

RESOLUTION OF THE CITY COUNCIL

No. 759

Approved October 29, 1993

WHEREAS, The City wishes to develop the site of the former Manton Avenue landfill, and

WHEREAS, Such development poses the potential for the need of remedial environmental action, and

WHEREAS, The City is cognizant of its responsibility in that regard,

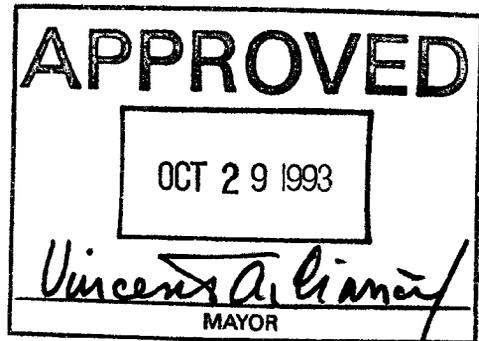
NOW, THEREFORE, BE IT RESOLVED, That His Honor the Mayor is hereby authorized to execute an indemnification agreement between Konover Development Corporation and the City of Providence substantially in accordance with the form attached hereto.

IN CITY COUNCIL

OCT 29 1993

READ AND PASSED AS AMENDED:

James H. Scamilli
PRES.
Michael R. Clement
CLERK



THE COMMITTEE ON
PUBLIC WORKS

Approves Passage of
The Within Resolution

Barbara A. Fairer
Chairman

10/14/93 Clerk

ENVIRONMENTAL INDEMNIFICATION AGREEMENT

This Indemnification Agreement (the "Agreement") is made as of this ____ day of _____, 1993 by and between KONOVER DEVELOPMENT CORPORATION, a Connecticut corporation with its principal place of business at 2410 Albany Avenue, West Hartford, Connecticut 06117 ("Konover") and the CITY OF PROVIDENCE, RHODE ISLAND (the "City").

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties hereto, the parties hereby agree as follows:

Section 1. Recitals.

1.1. Konover has executed certain Purchase and Sale Agreements to purchase property located on Manton Avenue in Providence, Rhode Island and more particularly described on Exhibit A attached hereto (the "Properties"), on which Konover plans to develop a retail shopping center.

1.2 A portion of the Properties was previously operated by the City as a municipal solid waste landfill facility (the "City Landfill").

1.3. Konover is unwilling to complete the purchase and development of the Properties unless the City agrees to indemnify and hold Konover harmless from and against certain matters which may arise as a result of or in connection with the use and operation by the City of a portion of the Properties as the City Landfill.

1.4 As part of the development of the Properties, Konover is obtaining approvals from state regulatory agencies with respect to the closure of the City Landfill without expense to the City.

1.5 The City deems it desirable that the Properties be developed and enters into this Agreement as an inducement to Konover and all Indemnified Parties (as hereinafter defined) to own, develop, lease, finance and operate the Properties.

1.6 The City has full power and authority to execute and deliver this Indemnification Agreement and to assume liability hereunder.

Section 2. Agreements.

2.1 The City represents and warrants to Konover (and all Indemnified Parties, as hereinafter defined) that (a) to the best knowledge of the City, neither the Properties nor the City are in violation of, or subject to any existing, pending, or threatened

investigation by any federal, state or local governmental authority under, any law, statute, ordinance, or regulation, including without limitation any of the Acts set forth in Section 2.2 hereof; and (b) to the best knowledge of the City, no "Hazardous Substance" (as defined in the Acts) has been released or disposed of onto the Properties.

2.2 The City agrees unconditionally and absolutely to defend, indemnify and hold the Indemnified Parties harmless from and against all losses, liabilities, damages (including but not limited to consequential damages), all costs incurred by any of the Indemnified Parties for the abatement, remediation, removal, handling, storage, transportation and/or disposal of Hazardous Substances upon or emanating from the Properties, (including, without limitation, environmental site assessment fees, site monitoring fees and any costs incurred by the Indemnified Parties for the clean-up of any disposal site at which any such Hazardous Substances may have been lawfully disposed), diminution in value, unmarketability, costs and expenses (including but not limited to attorneys' fees and expenses), causes of actions, suits, claims, demands and judgments of any nature suffered or incurred by any Indemnified Party and arising out of or in connection with:

(a) the release or presence of any Hazardous Substance on or in the Properties or migration of any Hazardous Substance arising from the operation by the City of the City Landfill;

(b) any failure by the City to comply with the terms of any provision of the Acts or of any order of the Rhode Island Department of Environmental Management or any other federal, state or municipal department or agency, board, commission, court, department or other governmental authority having regulatory authority over environmental matters, with regard to the City Landfill; and

(c) the falsity of any representation made herein; and

(d) the operation by the City of the City Landfill.

2.3 (a) As used herein, the term Hazardous Substance shall mean and include PCBs, asbestos, radon, oil, or any "hazardous waste", "hazardous substance" or "hazardous material" as defined and/or used in any of the following (collectively, the "Acts"): The Hazardous Waste Management Act of 1978, R.I.G.L. §23-19.1-1 et seq. as amended, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq., as amended or "solid waste" as defined in R.I.G.L. §23-18.9-7 et seq. or "municipal solid waste" as defined in 42 U.S.C. §6903(27), any other federal or state laws now existing or hereafter enacted with respect to hazardous materials; and the regulations adopted and publications promulgated pursuant to any of the foregoing.

(b) as used herein "Indemnified Party" shall mean, collectively:

(i) Konover, and any entity controlling, controlled by or in common control with Konover;

(ii) any successor in interest to Konover (a "Successor Purchaser") with respect to the Purchase and Sales Agreements with respect to the Properties,

(iii) any successor-in-interest to Konover (and to any Successor Purchaser) with respect to ownership of the Properties;

(iv) any tenant of the Properties; and

(v) any mortgagee of the Properties, both before and after foreclosure (or deed in lieu thereof), and successor-in-interest to such mortgagee, both before and after foreclosure (or deed in lieu thereof).

(vi) any and all officers, directors, shareholders, partners, trustees, beneficiaries, owners, agents, employees, attorneys, consultants, and personal representatives of the foregoing.

2.4 If any claim is made or brought against any Indemnified Party which is subject to the indemnification set forth in this Agreement, the City shall, at the request of such Indemnified Party defend the same, if necessary in the name of such Indemnified Party, by attorneys approved by such Indemnified Party. Notwithstanding the foregoing, such Indemnified Party may, in its discretion, upon the occurrence of any such claim, engage its own attorneys to defend or assist therein, and at such Indemnified Party's option, its counsel shall control the litigation or resolution of such claim. The City shall on demand, reimburse such Indemnified Party for the payment of the reasonable fees and disbursements of its attorneys.

2.5 Every provision of this Agreement is intended to be severable. In the event any term or provision herein is declared illegal, invalid or unenforceable for any reason whatsoever, by a court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the balance of the terms and provisions hereof, which terms and provisions shall be binding and enforceable in full force and effect.

2.6 This Agreement is intended to take effect as a sealed instrument and its validity and construction shall be governed by and determined in accordance with the laws of the State of Rhode Island.

2.7 The City agrees that this Indemnification Agreement shall inure to the benefit of and may be enforced by any one or more of the Indemnified Parties, and shall be binding upon and enforceable against the City and its respective legal representatives, successors, and assigns.

2.8 This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

2.9 The City shall have no liability hereunder for any additional liabilities related to Hazardous Substances resulting solely from any affirmative action taken by an Indemnified Party. Notwithstanding any other provisions of this agreement, the City shall have no liability for disposal of Hazardous Substances on the Properties shown not to arise from the City's operation of the City Landfill.

2.10 This Agreement shall continue in effect for 100 years from the date hereof.

2.11 Notices hereunder shall be deemed given when received by the addressee, and should be telecopied and either mailed or sent by express courier, as follows:

If to Konover: Konover Development Corporation
2410 Albany Avenue
West Hartford, CT 06117
Attention: President

With a copy to: Hinckley, Allen & Snyder
Attention: Sean O. Coffey
1500 Fleet Center
Providence, RI 02903

With a copy to: Such other Indemnified Party(ies)
as Konover (or its successor)
shall have specified in writing.

If to the City:

With a copy to:

2.12 The City will execute and deliver in favor of any Indemnified Party, upon request of any Indemnified Party, an estoppel letter, certificate or other document in form reasonably acceptable to such Indemnified Party, certifying to the factual

matters represented by the City in this Agreement, a statement of the status of this Agreement and the City's obligations hereunder and such other matters as such Indemnified Party shall reasonably request.

2.13 This Agreement shall constitute an enforceable obligation of the City backed by the full faith and credit of the City.

IN WITNESS WHEREOF, the Parties have executed this instrument on the day and year first above written.

CITY OF PROVIDENCE

By: _____
Title: _____

STATE OF RHODE ISLAND
COUNTY OF

)
) SS.

On this ____ day of _____, 1993, before me personally appeared _____ to me personally known, who, being by me duly sworn, did say that he is the _____ of the City of Providence named in the foregoing instrument; and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires:

KONOVER DEVELOPMENT CORPORATION

By: _____
Title: _____

STATE OF RHODE ISLAND
COUNTY OF

)
) SS.

On this ____ day of _____, 1993, before me personally appeared _____ to me personally known, who, being by me duly sworn, did say that _____ is the _____ of Konover Development Corporation the corporation named in the foregoing

instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires:

WP:[Coffey]kd041850 .ac0 R5

EXHIBIT A
To Environmental Indemnification Agreement
Description of the Properties

The property located on Manton Avenue in Providence Rhode Island and more particularly described as Providence Tax Assessor's Plat 34, Lots 192, 194, 213, 214, 316, 319, 334 and 340.

WP:[coffey]KD041850 .ac7

LAW OFFICE
JOSHUA TEVEROW, ESQUIRE, LTD.
55 PINE STREET
PROVIDENCE, RHODE ISLAND 02903

Member Rhode Island and Massachusetts Bar

TELEPHONE (401) 272-5300
FAX (401) 331-7454

September 30, 1993

HAND DELIVERED

Mr. Michael Clement
City Clerk
City Hall
Providence, RI 02903

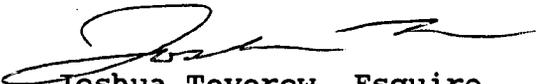
Dear Mr. Clement:

This office represents the City of Providence, Department of Planning and Development (the "Department") regarding a proposed shopping center development to be built by the Konover Development Corporation on Manton Avenue in Providence, Rhode Island. The property which is the site of the proposed shopping center development is a former landfill site operated by the City of Providence. In light of possible environmental problems associated with any site previously operated as a landfill, the Konover Development Corporation has requested that the City of Providence provide an indemnification for any problems encountered at the site solely related to the City's previous use of the site as a landfill. The Department has considered the City's existing legal liability for environmental issues related to the previous operation of the site as a landfill, and it has considered the economic development impact of the construction of a new shopping center in the Manton Avenue area of the City. After due consideration, the Department strongly believes that it is in the best interests of the City and the taxpayers of the City that the written indemnification requested by the Konover Corporation be provided. The primary consideration is that the legal rights and obligations of the City are not significantly different under the proposed indemnification compared to such rights and obligations as they presently exist under Rhode Island law. In fact, certain aspects of the proposed indemnification may be considered to be an improvement of the City's legal position.

After considerable negotiation, a final document has been prepared which I believe satisfactorily addresses all of the issues related to this matter. I am enclosing with this letter a copy of the final proposed Indemnification Agreement for review by the Public Works Committee of the City Council. It is the Department's request that the Public Works Committee review this request at its next scheduled meeting, and that if this proposal is approved by the Committee, that the matter be taken to the full Council for approval at the regular Council meeting scheduled for October 21, 1993. The Department has discussed with Councilman David Igliazzi and Councilman Joseph DeLuca all issues related to this proposed shopping center development. It is my understanding that both of the Councilmen support this proposed Indemnification Agreement. I am enclosing with this letter six additional sets of documentation (with each set including a copy of this letter and the proposed Indemnification Agreement) for distribution to each member of the Public Works Committee at the next scheduled Committee meeting. In the event that the Committee meeting is not scheduled at this time, please consider this letter as a request that the Chairman of the Committee schedule such a meeting in a timely fashion sufficient to allow this matter to be considered by the Committee and brought before the full Council for approval on October 21, 1993.

Thank you for your anticipated cooperation.

Very truly yours,



Joshua Teverow, Esquire

JT:smm

cc: John Palmieri, Director,
Department of Planning and Development
Frank Corrente, Director,
Department of Administration
Councilman David Igliazzi
Councilman Joseph DeLuca
Sean Coffey, Esquire

THE COMMITTEE ON

PUBLIC WORKS

**Approves Passage of
The Within Resolution.**

Barbara A. Fairies

Chairman

10/14/93

Clerk

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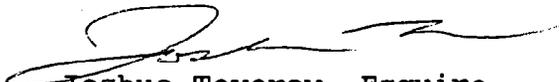
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(v) any mortgagee of the Properties, both before and after foreclosure (or deed in lieu thereof), and successor-in-interest to such mortgagee, both before and after foreclosure (or deed in lieu thereof).

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IN WITNESS WHEREOF, the Parties have executed this instrument on the day and year first above written.

CITY OF PROVIDENCE

By: _____
Title: _____

STATE OF RHODE ISLAND)
COUNTY OF) SS.

On this ____ day of _____, 1993, before me personally appeared _____ to me personally known, who, being by me duly sworn, did say that he is the _____ of the City of Providence named in the foregoing instrument; and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires:

KONOVER DEVELOPMENT CORPORATION

By: _____
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WP:[Coffey]kd041850 .ac0 R5

EXHIBIT A
To Environmental Indemnification Agreement
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(iv) any tenant of the Properties; and

(v) any mortgagee of the Properties, both before and after foreclosure (or deed in lieu thereof), and successor-in-interest to such mortgagee, both before and after foreclosure (or deed in lieu thereof).

(vi) any and all officers, directors, shareholders, partners, trustees, beneficiaries, owners, agents, employees, attorneys, consultants, and personal representatives of the foregoing.

2.4 If any claim is made or brought against any Indemnified Party which is subject to the indemnification set forth in this Agreement, the City shall, at the request of such Indemnified Party defend the same, if necessary in the name of such Indemnified Party, by attorneys approved by such Indemnified Party. Notwithstanding the foregoing, such Indemnified Party may, in its discretion, upon the occurrence of any such claim, engage its own attorneys to defend or assist therein, and at such Indemnified Party's option, its counsel shall control the litigation or resolution of such claim. The City shall on demand, reimburse such Indemnified Party for the payment of the reasonable fees and disbursements of its attorneys.

2.5 Every provision of this Agreement is intended to be severable. In the event any term or provision herein is declared illegal, invalid or unenforceable for any reason whatsoever, by a court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the balance of the terms and provisions hereof, which terms and provisions shall be binding and enforceable in full force and effect.

2.6 This Agreement is intended to take effect as a sealed instrument and its validity and construction shall be governed by and determined in accordance with the laws of the State of Rhode Island.

2.7 The City agrees that this Indemnification Agreement shall inure to the benefit of and may be enforced by any one or more of the Indemnified Parties, and shall be binding upon and enforceable against the City and its respective legal representatives, successors, and assigns.

2.8 This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

2.9 The City shall have no liability hereunder for any additional liabilities related to Hazardous Substances resulting solely from any affirmative action taken by an Indemnified Party. Notwithstanding any other provisions of this agreement, the City shall have no liability for disposal of Hazardous Substances on the Properties shown not to arise from the City's operation of the City Landfill.

2.10 This Agreement shall continue in effect for 100 years from the date hereof.

2.11 Notices hereunder shall be deemed given when received by the addressee, and should be telecopied and either mailed or sent by express courier, as follows:

If to Konover: Konover Development Corporation
2410 Albany Avenue
West Hartford, CT 06117
Attention: President

With a copy to: Hinckley, Allen & Snyder
Attention: Sean O. Coffey
1500 Fleet Center
Providence, RI 02903

With a copy to: Such other Indemnified Party(ies)
as Konover (or its successor)
shall have specified in writing.

If to the City: _____

With a copy to: _____

2.12 The City will execute and deliver in favor of any Indemnified Party, upon request of any Indemnified Party, an estoppel letter, certificate or other document in form reasonably acceptable to such Indemnified Party, certifying to the factual

matters represented by the City in this Agreement, a statement of the status of this Agreement and the City's obligations hereunder and such other matters as such Indemnified Party shall reasonably request.

2.13 This Agreement shall constitute an enforceable obligation of the City backed by the full faith and credit of the City.

IN WITNESS WHEREOF, the Parties have executed this instrument on the day and year first above written.

CITY OF PROVIDENCE

By: _____
Title: _____

STATE OF RHODE ISLAND)
COUNTY OF) SS.

On this _____ day of _____, 1993, before me personally appeared _____ to me personally known, who, being by me duly sworn, did say that he is the _____ of the City of Providence named in the foregoing instrument; and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires:

KONOVER DEVELOPMENT CORPORATION

By: _____
Title: _____

STATE OF RHODE ISLAND)
COUNTY OF) SS.

On this _____ day of _____, 1993, before me personally appeared _____ to me personally known, who, being by me duly sworn, did say that _____ is the _____ of Konover Development Corporation the corporation named in the foregoing

instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires:

WP:[Coffey]kd041850 .ac0 R5

EXHIBIT A
To Environmental Indemnification Agreement
Description of the Properties

The property located on Manton Avenue in Providence Rhode Island and more particularly described as Providence Tax Assessor's Plat 34, Lots 192, 194, 213, 214, 316, 319, 334 and 340.

WP:[coffey]KD041850 .ac7