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Kinsley
NEW

City of Providence
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER

No. **AN ORDINANCE ESTABLISHING A TAX EXEMPTION AND STABILIZATION PLAN FOR THE KINSLEY BUILDING**

Be it ordained by the City of Providence:

WHEREAS, DOWNCITY REVITALIZATION FUND I, LLC ("DCRF") is the owner of the Kinsley Building, certain real estate located in the City of Providence at 326 Westminister Street, AP 24, Lot 411, a property that has been tax-exempt for many years while under the ownership of Johnson and Wales University; and

WHEREAS, DCRF intends on rehabilitating the building and returning it to a productive use including ground floor retail and residential apartments; and

WHEREAS, The City of Providence envisions the Kinsley project will generate jobs within the City of Providence as well as protecting, preserving and showcasing a historic building critical to the Westminister Street corridor; and

WHEREAS, Rhode Island General Laws § 44-9-3 ("Act") authorizes, subject to certain enumerated conditions, the city council of a city for a period not to exceed twenty (20) years, to exempt and determine an 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, The tax payments contemplated to be made pursuant to this Ordinance have been determined by the City Council of the City of Providence to be fair, equitable and acceptable to the City; and

WHEREAS, It is in the interest of the residents of the City of Providence to grant a tax exemption and stabilization plan in order to induce the rehabilitation of the Kinsley project;

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) "Assessment" shall mean the value placed upon the improvements made by DCRF by the City of Providence Tax Assessor.

(e) "Project Site Owner" means an entity with the right and interest in and to the Project Site (or portions thereof), including successors to units and/or sub-units of the Project Site.

(f) "Project Taxable Property" means collectively, the Project Site and all Real Property Improvements thereon.

(g) "Real Property Improvements" means any structures or improvements including but not limited to buildings, parking lots/structures and related improvements to be constructed and developed on the Project Site.

(h) "Stabilized Tax Payments" shall mean the Assessment multiplied by the tax rate and further multiplied by the appropriate percentage contained in Section 5.

(i) "Termination Date" means the 12th anniversary of the December 31 in which the Project Site is first assessed pursuant to the schedule set forth in Section 5 below.

Section 3. Grant of Tax Stabilization Plan. The City of Providence, in accordance with the Laws of the State of Rhode Island and the Code of Ordinances for the City of Providence, is hereby authorized to grant and does grant the schedule of Stabilized Tax Payments pursuant to Section 5.

Section 4. Term. The term of this Ordinance shall be a period commencing upon the Commencement Date and terminating on the Termination Date.

Section 5. Tax Exemption and Stabilization Plan. No Tax Payments will be due for the first three (3) tax years of the Term, during which DCRF must complete construction on the Project Site, subject to a Force Majeure Event (as defined below). In the fourth tax year after the Commencement Date, full taxes shall begin phasing in; with the exception of the fourth, fifth and final tax years, each year, the assessor shall issue a bill for a percentage of the then current full value assessment as follows: ~~11.11%~~ 10.00% of the then current full value assessment in Year 4; ~~22.22%~~ 15.00% of the then current full value assessment in Year 5; ~~33.33%~~ 25.00% of the then current full value assessment in Year 6; 35.00% of the then current full value assessment in Year 7; 40.00% of the then current full value assessment in Year 8; 45.00% of the then current full value assessment in Year 9; 60.00% of the then current full value assessment in Year 10; 80.00% of the then current full value assessment in Year 11; 90.00% of the then current full value assessment in Year 12; ~~and so forth, so that~~ following the conclusion of twelve full years after completion, the new construction will be paying the full current assessment. However, in Year 4, DCRF shall pay the lesser of \$20,000.00 or ~~11.11%~~ 10.00% of the full assessed value; in Year 5, DCRF shall pay the lesser of \$30,000.00 or ~~22.22%~~ 15.00% of the full assessed value; and in Year 12, DCRF shall pay ~~95%~~ 90% of the full assessed value.

Section 6. Payment of Taxes.

(a) Stabilized Tax Payments due to the City, pursuant to the schedule listed in Section 5, may be made in either a lump sum during the first quarter of the applicable tax year or in equal

have ninety (90) days 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.

(c) It is understood that the Stabilized Tax Payments made hereunder are deemed by the City to be tax payments, and the Owner of the Project Site making the Stabilized Tax Payments shall be entitled to all of the rights and privileges of a taxpayer in the City, including, without limitation, the right to challenge and appeal any assessment and/or reassessment. It is further understood and agreed that the City's sole and exclusive recourse to the Owner of the Project Site is limited to the City's first lien on the Project Taxable Properties, however, nothing herein shall be construed to limit the right of the City to foreclose or take any other judicial proceeding available at law for the collection of taxes.

(d) Stabilized Tax Payments not made by the Owner of the Project Site as they become due shall be subject to any and all penalties allowed under Rhode Island General Laws. Failure to receive a stabilized tax bill shall not relieve the Owner of the Project Site of its obligation to make Stabilized Tax Payments herein. If for any reason the Owner of the Project Site does not receive an appropriate stabilized tax bill, the Owner of the Project Site 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 Owner of the Project Site directly to the City of Providence Tax Collector's Office.

Section 7. Effect of Failure to Make Payments. The real property taxes payable to the City for the Project Site during the term of this Ordinance shall be based upon the stabilized real property taxes set forth in Section 5. This Ordinance is further conditioned upon the Owner of the Project Site, whether now or in the future, remaining current on tax payments pursuant to Section 5. Failure to make said timely Stabilized Tax Payments may, at the discretion of the City of Providence following the Notice and the 90-day cure period set forth in Section 6(b), render this Ordinance null and void.

Section 8. Retroactive Revocation For Failure to Satisfy Performance Milestones. In the event that the Project Owner fails to satisfy the following performance milestones, then this Ordinance shall be automatically repealed following the Notice and the 90-day cure period set forth in Section 6(b), and the Owner of the Project Site shall be reassessed any unpaid real estate taxes, penalties and interest which remain unpaid as if this Ordinance had never been passed:

(a) Obtaining all necessary permits and approvals being secured from the municipal agencies of the City of Providence or the State of Rhode Island for the redevelopment of the Project Site in accordance with the second recital hereof within twenty-four (24) months of the Commencement Date.

(b) Achieving substantial completion of and the redevelopment of the Project Site within thirty-six (36) months of the Commencement Date.

(c) Notwithstanding anything to the contrary in this Section 8, the Project Site Owner may be entitled to an extension of the time for performance of the preceding milestones, if for a

Section 9. Transfers. As long as the Project Site Owner or any successor or assignee owns or operates the Project Site, it will continue to pay Stabilized Tax Payments for the Project Site pursuant to this Ordinance.

(a) The Project Site Owner or any successor or assignee, acknowledge and agree that the Project Site will be subject to taxation pursuant to the terms of this Ordinance and thereafter subject to taxation pursuant to Rhode Island General Laws and the ordinances of the City of Providence. The Project Site Owner, or any successor or assignee, agrees that the exemption and conditions under this Tax Stabilization Plan shall run with the land.

(b) If the Project Site is sold to a real property tax-exempt entity, the Tax Stabilization Plan may terminate at the discretion of the City of Providence following the Notice and the 90-day cure period set forth in Section 6(b), and unless otherwise agreed to by the City, the Project Site Owner/Seller shall pay to the City an amount equal to the difference between the Stabilized Tax Payments made under the Tax Stabilization Plan and the amount of real estate taxes that would have been paid during the effective term of said plan, but for the Tax Stabilization Plan.

Section 10. Employment and Contracts.

(a) Construction.

- i. MBE/WBE. The Project Site Owner shall make a good faith effort to award to Minority Business Enterprises as defined in Rhode Island General Laws, Section 31-14.1 ("MBE Act") no less than 10% of the dollar value of the construction costs for the Project (as determined in accordance with the rules and regulations promulgated pursuant to MBE Act). The Project Site Owner shall make a good faith effort to award to Women Business Enterprises (WBE's) no less than 10% of the dollar value of the construction costs for the Project (as determined in accordance with Section 21-52 of the Code of Ordinances of the City of Providence). The Project Site Owner will request the City MBE/WBE office and its Supplier Diversity Director to establish a list of qualified MBE/WBE companies in order to satisfy its MBE/WBE construction goals. In this manner, the City will assist the Project Site Owner in meeting said goals. The process of participating with the MBE/WBE office and its Supplier Diversity Director shall begin upon passage in order to develop a designated MBE/WBE subcontractor list which will encourage MBE/WBE participation and joint ventures with other members with the construction industry.
- ii. Apprenticeship. The Developer or Project Owner shall ensure that at least ~~fifty percent (50%)~~ one hundred percent (100%) of the hours worked on the Project 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 Developer or Project 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 project are completed by apprentices registered

The Developer or Project 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.
- iii. Internal Revenue Service reporting. Except as provided under Rhode Island General Laws § 28-42-8, any person performing services at the Project Site shall annually receive either a W-2 statement or an IRS Form 1099.
- iv. First Source List. Pursuant to the City of Providence First Source Ordinance, the Project Site Owner shall enter into a First Source Agreement covering the hiring of employees necessary to complete the proposed Project and throughout the term of this tax stabilization agreement. The Project Site Owner shall work in conjunction with the Director of First Source Providence to develop the First Source Agreement.
- v. "Buy Providence" Initiative. The Project Site Owner will use good faith efforts to ensure that construction materials are purchased from economically competitive and qualified vendors located in the City of Providence. In furtherance of this effort, the Project Site 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 of the Project. Furthermore, once the Project Site Owner constructs the development, the Project Site 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 Project Site Owner will hold seminars upon passage of this Ordinance, 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 Project Site Owner's development plans in order to maximize the opportunities for Providence businesses to work with the Project Site Owner in providing on-going services, equipment and materials.
- vi. In the event that there shall be a failure to comply with this Section 10(a), the Department of Planning and Development shall have standing to seek enforcement of this provision of the ordinance in the Rhode Island Superior Court. The Department shall also have the ability to impose a fine of \$500.00 per

(c) Reporting. The Project Site Owner shall annually report to the City Council on its progress in complying with the provisions of this Ordinance, including but not limited to, Section 10.

Section 11. Resolution of Calculation Disputes. The Project Site Owner and the City of Providence agree that the Project Site Owner retains the right to appeal the valuation or calculation of the taxes assessed from time to time.

Section 12. Severability. If any one section of this Ordinance is found to be unenforceable, then the other provisions herein shall continue to have the same force and effect as if the unenforceable provision were not passed as part of this Ordinance.

Section 13. Applicable Law. This agreement shall be construed under the laws of the State of Rhode Island.

Section 14. Effective Date. This Ordinance shall become effective immediately upon its passage by the City Council and approval by the Mayor.