

CHAPTER 2017-55

No. 515 AN ORDINANCE ESTABLISHING A TAX STABILIZATION AGREEMENT FOR PCHC BEAMAN AND SMITH MILL, LLC, LOCATED AT 335R PRAIRIE AVENUE

Approved December 8, 2017
Be it ordained by the City of Providence:

WHEREAS, PCHC Beaman and Smith Mill, LLC (hereinafter "B&S") is the owner of certain real property located in the City of Providence at 335R Prairie Avenue, also known as Assessor's Plat 48 Lot 1169; and

WHEREAS, B&S will complete the rehabilitation of the buildings, structures, and/or improvements on said property and return the same to productive commercial use in accordance with the rehabilitation/construction plans previously submitted to the City by B&S; and

WHEREAS, Under article 13, section 5 of the Rhode Island Constitution, the General Assembly retains exclusive power over matters relating to municipal taxation. Notwithstanding, and pursuant to § 44-3-9 of the Rhode Island General Laws, the General Assembly authorizes, subject to certain enumerated conditions, the City of Providence by and through its Town Council, for a period not to exceed twenty (20) years, to exempt or determine a stabilized amount of taxes to be paid on account of real and personal property; and

WHEREAS, the granting of the tax stabilization will inure to the benefit of the City of Providence and its residents by reason of:

- (A) The efforts of B&S, on behalf of Providence Community Health Centers (hereinafter "PCHC"), to retain or expand its facility in the city or town with an increase in employment or at a minimum not substantially reduce its work force in the city or town; and
- (B) The efforts of B&S, on behalf of Providence Community Health Centers (hereinafter "PCHC"), to improve the physical plant of the City which in turn will result in a long-term economic benefit to the City and State.

NOW THEREFORE, in consideration of the mutual agreements and promises set forth herein and other good and lawful consideration the receipt of which is hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS.

"Property" shall mean that certain real property together with any and all buildings, structures, and/or improvements now or in the future located in the City of Providence at 335R Prairie Avenue, also known as Assessor's Plat 48 Lot 1169.

"Property Owner" shall mean B&S, its successors and/or assigns, or any entity with legal or equitable right and/or interest in and/or to the Property; however excluding: (i) holders of any security interests in the Property and (ii) tenants leasing space at the Property who are not required to pay any amount, in part or in whole, of the tax payments found herein pursuant to any lease agreement, in accordance with R.I. Gen. Law § 44-4-6.

SECTION 2. TAX STABILIZATION.

Section 2.1. Grant. The City of Providence, in accordance with Rhode Island General Laws § 44-3-9 and the City of Providence Code of Ordinances, does hereby grant a tax stabilization in favor of the Property Owner with respect to the Property.

Section 2.2. Term. The tax stabilization term shall be the period commencing on December 31, 2015 and terminating on December 31, 2025. (Tax Years 2016- 2026).

Section 2.3. Plan. During the tax stabilization term as defined in Section 2.2 above, The City of Providence has determined the stabilized amount of taxes to be paid by the Property Owner with respect to the Property, notwithstanding the valuation of the Property or the rate of tax as follows: For tax years 2016-2026, the Property Owner shall make a tax payment in the amount of ONE HUNDRED FIFTY THOUSAND and XX/100 Dollars (\$150,000.00).

Section 2.4. Payment Deadlines. During the tax stabilization term as defined in Section 2.2 above and in accordance with the tax stabilization plan outlined in Section 2.3 above, stabilized tax payments shall be made in either a lump sum during the first quarter of the applicable tax year or in equal quarterly installments at the discretion of the Property Owner. If the Property Owner elects to make quarterly installments, each quarterly installment shall be due on the same date that quarterly taxes are due for all other taxpayers in the City of Providence.

Section 2.5. Obligation of Property Owner to Make Payment. During the tax stabilization term as defined in Section 2.2 above and in accordance with the tax stabilization plan outlined in Section 2.3 above, stabilized tax payments shall be an obligation of the Property Owner.

Section 2.6. Non-Receipt of Stabilized Tax Bill. Failure by the City of Providence to send or failure by the Property Owner to receive a stabilized tax bill does not excuse the nonpayment of the stabilized tax or affect its validity or any action or proceeding for the collection of the tax in accordance with this Agreement or otherwise.

Section 2.7. Recording of Agreement, Running with Land. Upon execution and delivery of this Agreement and after ratification of this Agreement by City Council by resolution, the Property Owner shall cause this Agreement and Providence City Council's resolution ratifying same to be recorded at its expense in the official public land evidence records of the City of Providence, within thirty (30) days of the execution and delivery aforementioned. This recording shall be construed to provide a complete additional alternative method under contract law for the securitization of payments due and owing under this Agreement and shall be regarded as supplemental and in addition to the powers conferred by other state and local laws.

SECTION 3. TRANSFER OF THE PROPERTY.

Stabilized tax payments shall be an obligation of the Property Owner during the tax stabilization term as defined in Section 2.2 above and in accordance with the tax stabilization plan outlined in Section 2.3 above, without regard for any transfer of the Property. Additionally, the burdens and benefits of this Agreement will run with the land, and as for payment of real estate taxes shall run in favor of the City of Providence regardless of any transfer of ownership. The Property Owner agrees to provide written notice to the City of Providence prior to any transfer of the Property so that the City of Providence may make a determination, in its sole discretion, as to whether or not stabilization under this Agreement will continue. Moreover, the Property Owner agrees not to transfer the property to a tax exempt entity, unless such transfer is assented to by the City of Providence in writing. The terms of this section shall apply, unless the Property Owner and any subsequent purchaser sign an additional future agreement presented to them by the City binding the subsequent purchaser to the terms of this Agreement.

SECTION 4. FURTHER ASSURANCES.

Subsequent to the execution of this agreement, if any further (1) new construction (for the purposes of this Agreement "new construction" refers to what is known as ground-up construction, such as new structures on vacant land, or construction of additional stories on existing structures) or (2) substantial rehabilitation, as defined in HUD Handbook 4460.1, ch. 4, ¶ 4-2 §§ 1, 2(a), takes place at or on the Property, then and only then will this Section 4 titled "Further Assurances" or any and all of its subsections apply.

Section 4.1. MBE/WBE. Where found to be applicable and for any of the terms of the stabilization period as defined in Section 4.A. above, the Property Owner afforded the stabilization of taxes as described herein shall comply with any and all requirements under Chapter 21 Article II Section 52 of the Providence Code of Ordinances as it pertains to Minority and Women Business Enterprises.

Section 4.2. Apprenticeship. The Property Owner shall ensure that at least one hundred percent (100%) of the hours worked on the Property shall be performed by trade construction subcontractors who have or are affiliated with an apprenticeship program as defined in 29 C.F.R. § 29 et seq.

The Property Owner shall make a requirement in the contracts between its Construction Manager and General Contractor and their subcontractors who have apprenticeship programs as defined in 29 C.F.R. § 29 that not less than ten percent (10%) of the total hours worked by the subcontractors' employees on the Property are completed by apprentices registered in the aforementioned apprenticeship programs.

The Property Owner shall as part of its contracts between its Construction Manager and General Contractor and their subcontractors require that the subcontractors submit to the Department of Planning and Development quarterly verification reports to ensure compliance with this section.

The Property Owner, its Construction Manager or General Contractor or other authorized person/entity may petition the City of Providence Department of Planning and Development to adjust the apprenticeship work hour requirements to a lower percentage upon a showing that:

- a.* compliance is not feasible because a trade or field does not have an apprenticeship program or cannot produce members from its program capable of performing the scope of work within the contract; or
- b.* compliance is not feasible because it would involve a risk or danger to human health and safety or the public at large; or
- c.* compliance is not feasible because it would create a significant economic hardship; or
- d.* compliance is not feasible for any other reason which is justifiable and demonstrates good cause.

Section 4.3. Internal Revenue Service reporting. Except as provided under Rhode Island General Laws § 28-42-8, any person performing services at the Property shall annually receive either a W-2 statement or an IRS Form 1099.

Section 4.4. First Source. Where found to be applicable and for the term of the stabilization period as defined in Section 2.2 above, the Property Owner afforded the stabilization of taxes as described herein shall enter into a First Source Agreement with the Director of First Source Providence in accordance with Chapter 21 Article III1/2 of the Providence Code of Ordinances

Section 4.5. "Buy Providence" Initiative. The Property Owner will use good faith efforts to ensure that construction materials for the Property are purchased from economically competitive and qualified vendors located in the City of Providence. In furtherance of this effort, the Property Owner will work with the City to develop a list of Providence vendors and subcontractors in order to create a preferred vendor list of qualified and

economically competitive vendors for the construction on the Property. Furthermore, once the Property Owner constructs the development, the Property Owner will use good faith efforts to conduct ongoing business with and provide preference to economically competitive and qualified Providence businesses. In order to further that effort, the Property Owner will hold seminars upon ratification of this Agreement, with the Providence MBE/WBE office, the Supplier Diversity Director, the Director of First Source Providence and the Providence Chamber of Commerce to inform the local economy of the Property Owner's development plans in order to maximize the opportunities for Providence businesses to work with the Property Owner in providing on-going services, equipment and materials.

SECTION 5. DEFAULT.

The following events shall constitute an event of default hereunder to the extent that such events described below continue beyond any applicable notice and cure period set forth in Section 6:

- (A) Failure of the Property Owner to pay any amount due under or with respect to the tax stabilization in accordance with Section 2 above; or
- (B) Failure of the Property Owner to record this Agreement, or the City Council's Resolution Ratifying this Agreement, as required by and in accordance with Section 2 above; or
- (C) Failure of the Property Owner to notify the City of Providence prior to any transfer of the Property, in accordance with Section 3 above; or
- (D) Failure of the Property Owner to comply with Section 4 above, if only by its own terms should it apply; or
- (E) Failure of the Property Owner to comply with any other material obligation or promise contained within any section or subsection of this Agreement; or
- (F) Failure of the Property Owner to materially comply with all state and local law regarding building and property maintenance codes, zoning ordinances, and building and trade permits; or
- (G) Failure of the Property Owner to remain current on any and all federal and state taxation obligations which would affect the priority of the lien created under this Agreement.

SECTION 6. NOTICE AND CURE.

Section 6.1. Notice and Cure Period. The City Council shall provide written notice to the Property Owner before exercising any of its rights and remedies under Section 7 below. The Property Owner shall have ninety (90) days to cure any alleged default under this Agreement, provided, however, that if the curing of such default cannot be accomplished with due diligence within ninety (90), then the Property Owner shall request an additional reasonable period of time from the City Council to cure such default as may be necessary provided that the Property Owner shall have commenced to cure such default within said period, such cure shall have been diligently pursued by the Project Owner and the City Council does not reasonably deem the taxes jeopardized by such further delay, all as determined by the City Council in its sole and reasonable discretion which shall not be unreasonably withheld.

Section 6.2. 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:

PCHC Beaman and Smith Mill, LLC
375 Allens Avenue
Providence, RI 20905

Diana M. Ducharme, Esq.
Hinckley Allen
100 Westminster Street, Suite 1500
Providence, RI 02903

SECTION 7. RIGHTS AND REMEDIES.

Section 7.1. Retroactive Revocation of Tax Stabilization. In the event of default under this Agreement which remains uncured after the notice and cure period set forth in Section 6 above, the Property Owner shall pay to the City of Providence an amount equal to the difference between the stabilized tax payments made under this Agreement and the amount of Property taxes that would have been assessed and paid during the tax stabilization term as defined in Section 2.2 above, but for this Agreement. The entire retroactive tax obligation will become due and owing on the same date that the next quarterly taxes are due for all other taxpayers in the City of Providence.

Section 7.2. Collection of Taxes. At any time during the tax stabilization term as defined in Section 2.2 of this Agreement the City of Providence may pursue any and all rights and remedies arising under any state or local law, including but not limited to Chapters 7-9 of Title 44, and/or arising under this Agreement to collect stabilized taxes due and owing in accordance with the tax stabilization plan outlined in Section 2.3 above and/or to collect retroactive taxes pursuant to Section 7.1 above.

Section 7.3. City's Lien Remedies and Rights. Nothing herein contained shall restrict or limit the City's rights and/or remedies with respect to its first priority lien for taxes as provided under Title 44 of the Rhode Island General Laws. Rather, this Agreement shall be construed to provide a complete additional alternative method under contract law for the collection of taxes, and shall be regarded as supplemental and in addition to the powers conferred by other state and local laws.

Section 7.4. Property Owner's Rights. During the tax stabilization term as defined in Section 2.2 the Property Owner agrees to waive and forever forgo any and all of its rights and privileges under Title 44 of the Rhode Island General Laws as those rights and privileges pertain to the tax payments made pursuant to this Agreement. Nothing herein shall be construed to limit the right of the Property Owner to pursue its rights and remedies under the terms of this Agreement.

Section 7.5. Waiver. Failure or delay on the part of the City of Providence to exercise any rights or remedies, power or privilege at any time under this Agreement or under any state or local law shall not constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, remedy, power of privilege thereunder.

Section 7.6. Joint and Several Liability. In the event of default under this Agreement B&S agrees to remain jointly and severally liable with any and all Property Owners, unless any subsequent Property Owner agrees to execute a transfer affidavit binding themselves to the terms of this agreement.

SECTION 8. MISCELLANEOUS TERMS.

Section 8.1. Monitoring Fee. The Property Owner shall remit a monitoring/compliance fee to the City in the amount of 0.01 percent of the cost of the project annually for the term of this Agreement.

Section 8.2 Agreement to Contribute to Parks and Recreation Trust Fund. Upon passage of this Ordinance by the City Council, the Property Owner shall contribute to a Trust Fund established by the City of Providence, of which the Treasurer shall be the trustee. The Fund shall be identified as the "City Council Parks and Recreation Fund." The City Council shall establish regulations pertaining to the disbursement of funds.

(a) Payments to the Fund. The Property Owner shall make annual payments to the Fund in the amount of 5 (five) percent of the total estimated abated tax for the term of the tax stabilization agreement, for as long as this Agreement is in full force and effect. Said annual payments will be payable on the last day of each subsequent tax year after the Commencement Date. If, for any reason, this Agreement is retroactively revoked, the payments to the fund shall remain and will not be forfeited back to the Property Owner due to a default.

(b) Investment and Distribution of the Fund. The trust fund will be invested by the Board of Investment Commissioners, and an annual distribution of the investment shall be used to provide funds to the Department of Parks and to the Department of Recreation for capital improvements in neighborhood parks and recreation centers. Said annual distribution shall not supplant any funds that are provided to the Department of Parks and the Department of Recreation through the operating budget. Distributions may never exceed the earnings in the year of distribution or reduce the corpus of the fund. The first payment from the fund shall begin in the fifth year after the establishment of the fund.

Section 8.3 . Annual Progress Report. The Property Owner shall provide annual reports to the City of Providence on its progress in complying with the provisions of this Agreement. Specifically, said report shall include a performance report on rehabilitation and/or improvements with evidence of final construction costs, status of stabilized tax payments, evidence of employment compliance pursuant to Section 4 above (should it apply), and overall financial well-being. Upon receipt and review, the City of Providence may require and request additional information.

Section 8.4. Severability. The sections of this Agreement are severable, and if any of its sections or subsections shall be held unenforceable by any court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining sections or subsections.

Section 8.5. Applicable Law. This Agreement shall be construed under the laws of the State of Rhode Island, the City of Providence Home Rule Charter, and the City of Providence Code of Ordinances, as amended.

Section 8.6. Modifications Amendments and/or Extensions. This Agreement shall not be modified, amended, extended or altered in any way by oral representations made before or after the execution and ratification by Providence City Council of this Agreement. Any and all modifications, amendments, extensions or alterations must be in writing duly executed by all parties and ratified by Providence City Council.

Section 8.7. Entire Agreement. This Agreement and all attachments, addendums, and/or exhibits attached hereto shall represent the entire agreement between City and the Property Owner and may not be amended or modified except as expressed in this document.

Section 8.6. Effective Date. This Agreement shall take effect upon passage of this Ordinance by the Providence City Council, and approval by the Mayor. The tax stabilization term shall be effective in accordance with the terms and provisions herein.

IN CITY COUNCIL
NOV 16 2017
FIRST READING
READ AND PASSED
[Signature]
CLERK

IN CITY COUNCIL
DEC 07 2017
FINAL READING
READ AND PASSED
[Signature]
ACTING PRESIDENT
[Signature]
CLERK

I HEREBY APPROVE
[Signature]
Mayor
Date: 12/8/17

APPENDIX B

TAX STABILIZATION PLAN

TAX PAYMENT UNDER STABILIZATION AGREEMENT

<u>TAX YEAR</u>	
2016	\$150,000.00
2017	\$150,000.00
2018	\$150,000.00
2019	\$150,000.00
2020	\$150,000.00
2021	\$150,000.00
2022	\$150,000.00
2023	\$150,000.00
2024	\$150,000.00
2025	\$150,000.00

FULL TAXATION RESUMES

2026

* All years refer to Tax Years