

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2010-4

No. 92

AN ORDINANCE AMENDMENT IN ENTIRETY OF NO. 88 OF CHAPTER 2005-17 OF THE PROVIDENCE CODE OF ORDINANCES ESTABLISHING AND GRANTING A TAX STABILIZATION PLAN FOR CAPITOL COVE, LLC, WITH RESPECT TO ASSESSOR'S PLAT 4, LOTS 261, 262 AND 263 (FORMERLY ASSESSOR'S PLAT 4, LOT 247) OF THE CITY OF PROVIDENCE

Approved **MARCH 8, 2010**

Be it ordained by the City of Providence:

WHEREAS, the City Council of the City of Providence, 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 of Providence which will result in a 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 of the City of Providence, 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 Cove, LLC, a Rhode Island limited liability company (defined below as the "Project Owner") has made application for tax stabilization 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 80 Smith Street, more specifically described as Assessor's Plat 4, Lots 261, 262 and 263 (formerly Plat 4, Lot 247); and

WHEREAS, the Project Owner, as the long term lessee of said Lots 261, 262 and 263 has evidenced a willingness to construct multi-story apartment building consisting of two hundred and sixty-five (265) apartments and three hundred and thirty (330) parking spaces, with 1,500 square feet of retail space on its first floor on ("Phase IA and Phase I B," as further described below), and to explore the possibility of constructing of two (2) additional multi-story residential buildings on the site ("Phase II" and/or "Phase III," as further described below) (collectively, the "Project"); and,

WHEREAS, the Project will result in an increase in the tax base of the City of Providence, an increase in expenditures by residents in the City of Providence and will increase employment opportunities in the City of Providence; and

WHEREAS, the City Council of the City of Providence has determined it is in the best interests of the residents of the City of Providence to grant such tax stabilization to induce the development of The Capital Center Project, generally, and this Project, specifically, 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 IA" means the 96 apartment, 112 parking space, 1500 square feet retail space, residential complex situated on said Lot 261. Phase I B means the proposed 169 apartment, 218 parking space, residential complex situated on said Lot 262. "Phase II" means the multi-story residential building anticipated to be situated on said Lot 263; and, "Phase III" means the multi-story residential building, anticipated to be situated on said Lot 263.
- (d) "Project" means the Project Site (as hereinafter defined), the Real Property Improvements (as hereinafter defined), and Personal Property.
- (e) "Project Owner" means Capitol Cove, LLC, which is the (i) lessee or sublessee under a ground lease with Capital Properties, Inc. (the "Ground Lease"), of the Project Site (as hereinafter defined), and (ii) which holds legal title to the Real Property Improvements (as hereinafter defined) or Personal Property, or any successor and/or assignee permitted hereunder.
- (f) "Project Site" means the property located at 80 Smith Street and more specifically described as Assessor's Plat 4, Lots 261, 262 and 263 (formerly Plat 4, Lot 247).
- (g) "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.
- (h) "Real Property Improvements" means all structures, buildings, renovations and improvements currently proposed to be located at the Project Site. Any material additional improvements, excluding customary repairs and renovations, shall require an amendment to this ordinance, except as provided herein.

(i) "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, 2003, as shown on Exhibit B attached hereto and incorporated by reference., being \$13,350,000 for the Project Site, with \$5,350,000 thereof being allocated between Phase IA and Phase I B (being Lots 261 and 262 of Assessor's Plat 4) as reasonably determined by the tax assessor after consultation with the Project Owner and the balance of \$8,000,000 being allocated between Phases II and III (being Lot 263 of Assessor's Plat 4) as reasonably determined by the tax assessor after consultation with the Project Owner.

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

- Phase IA and Phase I B: Two hundred and sixty-five (265) apartments, three hundred and thirty (330) parking spaces, with 1,500' first floor retail space, as shown on Exhibit B hereof
- Phases II and III: Two (2) multi-story residential complexes: Assessment will be determined upon request to the tax assessor of the City of Providence, based on the sum of the product of the number of residential units times \$125,000, plus the number of parking spaces times \$10,000, if any, plus the retail square footage times \$84.95, if any, for each phase, with the tax assessor setting forth a schedule using the remaining years left under the term of the tax stabilization agreement in modification of Exhibit B.
- (i) "Stabilized Tax Payment" means, with respect to the Project Taxable Properties, the amounts listed in the schedule attached hereto as Exhibit B, as it may be amended through the calculations of the tax assessor if and when Phases II and III are or are not developed, as provided for herein.

(j) "Stabilized Tax Rate" shall mean \$38.82 per \$1,000.00 of assessed valuation for Real Property Improvements and \$49.68 per \$1,000.00 of assessed valuation for Personal Property.

(k) "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. That the City of Providence grants to the Project Owner for the Project Site the Stabilized Assessment at the Stabilized Tax Rate in accordance with Exhibit B as attached for the period commencing with the December 31, 2004 assessment date through the December 31, 2023 assessment date; provided, however, that in the event that Project Owner does not commence construction of Phase II and/or Phase III of the Project on or before

December 31, 2006, no tax stabilization shall apply to the portion of the Project not so commenced and that portion of the Project Site allocated to said phase or phases of the Project shall be taxed at its full and fair market value as assessed on December 31, 2006.

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. 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. 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 or assign the Project Site, or any portion thereof, to any tax-exempt entity or to allow any transfer or assignment by any subsequent transferee to any tax-exempt entity during the term of this agreement to stabilize taxes; provided, further, that, with respect to Phase IA, there shall be no transfer or assignment to a tax-exempt entity during the term of the Ground Lease. 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 as long as this agreement is in effect. In the event that the Project Site, or any portion thereof is transferred to a tax-exempt entity, despite the prohibition against such transfer, whether by Capitol Cove, LLC, or any subsequent transferee of such property, Capitol Cove, LLC, will be responsible to make payments in lieu of taxes to the City of Providence equal to the full amount of taxes during the entirety of the tax stabilization term as set forth in Exhibit B which would have been paid to the City of Providence if such prohibition against transfer to a tax-exempt entity had not been violated subject to Section 16. In the event that Project Owner shall divide the Project Site or any portion thereof into residential and/or commercial condominiums, said residential and/or commercial condominiums, once sold by the Project Owner, shall 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 shall be prorated accordingly). Project Owner shall send written notice of any such sale or sales to the tax assessor, by certified mail, postage pre-paid, return receipt requested, identifying the unit sold, the date thereof, the sale price, and the buyer's name and current address.

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 of Providence, 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 such real property and personal property taxes on the Project (it being understood that the proposed Phases II and III require a written request to the tax assessor, City of Providence, for a determination of the tax stabilization available to such phase and/or phases).
- (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.
- (e) Notwithstanding anything to the contrary contained herein, if the Project Owner does not commence construction on either Phase II or Phase III on or before December 31, 2006, Project Owner shall make a tax payment, in addition to those payments required under Exhibit B, in the sum of \$100,000 on or before January 1, 2007.

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 customary repairs and customary 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 renovations or 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"), as defined in and pursuant to Section 21-52 of the Code of City Ordinances, City of Providence, as certified by state agency or 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 this 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 minority and women business enterprise not fall below twelve and a half (12.5%) percent.

Section 9. First Source and Employment. The Project Owner shall in all respects comply with the First Source Ordinance, so-called, and shall enter a contract with the City of Providence which contract shall set forth the obligations of the Project Owner. Further, the 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 ten (10%) percent of total hires as 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 \$392,000.00 contribution to the Providence Redevelopment Authority with respect to Phase I to support affordable housing and community services as follows:

- (i) \$50,000.00 to be contributed on or before June 30, 2005; and,
- (ii) \$18,000.00 to be contributed on or before June 30 of each of the nineteen (19) years thereafter.

The contributions to be made in connection with Phases II and III shall be determined at the time of application for tax stabilization using the same formula used to determine the Phase I contribution, except that the payments shall be made within the time frame then existing under the term of the agreement. 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 and 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 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. Notwithstanding the foregoing prohibition against the use of any building or buildings on the Project Site as a "dormitory" or "apartment dormitory," the Project Owner will be permitted to lease the building on Lot 261 of Assessor's Plat 4 for such purpose for a period not to exceed five (5) years,

commencing September 1, 2009 and ending August 31, 2014, during the term of tax stabilization; provided, that, all payments required under this tax stabilization are paid as required hereunder.

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 including, but not limited to, estimated construction costs. In the event that any of this information is inaccurate or proves to be materially erroneous, this treaty shall be modified to reflect the accurate information. This tax treaty is conditioned upon commencement of construction by June 30, 2005. Failure to begin construction by June 30, 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 Westminister Street, 2nd Fl.
 Providence, RI 02903

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

City Clerk
 City of Providence
 City Hall
 Providence, RI 02903

If to: Capitol Cove, LLC
 120 Seavor Street
 Brookline, MA 02445

Copy to: Adler Pollock & Sheehan P.C.
 One Citizens Plaza, 8th Floor
 Providence, RI 02903-1345
 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 the material provisions of this ordinance, the Director of the Department of Planning and Development, City of Providence, may provide written notice, mailed, postage-prepaid, 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 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 written notice. Project Owner may petition the City Council of the 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 of the City of Providence, does not act after a hearing of Project Owner prior to the Early Termination

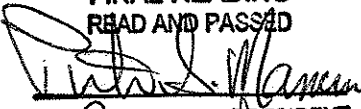
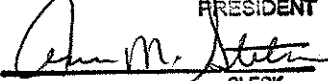
Date, the determination of the Director, Department of Planning and Development, City of Providence, shall be conclusive and Project Owner shall immediately make payment of the Full Tax to the City of Providence.

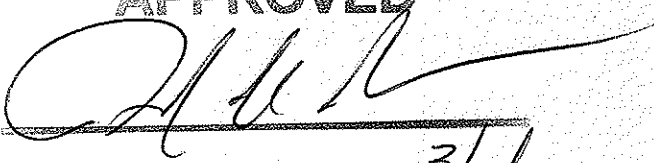
Section 17. Expiration Dates. That in accordance with the laws of the State of Rhode Island and the Code of Ordinances of the City of Providence, the City Council of the City of Providence hereby approves the Project Owner's application for tax stabilization as set forth as Exhibit A and authorizes said 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
FEB 18 2010
FIRST READING
READ AND PASSED

CLERK

IN CITY
COUNCIL
MAR 4 2010
FINAL READING
READ AND PASSED

PRESIDENT

CLERK

APPROVED

MAYOR 3/8/10

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER

No.

AN ORDINANCE AMENDMENT IN ENTIRETY OF NO. 88 OF CHAPTER 2005-17 OF THE PROVIDENCE CODE OF ORDINANCES ESTABLISHING AND GRANTING A TAX STABILIZATION PLAN FOR CAPITOL COVE, LLC, WITH RESPECT TO ASSESSOR'S PLAT 4, LOTS 261, 262 AND 263 (FORMERLY ASSESSOR'S PLAT 4, LOT 247) OF THE CITY OF PROVIDENCE

Approved

Be it ordained by the City of Providence:

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WHEREAS, Capitol Cove, LLC, a Rhode Island limited liability company (defined below as the "Project Owner") has made application for tax stabilization 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 80 Smith Street, more specifically described as Assessor's Plat 4, Lots 261, 262 and 263 (formerly Plat 4, Lot 247-being Parcel 6A in The Capital Center Project, so-called); and

WHEREAS, the Project Owner, as the long term lessee of said ~~Parcel 6A~~ Lots 261, 262 and 263 has evidenced a willingness to construct multi-story apartment building consisting of two hundred and sixty-five (265) apartments and three hundred and thirty (330) parking spaces, with 1,500 square feet of retail space on its first floor on ("Phase IA and Phase I B," as further described below), and to explore the possibility of constructing of two (2) additional multi-story

residential buildings on the site (“Phase II” and/or “Phase III,” as further described below) (collectively, the “Project”); and,

WHEREAS, the Project will result in an increase in the tax base of the City of Providence, an increase in expenditures by residents in the City of Providence and will increase employment opportunities in the City of Providence; and

WHEREAS, the City Council of the City of Providence has determined it is in the best interests of the residents of the City of Providence to grant such tax stabilization to induce the development of The Capital Center Project, generally, and this Project, specifically, and such tax stabilization will inure to the long-term benefit of the City of Providence,

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- (c) “Phase IA” means the the 96 apartment, 112 parking space, 1500 square feet retail space, residential complex ~~two hundred and sixty five (265) apartment, three hundred and thirty (330) parking space, 1,500 square retail space, residential complex to be situated on said Lot 261. Phase I B means the proposed 169 apartment, 218 parking space, residential complex situated on said Lot 262, as designated as such on the subdivision plan approved by the Providence City Plan Commission on June 22, 2004 and designated “Plan 04-047MI, Assessor’s Plat 4, Lot 247” (the, “Sub-division”)~~. “Phase II” means the multi-story residential building anticipated to be situated on said Lot 263; and, “Phase III” means the multi-story residential building, anticipated to be situated on said Lot 263 ~~New Lot C of the Sub-division~~.
- (d) “Project” means the Project Site (as hereinafter defined), the Real Property Improvements (as hereinafter defined), and Personal Property.
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- (g) "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.
- (h) "Real Property Improvements" means all structures, buildings, renovations and improvements currently proposed to be located at the Project Site. Any material additional improvements, excluding customary repairs and renovations, shall require an amendment to this ordinance, except as provided herein.
- (i) "Stabilized Assessment" means:
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 - (2) the Real Property Improvements shall be assessed as follows:
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(j) "Stabilized Tax Rate" shall mean \$38.82 per \$1,000.00 of assessed valuation for Real Property Improvements and \$49.68 per \$1,000.00 of assessed valuation for Personal Property.

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against transfer to a tax-exempt entity had not been violated subject to Section 16. In the event that Project Owner shall divide the Project Site or any portion thereof into residential and/or commercial condominiums, said residential and/or commercial condominiums, once sold by the Project Owner, shall 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 shall be prorated accordingly). Project Owner shall send written notice of any such sale or sales to the tax assessor, by certified mail, postage pre-paid, return receipt requested, identifying the unit sold, the date thereof, the sale price, and the buyer's name and current address.

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 of Providence, 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 such real property and personal property taxes on the Project (it being understood that the proposed Phases II and III require a written request to the tax assessor, City of Providence, for a determination of the tax stabilization available to such phase and/or phases).
- (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.

- (e) Notwithstanding anything to the contrary contained herein, if the Project Owner does not commence construction on either Phase II or Phase III on or before December 31, 2006, Project Owner shall make a tax payment, in addition to those payments required under Exhibit B, in the sum of \$100,000 on or before January 1, 2007.

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 customary repairs and customary 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 renovations or 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"), as defined in and pursuant to Section 21-52 of the Code of City Ordinances, City of Providence, as certified by state agency or 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 this 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 minority and women business enterprise not fall below twelve and a half (12.5%) percent.

Section 9. First Source and Employment. The Project Owner shall in all respects comply with the First Source Ordinance, so-called, and shall enter a contract with the City of Providence which contract shall set forth the obligations of the Project Owner. Further, the 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 ten (10%) percent of total hires as 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 \$392,000.00 contribution to the Providence Redevelopment Authority with respect to Phase I to support affordable housing and community services as follows:

- (i) \$50,000.00 to be contributed on or before June 30, 2005; and,
- (ii) \$18,000.00 to be contributed on or before June 30 of each of the nineteen (19) years thereafter.

The contributions to be made in connection with Phases II and III shall be determined at the time of application for tax stabilization using the same formula used to determine the Phase I contribution, except that the payments shall be made within the time frame then existing under the term of the agreement. 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 and 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 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. Notwithstanding the foregoing prohibition against the use of any building or buildings on the Project Site as a "dormitory" or "apartment dormitory," the Project Owner will be permitted to lease the building on Lot 261 of Assessor's Plat 4 for such purpose for a period not to exceed five (5) years, commencing September 1, 2009 and ending August 31, 2014, during the term of tax stabilization; provided, that, all payments required under this tax stabilization are paid as required hereunder.

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 including, but not limited to, estimated construction costs. In the event that any of this information is inaccurate or proves to be materially erroneous, this treaty shall be modified to reflect the accurate information. This tax treaty is conditioned upon commencement of construction by June 30, 2005. Failure to begin construction by June 30, 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 Westminister Street, 2nd Fl.
 Providence, RI 02903

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

City Clerk
City of Providence
City Hall
Providence, RI 02903

If to: Capitol Cove, LLC
 120 Seavor Street
 Brookline, MA 02445

Copy to: ~~Tillinghast, Licht, Perkins, Smith and Cohen, LLP~~
10 Weybosset Street
Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
 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 the material provisions of this ordinance, the Director of the Department of Planning and Development, City of Providence, may provide written notice, mailed, postage-prepaid, 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 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 written notice. Project Owner may petition the City Council of the 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 of the City of Providence, does not act after a hearing of 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 of the City of Providence 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.