five thousand twenty-five (5,025) square feet, being assessed at \$84.95 per square feet in addition to the apartment valuation.

Phase II

- o Hotel: \$13,770,000.00 as shown on Exhibit B hereof, with each additional hotel room over the contemplated one hundred sixty-two (162) being assessed at a value of \$85,000.00, it being agreed that if the aggregate number of hotel rooms constructed is more or less than the contemplated one hundred sixty-two (162), the assessed value shall be increased or reduced by \$85,000.00 for each such hotel room constructed or not constructed.

- o Park Row West (Apartments): \$12,150,000.00 as shown on Exhibit B hereof, with each additional apartment unit over the contemplated ninety (90) being assessed at a value of \$135,000.00, it being agreed that if the aggregate number of apartment units constructed is more or less than the contemplated ninety (90), the assessed value shall be increased or reduced by \$135,000.00 for each such apartment unit not constructed or constructed.
 - o Office building square footage, if any, shall be valued at \$ 140.00 per square foot on a gross square footage basis.
 - o Personal Property: \$880,000.00 as estimated and illustratively shown on Exhibit B hereof, with each dollar of Personal Property being assessed at fair market value.
- (k) "Stabilized Tax Payment" means, with respect to the Project Taxable Properties, the amounts listed in the schedule attached hereto as Exhibit B.
- (l) "Stabilized Tax Rate" shall mean \$37.00 per \$1,000.00 of assessed valuation for Real Property Improvements and \$49.68 per \$1,000.00 of assessed valuation for Personal Property.
- (m) "Termination Date" means June 30th of the year in which Stabilized Tax Payments based on the December 31, 2023 assessment date are to be paid in full

Section 3. Tax Stabilization. The City of Providence hereby grants to the Project Owner for the Project Site the Stabilized Assessment at the Stabilized Tax Rate in accordance with Exhibit B as attached hereto for the period commencing with the December 31, 2004 assessment date through the December 31, 2023 assessment date.

Section 4. Term. The term of the tax stabilization shall be for a period commencing on the Commencement Date and terminating on the Termination Date, as more particularly described on Exhibit B hereof, unless earlier terminated as provided herein.

Section 5. Stabilized Tax Payments. As long as Project Owner owns or operates the Project Site, it will continue to make the Stabilized Tax Payment(s) as set forth in Exhibit B during the term of this tax stabilization agreement with regard to Phase I and, to the extent that Phase II, in whole or in part, is commenced by Project Owner during the term hereof, Exhibit B shall be modified whereby the schedule will indicate no tax payments due during the first tax year after the issuance of a permit for Phase II with payments for subsequent tax years being determined at the same percentage valuation as applied to Phase I for the duration of the term hereof. Project Owner, its successors and assigns, agrees that this Project Site will be subject to taxation, without regard to tax stabilization, as of the Termination Date and thereafter. Project Owner also agrees not to transfer the Project Site, or any portion thereof, to any tax-exempt entity which does not waive in writing its exemption and right to assert any exemption from any real and/or personal property taxes assessed by the City of Providence ("Waiver") or to allow any transfer by any subsequent transferee to any tax-exempt entity which does not also provide such Waiver during the term of this Agreement to stabilize taxes. Project Owner is also required as a condition precedent to this tax treaty to record notice in the Land Evidence Records of the City of Providence of the requirement that the subject property covered by this ordinance be transferred only to a tax-paying entity or to a tax exempt entity which provides such Waiver as long as this agreement is in effect. In the event that the subject property covered by this ordinance is transferred to a tax-exempt entity without such Waiver, despite the prohibition against such transfer, whether by the Project Owner or any subsequent transferee of such property, the Project Owner will be responsible to make payments in lieu of taxes to the City of Providence equal to the amount of taxes as set forth in Exhibit B which would henceforth have to be paid to the City of Providence if such prohibition against transfer to a tax-exempt entity without a Waiver had not been violated. In the event that Project Owner shall divide the Project Site or convert all or any portion thereof into residential condominiums, such residential unit so converted and sold as a condominium unit shall, upon recording of the deed for transfer of such condominium unit by the Project Owner to a third party purchaser, no longer be covered under this ordinance and shall be subject to taxation without regard to any tax stabilization agreement (the remaining portion of the Project to be prorated accordingly and the Tax Stabilized Payments scheduled hereunder will thereby be reduced accordingly, to be calculated by \$135,000.00 per

unit based on the reduction in the number of units sold as a residential condominium), provided that Project Owner provides written notice of any such sale to the tax assessor of the City of Providence indicating the name(s) of the purchaser, the date of purchase and the purchase price of the unit sold, otherwise said unit shall remain as a part of the tax payments due from Project Owner; it being acknowledged, subject to the above stated provision for proration, that the Project Owner is permitted to create condominiums with respect to each of the building pads as envisioned in the Project, in whole or in part, it being further acknowledged that one of the building pads constituting Phase II of the Project may be converted, in whole or in part, to an office building, and thereafter subject to a tax stabilization schedule, consistent with this plan and approved by the City of Providence.

Section 6. Payment of Taxes. The following shall pertain to the payment of taxes set forth herein:

- (a) The Project Owner shall make Stabilized Tax Payments to the City of Providence as prescribed in the schedule attached in Exhibit B to the City, in lieu of all other real property and personal property taxes and assessments of every kind and nature which would now or hereafter otherwise be levied upon the Project and the City of Providence agrees to accept the Stabilized Tax Payments in lieu of all such other real property and personal property taxes.
- (b) Stabilized Tax Payments due the City of Providence, 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 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 of Providence and similarly subject to interest and late fee penalties if not timely made.
- (c) It is understood by the parties that Stabilized Tax Payments made hereunder are tax payments; and, the Project Owner shall be entitled to all the rights, privileges and obligations of a taxpayer in the City of Providence.

(d) The liability for the Stabilized Tax payments due and owing under this Agreement shall constitute an obligation of the Project Owner, and the City of Providence shall be granted by the Project Owner a lien on the Project Taxable Properties, which lien shall be of the same priority and entitle the City of Providence to the same foreclosure remedy as the lien and foreclosure remedy provided under applicable laws and ordinances with respect to real and personal property taxes, not subject to a tax treaty or this Agreement.

Section 7. Satisfaction of Obligations. The City of Providence agrees that so long as the Stabilized Tax Payments are made by the Project Owner in accordance with the terms of this ordinance, the City of Providence shall, during the term of this Agreement, accept said payments in full satisfaction of the obligations of the Project Owner as to the payment of any and all taxes and property assessments to the City of Providence which would otherwise be levied upon or with respect to the Project Taxable Properties, including future repairs and renovations of the Real Property Improvements and the Personal Property which may now exist or which may hereafter be placed or erected thereon or located thereat or used therein, but excluding material additional improvements beyond that contemplated in the Project.

Section 8. Minority and Local Contractors/Vendors. It shall be the goal and the Project Owner shall use its best efforts to hire contractors and subcontractors and to purchase construction materials from entities which/who are situated in and/or are residents of the City of Providence. Further, the Project Owner shall use its best efforts to award 25% of the total dollar value of construction to Minority Business Enterprises ("MBEs") and Women Business Enterprises ("WBEs"). These are enterprises with at least 51 % of business ownership by a minority (Black, Hispanic, American Indian, or of a group found to be economically or socially disadvantaged by the Small Business Administration) or a woman, as certified by state agency or by the Director of the Department of Planning and Development, City of Providence. The total fee and non-biddable "General Conditions" of the prime contractor will be deducted from the calculation. The Project Owner will use its best efforts to work with the prime contractor to reduce the size of bid packages where possible so as to maximize accessibility of contract work to small contractors from the community.

It is the 'intent of the parties that the participation of each element of business enterprise not fall below twelve and a half (12.5%) percent.

Section 9. Employment. Project Owner will include in all subcontracts an affirmative action and community hiring program in which the employer commits to notify Project Owner of any job openings at the Project Site and to a willingness to interview candidates identified through said program. Project Owner has set a target minimum of thirty (30) community hires over the course of the Project construction period. In addition, Project Owner agrees to provide training and/or apprenticeships for City of Providence residents hired on the Project. Such training and/or apprenticeship program shall be submitted in writing to the Director of the Department of Planning and Development, City of Providence, for his or her written approval, as a condition precedent to any tax stabilization as envisioned under this ordinance, which may include an apprenticeship created under Section 28-45-1, et seq., of the General Laws of Rhode Island, as amended.

Section 10. Support for Affordable Housing. (a) Project Owner and all successors and assigns shall make a \$784,000.00 contribution to the Providence Redevelopment Authority to support affordable housing and community services as follows:

- (i) \$100,000.00 to be contributed upon passage hereof; and,
- (ii) \$36,000.00 to be contributed on each of June 30, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023.

The contributions made by Project Owner shall be directed to a housing trust for the development of affordable housing and/or community services with a preference for affordable housing and community services in the Smith Hill section, so-called, of the City of Providence.

Section 11. Purpose. The City of Providence has entered into this tax treaty to provide residential, retail, office, hotel and other commercial units in the City of Providence and to increase its tax base as a result of such construction. This treaty shall be in effect during its term as long as the property is utilized primarily for the Project and failure to use the Project Site primarily for such purposes renders the treaty null and void. This ordinance does not extend to any building or buildings used as a "dormitory" or an "apartment dormitory." The use of any building or a portion of a building for "dormitory" or "apartment dormitory" purposes would

render the treaty null and void. The treaty being rendered null and void for any reason would require the Project Owner to pay all taxes and fees as due and owing as if no treaty had been entered.

Section 12. Basis of Calculation. The schedule listed in Exhibit B is based, in part, upon information provided to the tax assessor of the City of Providence by Project Owner. This tax treaty is conditioned upon commencement of construction by December 31, 2005. Failure to begin construction by December 31, 2005 renders the treaty null and void and shall subject the Project Owner liable for the real estate and tangibles that would have been assessed against such property as if no treaty had been entered.

Section 13. Back Taxes. This treaty is conditioned upon Project Owner at all times owing no back taxes to the City of Providence and remaining current on all payments due under this tax treaty. Failure to make timely payments may render this treaty null and void.

Section 14. Reporting and Monitoring. Project Owner shall, not less than sixty (60) days after the end of each fiscal year of the Project Owner, submit to the Director, Department of Planning and Development of the City of Providence, a report that will provide evidence of compliance with Sections 8, 9 and 10 hereof on forms provided by said director for said purpose. The director may require additional information to demonstrate compliance.

Section 15. Notices. All notices, certificates, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this section, collectively called "Notices") shall be in writing and shall be sent by registered or certified mail, postage pre-paid, return receipt requested and received overnight delivery by a recognized public or private carrier, or by facsimile, in either case as evidenced by a receipt or other evidence of delivery showing the date, time and, for facsimile, telephone number or receipt and addressed to the party to receive such Notice as identified below:

If to: City of Providence
City Hall
25 Dorrance Street
Providence, RI 02903
Attn: Mayor, City of Providence

Copies to: City Solicitor
City of Providence
275 Westminster Street, 2nd Fl.
Providence, RI 02903

Director, Department of Planning and Development
400 Westminister Street
Providence, RI 02903

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Clerk, City of Providence
City Hall
25 Dorrance Street
Providence, RI 02903

If to: Intercontinental Fund IV Waterplace, LLC
c/o Intercontinental Developers, Inc.
1270 Soldiers Field Road
Boston, MA 02135
Attn: Nicholas Iselin, Director

Copy to: Adler Pollock & Sheehan, P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903
Attn: Richard Licht, Esq.

Section 16. Penalties and Petition for Relief. In the event that Project Owner does not substantially comply in all material respects with any and/or all of material provisions of this ordinance, the Director of the Department of Planning and Development, City of Providence, may provide written notice, mailed by certified mail, postage-prepaid, return receipt requested, to Project Owner at its/his/her last known address, setting forth the nature of such non-compliance and the date upon which the relevant portion of the tax stabilization agreement shall be rendered null and void because of such non-compliance, unless said non-compliance is cured prior to said date ("Early Termination Date"). If there exists a default of any provision under this tax stabilization agreement brought about specifically by the actions or inactions of a Project Owner with regard to a specific Phase for which a letter of non-compliance and subsequent voiding of the tax stabilization agreement is issued such consequence shall only apply to the Phase in question and shall not affect the validity of the tax stabilization agreement with regards to the other Phase(s). The full tax which would otherwise have been due and payable for the Phase subject to such letter of non-compliance, if there had been no tax stabilization agreement, plus interest and penalties as provided by law ("Full Tax"), will become immediately due and payable on the Early Termination Date, with the calculation thereof being contained in the notice. However, the Early Termination Date shall be at least one hundred and twenty (120) days from the mailing of the written notice Project Owner may petition the City Council, City of Providence, for a hearing with respect to the issue of non-compliance. The hearing shall be held within sixty (60) days of the receipt of the petition by the City Clerk, City of Providence. At the hearing Project Owner shall have an opportunity to present evidence of compliance and/or

request relief. In the event that the City Council, City of Providence, does not act after a hearing of the Project Owner prior to the early Termination Date, the determination of the Director, Department of Planning and Development, City of Providence, shall be conclusive and Project Owner shall immediately make payment of the Full Tax to the City of Providence.

Section 17. Expiration Dates. That in accordance with the laws of the State of Rhode Island and the Code of Ordinances of the City of Providence, the City Council hereby approves the Project Owner's application for tax stabilization as set forth as Exhibit A and authorizes said tax stabilization as provided in this ordinance in accordance with it and with the schedule of payments set forth in Exhibit B.

Section 18. Applicable Law. This Agreement shall be construed under the laws of the State of Rhode Island.

Section 19. Effective Date. This ordinance shall take effect upon its passage.

IN CITY COUNCIL
OCT 15 2009
FIRST READING
READ AND PASSED

Ann M. Stata CLERK

IN CITY
COUNCIL
NOV 5 2009
FINAL READING
READ AND PASSED

Josephine DiFuzzo
ACTING PRESIDENT
Ann M. Stata
CLERK

APPROVED

[Signature]

MAYOR 11/16/09