

CHAPTER 2016-33

No. 330 AN ORDINANCE EXTENDING EXISTING STABILIZATION PLANS FOR 60 VALLEY STREET, LLC AND 166 VALLEY STREET, LLC ON BEHALF OF THE RISING SUN MILLS PROJECT

Approved August 5, 2016

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, 60 Valley Street, LLC, which has become known to the community as “The Plant”, and 166 Valley Street, LLC, which has become known to the community as “Rising Sun Mills”, have each previously 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, 60 Valley Street, LLC is the owner of the property located at 60 Valley Street, Assessor’s Plat 35, Lot 572 in the City of Providence (hereinafter referred to as the “60 Valley Street Project”) previously applied for, and was granted, a Tax Stabilization Plan by the City Council under Chapter 2006-44 on September 26, 2006 for a building on the City’s landmark list which has been rehabilitated and converted to a mixed use development containing commercial, residential and retail space units which have enhanced the tax base in the City of Providence; and

WHEREAS, the Tax Stabilization Plan granted to 60 Valley Street, LLC 60 Valley Street Project is scheduled to expire and 60 Valley Street, LLC is requesting additional relief in the form of a Tax Stabilization Plan, the terms of which are contained herein; and

WHEREAS, 166 Valley Street, LLC, owner of the property located 166 Valley Street, Assessor’s Plat 62, Lots 282, 301 and 393, (hereinafter referred to as the “Rise Sun Mills Project”) applied for, and was granted, a Tax Stabilization Plan by the City Council under Chapter 2003-61, Ordinance No. 745, on December 21, 2003, for buildings on the City of Providence’s landmark list which have been rehabilitated and converted to mixed use buildings

consisting of commercial, retail and residential units which have enhanced the City's tax base, revitalized the surrounding neighborhood and increased the availability of affordable housing units in the City of Providence; and

WHEREAS, the Tax Stabilization Plan granted to 166 Valley Street, LLC for the Rising Sun Mills Project is scheduled to expire on December 31, 2016 and 166 Valley Street, 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 enhanced the tax base, revitalized the surrounding neighborhoods and have attracted valuable tenants and businesses to relocate into the Olneyville neighborhood of the City; 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 availability of affordable housing, supported various community programs in the City, enhanced the City's tax base and generated the promised benefits to the City as contemplated by their respective Tax Stabilizations Plans, these Projects been 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, 166 Valley Street, LLC has contributed \$186,000 to the Affordable Housing Trust Fund of the Providence Redevelopment Authority as required under the original Tax Stabilization Plan granted by the City Council and continues to contribute to that fund on an annual basis; 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 neighborhood in which they are located and maintain the great strides towards revitalization of the community 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 of each respective Project Site to restructure and/or refinance its current debt obligations to protect the long term fiscal health of these Projects so that they can continue to generate benefits to the City and protect the initial investment made by the City when it entered into the initial Tax Stabilization Agreement by avoiding potential default or foreclosure; 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 commercial and residential tenants and an increased vacancy rate for real estate in the surrounding neighborhood; and

WHEREAS, in exchange for the extension of the Tax Stabilization Plan, the Project Owners of 166 Valley Street will make an additional investment of approximately \$5 million which shall be used to convert approximately 85,000 square feet of the building from a single tenant space to multiple commercial spaces. This will assist in the Project Owners in attracting new tenants to the Project and will create new construction and potential permanent jobs at the Project Site; 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 surrounding 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) "60 Valley Street Project Owners" means 60 Valley Street, LLC or any entity with the right, and interest in and to the 60 Valley Street Project Site (or portion thereof), including successors to units and/or subunits of the 60 Valley Street Project Site.
- (d) "Rising Sun Mills Project Owners" means 166 Valley Street, LLC or any entity with the right, and interest in and to the Rising Sun Mills Project Site (or portion thereof), including successors to units and/or subunits of the Rising Sun Mills Project Site.
- (e) "60 Valley Street Project Site" means 60 Valley Street on Assessor's Plat 35, Lot 572 in the City of Providence.
- (f) "Rising Sun Mills Project Site" means 166 Valley Street, on Assessor's Plat 62, Lot 282, 301 and 393 in the City of Providence.
- (g) "Project Sites" means the collective properties located at the 60 Valley Street and Rising Sun Mills Project Sites.
- (h) "Project Taxable Properties" means, collectively, the Project Sites, the Real Property Improvements and the Personal Property thereon and therein, together constituting the Projects.
- (i) "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.
- (j) "Projects" means, collectively, 60 Valley Street and Rising Sun Mills Project Sites, and the Real Property Improvements thereon and the Personal Property therein.
- (k) "Stabilized Tax Payments" means, with respect to the Project Taxable Properties, the amounts listed in Section 8 below.
- (l) "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 the Project Site to a tax exempt entity in the first five years immediately following the expiration of this Ordinance, the Project Owner agrees that a percentage of the sale price will be paid to the City of Providence as follows: if the property is sold to a tax exempt entity in the first year immediately following the expiration of the Ordinance then the Project Owner shall pay five percent (5%) of the sale price to the City; if the property is sold to a tax exempt entity in the second year immediately following the expiration of the Ordinance then the Project Owner shall pay four percent (4%) of the sale price to the City; if the property is sold to a tax exempt entity in the third year immediately following the expiration of the Ordinance then the Project Owner shall pay three percent (3%) of the sale price to the City; if the property is sold to a tax exempt entity in the fourth year immediately following the expiration of the Ordinance then the Project Owner shall pay two percent (2%) of the sale price to the City; and if the property is sold to a tax exempt entity in the fifth year immediately following the expiration of the Ordinance then the Project Owner shall pay one percent (1%) of the sale price to the City. 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 frame 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.
- (f) Any failure to make Stabilized Payments as called for herein as to a particular Project Owner of a particular unit or subunit at the Project Site shall not effect any of the other Project Owners of the other units and subunits located at the Project Site and shall not render any of said units or subunits in default of the terms of this Ordinance.

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, and maintain existing and attract new investors and businesses into the neighborhood and to continue to revitalize the surrounding community. 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 2003 and 2006 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, maintain existing and further attract new tenants, spur an approximately \$5 million additional investment in the economic footprint of the existing Projects, and enhance the tax base in the City and reasonably phase all Projects into paying full assessed taxes.

The Project Site owner shall complete the rehabilitation of the Project Site in phases over the life of the extension. The Project Site owner shall have one hundred eighty (180) days from the Effective Date of this Ordinance to apply for its initial necessary applicable building or demolition permits to commence the rehabilitation of the Project Site. Failure to apply for initial applicable building or demolition permits within one hundred eighty (180) days of the Effective Date shall render this Ordinance null and void after a ninety (90) days notice and cure period as referenced in this Ordinance. The Project Site owner may be entitled to an extension of time for performance of the requirements contained herein relative to applying for initial building permits if, for any cause beyond the reasonable control of the Project Site Owner, including, without limitation, strikes and/or labor disputes, accidents, invasion, riot, rebellion, civil commotion, insurrection, acts of terrorism against the interest of the United States, any act or judgment of any court granted in any legal proceeding, acts of god such as fire, wind, water or lightning, explosion, significant financial market downturns, acts of government or faults or delays caused by subcontractors to provide service due to circumstances such as those cited above ("Force Majeure Event"), the application for initial applicable building and/or demolition permits are delayed. In the event of such a delay caused by a Force Majeure Event, the Project Site Owner may request an extension equal to the number of days caused by the Force Majeure Event, provided that in no event shall the Project Site Owner delay the aforementioned requirements beyond the term of this Ordinance.

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. Extension of Tax Stabilization Plan. 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, provided that in no event shall any Project Owner's stabilized tax bill be for a lesser amount than what that particular Project Owner has paid during the original term of the Tax Stabilization Plan. For example, in Year 1 the Project Owners will pay twenty five (25) percent of the then current full value assessment. 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.

60 Valley Street Project

Year	Percent of Full Taxes Due
Year 1	25%
Year 2	40%
Year 3	55%
Year 4	70%
Year 5	95%

Rising Sun Mills Project

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

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

Section 11.

Agreed Upon Address for Purposes of Written Notice. All notices, requests, consents, approvals, and any other communication which may 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:

Original to:

City of Providence
Office of the City Clerk
25 Dorrance St.
Providence, RI 02903

*Accompanied by 9 copies thereof

Original to:

Armory Revival Company
334 Broadway
Providence, RI 02903

Copy to:

DarrowEverett, LLP
One Turks Head Place, Suite 1200
Providence, Rhode Island 02903

Section 12. Effective Date. This Ordinance shall become effective for each individual Project upon the expiration of the Project's current Tax Stabilization Plan.

Section 13. 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 Providence Code of Ordinances, as amended.

Section 14. 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 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.

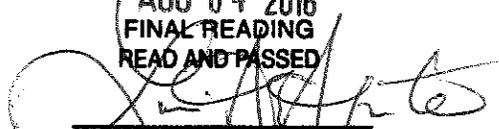
IN CITY COUNCIL
AUG 02 2016

FIRST READING
READ AND PASSED

 CLERK

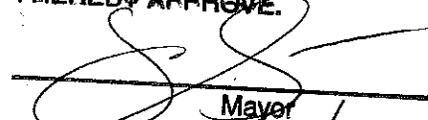
IN CITY
COUNCIL

AUG 04 2016
FINAL READING
READ AND PASSED


PRESIDENT

CLERK

I HEREBY APPROVE.


Mayer
Date: 8/5/16