

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

HARRISBURG ASSOCIATES, LLC :
LERNER ASSOCIATES, LLC, :
THE ALICE BUILDING, LLC, :
PEERLESS LOFTS, LLC, :
SMITH/KEEN, LP, :
LAPHAM 290, LLC, :
RWB ASSOCIATES, LLC, :
276 WESTMINSTER, LLC, :
CLEMENCE 91, LLC, and :
DOWNCITY REVITALIZATION FUND 1, LLC, :
Plaintiffs :

Hearing Date: August 24, 2023

vs. :

C.A. NO.: PC-2020-04757

THE CITY OF PROVIDENCE, :
ELY SSE PARE, in her capacity as :
Tax Assessor of the City of Providence, and :
JAMES LOMBARDI, III, in his capacity as :
Treasurer of the City of Providence, :
Defendants :

**MEMORANDUM IN SUPPORT OF PROVIDENCE CITY COUNCIL'S
MOTION FOR LEAVE TO INTERVENE**

August 8, 2023

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INTRODUCTION

This motion comes at a time when all too many people, regardless of their political views, have lost faith in the institutions of government. Cynical views of all three branches of government—executive, legislative, and even judicial—have become widespread. This distrust in government at all levels, nationwide and local, hurts the ability to deal with the many crises we face today. In Rhode Island, one of the biggest problems that can be addressed on a local level involves housing and homelessness.

This motion involves an attempt to have this Court enforce one of the fundamental principles of government: that each of the three branches is designed to provide indispensable checks and balances on the other two. This case is, at bottom, a contest between the legislative branch (the Providence City Council (“City Council”)) and the executive branch (the Mayor of Providence and the executive departments under him, especially the office of the City Solicitor).

It is the City Council’s position that, without any authority whatsoever, and for improper motives and purposes, a “settlement” was turned into a Consent Order. This was done by the executive branch of the City of Providence (“City”) and Buff Chace¹ in order to evade the laws of this State and of the City. These charges are serious.

¹ The City Council herein refers to Plaintiffs collectively as “Buff Chace”. It does so consistent with the executive branch’s view of the parties in the case. See Costa Aff. Ex. 10 (July 19, 2023 letter from Mayor Brett Smiley to Providence City Council President Rachel Miller) at 1 (“The purpose is to provide you with what I hope is helpful context as it relates to the 2021 consent agreement entered into by the City with Buff Chace which has been the topic of recent council discussions.”); id. (“[I]n 2020, the City of Providence was sued, challenging certain tax assessments made on properties owned by Buff Chace.”). See also Costa Aff. Ex. 11 (July 24, 2023 email from Deputy Director of Intergovernmental Affairs Michael Napolitano to City Council President Rachel Miller) at 1 (“[A]ttached is an amended Consent agreement for your consideration between the City and Buff Chace”). The denomination of “Buff Chace” herein is used for clarity, convenience, and because it reflects the underlying reality.

Indeed, they are of such gravity that they would not be made without a good-faith basis to believe them to be true. As will be demonstrated, the City Council has been stonewalled in its investigation of this matter. Even so, it has gathered enough presently available evidence to support the charges, prima-facie. The City Council recognizes that this submission is unusually lengthy. Such length, however, is necessary to substantiate that these charges are not only warranted, but must be made.

The City Council asks the Court to allow this motion to intervene, as the first step in allowing the judicial scrutiny and full public transparency that this matter deserves. Denial of this motion would impede the City Council from fulfilling its duty to protect against private backroom deals designed to improperly benefit private individuals.

It should be made clear at the outset: the City Council does not contend that the judge who entered the Consent Order was culpable in any respect whatsoever. The facts are very much to the contrary, and her limited and benign role is discussed and explained later in this Memorandum.

Nor does this motion ask the Court to vacate the Consent Order at this time. Rather, the City Council seeks to intervene so that it can then file an Answer, file such a motion to vacate, and thereafter be allowed to try this case on the merits.

This case involves the unlawful usurpation of the exclusive authority of the City Council over the taxation of real estate and seeks to rectify that abuse.² As will be seen, this usurpation was done in order to grant illicit benefits to one person³ through the gross and knowingly illegal misapplication of a state statute intended to promote

² See, e.g., *Providence City Council v. Cianci*, 650 A.2d 499 (R.I. 1994) (upholding authority of City Council over collective-bargaining agreement negotiated by the Mayor).

³ See *supra* at 1 n.1.

low-income housing. All of this, at a time when the City faces a massive crisis of housing and homelessness, and in violation of Rhode Island law and the City's Home Rule Charter and ordinances. Not only did this harm the fiscal stability of the City, and harm other taxpayers who will be required to make up the lost revenue, it did so without providing any meaningful benefits to low-income residents.

This motion to intervene is a first step to recoup improper benefits already received by Buff Chace; to prevent further stress on the City's fiscal health; to avoid the necessity for future tax increases to virtually all Providence taxpayers to pay for the benefits given Buff Chace; and to aid low-income residents as intended and required by state law.

The City Council submits this memorandum in support of its motion pursuant to Rule 24 of the Superior Court Rules of Civil Procedure for leave to intervene as an additional defendant in the captioned proceeding which had been brought by Buff Chace as a Declaratory Judgment proceeding ("DJ Proceeding"). If permitted to intervene, the City Council intends to (1) move for an order vacating the Consent Order entered in this case on June 8, 2021, and (2) to defend against Plaintiffs' complaint for Declaratory Judgment.

Pursuant to Super. R. Civ. P. 24(c), the City Council has attached to its motion the City Council's proposed pleading, i.e. the City Council's Answer to Buff Chace's complaint.⁴ Also attached are the affidavits of City of Providence Internal Auditor Gina

⁴ The City Council's proposed Answer (attached to the City Council's motion as Exhibit A) responds to Buff Chace's second Amended Complaint, which was filed on May 14, 2021. The City Council's motion to vacate the consent order is not a "pleading" that should be attached to the motion to intervene pursuant to Rule 24(c). See Gabauer v. Woodcock, 425 F. Supp. 1, 3 (E.D. Mo.1976), aff'd in part and rev'd in part on other grounds, 594 F.2d 662 (8th Cir.), cert. denied, 444 U.S. 841, 100 S.Ct. 80, 62 L.Ed.2d 52 (1979)

Costa (“Costa Aff.”) and former City Council Chief of Staff Sean Bouchard (“Bouchard Aff.”).

As discussed herein, the following procedure applies to this motion. The Court is required to accept as true all the non-conclusory allegations made in support of the motion. Southwest Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 819–20 (9th Cir. 2001) (stating that “a district court is required to accept as true the non-conclusory allegations made in support of an intervention motion”) (collecting cases). Thus, no determination need be or should be made at this time as to the merits of the issues in dispute. Herman v. New York Metro Area Postal Union, No. 97 CIV. 6839 (KMW), 1998 WL 214787, at *1 (S.D.N.Y. Apr. 30, 1998).

Instead, the motion is decided under a four-factor test of whether “[(1)] the applicant files a timely application * * * , [(2)] the applicant claims an interest relating to the property or transaction which is the subject matter of the action, [(3)] the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, and [(4)] the applicant's interest is not adequately represented by current parties to the action * * * ”. Hines Road, LLC v. Hall, 113 A.3d 924, 928 (R.I. 2013) (internal citation omitted). All of these factors are more than amply satisfied in this case.

BACKGROUND

Taxable real property in Rhode Island must be assessed at “its full and fair cash value, or at a uniform percentage of its value, not to exceed one hundred percent...”

(“A motion to dismiss is not a pleading” for purposes of a motion to intervene); Super. R. Civ. P. 7(a) (enumerating all the types of pleadings); Super. R. Civ. P. 7(b) & (c) (distinguishing motions from pleadings).

R.I. Gen. Laws § 44-5-12. With certain exceptions, the amount of the tax is a function of the tax rate applied to the value of the property. One exception is that the tax on certain low-income residential properties is instead eight percent (8%) of the taxpayer's gross income from the property. See R.I. Gen. Laws § 44-5-12(a)(1) (providing that such property shall not be taxed based on cash value but instead "shall be assessed and taxed in accordance with § 44-5-13.11"). R.I. Gen. Laws § 44-5-13.11 is commonly referred to as the "8 Law," because it provides for a tax rate of eight percent (8%) of the residential property's gross income.

This case involves the misapplication of the 8 Law to the entireties of ten large rental properties located in the City of Providence, which include commercial rentals and non-income restricted residential rentals, with merely twenty five percent (25%) "income-restricted" residential units. Even that so-called "income restriction", requiring only that tenants' income not exceed 100% of the area median income ("AMI"), is not in conformity with the 8 Law. The 8 Law requires the ultimate benefits to flow to "low-income housing". There is a huge difference between tenants who are not to exceed 100% AMI and those who are low income.⁵

During the administration of then-Mayor Jorge Elorza, the Providence City Solicitor (then and now Jeffrey Dana) entered into a purported settlement memorialized in a consent order (the "Consent Order")⁶ entered on June 8, 2021. The City Solicitor

⁵ For example, in 2023, a family of four (e.g. two parents and two children, or a single parent with three dependents) would qualify under Buff Chace's agreement if they earned up to \$106,000. See Exhibit C (*FY2023 Rhode Island Income Limits for Low- and Moderate-Income Households*) (downloaded from <https://www.rihousing.com/wp-content/uploads/FY-23-HUD-Income-Limits.pdf>). As will be discussed, \$106,000 per year is not "low income" in the Providence area.

⁶ The Consent Order is attached hereto as Exhibit A.

had agreed (without authority to do so) that the *entirety* of these properties⁷ would be taxed at eight percent (8%) of their gross incomes for thirty years.⁸ The City Solicitor further agreed (again without authority) to refund taxes that had been paid on the properties during a time when they had not even pretended to comply with the mandatory requirements of the 8 Law.⁹

With one exception that is not applicable to the Consent Order, all tax abatements must be approved by the City Council and, to be binding on the City, all settlements of lawsuits (including consent orders) must be approved by the City Council. The tax abatements and Consent Order in this case, however, were never submitted to, much less approved by, the City Council.¹⁰ Indeed, the Consent Order was entered into without the knowledge of the City Council.

City Council staff did not become aware of anything unusual until January of 2022, more than seven months after the Consent Order was entered, and the Consent Order was not mentioned in City Council proceedings until May 10, 2022, when it was incidentally referred to by the City Finance Director during a meeting of the Finance Committee of the City Council, nearly one year after the Consent Order was entered.¹¹ Moreover, although the City Tax Assessor then promised to (and in fact did) subsequently submit these tax abatements to the City Council for their approval, the

⁷ Not merely the portion of income allocable to the income-restricted units.

⁸ The Consent Order also gives Buff Chace the right to opt out of the Consent Order at any time upon 90 days' written notice. See Exhibit A (Consent Order) ¶ 2 ("Each respective Plaintiff shall have the option to terminate the restrictive covenant in favor of the City of Providence upon providing ninety (90) days written notice to the Tax Assessor and City Solicitor's Office").

⁹ Exhibit A (Consent Order) ¶ 3. The travel of this case is discussed in detail *infra*, at pages 11–33.

¹⁰ Bouchard Aff. ¶ 8.

¹¹ Bouchard Aff. ¶ 8; Costa Aff. ¶ 9.

request was withdrawn.¹² Instead, the tax abatements were put into effect without approval of the City Council.

The Tax Collector then refunded hundreds of thousands of dollars in taxes to Buff Chace, and he is continuing to pay taxes pursuant to the Consent Order that are much less than he would be required to pay absent the Consent Order, which, as will be seen, was and is utterly void. Indeed, it is estimated that over the life of the Consent Order, Buff Chace will avoid over \$42,500,000 in real property taxes. Simply put, the City of Providence will lose over \$42,500,000 in taxes that would have been due and payable absent the Consent Order if Buff Chace's tax liability were determined using the same standards that apply to other similarly situated owners of rental property.

THE AUTHORITY OF THE CITY COUNCIL

“All powers of the city shall be exercised in the manner prescribed by this Charter or, if not so prescribed, then in such manner as shall be provided by ordinance or resolution of the city council.” Providence Home Rule Charter § 104. “The legislative powers of the city shall be vested in” the City Council. Id. § 401. See Providence City Council v. Cianci, *supra*, 650 A.2d at 501 (“Section 401 of the Providence Home Rule Charter states that the legislative powers of the city shall be vested in the city council.”). “The powers and duties of the city council shall include, without limitation, the following: . . . (c) To adopt the annual city budget appropriation ordinance and levy taxes.” Id.

¹² Bouchard Aff. ¶¶ 17–19; Costa Aff. ¶¶ 14–16.

By Rhode Island statute, the City Council has the sole authority to abate taxes. See R.I. Gen. Laws § 44-7-14 (“The city or town council of any city or town may cancel in whole or in part, taxes assessed upon personal, mixed, or real property: . . .”).

By Rhode Island statute, the City Council also has the sole authority to grant or deny tax stabilizations (not to exceed 20 years) to determine an amount of tax notwithstanding the valuation of a property or the otherwise applicable rate of tax. See R.I. Gen. Laws § 44-3-9(b) (authority to grant tax stabilizations “shall be exercised in the case of a city by the city council”).

The Providence Home Rule Charter also establishes the office of City Solicitor, who is duty bound to “prosecute or defend, as the case may be, all suits or cases to which the city . . . may be a party.” Providence Home Rule Charter § 603(b)(5). However, the City Charter does not grant general authority to the City Solicitor to settle such suits or cases.

Instead, in an exercise of the City Council’s own powers, the City Council has—by ordinance—delegated limited and circumscribed settlement authority to the City Solicitor. For example, the City Solicitor has been delegated the authority to settle negligence claims of \$3,000 or less. See Providence Ordinances Code § 2-99(a). However, as to negligence claims of more than \$3,000 and all non-negligence claims (of any amount), the City Council “shall not have the authority to settle the matter without approval of the committee on claims and pending suits and the mayor,” Providence Ordinances Code § 2-99(b), unless the claims fall within one of four specifically enumerated exceptions including “[m]atters concerning appeals for relief

from tax assessment where the tax assessor consents to the settlement”.¹³ Providence Ordinances Code § 2-99(b)(4).

As to all other matters, the City Solicitor has no authority to settle such claims without the prior approval of the City Council’s committee on claims and pending suits.

See id.

As discussed herein, the City Solicitor has improperly invaded the prerogatives of the City Council and encroached on its rights by improperly—and without authority—depriving the City of tax revenue by entering into an unauthorized Consent Order that is so extraordinarily irregular in and of itself as to raise legitimate concerns as to the City Solicitor’s good faith. But there is more. There is evidence of the City Solicitor’s actual knowledge of the illegality of the Consent Order. Indeed, it appears that the City Solicitor has procured an illegal result by taking advantage of the Court’s reasonable reliance on counsel for “both” sides to present a Consent Order that is the product of an arms-length negotiation, properly authorized, and consistent with the law. It is the City Council’s position that the securing of the Consent Order was itself an imposition on the Court that entered it.

SUMMARY OF THE ARGUMENT

The motion to intervene should be granted for the following reasons:

- Intervention is necessary to protect the rights and powers of the City Council, since the City Solicitor agreed to the tax abatements and the Consent Order without any authority to do so, without the requisite approval of the City Council, and with actual knowledge that the Consent Order violated the law;

¹³ As will be seen, this exception, as a matter of law, is inapplicable to this case.

- Intervention is necessary to protect the rights of the City of Providence, since the City Solicitor completely disregarded the black letter law established by Morse v. Minardi, 208 A.3d 1151 (R.I. 2019) and similar cases, that a taxpayer challenging an assessment of taxes cannot maintain a cause of action for declaratory relief, but instead must seek relief under the taxing statutes;
- Intervention is necessary since the Consent Order is ostensibly based upon a statutory allowance for reduced taxes for low-income residential properties, but was misused here to greatly reduce taxes on commercial rentals properties, unrestricted residential units, and residential properties that although ostensibly restricted **are not low-income**;
- Intervention is necessary to protect the tax base of the City of Providence, since the Consent Order permits Buff Chace to grossly underpay property taxes by tens of millions of dollars, and, if applied to other similarly situated owners of real estate, would reduce tax revenues by hundreds of millions of dollars (or even more) at a time when the City is already under great financial stress;
- Intervention is necessary to protect other Providence taxpayers, since the Consent Order will require the City of Providence to increase taxes on other property owners to make up the loss; and
- The motion to intervene is timely since:
 - the City Council did not have notice of and an opportunity to object to the Consent Order;
 - City officials in the executive branch stonewalled the City Council and its representatives in disclosing the existence of the Consent Order and in supplying information to the City Council once that existence was known;
 - More than a year after the Consent Order was entered, a promise was made to seek City Council approval, but when the City Council's opposition became known, the request for approval was withdrawn. Nevertheless, the tax abatements and refunds provided in the Consent Order were put into effect;
 - In late 2022 and early 2023 the City Solicitor repeatedly asked the City Council to refrain from acting because the City Solicitor

promised he would have the Consent Order amended to better comply with the 8 Law, but failed to keep that promise, leaving intervention in this proceeding as the sole recourse for the City Council to vindicate their authority and protect the public fisc;

- As late as July 19, 2023, the Mayor informed the City Council President (with a copy to her chief of staff and the Internal Auditor) of “ongoing negotiations” and a “potential settlement” whereby “Buff Chace is willing to enter into new terms that are more favorable to the City of Providence.” The Mayor went on to threaten that “opening litigation at this stage would stop all of our joint efforts to renegotiate a better deal;” and
- Even later, on July 24, 2023 (only two weeks ago), the Mayor’s office discussed in general and incomplete terms a proposed amendment to the Consent Order.

TRAVEL OF THE CASE

The City Council was not a party to and was not provided with any of the filings in this proceeding or the Consent Order itself until many months after the Consent Order had been entered on June 8, 2021. However, review of the docket shows the following travel of the case.

I. The Plaintiffs (one of whom was and is nonexistent)

This DJ Proceeding was commenced by the filing of the complaint on June 24, 2020. The original Plaintiffs were six real estate holding companies owning rental properties located in the City of Providence:

- Harrisburg Associates, LLC (“Harrisburg”);
- Lerner Associates, LLC (“Lerner”);
- The Alice Building, LLC (“Alice”);
- Peerless Lofts, LLC (“Peerless”);

- Smith/Keen, LP (“Smith”); and
- Lapham 290, LLC (“Lapham”).

Later (in May 2021 with the filing of the second Amended Complaint and merely two days before the Consent Order was filed) the following four entities were also added as plaintiffs or purported plaintiffs:

- RWB Associates, LLC (“RWB”);
- 276 Westminster, LLC (“276 Westminster”), a former limited liability company that had been dissolved as of 2018 after transferring its real estate to Lapham, and that no longer existed as of the subject lawsuit;
- Clemence 91, LLC (“Clemence”); and
- Downcity Revitalization Fund I, LLC (“Downcity”).

Collectively, these ten entities owned or purported to own various mixed use¹⁴ properties within Providence (the “Subject Properties”).

All of the Subject Properties were and are owned directly or indirectly by Arnold B. “Buff” Chace Jr. (“Buff Chace”) and/or the property development company Cornish Associates LP, where Buff Chace is managing partner.¹⁵ Although it was not acknowledged in the Complaint, in fact four of the Plaintiffs (Lapham, RWB, Clemence, and 276 Westminster¹⁶) were already beneficiaries of a tax stabilization agreement¹⁷ (“TSA”) which was to have provided them with preferential tax treatment for fourteen

¹⁴ See Providence Zoning Ordinance, art. II, § 201 (“Mixed-Use. A mixture of land uses within a single development, building, or tract.”). The Subject Properties here involve a mixture of commercial and residential uses.

¹⁵ See *supra* at 1 n.1.

¹⁶ 276 Westminster was dissolved after receiving its TSA.

¹⁷ Exhibit D (Providence Ordinances Chapter 2018-7 No. 233, entitled “An Ordinance Establishing a Tax Stabilization Agreement for Lapham 290, LLC, 276 Westminster Street, LLC, RWB Associates, LLC, and Clemence 91, LLC”) (establishing one TSA for all four entities).

(14) years.¹⁸ This TSA expressly and contractually¹⁹ waived all rights to seek further reductions of taxes under the 8 Law (and other provisions of Title 44 of the Rhode Island General Laws) until the year 2031:

Section 8.4. Property Owner's Rights. During the tax stabilization term as defined in Section 2.2 [i.e. the period commencing on December 31, 2017 and terminating on December 31, 2031], **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 they pertain to the Tax Payments due and owing pursuant to this Agreement, **unless** the assessment value of the Property increases by more than ten percent (10%) between any two City-wide revaluations (as referenced in R.I. Gen. Laws § 44-5-11.6) which occur during the term of this stabilization or if there is a substantial change in circumstances regarding the value of the Property. . . .

Buff Chace did not claim that either of the exceptions to that waiver applied to the Subject Properties.²⁰

II. From the filing of the initial Complaint to the entry of the Consent Order

As noted, this Proceeding was commenced by the filing of a “Complaint for Declaratory Judgment” on June 24, 2020, on behalf of Harrisburg, Lerner, Alice, Peerless, Smith, and Lapham. The complaint contains only one count, asking the Court for a declaratory judgment as to the 8 Law’s application to the Subject Properties. That is, Buff Chace sought to apply the 8 Law and tax at 8% the gross income on all three

¹⁸ Buff Chace’s other properties had already benefited from prior TSAs dating back to 2001 and 2002.

¹⁹ See Exhibit D (Providence Ordinances Chapter 2018-7 No. 233) § 8.2 (“[T]his 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.”) (emphasis supplied).

²⁰ Exhibit D (Providence Ordinances Chapter 2018-7 No. 233).

components of the buildings: commercial units, unrestricted residential units, and restricted residential units.

On June 25, 2020, the same original six Plaintiffs filed “Plaintiffs’ [first] Amended Complaint for Declaratory Judgment,” seeking the very same declaratory relief on behalf of the same six Plaintiffs.²¹ This amended pleading merely added the civil action number and relabeled the subheading of Count I from “DECLARATORY JUDGMENT BUSINESS INCOME COVERAGE”²² to “DECLARATORY JUDGMENT”.²³

The “dispute” as alleged in the first Amended Complaint²⁴ concerned whether, pursuant to R.I. Gen. Laws § 44-5-13.11, Buff Chace would be entitled to obtain favorable tax treatment for the Subject Properties (including both residential and commercial units) by giving the City of Providence restrictive covenants that purported to restrict merely twenty five percent (25%) of the residential units at the properties to tenants with incomes no greater than one hundred percent (100%) of Area Median Income (“AMI”).²⁵ According to both the original Complaint and the first Amended Complaint, the Tax Assessor “had taken the position that R.I. Gen. Laws §44-5-13.11

²¹ See first Amended Complaint at 1. Buff Chace unhelpfully entitled both his first Amended Complaint and his subsequent second Amended Complaint (discussed *infra*) with the same title: “Plaintiffs’ Amended Complaint for Declaratory Judgment.”

²² The “BUSINESS INCOME COVERAGE” verbiage had evidently been cut and pasted from an unrelated insurance coverage declaratory action complaint.

²³ See first Amended Complaint at 1, 6.

²⁴ Whether there was ever a real “dispute” between the parties to the DJ Proceeding is a question of fact, but the City Council believes it will prove in discovery that the DJ Proceeding was collusion between non-adverse parties.

²⁵ Complaint ¶¶ 18, 28. See the U.S. Department of Housing and Urban Development (HUD) Statement on FY 2023 Income Limits, https://www.huduser.gov/portal/datasets/il.html#2022_documents (“HUD annually calculates estimates of median family income for every area of the country. These estimates are used to calculate various income limits, which are defined as percentages of median family income, and vary by the number of persons in a household. HUD uses income limits to define low-income status and resulting eligibility for many of its housing assistance programs.”).

required the City to apply the 8 percent (8%) tax rate ‘only’ to the units that are restricted by the covenant, not to the Properties as a whole.”²⁶ (However, that is not now—nor would it ever have been—the position of *the City Council*. The City Council would have taken the position, as it now does, that Buff Chace was entitled to no benefits whatsoever under the 8 Law.)

The docket reflects that on June 30, 2020, Buff Chace filed an Emergency Motion for Preliminary Injunction with a supporting Memorandum of Law, without an affidavit or any other evidentiary support. The motion asked the Court “to preliminarily enjoin the City from changing the Plaintiffs’ tax bills for the new tax year beginning on July 1, 2020 until such time as the instant matter is resolved.”²⁷ According to the supporting memorandum, absent the relief requested in the complaint, “the Plaintiffs face substantial increase [*sic*] in taxes which threaten the financial viability of the Plaintiffs, including its [*sic*] ability to pay taxes, remain in compliance with loan covenants, and ultimately avoid tax sale.”²⁸ The parties conducted no discovery. The City Council believes that discovery would have revealed, and now will reveal, that the allegations were insupportable.

The docket states that on July 2, 2020, the motion was rejected by the clerk as “Motion Not Scheduled” for failure to select a hearing date (as required by the operative civil motion protocols, including *Providence County Motion Calendar Guidance on*

²⁶ Complaint ¶¶ 21; first Amended Complaint ¶¶ 21.

²⁷ Motion for Preliminary Injunction at 1.

²⁸ Memorandum in Support of Motion for Preliminary Injunction at 2–3. However, no explanation much less evidentiary support was provided for these allegations and the parties conducted no discovery. Proposed Intervenor believes that discovery would have revealed the allegations to be insupportable.

*Administrative Order 2020-5 and Protocol for Requesting a Remote Hearing/
Conference (effective April 30, 2020)).*²⁹

Despite being promptly informed by the Court that their “Emergency” motion would not be heard, Buff Chace thereafter filed nothing whatsoever with the Court (apart from certain returns of service) for over three months.

The docket does not contain any order granting the motion for any preliminary injunction. The docket does contain, however, a *stipulation*, dated October 19, 2020 (*i.e.*, three months after the rejection of the motion for a preliminary injunction), that **falsely** states that the preliminary injunction had been entered on June 29, 2020 (which—anachronistically—was the day before the motion seeking the injunction had even been filed).³⁰ Importantly, the stipulation purported to “extend” that **completely nonexistent** preliminary injunction and to “agree that the tax bills for the Plaintiffs will be kept at the same amount as for the fourth quarter of fiscal year 2020 through the end of the second quarter of the current tax year while the parties work to resolve this matter.” A second stipulation was filed on April 14, 2021, which purportedly further “extended” the **still nonexistent** preliminary injunction “through the end of the fourth quarter of the current tax year. . . .”³¹

The two stipulations purporting to extend the preliminary injunction (itself never granted, after the Court rejected the motion) were never entered as orders of this Court. As noted, the stipulations falsely stated that the preliminary injunction had been granted.

²⁹ The docket sheet is attached hereto as Exhibit B.

³⁰ Stipulation filed October 19, 2020 at 1.

³¹ Stipulation filed April 14, 2021 at 1.

It had not. Parties may not stipulate to the entry of an injunction (violation of which is punishable by contempt) without the affirmative and express adoption of a preliminary injunction entered by the Court.³² Thus, at most, the purported “Preliminary Injunction” constitutes merely a falsely labeled agreement between the parties to protect Buff Chace from tax increases that otherwise would have occurred and to which all other similarly situated taxpayers were subject, all without City Council approval.

On September 14, 2020, the Providence City Solicitor filed an Answer to the first Amended Complaint (which included only the original six plaintiffs). The City Solicitor purported to file the Answer on behalf of all “Defendants,” i.e. the City of Providence, James Lombardi as Treasurer, and Elyse Pare as Tax Assessor. That Answer denied the material allegations of the first Amended Complaint, including an express denial that Buff Chace was entitled to the benefits of the 8 Law, and included several affirmative defenses, including:

- that the complaint failed to state a claim for relief;
- that Buff Chace had failed to exhaust his administrative remedies so as to permit this court to hear the amended complaint; and
- that Buch Chace had not met the statutorily required conditions precedent to commencing a suit for relief from assessment of taxes under R.I.G.L. § 44-5-15, 44—5-16, 44-5-26, and 44-5-27.³³

As discussed below, all three of these affirmative defenses were correct and the complaint should have been dismissed for these reasons, but the City Solicitor did not pursue these defenses.

³² See *infra* at 78.

³³ See Answer at 5 (affirmative defense #6).

On May 12, 2021, the six original Plaintiffs filed a motion for leave to file a second Amended Complaint. This motion (like its predecessor) was again rejected by the clerk that same day as “Motion Not Scheduled” for failure to indicate a hearing date. Subsequently, on May 12, 2021, the six original Plaintiffs and the City Solicitor filed a stipulation which granted those six Plaintiffs’ motion (now called an “Emergency” motion) to file a second Amended Complaint, which they filed two days later on May 14, 2021. The City Council contends that there was no “emergency” whatsoever, but that this represented yet another giveaway to Buff Chace.

The second Amended Complaint added four additional plaintiffs—RWB, 276 Westminster,³⁴ Clemence, and Downcity—and alleged that they also had the same ongoing dispute with the Tax Assessor as did the original six Plaintiffs, notwithstanding that the four new Plaintiffs had never participated in or presented that dispute to the City. (The motion to amend the complaint had made the following incredible allegation: “In discussions with the City of Providence, Plaintiffs **discovered** other parties that are similarly situated and in the spirit of promoting judicial economy, seek to add the Additional Plaintiffs to the cause of action.” (emphasis supplied). This was palpably incredible because all four new parties were and always had been Chace entities).

Both RWB and Clemence (along with 276 Westminster, prior to its dissolution in 2018) were beneficiaries of the same form of TSA that provided preferential tax treatment to Lapham.

³⁴ The limited liability company 276 Westminster, LLC was dissolved in 2018 and was not a validly extant limited liability company at the time it was purportedly added as a party plaintiff. The certificate of dissolution is attached hereto as Exhibit E. Prior to its dissolution, 276 Westminster had conveyed all of its property to Lapham. See Exhibit F (quitclaim deed).

The second Amended Complaint, filed on May 14, 2021, became and continues to be the operative complaint. However, the City Solicitor never filed an Answer to that complaint. Instead, on May 14, 2021, Buff Chace's counsel filed the Consent Order which was electronically signed by Buff Chace's counsel and by City Solicitor Jeffrey Dana purportedly on behalf of "Defendants."³⁵ The Consent Order was electronically endorsed by the Court and entered by the Clerk on June 8, 2021, and filed by the Clerk on June 9, 2021.

III. The Consent Order

The Consent Order states that "[a]fter a series of settlement conferences between the parties, the parties have agreed upon the terms of this Consent Order." The docket does not reflect that the Court had any active involvement in the case other than to (understandably) sign the Consent Order, which was presented to the Court as agreed to by what appeared to be "adversary" counsel. There was nothing to put the Court on notice of any irregularity.

It is noteworthy that on July 19, 2023, the present Mayor incorrectly stated in his letter to the City Council President:

That agreement was executed in 2021 after submission and review by the Honorable Justice Melissa Darigan following a public hearing and oral argument.

Costa Aff. Ex. 10. In fact, there is nothing that supports the Mayor's statement. The Court's docket supports nothing more than the fact that there was a "conference" (which of course occurs in chambers), which is hardly a "public hearing" as the Mayor claims.

³⁵ Exhibit A (Consent Order) at 4.

Further, inasmuch as there was already agreement between the City Solicitor and Buff Chace's counsel, it is difficult to understand of what the "oral argument" would consist. The "adversaries" at that point had nothing to argue about.

The Consent Order contained the following provisions, *inter alia*:

- "The Plaintiff [*sic*] [*recte* Plaintiffs] and City of Providence shall enter into and record a 30-year restrictive covenant in favor of the City of Providence restricting twenty five percent (25%) of the total residential units at each Plaintiff's respective property for occupancy by tenants who have an income of no greater than one hundred percent (100%) of the area median income (AMI) for each respective property within forty-five (45) days of the entry of this Consent Order."³⁶
- "Each respective Plaintiff shall have the option to terminate the restrictive covenant in favor of the City of Providence upon providing ninety (90) days written notice to the Tax Assessor and City Solicitor's Office."³⁷
- "[T]he City agrees that each Plaintiffs' respective properties will be subject to a real property tax that is equal to eight percent (8%) of each properties' previous years' gross scheduled income pursuant to R.I.Gen.Laws §44-5-13.11 retroactive to tax year 2020's first quarterly payment of July 24, 2020."³⁸
- "The 2021 tax bills for each Plaintiffs' property shall be adjusted to reflect an assessment pursuant to R.I.Gen.Laws §44-5-13.11 and the Plaintiffs shall receive a credit from the Defendants for any overpayment of taxes that has occurred since tax year 2020's first quarterly payment of July 24, 2020 provided that the Plaintiff must bring the Plaintiffs' properties into compliance with the terms of the restricted [*sic*] [*recte* restrictive] covenant

³⁶ Exhibit A (Consent Order) ¶ 2.

³⁷ Exhibit A (Consent Order) ¶ 2. This provision made the restrictive covenants optional for Buff Chace but binding on the City unless and until Buff Chace exercised his option. Moreover, the Consent Order did not obligate Buff Chace to return any tax savings if he exercised the option. That option was not even requested in either the original complaint or any of the amended complaints, and the 8 Law (R.I. Gen. Laws § 44-5-13.11) makes no allowance for such an option.

³⁸ Exhibit A (Consent Order) ¶ 3.

referenced in paragraph 1 of this Consent Order within ninety (90) days of the recording of said restrictive covenant.”³⁹

IV. Previous reviews by the City Law Department

As discussed below, the issues raised by the DJ Proceeding had previously been analyzed by the Law Department on three separate occasions, by three separate Assistant City Solicitors, all of whom concluded that the 8 Law did not entitle a taxpayer to the type of benefits afforded by the Consent Order.

On June 15, 2016, an Assistant City Solicitor provided a response to the inquiry of the same City Solicitor (Jeffrey Dana) of "how the city applies RIGL 44-5-13.11 to properties which are deed-restricted but not comprised of 100% affordable units."⁴⁰ The memorandum responded:

The applicable law is clear and unambiguous on its face; it requires that the property "be encumbered by a covenant recorded in land records in favor of a government unit or Rhode Island housing and mortgage finance corporation restricting either or both the rents that may be charged to tenants of the property or the incomes of the occupants of the property." R.I. GEN. LAW §44-5-13.11. **It does not state that some subset of units of the property may be restricted as to rent and/or income; instead the law requires the entire property's rents and/or incomes be restricted. . . .**

As an administrative accommodation, the City of Providence Tax Assessor has afforded property owners the ability to obtain some of the preferential tax treatment without fully restricting each and every unit within the single structure. . . . In an effort to bolster the creation and maintenance of **low-income** housing, the Assessor will liberally apply the preferential tax treatment to those units qualifying in any given single

³⁹ Exhibit A (Consent Order) ¶ 6. In other words, all of Buff Chace's entities would receive favorable tax treatment retroactive to 2020; a time when he did not even purport to comply with the statutory requirement for an actual recording of the restrictive covenants in order for the reduced tax rate to apply, let alone comply with such covenants. Indeed, as we have seen, four of the Plaintiffs had not even asked for that relief until two days before the Consent Order was filed.

⁴⁰ Costa Aff. Ex. 7, Attachment C.

structure. For illustrative purposes, if 50% of the units in any given structure qualify, then the Assessor will apply the preferential tax treatment to those restricted units and the other 50% of the units will be assessed at full and fair cash value in accordance with R.I. GEN. LAW §44-5-12.

[Emphasis supplied]

On March 11, 2020,⁴¹ which was three months before the DJ Proceeding was filed, a *second* Assistant City Solicitor addressed the issue⁴² as follows:

The plain reading of this statute [R.I. Gen. Laws § 44-5-13.11] limits the preferential tax treatment to properties/units that are, in fact, 100% restricted. To interpret the statute otherwise would defeat the purpose of the law, which is to encourage low income residential development by relieving developers of significant property tax when they accommodate low income tenants. **If the 8% tax were applied to all developers who restricted as little as one residential unit on their property, an absurd result would ensue - the City would be giving significant tax breaks when none were needed and conversely limiting affordable housing.**

[Emphasis supplied]

Most notably, this Assistant City Solicitor noted that the City would “exceed its authority under R.I. Gen Laws § 44-5-13.11 by applying the 8% tax to an entire multi-residential property when only a small portion of units qualify as low income housing...” (emphasis supplied). This is a clear acknowledgment that, when the City Solicitor later agreed to precisely that, he knowingly exceeded the City’s authority under the 8 Law!

⁴¹ Costa Aff. Ex. 7, Attachment D.

⁴² We expect that discovery will show that the issue came up specifically in connection with Buff Chace’s attempt to obtain 8 Law benefits.

In January 2021, after the DJ Proceeding was filed, and while it was pending but before the Consent Order was entered, a third Assistant City Solicitor reviewed a proposed draft of the instant Consent Order in this case and provided this comment⁴³:

Because this project is mixed use (not solely residential) and because the entirety of the property is not restricted, **I agree with my colleagues that the project does not meet the criteria for 8 Law under 44-5-13.11.**

[Emphasis supplied]

This third Assistant City Solicitor also noted⁴⁴ that proposed consent order violated the terms of the TSA and was subject to dismissal:

Also, pursuant to Section 8.4 of the Ordinance, the beneficiaries under the Ordinance "agreed to waive and forever forgo any and all rights and privileges under Title 44." **Therefore, we could motion to dismiss the dec[laratory] action altogether.**

[emphasis supplied]

Worse still, this third Assistant City Solicitor concluded:

It is my understanding that our client is well aware of the law departments advise [sic] and wishes to move forward.⁴⁵

In other words, having been informed of "the law department's advi[c]e" that the proposed 8 Law benefits to be given in this case were unlawful, the "client" wanted to go ahead anyway. The City Solicitor swallowed hard and followed orders from the "client" knowing of their illegality. (Most likely the client was then-Mayor Elorza. That can be fleshed out in discovery.)

⁴³ Costa Aff. Ex. 7, Attachment E.

⁴⁴ Costa Aff. Ex. 7, Attachment E.

⁴⁵ Costa Aff. Ex. 7, Attachment E.

V. City Council staff learn of Consent Order

As discussed below, the first mention of the Consent Order in any meeting of the City Council was during a meeting of the Finance Committee on May 10, 2022.

However, City Council staff learned of it informally earlier, after the City Internal Auditor learned of it on January 31, 2022. The facts concerning that disclosure are set forth in the Bouchard Affidavit and the Costa Affidavit.

City Internal Auditor Gina Costa brought it to Mr. Bouchard's attention and provided him with a copy in February of 2022.⁴⁶ Upon review they both became concerned that the Consent Order appeared to be very detrimental to the City's finances, was not properly authorized, and was not consistent with the law concerning reduced taxes for low-income properties.⁴⁷ Over the next three months they sought information from City officials necessary to understand the facts and advise the City Council. However, their efforts were futile. Their questions to the Providence Chief Financial Officer and the City Solicitor were not answered.⁴⁸

VI. The City Council learns of Consent Order and seeks to assert its authority, but City Officials try to keep the matter from the City Council

On May 10, 2022 the existence of the Consent Order was mentioned serendipitously during a video-recorded⁴⁹ meeting of the Finance Committee⁵⁰ of the

⁴⁶ Bouchard Aff. ¶¶ 8, 9; Costa Aff. ¶ 7.

⁴⁷ Bouchard Aff. ¶ 9; Costa Aff. ¶ 7.

⁴⁸ Bouchard Aff. ¶ 14; Costa Aff. ¶ 7.

⁴⁹ The relevant portion of that meeting can be viewed at https://www.youtube.com/watch?v=EGeij6sXJ_g.

⁵⁰ The Finance Committee of the City Council approves tax abatements in the first instance, subject to later approval by the entire City Council.

City Council, which was also attended by City Internal Auditor⁵¹ Gina Costa, City Finance Director Sara Silveria, City Tax Assessor Janesse Muscatelli, and Deputy City Solicitor Kenneth Chiavarini. During the meeting the Chairperson of the Finance Committee asked the Tax Assessor “[t]he city solicitor doesn’t have the ability to abate taxes it’s the council’s purview, correct?”⁵² The Tax Assessor responded equivocally. However, she did promise that the Consent Order would be brought before the City Council in connection with “the next quarterly statements for abatement reports.”⁵³ Further, she deferred to City Solicitor, who was not in attendance, as to whether the abatement of taxes was within the City Council’s “purview.” (The Deputy City Solicitor in attendance offered no advice on this point.)

Accordingly, five of the tax abatements promised in the Consent Order were scheduled to come before the Finance Committee for approval (or rejection) on September 22, 2022.⁵⁴ This meeting was to be the opportunity to assert the City Council’s authority and demand a response to the City Council and Internal Auditor’s concerns with the Consent Order, failing which the Finance Committee could simply deny the requested abatements and show that the Consent Order was a nullity.⁵⁵ However, that meeting was cancelled.⁵⁶

⁵¹ Under the Providence Home Rule Charter, the Internal Auditor has (*inter alia*) the power and duty to “perform audits of all offices, departments and other agencies of the city”, including (*inter alia*) “[w]hether the audited entity is in compliance with the state constitution, this Charter, city ordinances, and all other applicable laws and regulations.” Providence Home Rule Charter § 816(a)(1) & (b)(3).

⁵² See transcription of the relevant portion of the May 10, 2022 meeting attached hereto as Exhibit G (“Fin. Comm. Trans.”) at 2.

⁵³ See Ex. G (Fin. Comm. Trans.) at 2.

⁵⁴ Costa Aff. ¶ 14.

⁵⁵ Bouchard Aff. ¶ 18; Costa Aff. ¶ 15.

⁵⁶ Id.

Next, City officials submitted a revised request dated October 18, 2022 for City Council approval which *deleted the tax abatements promised in the Consent Order*.⁵⁷

In response to that maneuver, Internal Auditor Costa sent an email to City Solicitor Jeffrey Dana on November 14, 2022, that sought a written response to (*inter alia*) the question of “When will the consent judgements be brought to Council for the abatements on the various properties that provide for retroactive tax relief?” He responded on November 29, 2022 with a legal argument why City Council approval was not required, which boiled down to an assertion that the Consent Order was the product of an appeal from tax assessment.⁵⁸ The City Solicitor specifically stated:

With respect to Consent Judgments which provide potential tax relief, according to Providence Code of Ordinances Chapter 2, Art. VI, Sec. 2-99(b)(4), Consent Judgements do not need Council approval for "matters concerning appeals for relief from tax assessment." Generally, when a plaintiff has a claim for monetary damages against the City, they must present their claim to the City Council. RIGL § 45-15-5. "[I]n case just and due satisfaction is not made" to the complainant after forty days, the complainant "may commence his or her action against the treasurer for the recovery of the complaint." *Id.* Naming the Treasurer in suits for monetary relief is consistent with Home Rule Charter, because the Treasurer is vested with the "custody of all public funds belonging to or under the control of the city." Sec. 602(b)(4). Tax appeals, however, are different creatures. Tax appeals are requests for relief from property assessment. Initially, it was “the uniform practice” to “bring such actions against the town treasurer.” *Fish v. Higbee*, 22 R.I. 223, 225, 47 A. 212, 212 (1900). However, this changed with the passage of P.L. 1932, ch. 1945, now **§ 44-5-26**. This statute specifies that, when petitioning to the Superior Court, “the assessors of taxes of the city or town in office at the

⁵⁷ Costa Aff. ¶ 16.

⁵⁸ See Costa. Aff. Ex. 6 (email trail including Jeff Dana email dated November 29, 2022) (“With respect to Consent Judgments which provide potential tax relief, according to Providence Code of Ordinances Chapter 2, Art. VI, Sec. 2-99(b)(4), Consent Judgements do not need Council approval for ‘matters concerning appeals for relief from tax assessment.’”).

time the petition is filed shall be made parties respondent.” Sec. **44-5-26(b)** (emphasis added).

[Emphasis supplied]

Costa Aff. Ex. 6. Clearly this was not a tax appeal. Indeed, the Complaint itself did not claim to be a tax appeal, but, rather, sought a declaratory judgment. It expressly, clearly, and solely sought declaratory relief.

After looking into the matter, City Internal Auditor Costa concluded that the Consent Order was both substantively improper and damaging to the City’s fisc.⁵⁹ On December 1, 2022, City Internal Auditor Costa submitted a memorandum to the entire City Council.⁶⁰ The memorandum reviewed the facts then-available to her concerning the Consent Order and tax abatements. The City Auditor estimated that, if the Consent Order were followed, “the city would be facing a potential loss in the amount of \$18,780,00^[61] at a minimum.” The City Auditor noted that “[t]he City Council was not provided with an opportunity to approve or deny this abatement.”⁶² The Auditor concluded that “[i]t is my recommendation to hire outside counsel to challenge consent order 2020-04757.”⁶³

Under Section 816 of the Providence Home Rule Charter, the Internal Auditor’s job includes:

⁵⁹ Costa Aff. ¶¶ 7, 24.

⁶⁰ Costa Aff. ¶ 24 & Ex. 7.

⁶¹ Costa Aff. ¶ 24 & Ex. 7 at 4. Present estimates of the City’s total loss over the projected term of the benefit afforded by the Consent Order are that it will exceed forty-two million, five hundred thousand dollars (\$42,500,000). See Costa Aff. ¶ 24.

⁶² Costa Aff. ¶ 24 & Ex. 7 at 4.

⁶³ Costa Aff. ¶ 24 & Ex. 7 at 4.

(a) Powers and duties of the internal auditor. The powers and duties of the internal auditor shall be, without limitation, the following:

(1) To perform audits of all offices, departments and other agencies of the city, and additional audits as directed by the president of the city council or by resolution of the city council;

* * *

(b) Scope of audits. Audits shall include, but shall not be limited to determining:

* * *

(3) Whether the audited entity is in compliance with the state constitution, this Charter, city ordinances, and all other applicable laws and regulations;

See Costa Aff. ¶ 2.

The 2023 term of the City Council commenced on January 2, 2023. In January of 2023, staff of the City Council were informed that the City Solicitor was in the process of obtaining Buff Chace's agreement to an amendment to the Consent Order which would mitigate its impact.⁶⁴ Indeed, then City Council Chief of Staff Sean Bouchard was so informed by Mayor Smiley at a meeting on February 23, 2023.⁶⁵ Those assurances were repeated in March of 2023.⁶⁶ Those assurances produced absolutely nothing. Consequently, on March 16, 2023, the City Council authorized the Council President to retain outside counsel.⁶⁷

⁶⁴ Costa Aff. ¶ 26.

⁶⁵ Bouchard Aff. ¶ 25.

⁶⁶ Bouchard Aff. ¶ 27.

⁶⁷ Bouchard Aff. ¶ 27.

VII. The City Council retains outside counsel and, in the meantime, the Mayor Smiley administration (including the same City Solicitor who agreed to the Consent Order) claimed they were attempting to renegotiate the Consent Order

On March 16, 2023, the City Council passed a resolution authorizing Council President Rachel Miller to retain outside counsel to review the Consent Order, to report their findings to the City Council, and to initiate court filings if appropriate.⁶⁸ The resolution directed that a copy of the resolution be sent to the Mayor and the City Solicitor.⁶⁹ Council President Miller thereafter engaged the undersigned counsel, the law firm Wistow, Sheehan & Loveley, PC (“WSL”), pursuant to an engagement agreement that was executed by the Council President on May 12, 2023 and received by the City Council at the May 18, 2023 City Council meeting.⁷⁰

On June 15, 2023, the City Council convened and considered a resolution requesting that WSL attend a special meeting of the City Council to present their findings to the full City Council in executive session.⁷¹ The City Council voted to refer that resolution to the Finance Committee.⁷² However, Finance Committee Chairperson Helen Anthony had, days earlier, been seriously injured in California.⁷³

On July 13, 2023, the Finance Committee of the City Council convened and received a presentation the City Solicitor’s office and then a presentation from WSL

⁶⁸ Bouchard Aff. ¶ 27; Costa Aff. ¶ 27.

⁶⁹ Costa Aff. ¶ 27.

⁷⁰ Costa Aff. ¶ 27.

⁷¹ Costa Aff. ¶ 29.

⁷² Costa Aff. ¶ 29.

⁷³ Costa Aff. ¶ 28.

attorneys in executive session.⁷⁴ Following that presentation, the Finance Committee approved the resolution inviting WSL to make a presentation to the full City Council, which resolution was scheduled to be considered by the City Council at the July 20, 2023 meeting.⁷⁵

On July 14, 2023, a spokesperson for the Mayor was quoted by the Boston Globe as follows:

“For months, the city has been negotiating with Buff Chace, working towards a solution that is better for the city and taxpayers,” Smiley’s press secretary Josh Estrella said. “The council’s current approach risks both not achieving a better deal while sending more resources to an outside counsel.”

Despite not supporting the deal, Estrella defended Dana’s authority to negotiate such a tax agreement without the council’s approval, noting that “resolving litigation through consent agreements is something the solicitor regularly does on behalf of the city.”^[76]

On July 17, 2023, City Internal Auditor Gina Costa wrote a letter to the Mayor, requesting, pursuant to Section 816⁷⁷ of the Providence City Charter, specific information concerning those negotiations.⁷⁸

On July 19, 2023, the Mayor wrote a letter to the President of the City Council, stating that it was in response to the City Internal Auditor’s July 17, 2023 letter.⁷⁹

⁷⁴ Costa Aff. ¶ 30.

⁷⁵ Costa Aff. ¶ 30.

⁷⁶ Costa Aff. ¶ 31.

⁷⁷ Section 816 of the Providence City Charter provides in relevant part: “The city internal auditor shall have access to the books and records of all offices, departments and other agencies of the city, and it shall be the duty of all officers and employees thereof to supply such information and documents concerning the affairs of the city as the internal auditor may request.” See Costa Aff. ¶ 32.

⁷⁸ Costa Aff. ¶ 33 & Ex. 9.

⁷⁹ Costa Aff. ¶ 34 & Ex. 10.

Although the Mayor's letter provided virtually none of the information specifically requested by the City Internal Auditor, the Mayor's letter did state:

As it relates to ongoing negotiations, Buff Chace is willing to enter into new terms that are more favorable to the City of Providence. This potential settlement would provide the City with \$1,300,000 for affordable housing while also paying the full commercial taxes on the commercial components of the properties in question.^[80]

Thereafter, on July 24, 2023 at 7:43 p.m., the night before the City Council's special meeting at which the City Council was scheduled to consider a resolution (which was ultimately adopted) ratifying the engagement of counsel and authorizing this motion to intervene, Deputy Director of Intergovernmental Affairs Michael Napolitano emailed a proposed Amended and Restated Consent Order⁸¹ to the City Council President. Under that proposal:

- Buff Chace's *commercial* units would be taxed at the ordinary rate beginning in the 2024 tax year (by which time *he will already have collected additional millions of dollars in savings*);
- Buff Chace would "retain" his "rights to challenge the assessments associated with the properties, as listed in Exhibit A to this Consent Order" (*which exhibit was not provided*);
- Buff Chace would pay an additional \$50,000 annually to the City through 2049 (*a number that even without reduction to present value does not come close to the savings Chace will have already pocketed by 2024*);
- Buff Chace and the City would "enter into and record" undetermined "amended and restated 30-year restrictive covenants" concerning the properties.

As noted above, this proposal left open critical terms. For example, the new "restricted covenants" were yet to be agreed upon. In other words, aside from being riddled with

⁸⁰ Costa Aff. ¶ 34 & Ex. 10 at 1–2.

⁸¹ Costa Aff. ¶ 36 & Ex. 11

objectionable provisions, the proposal was so open-ended as to be at the most an agreement “to try to agree.”

On July 25, 2023, the City Council convened to consider two items: “Discussion and Presentation relative to ‘Resolution Requesting a presentation from Wistow, Sheehan & Loveley, P.C. (‘WSL’) regarding their investigation into Case No. PC-2020-04757” and “Resolution (a) ratifying the agreement by and between the Providence City Council and Wistow, Sheehan & Loveley, P.C. (‘WSL’) entered into on May 15, 2023 regarding Case No. PC-2020-04757; and (b) authorizing WSL to make such claim(s) regarding Case No. PC-2020-04757 as may be warranted based upon WSL’s investigation.”⁸²

During the July 25, 2023 meeting, the City Council went into executive session.⁸³ It heard a presentation from Internal Auditor Gina Costa, followed by a presentation of approximately an hour and a half from City Solicitor Jeffrey Dana, accompanied by Assistant City Solicitors Lisa Fries and Etie-Lee Schaub.⁸⁴ The City Council also heard a presentation of approximately an hour and a half from WSL attorney Max Wistow, accompanied by WSL attorney Benjamin Ledsham.⁸⁵ Following each speaker’s presentation, City Council members asked questions of their choosing. After the executive session, the City Council approved the resolution ratifying WSL’s engagement agreement and authorizing WSL to make claims on behalf of the City Council.⁸⁶

⁸² Costa Aff. ¶ 39.

⁸³ Costa Aff. ¶ 40.

⁸⁴ Costa Aff. ¶ 40.

⁸⁵ Costa Aff. ¶ 40.

⁸⁶ Costa Aff. ¶ 40.

On July 26, 2023, following the July 25, 2023 special meeting, the Boston Globe published an article quoting a spokesperson for Buff Chace as saying he had been negotiating "a new agreement with the [Mayor] Smiley administration since January," but "[t]hose negotiations are now off."⁸⁷

The City Council's July 25, 2023 resolution became effective without the Mayor's signature as City Council Resolution No. 351.⁸⁸

ARGUMENT

I. The City Council is entitled to intervention as of right

A. Standard for intervention as of right

Intervention of right is controlled by Super. R. Civ. P. 24(a)(2):

(a) Intervention of Right. Upon timely application **anyone** shall be permitted to intervene in an action:

* * *

(2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

[Emphasis supplied]

The determination of whether intervention is as of right is based upon a "four-factor test" as follows:

"Under Rule 24(a)(2), an applicant will be granted intervention as of right if [(1)] the applicant files a timely application * * *, [(2)] the applicant claims

⁸⁷ Costa Aff. ¶ 41 & Ex. 12.

⁸⁸ Costa Aff. ¶ 42 & Ex. 13.

an interest relating to the property or transaction which is the subject matter of the action, [(3)] the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, and [(4)] the applicant's interest is not adequately represented by current parties to the action * * *

Hines Road, LLC v. Hall, 113 A.3d 924, 928 (R.I. 2013) (quoting Tonetti Enterprises, LLC v. Mendon Road Leasing Corp., 943 A.2d 1063, 1072–73 (R.I. 2008)).

Because Rhode Island precedent applying this test is sparse, the Court may look to the federal courts for guidance. Retirement Board of Employees' Retirement System of City of Providence v. Corrente, 174 A.3d 1221, 1230 (R.I. 2017) (“Because ‘Rhode Island precedent on this point is sparse,’ this Court ‘may properly look to the federal courts for guidance.’”) (quoting Tonetti Enterprises, supra, 943 A.2d at 1073) (applying Rule 24(a)(1)).

The rule dealing with intervention as of right is to be liberally construed, and any doubts are to be resolved in favor of the applicant:

In keeping with the policy of [the rule] to promote judicial economy, the rule dealing with intervention as a matter of right should be liberally construed, **and any doubts are to be resolved in favor of the applicant**; when evaluating whether the requirements for intervention of right are met, a court normally construes the governing rule broadly in favor of proposed intervenors since a liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.

25 Federal Procedure, Lawyers Edition § 59:298 (June 2018 update) (footnotes omitted) (emphasis supplied).

Moreover, and of fundamental importance to this case, “[t]he applicants' well pleaded allegations must be accepted as true for purposes of considering a motion to intervene, with no determination made as to the merits of the issues in dispute.”

Herman v. New York Metro Area Postal Union, No. 97 CIV. 6839 (KMW), 1998 WL 214787, at *1 (S.D.N.Y. Apr. 30, 1998) (citation omitted). Thus:

except for allegations frivolous on their face, an application to intervene cannot be resolved by reference to the ultimate merits of the claims which the intervenor wishes to assert following intervention, but rather turns on whether the applicant has demonstrated that its application is timely, that it has an interest in the subject of the action, that disposition of the action might as a practical matter impair its interest, and that representation by existing parties would not adequately protect that interest.

Brennan v. N.Y.C. Bd. of Educ., 260 F.3d 123, 129 (2d Cir. 2001) (quoting Oneida Indian Nation v. New York, 732 F.2d 261, 265 (2d Cir. 1984)).

“[T]he requirement of timeliness is a flexible one.” Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d § 1916 (2014).

“Timeliness” is not a word of exactitude or of precisely measurable dimensions. The requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice.”

Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d § 1916 (2014) (quoting McDonald v. E.J. Lavino Co., 430 F.2d 1065, 1074 (5th Cir. 1970)).

A less stringent standard of timeliness is to be applied to intervention of right:

Even though the timeliness requirement applies to both intervention of right and permissive intervention, a different standard is used, depending on the type of intervention sought, in determining what is timely. Since in situations in which intervention is of right the would-be intervenor may be seriously harmed if intervention is denied, **courts should be reluctant to dismiss such a request for intervention as untimely**, even though they might deny the request if the intervention were merely permissive.

[Emphasis supplied]

Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d § 1916 (2014) (citations omitted).

Timeliness of intervention is to be judged by two criteria: (1) the length of time during which the proposed intervenor has known about its interest in the suit without acting; and (2) the harm or prejudice that results to the rights of other parties by delay. Marteg Corp. v. Zoning Bd. of Review of City of Warwick, 425 A.2d 1240, 1242 (R.I. 1981). However, prejudice to other parties “may be the *only* significant consideration when the proposed intervenor seeks intervention of right.” McDonald v. E.J. Lavino Co., *supra*, 430 F.2d at 1073 (emphasis in original). In other words, delay in itself may not be of any significance at all.

A party’s failure to provide the intervenor with a required notice of the suit may justify intervention. See Toti v. Carpenter, No. CIV.A. PC99-1373, 2004 WL 877636, at *2 (R.I. Super. Apr. 8, 2004) (“The Plaintiff, therefore, was required to give DHS notice as to any lawsuit or settlement. Accordingly, DHS will not be precluded from intervening in this matter.”). If **“one of the existing parties made it more difficult for the potential intervenors to acquire information that would alert them to the need to intervene, the existing party ‘should not be heard to complain that the appellants should have known about it or appreciated its significance sooner.’”** Adam Joseph Resources v. CNA Metals Ltd., 919 F.3d 856, 867 (5th Cir. 2019) (emphasis supplied) (quoting Stallworth v. Monsanto Co., 558 F.2d 257, 267 (5th Cir. 1977)).

A third party may be entitled to intervention as of right after a settlement has been reached. Id. (citing Atlantic Mutual Ins. Co. v. Northwest Airlines, Inc., 24 F.3d 958, 960 (7th Cir. 1994)). As noted by the Seventh Circuit in Atlantic Mutual:

Settlement is not conclusive if a third party possessing an interest in the property or transaction which is the subject of the action has been excluded from the negotiations. **Intervention permits such an entity to prevent the original litigants from bargaining away its interests. If**

they beat the intervenor to the punch, the court may annul the settlement in order to give all interested persons adequate opportunity to participate in the negotiations and proceedings.

[Emphasis supplied]

Atlantic Mutual Ins. Co. v. Northwest Airlines, Inc., *supra*, 24 F.3d at 960.

Indeed, intervention in a proceeding has been permitted even after judgment⁸⁹ has entered, and notwithstanding that the proposed intervenor was fully aware of the proceeding prior thereto, upon proof that the intervenor had a legally protectable interest in the property that had not been adequately represented by other parties and would be prejudiced if intervention were denied. See In re Lease Oil Antitrust Litigation, 570 F.3d 244, 252 (5th Cir. 2009) (reversing trial court's refusal to allow State of Texas to intervene and assert claims to funds that had been awarded to a third party under the doctrine of *cy pres*) ("The lack of real prejudice to existing parties from intervention, and the significant prejudice to Texas if intervention is not allowed, overcome the fact of the delay...").

The "prejudice" to the existing parties that results from intervention by a third party after the case has been settled does not include injury to the existing parties from the "possibl[e] dismantling of their scheme" that might occur if intervention were allowed, where the existing parties purposefully kept the proposed intervenor in the dark. Adam Joseph Resources v. CNA, 919 F.3d 856, 865 (5th Cir. 2019) ("CNA and AJR will suffer prejudice by allowing Brown Sims to intervene to protect its interest that

⁸⁹ Notably this proceeding has not culminated in a judgment or even a final order. Instead, the prior parties merely sought and obtained entry of an interlocutory consent order, which did not even refer to dismissal. As discussed below, under the Superior Court Rules of Civil Procedure and conclusive Supreme Court precedent, the case remains open.

is, the prejudice of possibly dismantling their scheme. . . .”). In such cases, intervention of right should be allowed even after the case has been settled:

Here, CNA and AJR settled the case surreptitiously to decrease their liability by cutting Brown Sims out of its contingent fee. Now CNA argues that Brown Sims cannot intervene to protect its interest because it did not intervene before the settlement, even though Brown Sims was purposefully kept in the dark. These unusual circumstances are exclusively in Brown Sims's favor. Thus we hold that all four factors support a conclusion that Brown Sims's motion to intervene was timely.

Adam Joseph Resources v. CNA, *supra*, 919 F.3d at 867 (quoting Stallworth v. Monsanto Co., *supra*, 558 F.2d at 567 (5th Cir. 1977)).

B. The City Council claims the requisite interest in the transaction which is the subject of the action

The transaction which is the subject of the action is Buff Chace’s claim against the City of Providence for the favorable tax treatment requested for the Subject Properties. The City Council has a direct and specific interest in that transaction because it (and only it) is the final arbiter of whether such treatment is allowed, and it (and only it) must approve such settlements. Moreover, the City Council has a unique interest in promoting low-income housing in Providence. These rights are specific to the City Council. In addition, four of the Subject Properties were subject to a TSA which the City Council had approved years before. This TSA was a contract to which the City Council was a party. In the Consent Order, the City Solicitor’s office and Buff Chace agreed to do away with and violate the terms of that contract without the knowledge or consent of a signatory thereto.⁹⁰

⁹⁰ See Exhibit D (TSA) at 8.

The City Council's claim to have the right to approve such tax abatements and the Consent Order is well supported in the Rhode Island General Laws, the Providence Home Rule Charter, and the Code of Ordinances for the City of Providence.

"Collection of taxes generally" is governed by Chapter 7 of Title 44 of the Rhode Island General Laws, R.I. Gen. Laws §§ 44-7-1, *et seq.* The only provisions for cancellation of taxes are R.I. Gen. Laws §§ 44-7-14 and 44-7-15. R.I. Gen. Laws § 44-7-14 states as follows:

§ 44-7-14. Cancellation of taxes--Erroneous, uncollectible, or illegal taxes--Incentive to rehabilitate property--Exeter--Equitable cancellation in the town

The city or town council of any city or town may cancel in whole or in part, taxes assessed upon personal, mixed, or real property:

(1) When there is a mistake in the assessment of a tax, and the tax assessors have certified to the fact, in writing, to the body authorized by the provisions of this section to cancel taxes, setting forth the nature of the mistake, the valuation of the property, the amount of the tax assessed, and the name of the person to whom the property was taxed.

* * *

(3) When the council is advised by the city or town solicitor, or the person acting in the capacity of the solicitor, **by written opinion that a tax is illegal, and the tax administrator concurs in the opinion.**

* * *

[Emphasis supplied]

R.I. Gen. Laws § 44-7-14. Notably, such authority is conferred only on "[t]he city or town council of any city or town," and the fact that a tax assessor has determined that the tax was assessed by mistake, or the City Solicitor believes that the tax is illegal, does not obviate the necessity for a written opinion from the City Solicitor and approval

by the City Council, both of which are expressly required by R.I. Gen. Laws § 44-7-14(3).

That the authority to approve tax abatements is solely that of the City Council is also clear in the Providence Ordinances § 21-2:

Sec. 21-2. - Deduction of abated taxes.

Whenever any tax or portion of a tax assessed against any person, which has not been paid into the city treasury **shall be abated by the city council**, the city collector shall deduct the amount so abated from the tax of the person assessed, and credit himself with the amount abated, for which he was charged. Such abatement shall also be entered on the records of the city treasurer.

[Emphasis supplied]

Providence Ordinances § 21-2. That ordinance is the only provision in the Providence Ordinances permitting the Tax Collector to deduct and abate a tax, and it applies only to abatements approved *by the City Council*.

The City Council's authority and the City Solicitor's lack of authority to enter into the Consent Order is clear in the Providence Home Rule Charter. Subsection (b) of Providence Home Rule Charter § 603 sets forth the "powers and duties" of the City Solicitor, including, "without limitation", "[t]o prosecute or **defend**, as the case may be, all suits or cases to which the city or any agency of city government listed in clause (2)^[91] of this section may be a party" (emphasis supplied). The "powers and duties" expressly set forth in the Charter do not include the power to settle claims or suits. (That authority is instead set forth in an ordinance.)

⁹¹ "[C]lause (2)" refers to "all departments, boards, commissions, bureaus and officers thereof in the matters relating to their official powers and duties."

Providence Ordinances § 2-99 does confer certain settlement authority on the City Solicitor, but that authority is narrowly limited:

Sec. 2-99. - Authority delegated to city solicitor to settle small claims against the city.

- (a) The city solicitor shall have the authority and power delegated to him and his office to settle claims against the city for damages and injuries due to, or occasioned by, the negligence of the city or any officer, agent, or employee of the city without the necessity of the approval of the mayor or the chairman of the committee on claims and pending suits in claims not to exceed three thousand dollars (\$3,000.00). At any time when the city solicitor shall exercise the authority and power delegated to him under this ordinance he shall report the disposition to the committee on claims and pending suits.
- (b) **For the settlement of claims, pending suits, arbitrations, mediations, consent decrees, consent judgments and/or any other legal matters of any kind that the city seeks to resolve by agreement, and whose resolution would have a fiscal impact of more than three thousand dollars (\$3,000.00), the city solicitor, or other attorney representing the city, shall not have the authority to settle the matter without approval of the committee on claims and pending suits and the mayor.** This approval requirement shall not apply to the matters listed below; but when a settlement of one (1) of the matters listed below occurs, the settlement **shall be reported, at least quarterly to the committee on claims and pending suits:**
 - (1) Matters involving collective bargaining agreements that are subject to section 17-27;
 - (2) Labor disputes, including grievances, arbitrations, and separation agreements, where the settlement amount does not exceed ten thousand dollars (\$10,000.00), and where the director of human resources, or, in the case of public safety employees, the commissioner of public safety, consents to the settlement;
 - (3) Actions brought pursuant to the Rhode Island Workers' Compensation Act; and

(4) Matters concerning appeals for relief from tax assessment where the tax assessor consents to the settlement.

[Emphasis supplied]

Providence Ordinances § 2-99.

The key language here is that “[f]or the settlement of claims, pending suits, arbitrations, mediations, consent decrees, consent judgments and/or any other legal matters of any kind that the city seeks to resolve by agreement, and whose resolution would have a fiscal impact of more than three thousand dollars (\$3,000.00), the city solicitor, or other attorney representing the city, **shall not have the authority to settle the matter without approval of the committee on claims and pending suits** and the mayor.” Providence Ordinances § 2-99(b) (emphasis added). The City Solicitor evidently claims he had authority to agree to entry of the Consent Order under Providence Ordinances § 2-99(b)(4), i.e., “[m]atters concerning appeals for relief from tax assessment where the tax assessor consents to the settlement.” However, here the complaint was for declaratory relief, not an “appeal for relief from tax assessment.” (As correctly pointed out by the Assistant City Solicitor on January 29, 2021, discussed below, the suit was subject to dismissal on that basis.) Moreover, the settlement was not reported to the committee on claims and pending suits, as required by § 2-99(b).

In addition, contemporaneous emails between the City Solicitor’s office and the Tax Assessor demonstrate that the Tax Assessor did not consent to the settlement, as would be required even if (*arguendo*) the settlement had concerned an appeal for relief from tax assessment (which it did not):

- On January 29, 2021 (approximately four months before entry of the Consent Order and with specific reference to the Chace properties), an

Assistant City Solicitor sent an email to the City Solicitor expressing this opinion among others: “Because this project is mixed use (not solely residential) and because the entirety of the property is not restricted, **I agree with my colleagues that the project does not meet the criteria for 8 law under [R.I. Gen. Laws §] 44-5-13.11.**”⁹² (emphasis supplied). The Assistant City Solicitor attached a draft of the proposed Consent Order (annotated with comments and objections to various provisions), along with two intraoffice memoranda prepared by other Assistant City Solicitors.

- One minute later, the same Assistant City Solicitor forwarded the same email and attachments to the Tax Assessor and stated: “Take a look at the Consent Order and call me when you have a minute. I want to make sure all of your concerns are addressed too!”⁹³
- On June 15, 2021, **one week after the Consent Order had been entered by the Court**, the same Assistant Solicitor forwarded a copy of it to the Tax Assessor as a *fait accompli* and stated: “Sorry Elyse, I tried!”⁹⁴
- To even suggest that the Tax Assessor agreed to the settlement would be to argue in the same breath that she did so after receiving the January 29, 2021 email stating that *the Law Department considered the entire deal illegal but were going forward because the “client” wanted them to.*

Moreover, it could not have constituted an appeal from a tax assessment since such appeals can only apply to taxes that were due and payable within thirty (30) days of filing the appeal, but the relief requested and ultimately obtained through the Consent Order included a reduction of *future* taxes.

Providence City Charter § 603(a) read in conjunction with Providence Ordinances § 21-18 also clearly affirms the requirement for City Council approval of the Consent Order. Providence City Charter § 603(a) states that “[t]he city solicitor shall be the head of the department of law and shall have all powers and perform all duties vested in the office of the city solicitor by the provisions of this Charter or otherwise.”

⁹² Costa Aff. Ex. 7 Attachment E.

⁹³ Id.

⁹⁴ Exhibit H.

Providence Ordinances § 21-18 sets forth the authority of department heads to compromise certain municipal claims, as follows:

Sec. 21-18. - Authority of department heads to compromise certain municipal claims.

(a) Definitions:

- (1) *Department head*: Shall mean those individuals categorized as such in the Home Rule Charter of the City of Providence.
- (2) *Claim*: A claim arising out of the operation of law or contract of the City of Providence subrogated through an employee of the city.
- (3) *Compromise*: To agree to accept less than the full value of the claim.

(b) Each department head may, with **the advise [sic] and consent of the department of law and the city council committee on claims and pending suits**, compromise claims of said department.

[Emphasis supplied]

Providence Ordinances § 21-18. Thus, insofar as the City Solicitor as head of the Law Department had any authority to settle claims, it also must have been with the “advise [sic] and consent...of the city council committee on claims and pending suits.”

The right of the City Council to intervene to seek to vacate a consent decree as void for lack of authority has been recognized by the Superior Court on prior occasion. See City of Providence v. Employees' Ret. Bd., No. C.A. NO. PC 90-2119, 1996 WL 937013, at *2 (R.I. Super. Nov. 27, 1996) (Israel, J.) (“In the course of hearings on the question of whether or not the City had purged itself of contempt the Court allowed the City Council to intervene to permit it, and the City, to argue the issue of whether or not the consent decree was void for lack of authority by counsel for the City to have

consented.”). Although the City Council did not ultimately prevail in vacating the consent decree on the merits in that case, because the City’s counsel was determined⁹⁵ to have had actual authority to approve the consent decree in the Retirement Board case, it was clear that the City Council did have standing to intervene in order to seek such vacatur.

C. The disposition of the action may as a practical matter impair or impede the City Council’s ability to protect its interest

The City Council is entitled to sue the city administration over violations of state statutes, the Providence Home Charter, or the Providence Ordinances, where such violations usurp the City Council’s authority. See Providence City Council v. Cianci, 650 A.2d 499 (R.I. 1994) (granting City Council’s complaint for an order compelling the Mayor to submit collective bargaining agreements for City Council approval as required by Providence ordinances). The instant Consent Order and the reduction of taxes pursuant thereto as a practical matter do impair or impede the City Council’s ability to protect its interest, because Buff Chace will contend that the Consent Order is binding. Moreover, the Mayor (as we have seen) has publicly stated that he believes the Consent Order to be binding; as has—not surprisingly—the very same City Solicitor who entered into the Consent Order in the first place.

The City Solicitor’s agreement to the Consent Order and the subsequent allowance of the abatements and refunds without City Council approval violated the City Council’s absolute right to decide whether the Consent Order should be approved. That

⁹⁵ The convoluted factual and procedural posture of City of Providence v. Employees’ Ret. Bd. and the companion case Mansolillo v. Emp. Ret. Bd. of City of Providence litigation is discussed *infra* at 57–58.

disposition was an attempt to foreclose the City Council from exercising its fundamental authority over the taxing policies of the City. The Consent Order, if left in place, would impair and interfere with the City Council's ability to protect its right (and the public's right) to have these matters come before the City Council, to protect the public fisc and the financial well-being of the City. In addition, it clearly as a practical matter would impair and impede the City Council's ability to protect its interest in having the 8 Law correctly applied to benefit *low-income* residents. Most basically, the Consent Order virtually destroys the City Council's right to act as a check on backroom deals privately reached and improperly benefiting private parties.

D. The City Council's interest is not adequately represented by current parties to the action

The City of Providence through the City Solicitor should have represented the City Council's interest, but instead the City of Providence through the City Solicitor failed to give the City Council notice of the suit, failed to submit the Consent Order for City Council approval, and failed to obtain City Council approval for the tax rate reductions provided therein. Buff Chace thereby obtained his desired relief without City Council approval or even supervision. Then, the City Solicitor failed to report such a settlement to the City Council as required by Providence Ordinances § 2-99(b). Thus, it is absolutely clear that the City Council's interest in exercising its supervisory authority has not been and is not currently adequately represented in this case.

It is equally clear that the City Council's interest in the proper application of the 8 Law was not adequately protected by the existing parties. By definition, Buff Chace did not adequately represent those interests. It would be expected that the City Solicitor

should have shared the City Council's interest in the proper application of tax law, especially where, as here, he had the opinions of three separate Assistant City Solicitors that Buff Chace was not entitled to have the benefit of the 8 Law for those portions of the Subject Properties that are commercial rentals or non-income-restricted residential rentals. Indeed, one of those opinions expressly concluded that the City would "**exceed its authority** under R.I. Gen. Laws § 44-5-13.11 by applying the 8% tax to an entire multi-unit residential property when only a small portion of units qualify as low income housing...."⁹⁶ Nevertheless, the City Solicitor went ahead and agreed to exactly that.

Moreover, Buff Chace's filing of a complaint for declaratory relief and the City Solicitor's failure to obtain dismissal of that complaint further evidence their disregard for the City Council's interest that the law be followed. Buff Chace filed a complaint for declaratory relief to improperly bypass the requirements of the taxing statutes. The City Solicitor knew (and originally pleaded, correctly) that declaratory relief is not available in such cases. See Answer (filed September 14, 2020) at 5 (Affirmative Defense #7) ("This Court lacks jurisdiction under the R.I.G.L. §9-30-1 et seq.") (citing Rhode Island's Uniform Declaratory Judgments Act).

This same approach for seeking the benefit of the 8 Law was expressly rejected in Morse v. Minardi, 208 A.3d 1151 (R.I. 2019), on June 3, 2019, merely one year before the filing of the Complaint in this case. The taxpayer in Morse filed a complaint for declaratory relief and "sought a declaration that Barrington's interpretation of §§ 44-5-12(a) and 44-5-13.11 [i.e. the 8 Law] violated the 'fair and equal distribution of

⁹⁶ Costa Aff. Ex. 7 Attachment D.

burdens' clause under article 1, section 2 of the Rhode Island Constitution." Morse v. Minardi, *supra*, 208 A.3d at 1154. The trial justice dismissed the complaint for declaratory relief and our Supreme Court affirmed for the following reasons:

However, as an initial matter, we hold that the declaratory-judgment action did not set forth a cognizable claim. During this term, in *Bluedog Capital Partners, LLC v. Murphy*, 206 A.3d 694 (R.I. 2019), we stated "that **the taxing statutes provide the exclusive relief to any person aggrieved by any assessment of taxes** against him by any city or town." *Bluedog Capital Partners, LLC*, 206 A.3d at 699, 2019 WL 1962075, at *4 (emphasis added) (quoting *Lehigh Cement Co. v. Quinn*, 173 A.3d 1272, 1278 (R.I. 2017)). Under this rule, a person challenging an assessment of taxes may not maintain a cause of action for declaratory relief. See *id.* at 700–01, 2019 WL 1962075, at *5. Thus, Morse was confined to bringing a tax appeal action under the provisions of §§ 44-5-26 and 44-5-27. Accordingly, we affirm the judgment of the Superior Court in the declaratory-judgment action.

[Emphasis supplied]

Morse v. Minardi, *supra*, 208 A.3d at 1155. In short, our Supreme Court applied the prohibition against using a declaratory judgment proceeding to challenge a tax assessment where the assessment in question involved the 8 Law.

The City Solicitor, as the full-time head of the Law Department of the State's largest municipality, must have been aware of this decision. Indeed, the Answer filed by the City Solicitor to the complaint for declaratory relief denied the substantive allegation that Buff Chace was entitled to the benefit of the 8 Law, and also asserted four affirmative defenses that should have led to dismissal of the complaint under Morse, *supra*:

- that the complaint failed to state a claim for relief;
- that Buff Chace failed to exhaust his administrative remedies so as to permit this court to hear the amended complaint;

- that Buff Chace had not met the statutorily required conditions precedent to commencing a suit for relief from assessment of taxes under R.I.G.L. § 44-5-15, 44—5-16, 44-5-26, and 44-5-27; and
- that “[t]his Court lacks jurisdiction under the R.I.G.L. §9-30-1 et seq.” (citing Rhode Island’s Uniform Declaratory Judgments Act).⁹⁷

The fact that the City Solicitor entered into the Consent Order rather than moving to dismiss the complaint (or moving for summary judgment) pursuant to these valid affirmative defenses is overwhelming evidence that this entire proceeding was designed and used in bad faith to give Buff Chace tax benefits to which he was not entitled.

Moreover, the City Solicitor’s agreement:

- (a) to extend a preliminary injunction (that never existed in the first instance) prohibiting the Tax Assessor from increasing Buff Chace’s taxes during the pendency of the DJ proceeding,
- (b) to grant an “Emergency” motion (when no emergency existed) simply to add four more of Buff Chace’s properties that were “discovered” two days before counsel for “both” sides entered into the settlement, and
- (c) allowing retroactive savings for properties which had no colorable basis for such treatment,

all point to an intentional end run around the legal requirements for 8 Law treatment. In any event, even if (*arguendo*) one could somehow come to the conclusion that the City Solicitor acted in good faith, it is still abundantly clear that the interests of the City Council were not adequately represented.

⁹⁷ See Answer at 5.

E. The motion is timely

Timeliness is determined by two factors: (1) the length of time during which the proposed intervenor has known about his interest in the suit without acting; and (2) the harm or prejudice that results to the rights of other parties by delay. Marteg Corp. v. Zoning Bd. of Review of City of Warwick, *supra*, 425 A.2d at 1242.

Notwithstanding that the action was filed in June of 2020, and the Consent Order was entered in June of 2021, City Council staff first learned of the DJ Proceeding and Consent Order in January of 2022, then for several months were frustrated by the total failure of City officials to provide requested information (although it was their express duty to do so under the Home Rule Charter⁹⁸). Thereafter, there was reasonable reliance on the Tax Assessor's assurance that the proposed tax abatements would come before the City Council as required by city ordinances and state statutes. Thereafter, the City Council reasonably relied upon the assurances of the Mayor and City Solicitor that the Consent Order was in the process of being amended. In short, the length of time it has taken the City Council to seek intervention is entirely the fault of existing parties to the litigation.

Moreover, the existing parties will suffer no prejudice if intervention is allowed other than the possibility that their unlawful scheme will be unraveled. In that case, Buff Chace will lose benefits to which he was never entitled in the first place. Buff Chace has not paid any taxes in reliance upon the Consent Order that he otherwise would not

⁹⁸ Section 816 of the Providence City Charter provides in relevant part: "The city internal auditor shall have access to the books and records of all offices, departments and other agencies of the city, and it shall be the duty of all officers and employees thereof to supply such information and documents concerning the affairs of the city as the internal auditor may request." See Costa Aff. ¶ 32.

have paid. To the contrary, Buff Chace has been *reimbursed* taxes that would have been properly payable absent the Consent Order, and he has subsequently paid less taxes since the Consent Order was entered than he would have paid if the Consent Order had not been agreed upon.

II. In the alternative, the Court should exercise its discretion to permit permissive intervention

The City Council asserts that it is entitled to intervention as of right, and not as a matter of discretion. If the Court should disagree, the City Council requests that the Court consider the motion as seeking permissive intervention. The City Council respectfully suggests that a denial of permissive intervention under the egregious circumstances of this case would be an abuse of discretion.

Permissive intervention is provided for in Super. R. Civ. P. 24(b)(2), which states in pertinent part:

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action:

(1) When a statute of this state confers a conditional right to intervene; or

(2) When an applicant's claim or defense and the main action have a question of law or fact in common.

The rule on permissive intervention does not require a showing of any particular interest:

The rule does not specify any particular interest that will suffice for permissive intervention and, as the Supreme Court has said, it “plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation.” Indeed, it appears that a permissive intervenor does not even have to be a person who would have been a proper party at the beginning of the suit, since of

the two tests for permissive joinder of parties, a common question of law or fact and some right to relief arising from the same transaction, only the first is stated as a limitation on intervention.

Wright & Miller, et al., 7C Fed. Prac. & Proc. Civ. § 1911 (3d ed.) (quoting SEC v. U.S. Realty & Improvement Co., 1940, 60 S.Ct. 1044, 1055, 310 U.S. 434, 459, 84 L.Ed. 1293)). “The rule requires only that the intervenor's claim or defense share a common question of law or fact with the main action.” Wright & Miller, *supra*, 7C Fed. Prac. & Proc. Civ. § 1911.

As noted *supra*, the City Council is unequivocally entitled to intervention as of right. *A fortiori*, the City Council also meets the requirements for permissive intervention, because the City Council's “claim or defense and the main action have a question of law or fact in common.” All the issues involved in determining whether Buff Chace is entitled to the 8 Law treatment for the entireties of his properties are involved in both the main action and in the City Council's claims and defenses.

III. The City Council has a good claim on the merits

As noted, “[t]he applicants' well pleaded allegations must be accepted as true for purposes of considering a motion to intervene, with no determination made as to the merits of the issues in dispute.” Herman v. New York Metro Area Postal Union, No. 97 CIV. 6839 (KMW), 1998 WL 214787, at *1 (S.D.N.Y. Apr. 30, 1998) (citation omitted). The City Council in its proposed Answer denies the material allegations in Buff Chace's complaint and asserts affirmative defenses that if proven will be dispositive. The City Council's allegations are hardly “frivolous on their face,” and so the Court must accept them as true. In any event, they clearly have substantial merit, as discussed below.

Ironically, most if not all of the dispositive affirmative defenses were properly raised—but not pursued—before the City Solicitor’s complete surrender. There was no risk to the City in going forward as compared to entering into the Consent Order. If the case had been tried, a complete loss by the City could not have produced a worse result. The City got nothing. Buff Chace gave up nothing. The capitulation gave Chace more than he could possibly have obtained at trial, even if he won on every issue and obtained precisely the declaratory judgment that he sought.

A. The Consent Order is utterly void

The entry of the Consent Order does not foreclose the City Council from addressing the merits of Buff Chace’s claim, since, as noted, the City Solicitor failed to obtain the City Council’s approval for the Consent Order notwithstanding he was required to do so. Therefore, he did not bind the City of Providence, and the City Council is entitled to have the Consent Order vacated. It does not matter whether the City Solicitor had apparent authority to sign the Consent Order. “[T]he authority of a public agent to bind a municipality must be actual ...”⁹⁹ Casa DiMario, Inc. v. Richardson, 763 A.2d 607, 610 (R.I. 2000) (quoting Warwick Teachers' Union Local No. 915 v. Warwick School Committee, 624 A.2d 849, 850–51 (R.I. 1993)). See Romano v. Ret. Bd. of Employees' Ret. Sys. of R.I., 767 A.2d 35, 40 (R.I. 2001) (“Thus, ‘[t]his Court has squarely rejected the proposition that a municipality may be bound by the actions of

⁹⁹ It should be noted that this is not a case in which an attorney for a private party to litigation settled a case without authority. In such cases a private party may be bound by the settlement through the agency principle of apparent authority. See Cohen v. Goldman, 132 A.2d 414, 417 (R.I. 1957); Parrillo v. Chalk, 681 A.2d 916, 919 (R.I. 1996) (explaining Cohen). As noted, the doctrine of apparent authority does not apply to governmental entities.

an agent without actual authority.”) (quoting Providence Teachers Union v. Providence School Board, 689 A.2d 388, 391 (R.I. 1997)).

Casa DiMario, Inc. v. Richardson is squarely on point since it involved a consent order to which the Johnston Town Solicitor had agreed without authority from the Town Council. Our Supreme Court held that the consent order was, therefore, not binding on the municipality, and affirmed the decision of the trial justice vacating the consent order at the request of the town. Casa DiMario, Inc. v. Richardson, *supra*, 763 A.2d at 610 (affirming vacation of consent order and noting that “the general rule throughout this country is that, **absent actual authority to do so**, a municipal attorney may not compromise claims or consent to judgments against the municipality.”) (citing 10 Eugene McQuillin, *The Law of Municipal Corporations* § 29.15 at 308 (3d Ed. 1999)) (emphasis supplied).

In addition, as noted *supra*, no dismissal much less any judgment has been entered in the DJ Proceeding. Indeed, even if the Consent Order had been reduced to or constituted a judgment, the City Council would be entitled to relief from judgment under Super. R. Civ. P. 60(b)(4) (“The judgment is void;”) and/or Super. R. Civ. P. 60(b)(6) (“(6) Any other reason justifying relief from the operation of the judgment.”), because the City Solicitor failed to obtain the City Council’s approval of the Consent Order. Notably, this rule provides that a judgment may be vacated at any time if relief is sought under these grounds, notwithstanding that relief under other grounds must be sought within one year of entry of the judgment sought to be vacated. It is well-settled that a consent order entered in violation of a municipal officer’s authority is void. See Casa DiMario, Inc. v. Richardson, *supra*, 763 A.2d 607 (R.I. 2000); State Com’n On

Human Relations v. Baltimore City Dept. of Recreation and Parks, 887 A.2d 64, 72 (Md. App. 2005) (affirming trial court's finding that City's agreement entered as consent decree without the required approval of the City's Board of Estimates was void):

[W]e hold that the consent judgment here is void and unenforceable, because it is based on the ultra vires settlement agreement between the Commission and the City. "To hold otherwise would be to insulate [illegal] municipal acts from review, in derogation of the public interest, where they could be contrived to take the form of a judgment by consent." *Edelstein*, 143 A.2d at 872. *See also Midtown Props.*, 172 A.2d at 46 ("If this contract and consent judgment were to be held valid this court would be putting its stamp of approval upon what is obviously an unauthorized and illegal exercise of the [town's] zoning power").

State Com'n On Human Relations v. Baltimore City Dept. of Recreation and Parks, 887 A.2d 64, 72 (Md. App. 2005) (reversing and remanding on other grounds). See also 62 C.J.S. Municipal Corporations § 452 ("**If a municipality's officers or agents act outside the scope of their authority, their actions are void and can be collaterally attacked at any time.**") (emphasis supplied); United States v. Beebe, 180 U.S. 343 (1901) (vacating consent judgment entered with ultra vires consent of United States District Attorney who failed to follow federal treasury regulations for compromise of federal government's claim); Cobb v. Aytch, 539 F.2d 297 (3d Cir.1976) (reversing entry of a consent decree, in constitutional prison litigation, in which a defendant agreed to undertake actions not authorized under state law), *cert. denied*, 429 U.S. 1103 (1977).

As the First Circuit stated in National Revenue Corp. v. Violet:

For an attorney general to stipulate that an act of the legislature is unconstitutional is a clear confusion of the three branches of government; it is the judicial branch, not the executive, that may reject legislation. This is not to say that at a full-dress review an attorney general may not inform the court that, in his opinion, a statute is flawed, *e.g.*, *Delchamps, Inc. v. Alabama State Milk Control Board*, 324 F.Supp. 117 (M.D.Ala.1971), but

this would be in the context that the court was to make the final, considered ruling. Here the court expressly recited that it was not doing this. An attorney general can have no authority to be the binding determiner that legislation is unconstitutional. The agreed judgment was void on its face.

Nat'l Revenue Corp. v. Violet, 807 F.2d 285, 288 (1st Cir. 1986) (holding consent judgment void and reversing trial court's finding on the basis of such consent judgment that the state statute was unconstitutional).

Similarly, in Suski v. Mayor & Comm'rs of Borough of Beach Haven, 333 A.2d 25 (N.J. App. 1975), the court addressed the fact that a municipal authority had agreed to allow a private party to construct a home in violation of a municipal ordinance, which agreement had been entered as a consent order and judgment, and held as follows:

An ordinance cannot be amended, repealed or suspended by any act of a governing body of less dignity than that which created the ordinance in the first place. V. F. Zahodiakin, etc. v. Summit Zoning Bd. Of Adj., 8 N.J. 386, 86 A.2d 127 (1952); 6 McQuillin, Municipal Corporations (3 ed. 1969), s 21.04 at 199.

The agreement between the Spiegles and the borough on its face is illegal, void and Ultra vires. It is an attempt to do by agreement what can only be done by following the appropriate statutory procedure. Midtown Properties, Inc. v. Madison Tp., 68 N.J.Super. 197, 172 A.2d 40 (Law Div. 1961), aff'd o.b. 78 N.J.Super. 471, 189 A.2d 226 (App.Div.1963). The fact that the parties entered into a consent judgment which purported to approve the agreement does not make it a valid agreement. Edelstein v. Asbury Park, 51 N.J.Super. 368, 389, 143 A.2d 860 (App.Div.1958). 'If the contract is illegal and void, having it incorporated in a consent judgment will not breathe legal life into it.' Midtown Properties, Inc. v. Madison Tp., Supra, 68 N.J.Super. at 206, 172 A.2d at 45.

If the borough has concluded that the dune ordinance unnecessarily prohibits building on the Spiegle tract, the appropriate remedy is to amend the ordinance. The borough cannot, by private agreement, circumvent the provisions of a valid ordinance.

The agreement herein being illegal and *Ultra vires*, it follows that plaintiff was entitled to a judgment (1) restraining construction by the Spiegles of a building in violation of the dune ordinance; (2) invalidating the building permit issued therefor, and (3) declaring the agreement between the borough and the Spiegles void and *Ultra vires*.

Suski, 333 A.2d at 28–29.

This will not be the first time the Providence City Council has been allowed to intervene in an action to seek to invalidate a consent decree for lack of authority by the City's attorney to agree to it. In Mansolillo v. Emp. Ret. Bd. Of City of Providence, 668 A.2d 313 (R.I. 1995) and City of Providence v. Emp. Ret. Bd. Of City of Providence, 749 A.2d 1088 (R.I. 2000), our Supreme Court concluded that the City and the City Council had judicially admitted that, in a suit prosecuted at the behest of the City Council pursuant to the City Council's own resolution,¹⁰⁰ the City's attorney had had actual authority to agree that a particular consent decree was valid:

At no time, in any pleading thereafter filed in Superior Court action PC 93–5277, did the city council ever suggest, contend, or assert, that attorney Cavanagh had lacked city council consent to enter the consent judgment in PC 90–2119. In fact, the record in PC 93–5277 reveals that the city and its city solicitor actually entered into an agreed-upon stipulation of facts relating to the validity of the consent judgment, in order to expedite certification by the Superior Court to this Court of certain questions posed in that case. **In that stipulation of facts [in PC 93-5297], the city solicitor personally as a party plaintiff, as well as in his capacity as counsel for the city council and the City of Providence, agreed that in PC 90–2119, [outside counsel] attorney Cavanagh had been retained by the city council to represent the City of Providence and that he had been authorized to enter the consent judgment in that case for and on behalf of the City of Providence.**

[Emphasis supplied]

¹⁰⁰ See City of Providence v. Emp. Ret. Bd. of City of Providence, 749 A.2d 1088, 1092–93 (R.I. 2000).

City of Providence v. Emp. Ret. Bd. of City of Providence, 749 A.2d 1088, 1092 (R.I. 2000).¹⁰¹ The Supreme Court therefore rejected the City Council’s contention that it had not consented to entry of the consent judgment:

That contention, we note, flies squarely in the face of the stipulated facts in PC 93–5277, and contradicts not only the city council's July 29, 1993, resolution that directed its city solicitor to commence PC 93–5277, but also, the city solicitor's subsequent admission submitted in his memorandum to the Superior Court in support of the verified complaint in that case. In that memorandum, the solicitor had written that PC 93–5277 had been commenced “on behalf of the *city council* and the City of Providence at the request of the *City Council* * * *.” (Emphasis added.) The city solicitor's later sworn affidavit, made in support of the city council's motion for summary judgment, actually repeats that same assertion.

City of Providence v. Emp. Ret. Bd. of City of Providence, 749 A.2d 1088, 1093 (R.I. 2000).

In those pension cases, the City Council had given actual authority to the City Solicitor to stipulate that the prior settlement had been duly authorized. The Supreme Court in the pension cases took that stipulation as a binding judicial admission and held that the City Council was bound by the settlement. Unlike the City Council in the pension suits, the City Council in this case has never stipulated that the City Solicitor had actual authority to enter into the Consent Order. To the contrary, the City Council in this case asserts that the City Solicitor had no such authority.

¹⁰¹ That is, the judicial admission resulted from the Mansolillo parties’ stipulation, in connection with an interlocutory certification of questions to the Supreme Court pursuant to R.I. Gen. Laws § 9–24–25 and Super. R. Civ. P. 72, that the consent decree entered in the City of Providence case was valid, final, and binding on the City. See City of Providence v. Emp. Ret. Bd. of City of Providence, 749 A.2d 1088, 1092 (R.I. 2000).

B. The Consent Order reeks of corruption by the parties to the case

As discussed above, this is the rare case in which it can be demonstrated, through contemporary documentary evidence, that the Mayor (whom the City Solicitor evidently considered to be his “client”) was specifically informed that giving the 8 Law benefits to Buff Chace would be illegal, and nevertheless he instructed the City Solicitor to proceed with the Consent Order. Moreover, the City Solicitor did so over the objections of the Tax Assessor, who was a named Defendant in the case, on whose behalf the City Solicitor had entered his appearance, and whose consent would have been indispensable to the City Solicitor’s purported claim of authority to settle the case if this had been a tax appeal under R.I. Gen. Laws § 44-5-26 (which it was not).

Although presented to the Court as a negotiated compromise, the result under the Consent Order could not have been worse for the City if it had tried the case and lost. Buff Chace not only obtained all relief he requested in his complaint but more besides. Indeed, the same day the Consent Order was filed with the Court, four additional Plaintiffs were added by amended pleading (pursuant to an “emergency” motion) and given the same retroactive tax breaks, notwithstanding that they had never previously even claimed to be entitled to them.

The travel of this case is so bizarre that it cries out for a full judicial inquiry. The e City Council’s motion to intervene is intended to enable that inquiry.

C. The action remains pending

This action has not been dismissed and remains pending, notwithstanding entry of the Consent Order and the absence of activity in the litigation thereafter. The Consent Order itself does not refer to dismissal and contains many provisions that

required future action by the parties. In any event, no separate judgment was entered as required by Super. R. Civ. P. 58. See Furtado v. Laferriere, 839 A.2d 533, 535 (R.I. 2004) (order entering summary judgment is not a final judgment, and time for appeal did not begin to run until separate judgment was entered). Indeed, our Supreme Court in Furtado specifically held that unlike under the corresponding provision of Fed. R. Civ. P. 58, the separate judgment requirement of Super. R. Civ. P. 58 could not be waived, and thus a party “may file an appeal within twenty days of the separate entry of final judgment, regardless of when such judgment is entered.” Furtado, 839 A.2d at 536-37.

Accordingly, our Supreme Court in Furtado found that notice of appeal from the grant of summary judgment was timely even though filed more than nine months after the decision, where a separate judgment on the decision was not entered until more than eight months after the decision. See id. See also Duffy v. Town of W. Warwick by & Through Moore, 196 A.3d 1100, 1102 (R.I. 2018) (premature appeal from interlocutory order of dismissal remanded for entry of final judgment); Atmed Treatment Ctr., Inc. v. Travelers Indem. Co., 285 A.3d 352, 360 (R.I. 2022) (interlocutory order granting summary judgment was subject to revision by trial court without regard to Super. R. Civ. P. 60(b)).

Here, there is not even a dismissal order, let alone a separate final judgment as required by Super. R. Civ. P. 58 and Supreme Court precedents, and, consequently, the instant action remains pending today. The Consent Order certainly is not a judgment. The Consent Order did not even direct the entry of judgment, much less itself purport to enter judgment. See, e.g., Reyes v. Providence Place Grp., L.L.C., 853 A.2d 1242, 1247 (R.I. 2004) (orders directing that “final judgment shall enter” or that “judgment may

enter” remained interlocutory, because judgment had not yet entered). Accordingly the Consent Order remains “subject to revision at any time before the entry of judgment.” Super. R. Civ. P. 54(b).

Moreover, even if (*arguendo*) the Consent Order constituted a final judgment (which it unequivocally does not), that judgment would be void for lack of authority. Accordingly there would be grounds for vacating it under Super. R. Civ. P. 60(b)(4) or (6). See generally Flynn v. Al-Amir:

A void judgment may be expunged **at any time**. It is the duty of the court to remove the cloud on its own motion whenever it is brought to its attention. It matters not how, or in what way, or at what time the objection to its presence is brought to the court's attention.

Flynn v. Al-Amir, 811 A.2d 1146, 1151 n.3 (R.I. 2002) (quoting Lamarche v. Lamarche, 348 A.2d 22, 23 (R.I. 1975)) (emphasis supplied). This holding in Flynn and the holding in Casa DiMario are dispositive on the issue of whether the Consent order should be vacated.

D. Equitable estoppel does not apply

“In order to argue a claim of estoppel successfully, plaintiff must show that defendant, by some affirmative conduct or representation, intentionally induced plaintiff to act or to fail to act in detrimental reliance on that conduct or representation.” Raymond v. B.I.F. Industries, Inc., 308 A.2d 820, 823 (R.I. 1973). However, “[e]stoppel against a municipal corporation growing out of affirmative action must be predicated upon the acts or conduct of its officers, agents or official bodies **acting within the scope of their authority**.” Romano v. Ret. Bd. of Employees' Ret. Sys. of R.I., 767

A.2d 35, 41 (R.I. 2001) (quoting Ferrelli v. Department of Employment Security, 261 A.2d 906, 909 (R.I. 1970)) (internal quotations omitted) (emphasis supplied).

Moreover, a party dealing with a municipal employee is presumed to know the scope of the employee's actual authority. Chapman v. Pendleton, 82 A. 1063, 1066 (R.I. 1912) ("Every person dealing with a town or with the agents of a town is presumed to know the law relative to the scope of such agency and the powers of the municipality with reference to the matter under consideration."). Thus, it is irrelevant whether or not the City Council can prove that Buff Chace subjectively understood that the City Solicitor lacked actual authority.

We also have long held that a person's failure to discover the true scope of a government agent's actual authority will not provide any grounds to relieve that person's detrimental reliance upon the agent's representations or actions. See *Providence Teachers II*, 689 A.2d at 392 (citing *Vieira v. Jamestown Bridge Commission*, 91 R.I. 350, 358, 163 A.2d 18, 23 (1960); *Murphy v. Duffy*, 46 R.I. 210, 215–16, 124 A. 103, 105 (1924)). **Indeed, to rule otherwise would undermine the integrity and structure of our state government because it would allow every government official to act as his own mini-legislature, cashiering those laws he or she dislikes, is ignorant of, or misinterprets, and instead molding the law to be whatever the government official claims it to be.**

[Emphasis supplied]

Romano v. Retirement Bd. of Employees' Retirement System of R.I., *supra*, 767 A.2d at 43.

In addition, far from being injured in the interim, Buff Chace has been improperly receiving the benefit of the special tax treatment. He will suffer no legally cognizable injury by the deprivation of a benefit to which he was never entitled.

Thus, Buff Chace cannot rely on the doctrine of equitable estoppel.

E. The 8 Law did not and does not entitle Buff Chace to the requested relief

1. The 8 Law only applies to “residential” properties, not commercial portions of mixed-use properties

The 8 Law does not entitle Buff Chace to the requested relief, either on its plain meaning or in accordance with its clear intent. The 8 Law states as follows:

§ 44-5-13.11. Qualifying low-income housing--Assessment and taxation

Any **residential property** that has been issued an occupancy permit on or after January 1, 1995, after substantial rehabilitation as defined by the U.S. Department of Housing and Urban Development and is encumbered by a covenant recorded in the land records in favor of a governmental unit or Rhode Island housing and mortgage finance corporation restricting either or both the rents that may be charged to tenants of **the property** or the incomes of the occupants of **the property**, is subject to a tax that equals eight percent (8%) of **the property's** previous years' gross scheduled rental income or a lesser percentage as determined by each municipality.

[Emphasis supplied]

R.I. Gen. Laws § 44-5-13.11.

The first key phrase in the 8 Law statute is "Qualifying low-income housing".

Next comes “residential property.” See R.I. Gen. Laws § 44-5-13.11 (beginning “Any residential property”). All references thereafter to “the property” refer back to the phrase “any residential property.” The term “residential property” certainly does not include the commercial portions of a mixed-use property. Indeed, arguably it should not include any building which has both commercial and residential units.

The General Assembly understands the meaning of “mixed-use property.” Such properties are a combination of business and residential property. See R.I. Gen. Laws § 44-3-13.6 (c) (“No income-bearing residential property, business or **combination of**

business and residential property, owned and occupied by any person or persons sixty-five (65) years of age or over is entitled to the exemption provided in this section.”) (emphasis supplied); R.I. Gen. Laws § 44-5-57(5) (“(5) Class five: owner-occupied **mixed-use combination commercial and residential properties** with five (5) units or less...”) (emphasis supplied). See also Providence Zoning Ordinance, art. II, § 201 (“Mixed-Use. A mixture of land uses within a single development, building, or tract.”). The Subject Properties here involve a mixture of commercial and residential uses.

2. **The 8 Law applies only to residential properties with “low income” residents**

The heading of R.I. Gen. Laws § 44-5-13.11 is “Qualifying **low-income** housing-- Assessment and taxation.” (emphasis supplied). Such headings serve “as an aid in a court's interpretation.” Inland American Retail Management LLC v. Cinemaworld of Florida, Inc., 68 A.3d 457, 463 n.5 (R.I. 2013 (quoting Town of East Greenwich v. O'Neil, 617 A.2d 104, 109 (R.I. 1992))). The Supreme Court has already construed the statute as applicable “only for low-income-housing developments.” Willow St. Assocs. LLP v. Bd. of Tax Assessment Rev., 798 A.2d 896, 898 (R.I. 2002) (“This statute [R.I. Gen. Laws § 44-5-13.11] limit[s] the municipal-property tax to 8 percent of the property's gross scheduled rental income, **but only for low-income-housing developments** to which the city ha[s] issued an occupancy permit on or after January 1, 1995.”) (emphasis supplied).¹⁰²

¹⁰² Although the phrase “low income” appears only in the title of the statute, our Supreme Court's construction of the 8 Law as applying only to “low-income” properties is consistent with the canon that statutory titles may be considered in construing otherwise ambiguous statutory text. See, e.g., Knaggs v. Clark, 686 A.2d 466 (R.I. 1996):

The text of the 8 Law does not define the phrase “low income”. Other provisions of the Rhode Island General Laws define “low income” as either 50% or 60% of the area median income. See R.I. Gen. Laws § 45-24.2-2(f) (“Low income residents’ means those residents with incomes not exceeding fifty percent (50%) of the median household income as reported in the most recent federal census.”); R.I. Gen. Laws § 42-11.2-3(5) (“Low-income family’ means an individual or family whose total income does not exceed sixty percent (60%) of the median family income adjusted by family size for the area of the state in which the family lives, as determined annually by the U.S. Department of Housing and Urban Development.”).¹⁰³

Under the federal Housing Act of 1937 and pertinent HUD regulations, “low income” means earning less than 80% of the area median income. See 42 U.S.C. § 1437a(b)(2)(A) (“The term ‘low-income families’ means those families whose incomes do not exceed 80 per centum of the median income for the area . . .”); 24 C.F.R. § 5.603 (“Low income family. A family whose annual income does not exceed 80 percent of the

The 20 percent tax provision set forth in § 4999 is found in the Internal Revenue Code subtitle pertaining to miscellaneous excise taxes, subtitle D. That legislatively selected name, while it cannot be used to alter or to control the plain meaning of the language employed in § 4999, is certainly relevant where, as here, the plain language of the specific provision does not clearly indicate whether the Legislature intended the tax to be an income or an excise tax, resulting in statutory ambiguity. In such cases, the label of the subtitle containing § 4999, miscellaneous excise taxes may be considered as “a guide to the intent of the Legislature and [it should be] accorded some weight in the interpretation.”

Knaggs v. Clark, 686 A.2d 466, 469 (R.I. 1996) (citations omitted).

¹⁰³ See also R.I. Gen. Laws § 42-128-8.1(d)(1) (“In the case of dwelling units for rent, housing that is affordable means housing for which the rent, heat, and utilities other than telephone constitute no more than thirty percent (30%) of the gross annual household income for a household with eighty percent (80%) or less of area median income, adjusted for family size.”); R.I. Gen. Laws § 45-53-14(a)(1) (requiring Rhode Island Housing to maintain an online database of “low-income housing tax credit developments that are designated only for households at or below sixty percent (60%) of area median income, adjusted for household size and subsidized housing developments, as referenced in the corporation’s Rhode Island resource guide, which are designated only for households at or below eighty percent (80%) of area median income, adjusted for household size (collectively ‘low-income rental units’”).

median income for the area. . . .”) (definitions applicable to Section 8 housing).

However, under Rhode Island law, even such families are deemed to be of “moderate” income, not “low” income. See R.I. Gen. Laws Ann. § 45-24.2-2(g) (“Moderate income residents’ means those residents with incomes not exceeding eighty percent (80%) of the median household income as reported in the most recent federal census.”).

Regardless, under no circumstance is an income of *100% of the Area Median Income* (as provided in the Consent Order) deemed to be low-income. See MEDIAN, Black’s Law Dictionary (11th ed. 2019) (“median *adj.* Located in or related to the precise midpoint in a range of values or quantities, such that half of them fall above the midpoint and half below.”); In re Thelen, 431 B.R. 601, 606 (Bankr. E.D.N.C. 2010) (“Black’s Law Dictionary defines ‘average’ as follows: ‘1. A single value that represents a broad sample of subjects; esp. in mathematics, the mean, median or mode of a series.’”); Scalia v. Paragon Contractors Corp., 957 F.3d 1156, 1167 n.2 (10th Cir. 2020) (“In ordinary language, the arithmetic mean, the median, and the mode seem to be referred to interchangeably as ‘the average.’”). Thus, by definition, 100% of the Area Median Income is the average income, not “low income”.

Indeed, assuming (*arguendo*) that median-income properties could qualify for the 8 Law treatment, then so too would luxury apartment buildings occupied exclusively by the wealthy. Suppose a hypothetical luxury apartment building grants a covenant in favor of the City limiting occupancy to residents with annual incomes of no greater than 500% of AMI. Such a covenant would literally “restrict[] . . . the incomes of the occupants of the property.” See R.I. Gen. Laws § 44-5-13.11. But obviously it would be

absurd to grant preferential tax treatment to such a property, when the purpose is to benefit “low-income” residents.

Even more absurdly, a limitation on tenants *requiring* that their income *exceed* 500% of AMI would also literally satisfy Buff Chace’s construction of the statute!

Under these scenarios, the statute which is clearly intended to promote low-income housing would be employed to have the exact opposite effect.

3. The 8 Law can apply at most only to the restricted portions of a property (but not in this case)

Consider a hypothetical mixed-use building that consists of 80% commercial units, 15% unrestricted residential units, and 5% restricted residential units. For this hypothetical building, further assume that restrictive covenants restrict the rents for twenty five percent (25%) of the residential units, but there is no restriction for the remaining three quarters of the residential units or any of the commercial rental units. The reading of the 8 Law most in keeping with its structure and purpose (and common sense) would allow the preferential tax treatment only to the restricted residential units.

If the General Assembly had intended that it would apply to all residential units (restricted and unrestricted alike), the statute would have used language that so stated, as, for example, referring to “restricting either or both the rents that may be charged to any tenants of the property or the incomes of the any occupants of the property....”

On the other hand, if Buff Chace is correct, then, ludicrously, the 8 Law would apply to provide a reduced rate of taxation for property with fifty residential units even if only one unit was designated low income, and even if the property also included fifty commercial tenants. In that example, the existence of one income-restricted unit would

have the effect of creating two classes of commercial and non-income restricted real property: one class consisting of purely commercial and/or non-income restricted properties, which would be taxed based upon the full cash value, and the other class (with as little as one income-restricted apartment) would be taxed at a much lower rate. Such a result would absolutely be contrary to the legislative intent to encourage low-income housing, would be against public policy, and would be so absurd as to be laughable.

That absurd result also would preclude that construction of the statute even if the plain meaning of the statute was consistent with that construction (which it is not):

It is a well settled principle of our law that this Court will not interpret a statute literally when doing so would lead to an absurd result, or one that is at odds with legislative intent. See *Raso v. Wall*, 884 A.2d 391, 395 n. 11 (R.I.2005) (recognizing that the plain meaning approach to statutory construction is not to be adhered to when it would lead to an absurd result) (citing *State v. Santos*, 870 A.2d 1029 (R.I.2005)). This Court always will strive to adopt a construction of a statute that avoids an absurd or unjust result. *Id.* (citing *Berthiaume v. School Committee of Woonsocket*, 121 R.I. 243, 247, 397 A.2d 889, 892 (1979)).

Berman v. Sitrin, 991 A.2d 1038, 1049 (R.I. 2010).

It should be noted that the City Council is not presently objecting to the City Tax Assessor's "liberal" interpretation of the 8 Law (as identified and explained in the memoranda of the Assistant City Solicitors quoted supra at 21–22) to permit its *pro rata* application to residential rental property that is only partially restricted for low-income tenants. In other words, if 25% of the units in an apartment building are properly restricted to "low-income" residents, the Tax Assessor would tax the property correctly by applying the standard tax to 75% of the property's ratable value and a tax of eight percent (8%) of the gross income from the 25% low-income restricted units. That policy

encourages low-income housing (at least where the incomes are truly low-income) while ensuring that non-income-restricted properties are taxed uniformly. It also discourages bizarre and undeserved windfalls to property owners, which must be made up for at the expense of the financial stability of the City and increased the burden on other taxpayers. The Buff Chace properties involve restrictions to average incomes (100% of AMI), not “low incomes.”

4. The 8 Law does not apply to properties that have not been properly encumbered by restrictive covenants

By its terms, the 8 Law only applies to residential property “encumbered by a covenant recorded in the land records in favor of a governmental unit or Rhode Island housing and mortgage finance corporation restricting either or both the rents that may be charged to tenants of the property or the incomes of the occupants of the property . . .” R.I. Gen. Laws § 44-5-13.11.

At least one of the Subject Properties—276 Westminster Street in Providence—is not encumbered by any valid restrictive covenant. While the land records reflect a Declaration of Land Use Restrictive Covenants purportedly recorded by 276 Westminster, LLC on January 3, 2022, that limited liability company has not owned the property since July 10, 2018¹⁰⁴ and has not existed whatsoever since it dissolved itself on December 31, 2018,¹⁰⁵ years before it purportedly granted the covenant. The

¹⁰⁴ See Exhibit F (quitclaim deed).

¹⁰⁵ See Exhibit E (Articles of Dissolution filed with the Secretary of State on December 31, 2018). In addition, by virtue of its non-existence, 276 Westminster, LLC was in breach of its own warranties in its so-called Declarations of Land Use Restrictive Covenants that “(i) is a limited liability company duly formed and organized under the laws of the State of Rhode Island, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry

present owner of the property, Lapham 290, LLC, has not recorded any encumbrance on that property. No restrictive covenant is in place. Buff Chace may run to try to cure this deficiency, but he has already reaped the benefits. This demonstrates how badly the matter has been handled to date.

5. The 8 Law should be construed against Buff Chace

Unlike statutes imposing a tax, which are strictly construed against the taxing authority,¹⁰⁶ “[i]t is well-settled that taxation-*exemption* statutes in this jurisdiction are strictly construed against the taxpayer.” Cookson Am., Inc. v. Clark, 610 A.2d 1095, 1098 (R.I. 1992) (emphasis supplied). “The party claiming the exemption from taxation under a statute has the burden of demonstrating that the terms of the statute illustrate a clear legislative intent to grant such exemption.” Id. “Any taxpayer claiming entitlement to a statutory tax exemption carries the burden of proving that the assessment in question falls within the terms of the exemption.” Kent Cnty. Water Auth. v. State Dep’t of Health, 723 A.2d 1132, 1135 (R.I. 1999). This is a “‘time-honored rule’ of statutory construction that requires a court to construe tax-exemption statutes strictly in favor of the taxing authority and against the party seeking the exemption.” Fleet Credit Corp. v. Frazier, 726 A.2d 452, 454 (R.I. 1999). “It is also well established that when a taxing statute provides a lower tax rate than is generally applied, a partial exemption is created” and “the taxpayer claiming an exemption has the burden of showing that he

on its business as now being conducted, and (iii) has the full legal right power and authority to execute and deliver this Agreement.”

¹⁰⁶ See, e.g., United Transit Co. v. Hawksley, 133 A.2d 132, 136 (R.I. 1957) (“It is well established that statutes imposing a tax will not be extended by implication or inference to cover subjects not expressly included within the plain meaning of the statute.”).

comes within that exception.” Deep River Farms, Ltd. v. Lynch, 292 S.E.2d 752, 753 (N.C. App. 1982). That is:

The backdrop for this case, as in all cases where a taxpayer seeks a reduction in taxes, is the principle that taxation is the rule, and exemption is the exception. Since the reduction depends on legislative grace, the statute must clearly express the exemption, and a taxpayer must show his entitlement to it.

Ares, Inc. v. Limbach, 554 N.E.2d 1310, 1312 (Ohio 1990). See also City of Providence v. Hall, 142 A. 156, 160 (R.I. 1928) (“If two views are possible, of which one more equitably distributes the burdens of taxation, the court should adopt that view, unless compelled to do otherwise by decisions or a long course of conduct which ought not to be altered.”).

Here, the 8 Law is sufficiently clear that Buff Chace is not entitled to the benefit of its exemption from the ordinary property tax rates. However, assuming (*arguendo*) that the 8 Law is ambiguous, that ambiguity must be resolved in favor of the City Council and against Buff Chace.

- 6. As to four of the Plaintiffs, the Consent Order contravened a binding Tax Stabilization Agreement**
 - a. The Tax Stabilization Agreement was a binding contract and ordinance that could not be unilaterally waived by Buff Chace or the City Solicitor**

As noted *supra* at 12–13, prior to instituting or joining this action, four of the Plaintiffs—Lapham, 276 Westminster, RWB Associates, and Clemence—were or had been (in the case of 276 Westminster) beneficiaries of an active tax stabilization

agreement¹⁰⁷ approved by the City Council and enacted as a legally binding ordinance and contract.¹⁰⁸

In the Consent Order, these four Plaintiffs “agree[d] to withdraw and forever forgo any right, entitlement, or benefit provided under the existing TSA beginning with tax assessment as of December 31, 2020 for tax year 2021 and thereafter.” See Consent Order ¶ 8. However, the City was also a party to the TSA. These four Plaintiffs had promised to make certain tax payments to the City in specified amounts from 2018 to 2032, in addition to making other promises.¹⁰⁹ These four Plaintiffs could not thereafter unilaterally renege on these promises. Nor was the City Solicitor authorized to agree to repeal an ordinance duly enacted by the City Council, without its action, consent, or even notice. The TSA expressly provided:

Section 9.6. 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 of this Agreement. Any and all modifications, amendments, extensions or alterations must be in writing duly executed by all parties.

Section 9.7. Entire Agreement. This Agreement and all attachments, addenda, and/or exhibits attached hereto shall represent the entire agreement between City and the Property Owners and may not be amended or modified except as expressed in this document.

¹⁰⁷ Exhibit D (Providence Ordinances Chapter 2018-7 No. 233, entitled “An Ordinance Establishing a Tax Stabilization Agreement for Lapham 290, LLC, 276 Westminster Street, LLC, RWB Associates, LLC, and Clemence 91, LLC”).

¹⁰⁸ See Exhibit D (Providence Ordinances Chapter 2018-7 No. 233) § 8.2 (“[T]his 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.”) (emphasis supplied).

¹⁰⁹ For example, these four Plaintiffs also agreed not to transfer their properties to a tax-exempt entity during the term of the TSA and agreed any such transfer would be void ab initio. See Chapter 2018-7 No. 233 (TSA) § 4.2. These four Plaintiffs also agreed to pay the City a percentage of the sale price if they subsequently sold their properties to a tax-exempt entity in the five years following the expiration of the TSA. See id. § 4.3.

Section 9.8. Effective Date. This Agreement shall take effect upon passage of this Ordinance by the Providence City Council, and approval by the Mayor.

Exhibit D (Providence Ordinances Chapter 2018-7 No. 233) at 8.

b. Four of the Plaintiffs had waived any rights under the 8 Law

In addition, pursuant to the same tax stabilization agreement, Lapham, 276 Westminster, RWB, and Clemence each agreed “to waive and **forever forego** any and all of its rights and privileges under Title 44 of the Rhode Island General Laws as they pertain to the Tax Payments due and owing pursuant to this Agreement” (emphasis supplied), unless one of two exceptions (here inapplicable) occurred.

Title 44 of the Rhode Island General Laws includes the 8 Law, *i.e.* R.I. Gen. Laws § 44-5-13.11. Those four Plaintiffs were ineligible to seek the 8 Law coverage even assuming (*arguendo*) they were otherwise eligible (which they were not). Allowing them to breach their agreement “to waive and forego” was in clear violation of the conditions of approval required by the City Council in the tax stabilization agreement.

7. Buff Chace was already in material breach of the covenants in the Declarations of Land Use Restrictive Covenants at the time they were executed and recorded

Each of the Declarations of Land Use Restrictive Covenants¹¹⁰ contains certain warranties by the Owner including the following:

The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental

¹¹⁰ See, e.g., Exhibit I (Harrisburg Associates, LLC’s Declaration of Land Use Restrictive Covenants, recorded January 3, 2022).

body, and (ii) **will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument** to which the Owner is a party or by which it bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

The Owner warrants that it has not **and will not** execute any agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements in conflict therewith.

[Emphasis supplied]

Discovery will show that Buff Chace was in breach of these warranties from the very day they were made. For example, Plaintiff Harrisburg was party to an Assignment of Leases and Rents dated as of July 2, 2014, recorded in favor of Bank of Rhode Island.¹¹¹ In that Assignment of Leases and Rents, Harrisburg assigned to Bank of America all existing and future leases at the subject property to Bank of America and warranted:

that it [Harrisburg] will not assign, pledge or otherwise encumber any of the Assigned Leases or any of the rents thereunder unless the prior written consent of the Assignee shall have been obtained thereto and unless the instrument creating such assignment, pledge or encumbrance **shall expressly state that the same is subject to this Assignment;**

[Emphasis supplied]

Exhibit J (Assignment of Leases and Rents, recorded July 3, 2014).

Harrisburg's Declaration of Land Use Restrictive Covenants did not expressly reveal (as it was required to) that the Restrictive Covenant was subordinate to that

¹¹¹ Exhibit J hereto.

Assignment. The City Council fully expects that discovery will show other additional breaches of those warranties and others.

8. Buff Chace has failed to comply with other terms of his Declarations of Land Use Restrictive Covenants

Each of the Declarations of Land Use Restrictive Covenants requires annual reporting (by March 15) of certain rent roll data and other information, on the forms prescribed by those instruments (both the exhibits and additional forms referenced in the exhibits). See, e.g., Exhibit I (Harrisburg Associates, LLC's Declaration of Land Use Restrictive Covenants) § 3.B ("The Owner shall submit an application for the preferential tax treatment afforded hereunder on a form available in the Office of the City of Providence Tax Assessor and attached hereto as Exhibit C ('Tax Assessor') and supporting documentation to the Tax Assessor for review annually by March 15."). Buff Chace failed to comply with their reporting requirements on the required forms in 2022 and has failed to supply any information whatsoever for 2023.

9. Buff Chace has sometimes charged the same or more for "restricted" apartments than for equivalent unrestricted apartments in the same building, indicating that the Consent Order has had no effect on the cost of housing

According to rent rolls submitted by Buff Chace in 2022 to the Tax Assessor, Buff Chace has sometimes been charging so-called "low income" tenants the same or more than other tenants for equivalent apartments. See Exhibit K (RWB's 2022 rent roll);

Exhibit L (Downcity's 2022 rent roll).¹¹² Obviously, Buff Chace is free to charge the unrestricted apartments what the market will bear and presumably does so.

For example, RWB's building was charging the following rents for tenants in three 488 square foot apartments:

Income Status	Tenant #	Square footage	Monthly Rent
restricted	#341	488 sq ft	\$1,490.00
unrestricted	#444	488 sq ft	\$1,500.00
restricted	#625	488 sq ft	\$1,600.00

In this case, one of the income-restricted tenants (#625) was being charged \$100 more per month than a comparable unrestricted tenant (#444), while another income-restricted tenant (#341) was being charged only \$10 per month less.

Likewise, RWB's building was charging the following rents for four tenants in 566 square foot apartments:

Income Status	Tenant #	Square footage	Monthly Rent
unrestricted	#396	566 sq ft	\$1,650.00
restricted	#438	566 sq ft	\$1,650.00
restricted	#622	566 sq ft	\$1,730.00
restricted	#637	566 sq ft	\$1,730.00

In this case, two of the income-restricted tenants (#622 and #637) were being charged \$80 per month more than the unrestricted tenant in a unit of the same size (#396), while

¹¹² For the sake of tenants' privacy, tenants' names and apartment numbers have been redacted from these two exhibits.

another income-restricted tenant (#438) was being charged the same as that unrestricted tenant (#396).

Similarly, Downcity's building¹¹³ was charging the following rents for these four tenants:

Income Status	Tenant #	Square footage	Monthly Rent
unrestricted	#33	573 sq ft	\$1,420.00
unrestricted	#36	565 sq ft	\$1,565.00
unrestricted	#451	573 sq ft	\$1,420.00
restricted	#557	565 sq ft	\$1,590.00

In this case, the income-restricted tenant (#557) was being charged the most of all four units, including in comparison to two larger units (of tenants #33 and #451).

While discovery remains to be done, it is already clear that in some instances Buff Chace has been charging tenants in income-restricted units the same or higher rents than he has been charging tenants in non-income-restricted units, indicating that the so-called income-restriction is in such cases actually above-market rates, such that Buff Chace is giving nothing in return for 8 Law treatment and his preferential treatment has not increased the supply of low-income housing.

¹¹³ Downcity had leased its entire building to its affiliate Kinsley MT, LLC, which in turn sub-leased individual units to the tenants named on the rent roll.

F. The Complaint for Declaratory Relief does not state a claim

“[A] person challenging an assessment of taxes may not maintain a cause of action for declaratory relief. Morse v. Minardi, *supra*, 208 A.3d at 1155. This case should have been dismissed at the outset.

G. The "Preliminary Injunction" was improper

This failure to obtain Court approval violated the fundamental rule that “parties cannot, by giving each other consideration, purchase from a court of equity a continuing injunction.” Sys. Fed'n No. 91, Ry. Emp. Dep't, AFL-CIO v. Wright, 364 U.S. 642, 651 (1961). In addition, the stipulations both in fact and in law simply reflected an agreement by the City Solicitor—to suspend collection of amounts of taxes—to which he was powerless and unauthorized to agree.¹¹⁴ It is for the Court to enter an injunction, punishable by contempt. That was never done here. Instead, the parties entered into an illicit agreement and twice mislabeled it as an injunction.

H. Buff Chace improperly sought an impermissible advisory opinion

Another ground for denying Buff Chace’s declaratory judgment relief was that it merely sought an advisory opinion as to hypothetical facts. “The Uniform Declaratory Judgments Act requires that there be a justiciable controversy between a plaintiff and a defendant and does not authorize the Superior Court to give an advisory opinion upon hypothetical facts which are not in existence or may never come into being.” Berberian v. Trivisono, 332 A.2d 121, 124 (R.I. 1975). “A declaratory-judgment action may not be used ‘for the determination of abstract questions or the rendering of advisory opinions,’

¹¹⁴ See supra at 38–45 (discussing at length the City Solicitor’s lack of authority).

nor does it ‘license litigants to fish in judicial ponds for legal advice.’” Benson v. McKee, 273 A.3d 121, 129 (R.I. 2022) (quoting Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997)). Under Rhode Island’s Constitution, only the justices of our Supreme Court are permitted or empowered to issue advisory opinions, and only upon request by the governor or General Assembly. See R.I. Const. art. X, § 3.

Here, Buff Chace’s alleged dispute was utterly hypothetical, seeking an abstract advisory opinion about a course of action it was contemplating taking, concerning the effect of hypothetical agreements not yet reached and hypothetical covenants not yet recorded. See second Amended Complaint ¶ 23 (“Under the Proposal, the Plaintiffs would record a restrictive covenant in favor of the City”); id. ¶ 26 (“Plaintiffs disagree with the Assessor’s interpretation of the statute because it is clear under the plain and ordinary meaning of the terms of the statute that the entire Property is to be assessed at the 8 percent (8%) tax rate **so long as the ‘government unit’ and tax payer reach an agreement** on the restrictive covenant.”^[115]) (emphasis supplied); id. ¶ 32 (“Plaintiffs are prepared to grant the City a restrictive covenant. . . .”); id. ¶ 33 (“**Once the restrictive covenant is executed and recorded**, the Plaintiffs **will** meet all of the requirements of R.I. Gen. Laws §44-5-13.11.”) (emphasis supplied); id. at 8 (“WHEREFORE, Plaintiffs ask this Honorable Court grant its Complaint for declaratory judgment and enter judgment declaring and awarding the following: That **upon** entering and recording a restrictive covenant . . . That the Assessor’s **proposed** method of calculating two separate tax rates for the Properties is”) (emphasis supplied).

¹¹⁵ The allegation on its face does not allege that such an agreement had yet been reached.

The operative second Amended Complaint (as did Buff Chace's prior pleadings) requested a declaratory judgment as to facts that had not yet (and might never have) come into existence. Buff Chace expressly alleged that he *had not yet* entered into an agreement with the City, and had not yet recorded any restrictive covenants, as would be required under the 8 Law. While Rhode Island's Uniform Declaratory Judgments Act provides that a "contract may be construed either before or after there has been a breach thereof," R.I. Gen. Laws § 9-30-3, it does not permit the construal of a hypothetical contract or a hypothetical restrictive covenant.

CONCLUSION

The motion to intervene should be granted. Of course, the Court need not presently rule on whether the Consent Order should be vacated or the merits of the City Council's proposed Answer. All that the City Council asks at this time is that it be allowed to intervene in the case, so that it may have an opportunity to thereafter move to vacate the Consent Order. The City Council will, if allowed to intervene, then file its motion asking for the vacatur of the Consent Order, and that such motion be assigned to Superior Court Justice Melissa Darigan for hearing.

The public interest, justice, and common sense all cry out for a judicial inquiry, which granting this motion will allow.

The motion should be granted.

Respectfully submitted,

Proposed Intervenor
City Council of the City of Providence,

By Its Attorneys,

/s/ Max Wistow

Max Wistow, Esq. (#0330)

Stephen P. Sheehan, Esq. (#4030)

Benjamin Ledsham, Esq. (#7956)

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August 8, 2023

CERTIFICATE OF SERVICE

I hereby certify that, on the 8th day of August, 2023, I filed and served the foregoing document through the electronic filing system on the following users of record:

Nicholas J. Hemond, Esq.
DarrowEverett, LLP
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401-453-1200

nhemond@darroweverett.com

Lisa Fries, Esq.
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npoulos@providenceri.gov

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Benjamin Ledsham _____

Exhibit A

Case Number: PC-2020-04757
Filed in Providence/Bristol County Superior Court
Submitted: 5/14/2021 3:23 PM
Envelope: 3102136
Reviewer: Jaiden H.

**STATE OF RHODE ISLAND
PROVIDENCE, SC**

SUPERIOR COURT

**HARRISBURG ASSOCIATES, LLC,
LERNER ASSOCIATES, LLC,
ALICE BUILDING, LLC,
PEERLESS LOFTS, LLC,
SMITH/KEEN, LP
LAPHAM 290, LLC
RWB ASSOCIATES, LLC
276 WESTMINSTER, LLC
CLEMENCE 91, LLC
DOWNCITY REVITALIZATION FUND I, LLC
PLAINTIFFS**

VS.

**THE CITY OF PROVIDENCE,
ELY SSE PARE, in her capacity as Tax Assessor
Of the City of Providence, and
JAMES LOMBARDI, III, in his capacity as
Treasurer of the City of Providence
DEFENDANTS**

C.A.NO.: PC-2020-04757

CONSENT ORDER

The above captioned matter was filed by the Plaintiffs seeking declaratory judgment to resolve disputes between the parties related to the Plaintiffs' request for taxes to be assessed on their respective properties pursuant to R.I.Gen.Laws §44-5-13.11. After a series of settlement conferences between the parties, the parties have agreed upon the terms of this Consent Order. Therefore, by agreement of the parties, it is hereby:

ORDERED, ADJUDGED AND DECREED:

1. Plaintiffs Motion to Amend its Complaint to add additional plaintiffs is granted.
2. The Plaintiff and City of Providence shall enter into and record a 30-year restrictive covenant in favor of the City of Providence restricting twenty five percent (25%) of the

SUPERIOR COURT
FILED
CLERK'S OFFICE
21 JUN -9 PM 12:05

Case Number: PC-2020-04757
Filed in Providence/Bristol County Superior Court
Submitted: 5/14/2021 3:23 PM
Envelope: 3102136
Reviewer: Jaideen H.

total residential units at each Plaintiff's respective property for occupancy by tenants who have an income of no greater than one hundred percent (100%) of the area median income (AMI) for each respective property within forty-five (45) days of the entry of this Consent Order.¹ Each respective Plaintiff shall have the option to terminate the restrictive covenant in favor of the City of Providence upon providing ninety (90) days written notice to the Tax Assessor and City Solicitor's Office. In the event that any Plaintiff and the City wish to extend the restrictive covenant beyond thirty (30) years, nothing herein shall preclude the parties from doing so.

3. In exchange for restricting the units for occupancy by tenants making no more than one hundred percent (100%) AMI, the City agrees that each Plaintiffs' respective properties will be subject to a real property tax that is equal to eight percent (8%) of each properties' previous years' gross scheduled income pursuant to R.I.Gen.Laws §44-5-13.11 retroactive to tax year 2020's first quarterly payment of July 24, 2020.
4. The Plaintiffs shall have ninety (90) days from the date of the recording of the restrictive covenant to demonstrate compliance with the requirement that each of the Plaintiffs' respective properties has twenty five percent (25%) of its residential units restricted for occupancy by tenants making no more than one hundred percent (100%) of AMI.

¹ As pled in the Complaint, the Plaintiffs' respective properties are as follows:

1. Harrisburg Associates, LLC – 89 Eddy Street, Providence, RI
2. Lerner Associates, LLC – 90 Eddy Street, Providence, RI
3. The Alice Building, LLC – 236 Westminster Street, Providence, RI
4. Smith/Keen, LP – 1 Fulton Street, Providence, RI
5. Lapham 290, LLC – 290 Westminster Street, Providence, RI
6. Peerless Lofts, LLC – 150 Union Street, Providence, RI
7. Clemence 91, LLC – 91 Clemence Street, Providence, RI
8. RWB Associates, LLC – 270 Westminster Street, Providence, RI
9. 276 Westminster, LLC – 276 Westminster Street, Providence, RI
10. Downcity Revitalization Fund I, LLC – 326 Westminster Street, Providence, RI

Case Number: PC-2020-04757
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Submitted: 5/14/2021 3:23 PM
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Reviewer: Jaiden H.

5. Failure on the part of any Plaintiffs to demonstrate compliance with the requirements that Plaintiff's respective properties has twenty-five percent (25%) of its residential units restricted for occupancy by tenants making no more than one hundred percent (100%) of AMI will result in retroactive assessment such that full and fair taxation without the benefit of R.I.Gen.Laws §44-5-13.11 shall become immediately due and payable upon 10 days notice on the part of the City.
6. The 2021 tax bills for each Plaintiffs' property shall be adjusted to reflect an assessment pursuant to R.I.Gen.Laws §44-5-13.11 and the Plaintiffs shall receive a credit from the Defendants for any overpayment of taxes that has occurred since tax year 2020's first quarterly payment of July 24, 2020 provided that the Plaintiff must bring the Plaintiffs' properties into compliance with the terms of the restricted covenant referenced in paragraph 1 of this Consent Order within ninety (90) days of the recording of said restrictive covenant.
7. In the event that one of the Plaintiffs is unable to bring its respective property into compliance with the terms of the restrictive covenant referenced in paragraph 1 of this Consent Order within ninety (90) days of the recording of the restrictive covenant, each respective property shall receive retroactive assessment such that full and fair taxation without the benefit of R.I.Gen.Laws §44-5-13.11 shall become immediately due and payable upon 10 days notice. . That particular Plaintiff shall be given until December 31, 2021 to bring the property into full compliance in order to begin being assessed taxes pursuant to §44-5-13.11 for tax year 2022.
8. Lapham 290, LLC ("Lapham Owner"), 276 Westminster, LLC, RWB Associates, LLC, Clemence 91, LLC agree to withdraw and forever forgo any right, entitlement, or benefit

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Reviewer: Jaiden H.

provided under the existing TSA beginning with tax assessment as of December 31, 2020
for tax year 2021 and thereafter.

By agreement of the parties:

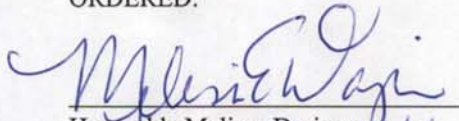
Plaintiffs,
By their attorney,

/s/ Nicholas J. Hemond, Esq.
Nicholas J. Hemond, Esq. #8782
DarrowEverett, LLP
One Turks Head Place, Suite 1200
Providence, Rhode Island
401-453-1200
nhemond@darroverett.com

Defendants,
By their attorney,

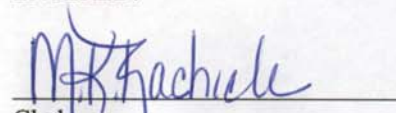
/s/ Jeffrey Dana, Esq.
Jeffrey Dana, Esq.
City Solicitor
444 Westminster Street, Suite 220
Providence, Rhode Island
401-680-5333
jdana@providenceri.gov

ORDERED:



Honorable Melissa Darigan 6/8/21

ENTERED:



Clerk

Dated: 6/8/21

Case Number: PC-2020-04757
Filed in Providence/Bristol County Superior Court
Submitted: 5/14/2021 3:23 PM
Envelope: 3102136
Reviewer: Jaiden H.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2021, I filed and served a true copy of the within document through the electronic filing system on the counsels of record for the opposing parties.

This document, electronically filed and served, is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Sean M. Rock

Exhibit B

Providence/Bristol County Superior Court

Case Summary

Case No. PC-2020-04757

Harrisburg Associates, LLC et al. v. The City of Providence et al.

§
§

Location: Providence/Bristol County Superior Court
Filed on: 06/24/2020

Case Information

Statistical Closures

06/09/2021 Closed-Non-Trial-Assigned-Judgment

Case Type: Declaratory Judgment
Case Status: 06/09/2021 Closed

Party Information

Plaintiff

276 Westminster, LLC

Clemence 91, LLC

Downcity Revitalization Fund I, LLC

Harrisburg Associates, LLC

HEMOND, NICHOLAS J
Retained

Lapham 290, LLC

HEMOND, NICHOLAS J
Retained

Lerner Associates LLC

HEMOND, NICHOLAS J
Retained

Peerless Lofts, LLC

HEMOND, NICHOLAS J
Retained

RWB Associates LLC.

Smith/Keen, LP

HEMOND, NICHOLAS J
Retained

The Alice Building, LLC

HEMOND, NICHOLAS J
Retained

Defendant

Elyse Pare, in her capacity as Tax Assessor of the City of Providence


James Lombardi, III, in is capacity as Treasurer of the City of Providence

The City of Providence

POULOS, NICHOLAS PAUL
Retained

Case Events

06/24/2020  Complaint Filed

06/24/2020  Summons

06/25/2020  Amended Complaint Filed

06/29/2020 Stipulation Filed

Case Summary

Case No. PC-2020-04757

06/30/2020  Emergency Motion Filed

07/02/2020  Motion Not Scheduled

07/06/2020  Summons Proof of Service Filed

07/06/2020  Summons Proof of Service Filed

07/06/2020  Summons Proof of Service Filed

09/14/2020  Answer Filed

10/19/2020  Stipulation Filed Extension of Time

01/21/2021  Stipulation Filed

03/23/2021  Entry of Appearance

04/14/2021  Stipulation Filed

05/12/2021  Rule 7 Motion to Amend Complaint

05/12/2021  Motion Not Scheduled

05/12/2021  Stipulation Filed

05/14/2021  Amended Complaint Filed

06/09/2021  Consent Order Entered (Judicial Officer: Darigan, Associate Justice Melissa E.)

06/09/2021 Closed-Non-Trial-Assigned-Judgment

Hearings

06/08/2021 **Conference** (1:30 PM) (Judicial Officer: Darigan, Associate Justice Melissa E.)
Completed

06/08/2021 **Entry of Judgment** (1:30 PM) (Judicial Officer: Darigan, Associate Justice Melissa E.)
06/04/2021 Reset by Court to 06/08/2021
Order to Enter

Financial Information

Plaintiff Harrisburg Associates, LLC	
Total Financial Assessment	180.75
Total Payments and Credits	180.75
Balance Due as of 08/07/2023	0.00
06/24/2020 Transaction Assessment	180.75
06/24/2020 Electronic Payment Receipt # SCP-2020-013057	(180.75)

Exhibit C

FY2023 Rhode Island Income Limits for Low- and Moderate-Income Households

(Incomes over 80% AMI are calculated based on HUD 2008 income limits policy)

Providence--Fall River, RI-MA HMFA 2023								
MUNICIPALITIES: Barrington, Bristol, Burrillville, Central Falls, Charlestown, Coventry, Cranston, Cumberland, East Greenwich, East Providence, Exeter, Foster, Glocester, Jamestown, Johnston, Lincoln, Little Compton, Narragansett, North Kingstown, North Providence, North Smithfield, Pawtucket, Providence, Richmond, Scituate, Smithfield, South Kingstown, Tiverton, Warren, Warwick, West Greenwich, West Warwick, Woonsocket								
	1 person	2 person	3 person	4 person	5 person	6 person	7 person	8 person
30%	\$21,500	\$24,600	\$27,650	\$30,700	\$35,140	\$40,280	\$45,420	\$50,560
50%	\$35,850	\$41,000	\$46,100	\$51,200	\$55,300	\$59,400	\$63,500	\$67,600
60%	\$43,020	\$49,200	\$55,320	\$61,440	\$66,360	\$71,280	\$76,200	\$81,120
80%	\$57,350	\$65,550	\$73,750	\$81,900	\$88,500	\$95,050	\$101,600	\$108,150
100%	\$74,200	\$84,800	\$95,400	\$106,000	\$114,500	\$122,950	\$131,450	\$139,900
115%	\$82,460	\$94,300	\$106,030	\$117,760	\$127,190	\$136,620	\$146,050	\$155,480
120%	\$86,040	\$98,400	\$110,640	\$122,880	\$132,720	\$142,560	\$152,400	\$162,240
Westerly-Hopkinton-New Shoreham-RI HMFA 2023								
MUNICIPALITIES: Hopkinton, New Shoreham & Westerly								
	1 person	2 person	3 person	4 person	5 person	6 person	7 person	8 person
30%	\$23,350	\$26,700	\$30,050	\$33,350	\$36,050	\$40,280	\$45,420	\$50,560
50%	\$38,900	\$44,450	\$50,000	\$55,550	\$60,000	\$64,450	\$68,900	\$73,350
60%	\$46,680	\$53,340	\$60,000	\$66,660	\$72,000	\$77,340	\$82,680	\$88,020
80%	\$62,200	\$71,100	\$80,000	\$88,850	\$96,000	\$103,100	\$110,200	\$117,300
100%	\$82,880	\$94,720	\$106,560	\$118,400	\$127,850	\$137,350	\$146,800	\$156,300
115%	\$89,470	\$102,230	\$115,000	\$127,760	\$138,000	\$148,240	\$158,470	\$168,710
120%	\$93,360	\$106,680	\$120,000	\$133,320	\$144,000	\$154,680	\$165,360	\$176,040
Newport-Middletown-Portsmouth RI HMFA 2023								
MUNICIPALITIES: Newport, Portsmouth, Middletown								
	1 person	2 person	3 person	4 person	5 person	6 person	7 person	8 person
30%	\$25,950	\$29,650	\$33,350	\$37,050	\$40,050	\$43,000	\$45,950	\$50,560
50%	\$43,250	\$49,400	\$55,600	\$61,750	\$66,700	\$71,650	\$76,600	\$81,550
60%	\$51,900	\$59,280	\$66,720	\$74,100	\$80,040	\$85,980	\$91,920	\$97,860
80%	\$66,300	\$75,750	\$85,200	\$94,650	\$102,250	\$109,800	\$117,400	\$124,950
100%	\$74,050	\$84,650	\$95,200	\$135,400	\$146,232	\$157,064	\$167,896	\$178,728
115%	\$99,470	\$113,620	\$127,880	\$142,030	\$153,410	\$164,800	\$176,180	\$187,570
120%	\$103,800	\$118,560	\$133,440	\$148,200	\$160,080	\$171,960	\$183,840	\$195,720
Statewide Income Limits for Rhode Island FY 2023								
	1 person	2 person	3 person	4 person	5 person	6 person	7 person	8 person
30%	\$21,900	\$25,000	\$28,150	\$31,250	\$33,800	\$36,300	\$38,800	\$41,300
50%	\$36,500	\$41,700	\$46,900	\$52,150	\$56,300	\$60,500	\$64,650	\$68,850
60%	\$43,800	\$50,040	\$56,280	\$62,580	\$67,560	\$72,600	\$77,580	\$82,620
80%	\$58,350	\$66,700	\$75,050	\$83,400	\$90,050	\$96,750	\$103,400	\$110,100
100%	\$76,370	\$87,280	\$98,190	\$109,100	\$117,828	\$126,556	\$135,284	\$144,012
115%	\$83,950	\$95,910	\$107,870	\$119,940	\$129,490	\$139,150	\$148,700	\$158,360
120%	\$87,600	\$100,080	\$112,560	\$125,160	\$135,120	\$145,200	\$155,160	\$165,240
140%	\$102,200	\$116,760	\$131,320	\$146,020	\$157,640	\$169,400	\$181,020	\$192,780

Exhibit D

City of Providence
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2018-7

No. 233 AN ORDINANCE ESTABLISHING A TAX STABILIZATION AGREEMENT FOR LAPHAM 290, LLC, 276 WESTMINSTER STREET, LLC, RWB ASSOCIATES, LLC AND CLEMENCE 91, LLC

Approved March 26, 2018

Be it ordained by the City of Providence:

WHEREAS, Lapham 290, LLC (“Lapham Owner”), 276 Westminster, LLC (“276 Owner”), RWB Associates, LLC (“RWB Owner”) and Clemence 91, LLC (“Clemence Owner”) (collectively the “Project Owners”) are the owners of certain real property located in the City at 290 Westminster Street, 276 Westminster Street, 270 Westminster Street and 91 Clemence Street, Assessor’s Plat 020, Lots 165,166,167,169 and 63; and

WHEREAS, Project Owners have proposed and committed to rehabilitated mostly vacant historic buildings into mixed use buildings featuring commercial and residential uses upon the thus returning the property to productive mixed use; 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 Rhode Island General Laws § 44-3-9, the General Assembly has authorized the City of Providence, acting through its City Council and subject to certain enumerated conditions, to exempt or determine a stabilized amount of taxes to be paid on account of real and personal property for a period not to exceed twenty (20) years; and

WHEREAS, pursuant to the Providence Code of Ordinances, as amended, specifically Chapter 21, Article VIII, Section 21-169, the granting of the tax stabilization will inure to the benefit of the City of Providence and its residents by reason of:

- (A) The willingness of Project Owners to rehabilitate existing historic buildings and return them to useful service featuring commercial and residential uses thereby improving the physical plant of the City, which will result in a long-term economic benefit to the City and State; and
- (B) The willingness of Project Owners to commit by agreement to make a significant investment in the above-referenced property, by rehabilitating these historic buildings into mixed use buildings featuring commercial and residential uses in the heart of downtown Providence. This will enhance the tax base of the surrounding area, and generate significant tax revenues for the City of Providence.

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 collectively mean certain real property together with any and all buildings, structures, and/or improvements now or in the future located in the City at 290 Westminster Street, 276 Westminster Street, 270 Westminster Street and 91 Clemence Street, Assessor’s Plat 020, Lots 165,166,167,169 and 63.

“Property Owners” shall mean the respective entities with the legal or equitable right and/or interest in and/or to the Property or the individual lots that compromise the Property, including any and all successors and assigns.

SECTION 2. TAX STABILIZATION.

Section 2.1. Grant. The City, in accordance with R.I.G.L. § 44-3-9 and the City of Providence Code of Ordinances, does hereby grant a fifteen (15) year tax stabilization in favor of the Property Owners with respect to the Property.

Section 2.2. Term. The tax stabilization term shall be the period commencing on December 31, 2017 and terminating on December 31, 2031. (Tax Years 2018 - 2032).

Section 2.3. Plan. During the tax stabilization term as defined in Section 2.2 above, the City has determined the stabilized amount of taxes to be paid by the Property Owners with respect to the Property, notwithstanding the valuation of the Property or the then-current rate of tax as follows: For tax years 2018 through and including tax year 2020, the Property Owner shall make a tax payment equal to the taxes due and owing for the December 31, 2015 assessment value multiplied by the 2016 Tax Year tax rate (hereinafter the "Base Assessment Tax"). The parties hereto acknowledge that assessed values the parcels which comprise the Property as defined herein as the subject of tax appeals filed by the owners of the Property. In the course of said appeals, the parties have reached a settlement agreement resolving the appeals and the assessed values established in the settlement agreement shall be used to calculate the Base Assessment Tax. For each tax year thereafter, the Property Owners will pay the Base Assessment Tax plus a percentage of the difference between the Base Assessment Tax on the Property and the taxes due and owing on the then-current assessed value of the Property multiplied by the then-current rate. See "Tax Stabilization Plan" incorporated herein as if fully reproduced and attached hereto and as Exhibit A.

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 Owners. If the Property Owners 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. The failure of one of the Property Owners to make timely payments shall only impact said Property Owner. By way of example, if Lapham Owner fails to meet the requirements of this section, its failure shall only impact Lapham Owners respective property and not the remaining Property Owners.

Section 2.5. Obligation of Property Owners 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 Owners. It is understood that the stabilized tax payments made hereunder are deemed by the City to be tax payments, and the Property Owners 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.

Section 2.6. Non-Receipt of Stabilized Tax Bill. Failure by the City to send or failure by the Property Owners to receive a stabilized tax bill does not excuse the nonpayment of the stabilized tax nor 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 the execution of this Agreement, the Property Owners shall cause a Notice of this Agreement to be recorded at its expense in the City's official public land evidence records.

SECTION 3. PERFORMANCE OBLIGATIONS.

Section 3.1. Commencement of Performance.

Rehabilitation and/or construction shall commence within twelve (12) months of the effective date of this Agreement.

Section 3.2. Permits and Certificates of Occupancy.

Property Owners shall obtain all permits and certificates of occupancy as required by state and local law in connection with any and all intended construction or rehabilitation at the Property.

SECTION 4. TRANSFER OF THE PROPERTY.

Section 4.1. Transfer Generally. 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. Additionally, in accordance with Section 2.7, the burdens and benefits of this Agreement will run with the land, and as for payment of taxes shall run in favor of the City regardless of any transfer of ownership. The Property Owners further agree to provide written notice to the City within thirty (30) days of any transfer of title to the real estate.

Section 4.2. Transfer to Tax Exempt Entities. In the event that one of the respective entities comprising the Property Owners transfers one of the lots comprising the Property to a tax exempt entity, this Agreement shall be void ab initio as it pertains to the respective lot being transferred and the owner thereof and any entity holding the legal right or legal interest in the that respective lot at the time of said transfer shall be liable for the full taxes due and owing from the Effective Date of this Agreement and forward. Transfer of an individual lot by an individual owning entity to a tax exempt entity shall not impact the validity or duration of this Agreement as it pertains to the other entities comprising the Property Owners and the other lots comprising the Property.

Section 4.3. Post-Expiration Transfers. In the event that one of the respective entities comprising the Property Owners transfers one of the lots comprising the Property to a tax exempt entity within five years from the end of the tax stabilization term, as defined in Section 2.2 above, the then respective entity owning the applicable lot at the time of said sale will pay the following: five percent (5%) of the sale price in said transfer if sold to a tax-exempt entity in the first year following the end of the Term; four percent (4%) of the sale price in said transfer if sold to a tax-exempt entity in the second year following the end of the Term; three percent (3%) of the sale price in said transfer if sold to a tax-exempt entity in the third year following the end of the Term; two percent (2%) of the sale price in said transfer if sold to a tax-exempt entity in the fourth year following the end of the Term; and one percent (1%) of the sale price in said transfer if sold to a tax-exempt entity in the fifth year following the end of the Term. Transfer of an individual lot by an individual owning entity to a tax exempt entity shall not impact the validity or duration of this Agreement as it pertains to the other entities comprising the Property Owners and the other lots comprising the Property.

SECTION 5. FURTHER ASSURANCES.

Section 5.1. MBE/WBE. Property Owners 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). Property Owners 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). Property Owners 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 Property 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.

Section 5.2. Internal Revenue Service reporting. Except as provided under R.I.G.L. § 28-42-8, any person performing services at the Property shall annually receive either a W-2 statement or an IRS Form 1099.

Section 5.3. First Source. Pursuant to the City of Providence First Source Ordinance, the Project Owners shall enter into a First Source Agreement covering the hiring of employees necessary to complete the proposed Project and throughout the term of this Agreement. Project Owners shall work in conjunction with the Director of First Source Providence to develop the First Source Agreement.

Section 5.4. "Buy Providence" Initiative. Property Owners 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, Property Owners 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 Property. In order to further that effort, Property Owners will hold seminars/meetings 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 Property Owners' development plans in order to maximize the opportunities for Providence businesses to work with Property Owners in providing on-going services, equipment and materials. To be clear, nothing in the foregoing shall be construed so as to obligate Property Owners to purchase construction materials from any vendor that has not provided the lowest qualified bid in connection with the provision of such materials, as reasonably determined by Property Owners.

Section 5.5. Apprenticeship. The Property Owners shall ensure that one hundred (100) percent 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. Up to twenty (20) percent of the hourly requirement may be waived if replaced with hours worked by qualified MBE/WBE companies registered in the State of Rhode Island. Certification of this waiver shall be reviewed and signed by the designated MBE/WBE coordinator within the department of purchasing. The Property Owners 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 (10) percent of the total hours worked by the subcontractors' employees on the project are completed by apprentices registered in the aforementioned apprenticeship programs.

The Property Owners shall as part of its contracts between its construction manager and general contractor and their subcontractors require that the subcontractors submit to the First Source Director quarterly verification reports to ensure compliance with this section.

The Property Owners, its construction manager or general contractor or other authorized person/entity may petition the First Source Director 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 6. DEFAULT.

The following events shall constitute an event of default hereunder:

- (A) Failure of the Property Owners 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 Owners to record a Notice of this Agreement as required by and in accordance with Section 2 above; or
- (C) Failure of the Property Owners to meet any of the performance obligations set forth in Section 3 above; or
- (D) Failure of the Property Owners to annually report as required by Section 9 below; or
- (E) Failure of the Property Owners to notify the City in writing within thirty (30) days of the transfer of the Property; or
- (F) Transfer of the Property by the Property Owners outside of the terms of this Agreement; or
- (G) Failure of the Property Owners to comply with Section 5 above; or
- (H) Failure of the Property Owners to comply with any other obligation or promise contained within any section or subsection of this Agreement; or
- (I) Failure of the Property Owners to comply with all state and local law regarding building and property maintenance codes, zoning ordinances, and building and/or trade permits; or
- (J) Failure of the Property Owners to remain current on any and all other financial obligations to the City of Providence.

Default by an individual owning entity within the defined term Property Owners shall not constitute default as it pertains to the other entities comprising the Property Owners. By way of example, default by Lapham Owner shall not impact any of the other entities and shall only constitute default as it pertains to Lapham Owner.

SECTION 7. NOTICE AND CURE.

Section 7.1. Notice and Cure Period. The City Council shall provide written notice to the Property Owners before exercising any of its rights and remedies under Section 8 below. The Property Owners 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) days, then the Property Owners shall request an additional reasonable period of time from the Tax Assessor (and if an agreement on the period of time cannot be reached between the Property Owner and the Tax Assessor, then the Property Owner shall request such additional time from the City Council) to cure such default. Such reasonable request shall be granted provided that the Property Owners shall have commenced to cure such default within said period, such cure shall have been diligently pursued by the Property Owners 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 reasonable discretion. Default by an individual owning entity within the defined term Property Owners shall not constitute default as it pertains to the other entities comprising the Property Owners. By way of example, default by Lapham Owner shall not impact any of the other entities and shall only constitute default as it pertains to Lapham Owner.

Section 7.2. Agreed Upon Address for Purposes of Written Notice. All notices, requests, consents, approvals, and any other communication which may be 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, or by nationally recognized overnight courier (such as Federal Express or UPS) and addressed to the following parties set forth below:

If to: City of Providence
Office of the City Clerk
25 Dorrance St.
Providence, RI 02903
*Accompanied by 9 copies

If to: Lapham 290, LLC
46 Aborn Street, Providence, RI
Copy to:
Zachary Darrow, Esq.
Darrow Everett, LLP
One Turks Head Place, Suite 1200
Providence, RI 02903

If to: 276 Westminster, LLC
46 Aborn Street, Providence, RI
Copy to:
Zachary Darrow, Esq.
Darrow Everett, LLP
One Turks Head Place, Suite 1200
Providence, RI 02903

If to: RWB Associates, LLC
46 Aborn Street, Providence, RI
Copy to:
Zachary Darrow, Esq.
Darrow Everett, LLP
One Turks Head Place, Suite 1200
Providence, RI 02903

If to: Clemence 91, LLC
46 Aborn Street, Providence, RI
Copy to:
Zachary Darrow, Esq.
Darrow Everett, LLP
One Turks Head Place, Suite 1200
Providence, RI 02903

SECTION 8. RIGHTS AND REMEDIES.

Section 8.1. 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 8.1 above.

Section 8.2. 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 8.3. Waiver. Failure or delay on the part of the City to exercise any rights or remedies, powers or privileges 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 or privilege thereunder.

Section 8.4. 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 they pertain to the Tax Payments due and owing pursuant to this Agreement, unless the assessment value of the Property increases by more than ten percent (10%) between any two City-wide revaluations (as referenced in R.I. Gen. Laws § 44-5-11.6) which occur during the term of this stabilization or if there is a substantial change in circumstances regarding the value of the Property. A substantial change in circumstances shall include a vacancy or partial vacancy at the Property, loss of use of the Property as a result of fire, flood or other force majeure, loss of revenue generated by the Property or decline in the real estate market such that it negatively impacts the value of the Property. 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 9. MISCELLANEOUS TERMS.

Section 9.1. Annual Progress Report. The Property Owners shall provide annual reports to the City on its progress in complying with the provisions of this Agreement, and one final report following the issuance of a certificate of occupancy for the work contemplated hereby (which reporting may be done on a Property by Property basis). Specifically, its report shall include a performance report on rehabilitation and/or improvements with evidence of final construction costs, status of stabilized tax payments, and evidence of employment compliance pursuant to Section 6 above. Upon receipt and review, the City may require and request reasonable additional non-confidential or proprietary information.

Section 9.2. Monitoring Fee. Within thirty (30) days of receiving a statement from the Tax Assessor, the Property Owners shall remit a monitoring/compliance fee to the City in the amount of 0.1 percent of the tax savings for each respective tax year during the term of this Agreement. By way of example only, if the tax savings for Year 3 is \$500,000, the monitoring fee for Year 3 shall be \$500.

Section 9.3. Agreement to Contribute to Parks and Recreation Trust Fund. Upon ratification of this Agreement by the City Council, the Property Owners shall, within thirty days of receiving a statement from the Treasurer, 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 Owners shall make annual payments to the Fund in the amount of Five (5) percent of the abated tax for each respective tax year, 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 Owners due to a default. By way of example only, if the tax savings for Year 3 is \$500,000, the contribution for Year 3 shall be \$25,000.
- (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 9.4 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.

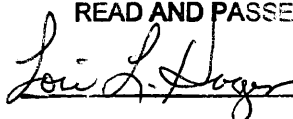
Section 9.5. Applicable Law. This Agreement shall be construed under the laws of the State of Rhode Island, the City of Providence Home Rule Charter, and the City of Providence Code of Ordinances, as amended.

Section 9.6. 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 of this Agreement. Any and all modifications, amendments, extensions or alterations must be in writing duly executed by all parties.



Section 9.7. Entire Agreement. This Agreement and all attachments, addenda, and/or exhibits attached hereto shall represent the entire agreement between City and the Property Owners and may not be amended or modified except as expressed in this document.

Section 9.8. Effective Date. This Agreement shall take effect upon passage of this Ordinance by the Providence City Council, and approval by the Mayor.

IN CITY COUNCIL
MAR 01 2018
FIRST READING
READ AND PASSED


CLERK

IN CITY
COUNCIL
MAR 15 2018
FINAL READING
READ AND PASSED


PRESIDENT

CLERK

I HEREBY APPROVE.



Mayor

Date: 3/26/18

Exhibit A

<u>Year</u>	Percentage of Difference between Base Assessment and Current Full Value Assessment
Year 4	8.33%
Year 5	16.66%
Year 6	24.99%
Year 7	33.32%
Year 8	41.65%
Year 9	49.98%
Year 10	58.31%
Year 11	66.64%
Year 12	74.97%
Year 13	83.30%
Year 14	91.63%
Year 15	95%

Exhibit A

<u>Year</u>	Percentage of Difference between Base Assessment and Current Full Value Assessment
Year 4	8.33%
Year 5	16.66%
Year 6	24.99%
Year 7	33.32%
Year 8	41.65%
Year 9	49.98%
Year 10	58.31%
Year 11	66.64%
Year 12	74.97%
Year 13	83.30%
Year 14	91.63%
Year 15	95%

(Fiscal Impact)

Lapham 290, LLC
 Plat 20 Lot 165,166,167,169,63

270,276,290 Westminster Street 91 Clemence Street

15 Year TSA Projection

Year	Base Tax + %			Tax Rate	Base Tax	Phased-In Tax	Proposed Total		Payments at Full Taxation
	Value	of Incr.	Tax				Tax	Tax	
1	4,005,600	Base Tax	\$36.70	\$147,005.52	\$0	\$147,005.52	\$147,005.52	\$ 147,005.52	
2	4,005,600	Base Tax	\$36.70	\$147,005.52	\$0	\$147,005.52	\$147,005.52	\$ 147,005.52	
3	4,005,600	Base Tax	\$36.70	\$147,005.52	\$0	\$147,005.52	\$147,005.52	\$ 147,005.52	
4	29,005,600	8.33%	\$36.70	\$147,005.52	\$76,427.75	\$223,433.27	\$223,433.27	\$ 1,064,505.52	
5	29,005,600	16.66%	\$36.70	\$147,005.52	\$152,855.50	\$299,861.02	\$299,861.02	\$ 1,064,505.52	
6	29,005,600	24.99%	\$36.70	\$147,005.52	\$229,283.25	\$376,288.77	\$376,288.77	\$ 1,064,505.52	
7	29,585,712	33.32%	\$36.70	\$147,005.52	\$312,804.86	\$459,810.38	\$459,810.38	\$ 1,085,795.63	
8	29,585,712	41.65%	\$36.70	\$147,005.52	\$391,006.08	\$538,011.60	\$538,011.60	\$ 1,085,795.63	
9	29,585,712	49.98%	\$36.70	\$147,005.52	\$469,207.30	\$616,212.82	\$616,212.82	\$ 1,085,795.63	
10	30,177,426	58.31%	\$36.70	\$147,005.52	\$560,071.06	\$707,076.58	\$707,076.58	\$ 1,107,511.54	
11	30,177,426	66.64%	\$36.70	\$147,005.52	\$640,081.21	\$787,086.73	\$787,086.73	\$ 1,107,511.54	
12	30,177,426	74.97%	\$36.70	\$147,005.52	\$720,091.37	\$867,096.89	\$867,096.89	\$ 1,107,511.54	
13	30,780,975	83.30%	\$36.70	\$147,005.52	\$818,552.66	\$965,558.18	\$965,558.18	\$ 1,129,661.77	
14	30,780,975	91.63%	\$36.70	\$147,005.52	\$900,407.93	\$1,047,413.45	\$1,047,413.45	\$ 1,129,661.77	
15	30,780,975	95%	\$36.70	\$147,005.52	\$933,523.44	\$1,080,528.96	\$1,080,528.96	\$ 1,129,661.77	
							\$8,409,395.21	\$ 13,603,439.96	

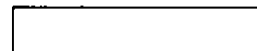
Savings to applicant:

(\$5,194,044.75)

Exhibit E



State of Rhode Island and Providence Plantations
Department of State - Business Services Division

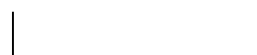


Articles of Dissolution
DOMESTIC Limited Liability Company

STAMP

→ Filing Fee: \$50.00

Pursuant to the provisions of RIGL 7-16-47, the undersigned hereby submits the following Articles of Dissolution:



1. Entity ID Number: 000817907	2. The name of the limited liability company is: 276 Westminster LLC
3. The date of filing of its original Articles of Organization was: 8/5/2013	
4. The dates of filing of all amendments to the original Articles of Organization or the most recent restatement, if any, and all subsequent amendments thereto:	
5. The reason(s) for filing the Articles of Dissolution are: LLC no longer in use	
6. State any other information or provision, not inconsistent with law, which the members or authorized person signing the Articles of Dissolution elect to set forth:	
7. As required by RIGL <u>7-16-8</u> , the entity has paid all fees and franchise taxes. RI Division of Taxation's ORIGINAL letter of good standing (LOGS) for the purpose of dissolution MUST accompany this form.	

FILED *m*

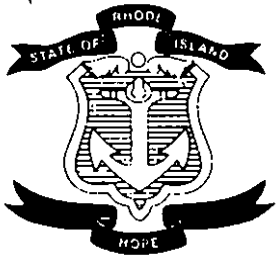
DEC 31 2018 12:04
BY *CA V35T1* **STAMP**

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SECRETARY OF STATE
CORPORATIONS DIV
2018 DEC 31 PM 12:04

MAIL TO:
Division of Business Services
148 W. River Street, Providence, Rhode Island 02904-2615
Phone: (401) 222-3040
Website: www.sos.ri.gov

8. Date when these Articles of Dissolution will be effective: CHECK ONE BOX ONLY	
<input type="checkbox"/> Date received (Upon filing)	
<input checked="" type="checkbox"/> Effective date (which shall be a date certain) <u>October 1, 2018</u>	
<i>Under penalty of perjury, I declare and affirm that I have examined these Articles of Dissolution, including any accompanying attachments, and that all statements contained herein are true and correct.</i>	
Type or Print Name of LLC <u>276 Westminster LLC</u>	Date <u>12/18/18</u>
Signature of Authorized Person <u>Al B. Chas.</u> SIGN DOCUMENT HERE	

817907



STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS
DEPARTMENT OF ADMINISTRATION
DIVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RI 02908

ATTN: KIMBERLY HASKINS
C/O CORNISH ASSOCIATES, LP
46 ABORN ST
PROVIDENCE, RI 02908

LETTER OF GOOD STANDING

It appears from our records that 276 WESTMINSTER LLC has filed all the required returns due for this letter of good standing and paid all known tax liabilities as of this date. 276 WESTMINSTER LLC is in good standing with the Rhode Island Division of Taxation as of 12/05/2018. This letter of good standing is expressly conditional and may be based upon unaudited returns, subject to future audit.

This Letter of Good Standing does not cover any violation of chapter 20 of Title 44 that has occurred within the last thirty (30) days and any resulting assessments and/or license suspension which have not yet issued from the Division for such violation(s). Any subsequent application for a license or permit may be denied in accordance with R.I. Gen. Laws § 44-20-4.1.


This letter is issued pursuant to the request of the above named corporation for the purpose of:

DISSOLUTION

This letter of good standing is valid only for the specific reason listed above and is not valid for any other reason(s).

Very truly yours,


CARLITA ANNICELLI
Supervising Revenue Officer


Neena Savage
Tax Administrator

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BUS. SVCS. DIV.
2018 DEC 14 AM 11:06

FILED
DEC 31 2018
BY CU 43571

463471874:14202208
DLN: 10003622895

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SECRETARY OF STATE
CORPORATIONS DIV.
2018 DEC 31 PM 12:04



State of Rhode Island and Providence Plantations
Department of State | Office of the Secretary of State

Nellie M. Gorbea, *Secretary of State*

I, NELLIE M. GORBEA, Secretary of State of the State of Rhode Island
and Providence Plantations, hereby certify that this document, duly executed in
accordance with the provisions of Title 7 of the General Laws of Rhode Island, as
amended, has been filed in this office on this day:

December 31, 2018 12:04 PM

A handwritten signature in blue ink that reads "Nellie M. Gorbea".

Nellie M. Gorbea
Secretary of State



Exhibit F

QUITCLAIM DEED

276 WESTMINSTER LLC, a Rhode Island limited liability company having a mailing address of 46 Aborn Street, 4th Floor, Providence, Rhode Island 02903 ("**Grantor**"), for consideration paid in full consideration of less than One Hundred and 00/100 Dollars, the receipt and sufficiency of which is hereby acknowledged, hereby grants to **LAPHAM 290, LLC**, a Rhode Island limited liability company, having an address of 46 Aborn Street, Fourth Floor, Providence, Rhode Island 02903 ("**Grantee**"), with **QUITCLAIM COVENANTS**,

That certain lot or parcel of land, known as 276 Westminster Street, with any and all buildings and improvements thereon, located on the southerly side of Westminster Street in the City and County of Providence, State of Rhode Island, bounded and described as follows:

Beginning at the southwest corner of said Westminster Street and Clemence Street; thence running southwesterly bounding northwesterly by said Westminster Street thirty-six and 86/100 (36.86) feet to land now or formerly belonging to Rachel L. Cohen et al.; thence turning an interior angle of 89 degrees 40 minutes 30 seconds and running southeasterly bounding southwesterly by said last named land one hundred four and 32/100 (104.32) feet to an angle; thence turning an interior angle of 178 degrees 20 minutes 15 seconds and running southeasterly bounding southwesterly by said last named land seventeen and 83/100 (17.83) feet to land now or formerly Edward Winsor, Trustee et al.; thence turning an Interior angle of 87 degrees 36 minutes 15 seconds and running northeasterly bounding southeasterly by said last named land forth-three and 75/100 (43.75) feet to said Clemence Street; thence turning an interior angle of 88 degrees 20 minutes and running northwesterly bounding northeasterly by said Clemence Street thirty-nine and 21/100 (39.21) feet to an angle; thence running an interior angle of 183 degrees 20 minutes and running northwesterly bounding northeasterly by said Clemence Street seventy-nine and 88/100 (79.88) feet to the point of beginning.

NO RIGL §44-30-71.3 withholding is required as Grantor(s) is a resident of the State of Rhode Island as evidenced by affidavit(s).

Meaning and intending to convey to the Grantee the property described in the deed from BALI HOLDINGS, LLC to the Grantor by deed dated October 18, 2013 and recorded on October 21, 2013 and recorded in the Providence Land Evidence Records in Book 10721 Page 142.

[Signatures on following page]

EXECUTED under seal as of the 10th day of July, 2018.

GRANTOR

276 WESTMINSTER LLC,
a Rhode Island limited Liability Company

By: [Signature]
Name: Arnold B. Chace, Jr.
Its: Sole Member

COUNTY OF Providence STATE OF RHODE ISLAND

In Providence, RI on this 10th day of July, 2018, before me personally appeared Arnold B. Chace, Jr. as Sole Member of 276 WESTMINSTER LLC, who proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, or personal knowledge of the undersigned, to be the party executing the foregoing instrument and he acknowledged said instrument, by her executed to be her free act and deed and her free act and deed in said capacity and the free act and deed of 276 Westminster LLC.

[Signature]
Notary Public
Printed Name: Jason R. Bonchard
- My Commission Expires: 8/30/21

RECEIVED:

Providence
Received for Record
Jul 20, 2018 at 11:55A
Document Num: 00205152
John A Murphy
Recorder of Deeds

Exhibit G

At the May 10, 2022 meeting of the Finance Committee, the following discussion¹ occurred among Gina Costa (Internal Auditor), Sara Silveria (Finance Director), Janesse Muscatelli (Tax Assessor), and Jo-Ann Ryan (then-Finance Committee Chairperson):

G Costa: Fiscal year 2022 collections, can you identify how much has been collected for TSAs, I know it's all wrapped up into tax collection?

S Silveria: Yes, so we have collected 12.9 million on a 13.8 million dollar budget and real estate TSAs and we collected 935,000 of a 935,000 dollar budget for tangible so far, as of April 30th.

G Costa: Are you expecting to collect more or is that or have we collected 100% and we've lost some TSAs?

S Silveria: There was a consent decree in the middle of the year, so we may have lost some of that this year. I'll have to double back with our collector to see if—

G Costa: A consent decree?

S Silveria: One of the TSAs went back off TSA, so they are now in the tax roll.

G Costa: As an 8 Law?

S Silveria: As an 8 Law.

G Costa: Okay, so we have active TSAs that became 8 Laws?

S Silveria: Yes.

G Costa: How many of them?

S Silveria: I don't have that level of detail, but I'm happy to work with you and the assessor.

G Costa: Janesse?

J Muscatelli: Yes.

G Costa: We have active TSAs that became 8 Law? So—

J Muscatelli: Correct.

¹ See https://www.youtube.com/watch?v=r32_7AONygA.

G Costa: Okay, so that makes sense. When I look at the 8 Law code, I see that there's 4 TSAs and some expired TSAs that became 8 Law and that that came through a consent decree?

J Muscatelli: That is correct. There was a consent order that was signed with the solicitor.

G Costa: Okay, so the solicitor approved it, and it has not come through any tax certificates for city council to approve or deny? Does the council still have the authority—

J Muscatelli: It has not.

G Costa: Does the council still have the authority to deny those tax certificates?

J Muscatelli: I would have to defer to the solicitor. They will come through for finance committee probably on the next quarterly statements for abatement reports.

G Costa: And do you know the total value—

J Muscatelli: I don't have that information—

G Costa: —of this year?

J Muscatelli: I don't have that information but I'm happy to get it for you.

G Costa: Okay, thank you.

J Ryan: The city solicitor doesn't have the ability to abate taxes; it's the council's purview, correct? Correct?

J Muscatelli: (nods her head)

G Costa: Well it's by a consent judgment—

J Muscatelli: (inaudible)

G Costa: —a consent decree, or a consent agreement. So the city solicitor arbitrarily unilaterally abated these taxes, made these former TSAs and current TSAs 8 Law. So—

J Ryan: Okay, so we're going to get, we're going to ask for a summary of those 8 Law TSAs, we want to look at it, we want to look at the consent agreement.

G Costa: Can I ask Ken a question?

J Ryan Please do.

J Ryan Ken?

K Chiavarini Yes?

G Costa So these properties that were or are still tax stabilizations, shouldn't they be revoked before they get converted to an 8 Law?

K Chiavarini Let me, Gina, I have not seen them, I need to at least look at them before I can provide any opinion. So I mean I'd like the opportunity to review them before I provide any opinion.

J Ryan That sounds like a great idea, here's what we're going to do, please work with the solicitor, I mean the auditor on that please.

K Chiavarini Absolutely.

J Ryan And if we need to get some more information we'll bring it up at the next finance meeting. Okay, good, are you good on that topic? Alright.

Exhibit H

From: [Fries, Lisa](#)
To: ["Pare, Elyse"](#)
Subject: Harrisburg Consent Judgment
Date: Tuesday, June 15, 2021 2:15:55 PM
Attachments: [Consent Judgment agreed to by Jeff entered by Judge Darigan.pdf](#)

Sorry Elyse, I tried!

I have no idea how you are going to calculate the retroactive 8 law!

~Lisa

CONFIDENTIALITY NOTICE: This transmission may contain information which is privileged, confidential, and protected by the attorney-client or attorney-work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited.

**STATE OF RHODE ISLAND
PROVIDENCE, SC**

SUPERIOR COURT

**HARRISBURG ASSOCIATES, LLC,
LERNER ASSOCIATES, LLC,
ALICE BUILDING, LLC,
PEERLESS LOFTS, LLC,
SMITH/KEEN, LP
LAPHAM 290, LLC
RWB ASSOCIATES, LLC
276 WESTMINSTER, LLC
CLEMENCE 91, LLC
DOWNCITY REVITALIZATION FUND I, LLC
PLAINTIFFS**

VS.

**THE CITY OF PROVIDENCE,
ELYSSE PARE, in her capacity as Tax Assessor
Of the City of Providence, and
JAMES LOMBARDI, III, in his capacity as
Treasurer of the City of Providence
DEFENDANTS**

C.A.NO.: PC-2020-04757

CONSENT ORDER

The above captioned matter was filed by the Plaintiffs seeking declaratory judgment to resolve disputes between the parties related to the Plaintiffs' request for taxes to be assessed on their respective properties pursuant to R.I.Gen.Laws §44-5-13.11. After a series of settlement conferences between the parties, the parties have agreed upon the terms of this Consent Order. Therefore, by agreement of the parties, it is hereby:

ORDERED, ADJUDGED AND DECREED:

1. Plaintiffs Motion to Amend its Complaint to add additional plaintiffs is granted.
2. The Plaintiff and City of Providence shall enter into and record a 30-year restrictive covenant in favor of the City of Providence restricting twenty five percent (25%) of the

SUPERIOR COURT
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CLERK'S OFFICE
21 JUN -9 PH 12: 05

total residential units at each Plaintiff's respective property for occupancy by tenants who have an income of no greater than one hundred percent (100%) of the area median income (AMI) for each respective property within forty-five (45) days of the entry of this Consent Order.¹ Each respective Plaintiff shall have the option to terminate the restrictive covenant in favor of the City of Providence upon providing ninety (90) days written notice to the Tax Assessor and City Solicitor's Office. In the event that any Plaintiff and the City wish to extend the restrictive covenant beyond thirty (30) years, nothing herein shall preclude the parties from doing so.

3. In exchange for restricting the units for occupancy by tenants making no more than one hundred percent (100%) AMI, the City agrees that each Plaintiffs' respective properties will be subject to a real property tax that is equal to eight percent (8%) of each properties' previous years' gross scheduled income pursuant to R.I.Gen.Laws §44-5-13.11 retroactive to tax year 2020's first quarterly payment of July 24, 2020.
4. The Plaintiffs shall have ninety (90) days from the date of the recording of the restrictive covenant to demonstrate compliance with the requirement that each of the Plaintiffs' respective properties has twenty five percent (25%) of its residential units restricted for occupancy by tenants making no more than one hundred percent (100%) of AMI.

¹ As pled in the Complaint, the Plaintiffs' respective properties are as follows:

1. Harrisburg Associates, LLC – 89 Eddy Street, Providence, RI
2. Lerner Associates, LLC – 90 Eddy Street, Providence, RI
3. The Alice Building, LLC – 236 Westminster Street, Providence, RI
4. Smith/Keen, LP – 1 Fulton Street, Providence, RI
5. Lapham 290, LLC – 290 Westminster Street, Providence, RI
6. Peerless Lofts, LLC – 150 Union Street, Providence, RI
7. Clemence 91, LLC – 91 Clemence Street, Providence, RI
8. RWB Associates, LLC – 270 Westminster Street, Providence, RI
9. 276 Westminister, LLC – 276 Westminister Street, Providence, RI
10. Downcity Revitalization Fund I, LLC – 326 Westminister Street, Providence, RI

5. Failure on the part of any Plaintiffs to demonstrate compliance with the requirements that Plaintiff's respective properties has twenty-five percent (25%) of its residential units restricted for occupancy by tenants making no more than one hundred percent (100%) of AMI will result in retroactive assessment such that full and fair taxation without the benefit of R.I.Gen.Laws §44-5-13.11 shall become immediately due and payable upon 10 days notice on the part of the City.
6. The 2021 tax bills for each Plaintiffs' property shall be adjusted to reflect an assessment pursuant to R.I.Gen.Laws §44-5-13.11 and the Plaintiffs shall receive a credit from the Defendants for any overpayment of taxes that has occurred since tax year 2020's first quarterly payment of July 24, 2020 provided that the Plaintiff must bring the Plaintiffs' properties into compliance with the terms of the restricted covenant referenced in paragraph 1 of this Consent Order within ninety (90) days of the recording of said restrictive covenant.
7. In the event that one of the Plaintiffs is unable to bring its respective property into compliance with the terms of the restrictive covenant referenced in paragraph 1 of this Consent Order within ninety (90) days of the recording of the restrictive covenant, each respective property shall receive retroactive assessment such that full and fair taxation without the benefit of R.I.Gen.Laws §44-5-13.11 shall become immediately due and payable upon 10 days notice. . That particular Plaintiff shall be given until December 31, 2021 to bring the property into full compliance in order to begin being assessed taxes pursuant to §44-5-13.11 for tax year 2022.
8. Lapham 290, LLC ("Lapham Owner"), 276 Westminster, LLC, RWB Associates, LLC, Clemence 91, LLC agree to withdraw and forever forgo any right, entitlement, or benefit

provided under the existing TSA beginning with tax assessment as of December 31, 2020
for tax year 2021 and thereafter.

By agreement of the parties:

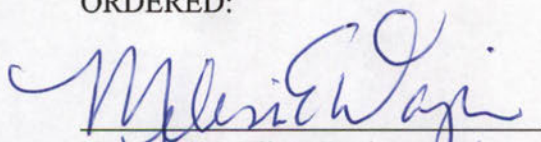
Plaintiffs,
By their attorney,

/s/ Nicholas J. Hemond, Esq.
Nicholas J. Hemond, Esq. #8782
DarrowEverett, LLP
One Turks Head Place, Suite 1200
Providence, Rhode Island
401-453-1200
nhemond@darroweverett.com

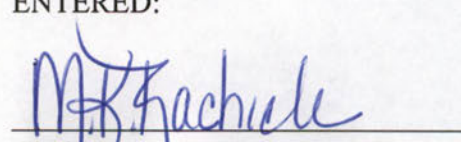
Defendants,
By their attorney,

/s/ Jeffrey Dana, Esq.
Jeffrey Dana, Esq.
City Solicitor
444 Westminster Street, Suite 220
Providence, Rhode Island
401-680-5333
jdana@providenceri.gov

ORDERED:


Honorable Melissa Darigan *6/8/21*

ENTERED:


Clerk
Dated: *6/8/21*

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2021, I filed and served a true copy of the within document through the electronic filing system on the counsels of record for the opposing parties.

This document, electronically filed and served, is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Sean M. Rock

Exhibit I

Upon recording return to:
Dianne Everett LLP
One Turks Head Place
12th Floor
Providence, RI 02903
Attn: Jon M. Restivo, Esq.

DECLARATION OF LAND USE RESTRICTIVE COVENANTS

This Declaration of Land Use Restrictive Covenants (this "Agreement"), dated as of November ____, 2021, is entered into by and between the City of Providence, Rhode Island, a municipal corporation (together with any successor to its rights, duties and obligations, the "City"), and **Harrisburg Associates, LLC**, a Rhode Island limited liability company (together with its successors and assigns, the "Owner").

WITNESSETH:

WHEREAS, the Owner is the owner of that certain real property located at 89 Eddy Street, Providence, Rhode Island, said real estate being more particularly described in Exhibit A attached hereto (the "Property");

WHEREAS, the Owner and the City have agreed, pursuant to that certain Consent Order entered in connection with Case Number: PC-2020-04757 (the "Consent Order"), to restrict twenty-five (25%) percent of the residential units located at the Property for occupancy by tenants who have an income of no greater than one hundred percent (100%) of the area median income (AMI), as more particularly set forth herein;

WHEREAS, in exchange for said restriction, the City has agreed that the real property taxes payable with respect to the Property shall be limited to eight (8%) percent of the Property's previous calendar years' gross scheduled income, as more particularly set forth herein; and

WHEREAS, accordingly, the Owner intends, declares and covenants that the restrictive covenants set forth herein governing the use, occupancy and transfer of the Property shall be and are covenants running with the Property for the term stated herein and binding upon all subsequent owners of the Property land for such term, and are not merely personal covenants to the Owner.

WHEREAS, the Owner agrees to monitor and annually report compliance with the total percentage of Rental Affordable Units (as that term is hereinafter defined) to the City by providing the tenant monitoring/verification form attached hereto as Exhibit B for each income qualifying unit with annual application for preferential tax treatment.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the City agrees as follows:

SECTION 1 - RECORDING AND FILING

Upon execution and delivery by the Owner and the City, the Owner shall cause this Agreement and all amendments hereto to be recorded land evidence records of the City of Providence, and

SECTION 2 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents covenants and warrants that as of the date of this Agreement:

A. The Owner (i) is a limited liability company duly formed and organized under the laws of the State of Rhode Island, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right power and authority to execute and deliver this Agreement.

B. The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

C. There is no action, suit, or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

D. During the Rental Affordability Period (as hereinafter defined) the Owner agrees to notify the City in writing prior to any intention to sell, transfer, or convey the Property, or any portion thereof, so that the City in its sole discretion can determine whether or not this Agreement will to continue to be operative following such conveyance. The City must notify the Owner within twenty (20) days of receiving said Notice as to whether this Agreement will terminate or survive the conveyance. Only after the City has issued a letter of no objection will the Owner be able to transfer the Property subject to this Agreement. Failure by the City to respond within such 20-day period shall be deemed an approval of the continuance of this Agreement. If the City elects not to continue this Agreement, upon conveyance, the Rental Affordability Period and this Agreement shall terminate.

D. The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 3 - INCOME RESTRICTIONS; RENTAL RESTRICTIONS

In order to receive the preferential tax treatment hereunder ("Reduced Real Estate Taxes"), the Owner represents warrants and covenants that:

Envelope: 4224497
Reviewer: Dianna J.

A. From the date that is ninety (90) days following the date this Agreement is recorded in the land evidence records for the City of Providence up to the date that is thirty (30) years thereafter (hereinafter referred to as the "Rental Affordability Period"), **the Owner agrees to restrict twenty-five (25%) percent of the total residential dwelling units** ("Restricted Apartment Units") for occupancy by persons having income not greater than 100% of the then-current AMI, as published by HUD and adjusted by size of households. For clarity, the total number of Restricted Apartment Units at the Property shall be calculated by dividing the number of Dwelling Units (as such term is defined in the City of Providence Zoning Ordinance) by four, and truncating the quotient to the next nearest whole number. For example, if the Property contains thirty (30) Dwelling Units, then the number of Restricted Apartment Units at the Property shall be Seven (7), and if the Property contains twenty-nine (29) Dwelling Units, then the number of Restricted Apartment Units at the Property shall be seven (7). To be clear, in the event the income of occupant(s) of a Restricted Apartment Unit satisfy the foregoing restriction at the time of initial occupancy of the unit, and then subsequently exceed the income limitations set forth herein with respect to that Dwelling Unit, said Dwelling Unit shall no longer continue to be deemed to satisfy the income restrictions set forth herein and the unit must be either made available to another income qualifying occupant or replaced with another income qualifying unit such that the total number of Restricted Apartment Units is compliant by the later of (a) by December 31 each year of the Rental Affordability Period, or (b) the date that is sixty (60) days following the date a Dwelling Unit of comparable or smaller size becomes available.

B. The Owner shall submit an application for the preferential tax treatment afforded hereunder on a form available in the Office of the City of Providence Tax Assessor and attached hereto as **Exhibit C** ("Tax Assessor") and supporting documentation to the Tax Assessor for review annually by March 15. Such application and supporting documentation may consist of the following, as well as such other items as may reasonably be requested by the Tax Assessor: executed lease agreements for each Restricted Apartment Unit (which, to be clear, only need to be submitted once each time a Restricted Apartment Unit's occupancy changes), annual tenant monitoring/verification forms, and income and expense reports as they relate to the Property. Owner shall not be liable if a Tenant refuses to timely provide any documentation required in order for Owner to remain compliant hereunder, including without limitation any income verification documentation or monitoring forms, provided however that in the event of any such refusal, then Owner shall have ninety (90) days to seek enforcement of said tenant's lease, which ninety (90) day period may be extended upon request in connection with any ongoing litigation related to said enforcement efforts.

C. During the Rental Affordability Period, prior to any transfer or conveyance of the Property or the Restricted Apartment Units, all potential purchasers of said Property or Restricted Apartment Units must first agree, in writing, to be bound by the terms and conditions of this Agreement.

SECTION 4 - TERM OF AGREEMENT

This Agreement shall continue in full force and effect for the duration of the Rental Affordability Period, provided however that nothing contained herein shall preclude the parties hereto from continuing this Agreement beyond the expiration of the Rental Affordability Period by mutual agreement. Notwithstanding the foregoing, Owner shall have the right, upon ninety (90) days written notice to the City, to terminate this Agreement, whereupon this Agreement (and the covenants contained herein, including without limitation the Rental Affordability Period) shall

Envelope: 4224497
Reviewer: Diana J.

terminate. In addition, and without limiting the foregoing, this Agreement shall automatically terminate on the date the Property is acquired by foreclosure or instrument in lieu of foreclosure. In the event that the Owner elects to terminate this Agreement, the benefits conferred by this Agreement shall end as of December 31 of the year in which the Agreement is terminated.

SECTION 5- PAYMENT OF COST AND EXPENSES

Owner covenants, represents, warrants, and agrees to pay all reasonable costs, fees and expenses (including reasonable attorney fees) suffered or incurred by the City in the enforcement, exercise or defense of the rights or powers of the City hereunder.

SECTION 6- ABSENCE OF WAIVER

Owner covenants, represents, warrants, and agrees that no waiver, forbearance, extension of time or indulgence shown by City to Owner or to any other person now or hereafter interested herein or in the Property with respect to any combination of conditions, covenants, or agreements on the part of the Owner to be paid, performed, or observed as set forth or referred to herein shall affect the right of the City thereafter to require payment, performance or observance of the same or of any other covenant, condition or agreement.

SECTION 5 - PROPERTY TAXES

In consideration of restricting the units for occupancy by tenants making no more than one hundred percent (100%) AMI, the City acknowledges and agrees that for the duration of the Rental Affordability Period (and, in accordance with the Consent Order, retroactively to tax year 2020's first quarterly tax payment), real property taxes payable with respect to the Property shall be limited to eight (8%) percent of the Property's previous calendar years' gross scheduled income, all as more particularly set forth in the Consent Order.

SECTION 6 - ENFORCEMENT OF CITY'S OCCUPANCY RESTRICTIONS

A. The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the City to inspect any books and records of the Owner regarding the Property with respect to the occupancy restrictions which pertain to compliance with the requirements set forth herein.

B. The Owner shall submit any other information, documents or certifications requested by the City which the City shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement.

C. THE OWNER IN CONSIDERATION FOR RECEIVING REDUCED REAL ESTATE TAXES FOR THE RESTRICTED APARTMENT UNITS HEREBY AGREES AND CONSENTS THAT THE CITY SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY FOLLOWING SIXTY (60) DAYS WRITTEN NOTICE AND OPPORTUNITY TO CURE, THE CITY SHALL BE ENTITLED TO RETROACTIVELY ASSESS THE PROPERTY AT ITS FULL AND FAIR TAXATION LEVEL, WITHOUT REGARD TO THE ACT, AND THE OWNER SHALL PAY TO THE CITY WITHIN TEN (10) DAYS FOLLOWING SUCH ASSESSMENT THE DIFFERENCE BETWEEN ALL TAXES PAID ON THE PROPERTY DURING THE TERM OF THIS AGREEMENT AND ALL TAXES

THAT WOULD HAVE BEEN DUE AND OWING WITH RESPECT TO THE PROPERTY HAD THIS AGREEMENT AND THE CONSENT ORDER NEVER BEEN ENTERED INTO. WITH RESPECT TO ANY SUCH RETROACTIVE ASSESSMENT, IN THE EVENT THE OWNER FAILS TO TIMELY PAY THE SAME, THE CITY SHALL HAVE ALL RIGHTS AND REMEDIES AT LAW OR IN THE EQUITY AVAILABLE TO ENFORCE SAID PAYMENT OBLIGATION.

SECTION 7 - MISCELLANEOUS

A. Benefit. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

B. Headings. The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify or aid in the interpretation of the provisions of this Agreement.

C. Governing Law. It is the intention of the parties hereto that this Agreement and the performance under this Agreement and all suits and special proceedings under this Agreement are to be construed in accordance with and under and pursuant to the laws of the State of Rhode Island, and that in any action, special proceedings, or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Rhode Island shall be applicable and shall govern to the exclusion of the laws of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted.

D. Severability. The validity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

E. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

To the City:
City of Providence
Tax Assessor
35 Dorrance Street
Providence, RI 02903

If to the Owner:
c/o Cornish Associates
46 Aborn Street
Providence, RI 02903

With a copy to:
City of Providence
City Solicitor
444 Westminster Street
Providence, RI 02903

With a copy to:
DarrowEverett LLP
One Turks Head Place
12th floor
Providence, RI 02903

The City and the Owner may by notice given hereunder designate any further or different addresses to which subsequent notices, certificate, or other communications shall be sent.

F. Entire Agreement. This Agreement and all attachments, addendums, and/or exhibits attached hereto shall represent the entire agreement between the City and the Owner and may not be amended or modified except in writing signed by both parties.

G. Counterparts. This Agreement may be signed in counterparts by the Owner and the City, each signed part of the Agreement in connection with the other signed parts will collectively constitute a fully executed Agreement between the parties.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have each duly executed and delivered this Agreement as of the date hereof.

Witness:

Harrisburg Associates, LLC, a Rhode Island limited liability company

James R. [Signature]

By: *Arnold B. Chace, Jr.*
Name: Arnold B. Chace, Jr.
Authorized Signatory

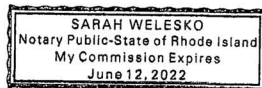
STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

On the 18th day of November, 2021 before me, the undersigned notary public, personally appeared Arnold B. Chace, Jr. as Authorized Signatory for Harrisburg Associates, LLC, personally known to the notary or proved to the notary through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to the notary that he/she signed it voluntarily for its stated purpose as authorized signatory for Harrisburg Associates, LLC.

S. Welesko
Notary Public
Printed Name: Sarah Welesko

My Commission expires: 06/12/2022



Owner Signature Page to Declaration

Murphy

CITY OF PROVIDENCE

By: [Signature]
Name: Serge Eloran
Title: Mayor

Approved as to Form and Correctness:

[Signature]
Jeffrey Dana, City Solicitor
City of Providence

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

On the 30th day of December, 2021 before me, the undersigned notary public, personally appeared _____, as Authorized Signatory for Serge Eloran, personally known to the notary or proved to the notary through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to the notary that he/she signed it voluntarily for its stated purpose as authorized signatory for _____.

Rhafiel Silva
Notary Public
Printed Name: Rhafiel Silva

My Commission expires: 8/12/2024
#765660



City Signature Page to Declaration

Case Number: PC-2020-04757
Filed in Providence/Bristol County Superior Court
Submitted: 8/8/2023 2:53 PM
Envelope: 4224497
Reviewer: Dianna J.

Doc No: 2022309094
Book: 13420 Page: 316

EXHIBIT A

Legal Description

Attached

Exhibit A to Declaration

EXHIBIT A

That certain lot or parcel of land, with all the buildings and improvements thereon, situated at the northwesterly corner of Eddy and Middle Streets, in the City of Providence, State of Rhode Island, bounded and describes as follows:

Beginning at the northwesterly corner of Eddy and Middle Street; thence westerly bounding southerly on Middle Street fifty-one and 15/100 (51.15) feet, more or less to a point; thence northerly bounding westerly on land conveyed by deed from The William H. Low Estate Company to J.R.P. Assoc., a Rhode Island general partnership; twenty-three and 75/100 (23.75) feet, more or less, to land now or lately of Frederick S. Church Estate; thence easterly bounding northerly on land now or lately of Frederick S. Church Estate forty-eight and 84/100 (48.84) feet to Eddy Street; thence southerly bounding easterly on Eddy Street twenty-three and 71/100 (23.71) feet to the point of beginning.

Case Number: PC-2020-04757
Filed in Providence/Bristol County Superior Court
Submitted: 8/8/2023 2:53 PM
Envelope: 4224497
Reviewer: Dianna J.

Doc No: 2022309094
Book: 13420 Page: 318

EXHIBIT B

Tenant Monitor/Verification Form

Attached

Exhibit B to Declaration

**Tenant Monitoring/Verification form
Income Qualifying Worksheet**

Date: _____

Tenant (1) _____ Tenant (2) _____

Address _____ Unit# _____ BdRms# _____

Household Size: _____ Income Limit: \$ _____

Bedroom Size: _____ Rent Limit_(w utilities) \$ _____

INCOME CALCULATION: Tenant(1) Tenant(2) Total

Base income \$ _____ \$ _____ \$ _____

Bonuses \$ _____ \$ _____ \$ _____

Social Security \$ _____ \$ _____ \$ _____

Child Support \$ _____ \$ _____ \$ _____

Other \$ _____ \$ _____ \$ _____

Household Size: _____ Total Income \$ _____

Bedroom Size: _____ Current Rent \$ _____

Under 100 % Median Income: YES ___ NO ___

Did the tenant(s) provide all the documents: Yes ___ No ___

Is the tenant(s) income eligible: Yes ___ No ___

Comments: _____

COPY OF THE DOCUMENTS YOU MUST PROVIDE:

- 1 (one) years personal TAX RETURNS with all W-2 forms, and with all schedules
- 2 (Two) years business TAX RETURNS (**IF SELF-EMPLOYED**), Seasonal Worker (e.g., construction, etc.)
- Current Profit and Loss Business Statement and Balance sheet (**IF SELF-EMPLOYED**)
- Two Months** most recent Pay Check Stubs for **all adult income earners**
- Students over age 18, documentation of full or part time status
- Verification of Employment for **all employed adults (attached) must be filled out by employer**
- Documentation of other sources of income, (e.g., SSA/SSI benefit letters, Child Support, etc.)
- 2 Months** recent checking account statements (*for all checking accounts*) **all adult income earners**
- 2 Months** recent savings account statement (*for all saving accounts*) **all adult income earners**
- Retirement statements (e.g., 401(k), IRAs, etc.)
- Other asset sources

EXHIBIT C

Tax Assessor's Form

Attached

Exhibit C to Declaration



City of Providence Affordable Housing Assessment (8%) and Taxation

As provided by Rhode Island General Law 44-5-13.11, properties currently receiving 8% taxation are required to report the property's previous years' gross rental income to the City. In addition to completing the form below by March 15, 2022, please provide a copy of **yearly rent roll**, and **HUD-92458 or equivalent, supporting your gross rental income.** (see example; preferable rent roll format)

Applicant Information

Organization
Name (Owner): _____ Date: _____

Contact Person: _____
Phone: _____ Email: _____

Mailing Address: _____
Street Address _____ City _____ State _____
Zip _____

Property Location: _____

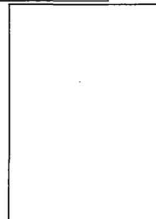
Current Property Information

Restrictive Authority		Parcel ID:	
Program Name/Type		Rental Income (2021):	
Subsidies received other than rent		Total # Residential Units:	
Total amount of subsidies		Total # of Commercial Units:	
Term expiration		Total # of Restricted Units:	

Disclaimer and Signature

I, the undersigned claimant, attest that all information contained herein is true to the best of my knowledge and that the City of Providence is authorized to investigate and verify any such information.

Signature: _____ Date: _____
Print
Name: _____



Please note that a separate form is required for each property.

Unit	Sq.Ft	Program	Name	Move in	Jan	Feb	March	April	May	June	July	August	Sept.	Oct.	Nov	Dec
Example	1000	Sec. 8	Jon Doe	1/1/1999	500	500	500	500	500	500	500	500	500	500	500	500
Example2	900	60% Ami	Jane Doe	1/1/1999	800	800	800	800	800	800	800	800	800	800	800	800
Total	1900				1300	1300	1300	1300	1300	1300	1300	1300	1300	1300	1300	1300

RECEIVED:
Providence
Received for Record
JAN 03, 2022 08:33 AM
Document Num: 2022309094
John A Murphy
Recorder of Deeds

Please note that a separate form is required for each property.

Exhibit J

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS is made this 2nd day of July, 2014, by **Harrisburg Associates, LLC**, a Rhode Island limited liability company, with a mailing address of 46 Aborn Street, 4th Floor, Providence, Rhode Island 02903 (the "Assignor") to **Bank Rhode Island**, a Rhode Island banking institution, with a mailing address of One Turks Head Place, Providence, Rhode Island 02903 (the "Assignee").

PURPOSE

Contemporaneously herewith, the Assignee has made a loan to the Assignor in the amount of Two Million Seven Hundred Two Thousand Dollars (\$2,702,000), which loan is evidenced by that certain Secured Promissory Note executed by the Assignor in favor of the Assignee in the principal sum of Two Million Seven Hundred Two Thousand Dollars (\$2,702,000) (said note and all amendments, renewals, modifications and extensions thereof shall hereinafter be referred to as the "Note") and that certain Loan Agreement by and between the Assignor and the Assignee (said loan agreement and all amendments, renewals, modifications and extensions thereof shall hereinafter be referred to as the "Loan Agreement").

As security for the Note and for all other obligations of the Assignor to the Assignee of every kind, whether now existing or hereafter arising during the term hereof (the "Obligations"), the Assignor has executed and delivered to the Assignee this Assignment of Leases and Rents.

NOW THEREFORE, for value received and as security for the payment of the Obligations, the Assignor, for itself and for its heirs, successors and assigns, as appropriate, does hereby transfer, assign and deliver unto the Assignee, its successors and assigns, all of the right, title and interest of the Assignor in and to (i) all leases, subleases and tenancies, whether written or oral, now or hereafter existing with respect to any portion or portions of the premises owned by the Assignor in the City of Providence, County of Providence, State of Rhode Island situated at 220 and 232 Westminster Street, Providence, Rhode Island, which premises may be more

particularly described in Exhibit "A" annexed hereto, together with all buildings and improvements now or hereafter constructed thereon (all of such premises being hereinafter collectively referred to as the "Premises"), together with any renewals or extensions thereof and leases, subleases and tenancies in substitution therefor (all of which are hereinafter collectively referred to as the "Assigned Leases"), (ii) all rents and other payments of every kind due or payable and to become due or payable to the Assignor, its successors and assigns, by virtue of the Assigned Leases, or otherwise due or payable and to become due and payable to the Assignor, its successors and assigns, as the result of any use, possession, or occupancy of any portion or portions of the Premises, including, but not limited to, security deposits, tax or operating expense escalation payments, percentage rent, additional rent, or any other payments arising from any license, use permit or concession and (iii) all right, title and interest of Assignor in and to any and all guaranties of the Assigned Leases.

TO HAVE AND TO HOLD the Assigned Leases and said rents and other payments, together with all the rights, privileges and appurtenances now or hereafter in any way arising therefrom or pertaining thereto, unto the Assignee, its successors and assigns, forever, subject, however, to the terms and conditions as hereinafter provided.

1. The Assignor does hereby authorize and empower the Assignee to collect said rents and other payments as the same shall become due, and does hereby direct each and all of the lessees, sublessees, tenants or other occupants of the Premises to pay to the Assignee, upon demand by the Assignee, such rents and other payments as may now be due or payable and/or shall hereafter become due or payable; provided, however, that it is understood and agreed by and between the Assignor and the Assignee that no such demand shall be made unless and until there shall have been an Event of Default (as defined in the Loan Agreement) (an "Event of Default"), and that, until such demand is made, the Assignor shall be authorized to collect or continue to collect said rents and other payments; and provided, further, that the Assignor's right to collect or to continue to collect such rents and other payments, as aforesaid, shall not authorize collection by the Assignor of any installment of rent more than one (1) month in advance of the

respective dates prescribed in the Assigned Leases for the payment thereof without the written consent of the Assignee.

2. The Assignor does hereby constitute and appoint the Assignee, upon the occurrence of an Event of Default and while this Assignment remains in force and effect, irrevocably, and with full power of substitution and revocation, its true and lawful attorney, for it and in its name, place and stead, (a) to demand and receive any and all of said rents or other payments and to give any form of release, receipt or acquittance which may be required for the purpose; (b) to compromise and adjust any matters of dispute with any lessee, sublessee, tenant or other occupant of any portion of the Premises, including, without limitation, said rents or other payments, after ten (10) days' prior written notice to the Assignor of any such dispute; and (c) to give all such assurances, acquittances, discharges and other instruments as to such lessee, sublessee, tenant or other occupant may require for said rents or other payments, or any part thereof. And the Assignor does hereby grant unto its said attorney full power and authority to do and perform each and every act whatsoever requisite to be done in and about the Premises, as fully, to all intents and purposes, as it could do if personally present, hereby ratifying and confirming all that its said attorney or its substitute shall lawfully do or cause to be done by virtue hereof.

3. Any funds received by the Assignee under this Assignment shall be first applied to interest due and only then to principal payments (in the inverse order of maturity) payable under the Obligations. Any of such funds remaining after such application shall be paid as soon as reasonably practicable by the Assignee to the Assignor.

4. The Assignor, for itself and for its successors and assigns, covenants and warrants as follows:

(a) that each of the Assigned Leases now or hereafter in effect that are entered into or assumed by Assignor is and shall be a valid and subsisting lease and that there are to the extent ascertainable by the Assignor, no defaults on the part of any of the parties thereto; and Assignor shall not default in the performance of the obligations of the Assignor under the Assigned Leases;

(b) that the Assignor has not sold, assigned, transferred, mortgaged or pledged any of the rents, issues or profits from the Premises or any part thereof, whether now or hereafter to become due, to any person, firm or corporation other than the Assignee;

(c) that no rents, issues or profits of the Premises, or any part thereof, becoming due subsequent to the date hereof have been collected (except as provided in Section 1 hereof) nor has payment of any of the same been anticipated, waived, released, discounted or otherwise discharged or compromised;

(d) that it will furnish to the Assignee, on demand, true copies of all Assigned Leases hereafter executed by Assignor and true copies of each document effecting the renewal, amendment or modification of any Assigned Lease executed or assumed by Assignor;

(e) that it will not assign, pledge or otherwise encumber any of the Assigned Leases or any of the rents thereunder unless the prior written consent of the Assignee shall have been obtained thereto and unless the instrument creating such assignment, pledge or encumbrance shall expressly state that the same is subject to this Assignment;

(f) that it will not cancel, terminate, or accept any surrender of any of the Assigned Leases, or amend or modify the same, directly or indirectly in any respect whatsoever, without in each case having obtained the prior written consent of the Assignee thereto;

(g) that it will not waive or give any consent with respect to any default or variation in the performance of any of the terms, covenants and conditions on the part of any lessee, sublessee, tenant or other occupant to be performed under any of the Assigned Leases, but will at all times take proper steps to enforce all of the provisions and conditions thereof;

(h) that it will not collect or receive from any such lessee, sublessee, tenant or other occupant more than one (1) month's rent in advance of the rent stipulated to be paid under the applicable lease, without in each case having obtained the prior written consent of the Assignee thereto; and that it will not agree or permit that any debt or amount owed to any lessee, sublessee, tenant or other occupant may be setoff or applied against rents or other sums due to Assignor in connection with the Premises;

(i) that it will perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions on its part to be performed and observed with respect to each of the Assigned Leases; and

(j) that it will, upon written request by the Assignee, while this Assignment remains in force and effect, serve such written notices upon lessee, sublessee, tenant or other occupant of any portion of the Premises concerning this Assignment, or include among the written provisions of any instrument hereafter creating any such lease, sublease, tenancy or right of occupancy specific reference to this Assignment, and make, execute and deliver all such powers of attorney or instruments of pledge or assignment as the Assignee may reasonably request at any time for the purpose of securing its rights hereunder.

5. Upon the payment in full of all Obligations of the Assignor and the cancellation and discharge of said indebtedness and the mortgage securing the same, this Assignment shall become null and void, and thereupon the Assignee shall execute and deliver to the Assignor any instruments which may be necessary or appropriate to terminate this Assignment and to notify any of such lessees, sublessees, tenants or other occupants of such termination.

6. The Assignor further covenants and agrees to and with the Assignee, its successors and assigns, that the acceptance of this Assignment shall not constitute a satisfaction of any indebtedness, liability or obligation, or any part thereof, now or hereafter owed by the Assignor to the Assignee, except to the extent of amounts actually received and applied by the Assignee on account of the same; that nothing in this Assignment contained shall be deemed to obligate the Assignee to undertake or continue collection of rents or other payments due or to become due under the Assigned Leases or otherwise with respect to the Premises or to undertake or continue performance of the obligations of the Assignor under any of the Assigned Leases, or to take any measures, legal or otherwise, to enforce collection of any of said rents or other payments; that notwithstanding the acceptance of this Assignment and collection of said rents and other payments hereunder, the Assignee may institute summary dispossession proceedings, sell, realize upon or otherwise deal with any other security, guaranty or collateral at any time held by it and

otherwise exercise any of its rights and powers under any documents evidencing the Obligations or security for same, or otherwise, in such manner as it may deem advisable, at any time it shall see fit to do so, and for any cause for which the same might have been instituted or done had this Assignment not been made, and that no waiver or condonation of any breach or default and no waiver of any right of the Assignee hereunder shall be deemed to constitute a waiver of any other or subsequent breach or default, or to prevent subsequent exercise of any such right or any other similar right.

7. The Assignor hereby agrees to indemnify and hold the Assignee harmless against and from (a) any and all liability, loss, damage and expense, including attorneys' fees, which it may or shall incur or which may be asserted under or in connection with this Assignment or any of the Assigned Leases, or by reason of any action taken by the Assignee under any of the Obligations (including without limitation any action which the Assignee in its discretion may take to protect its interest in the Premises), and (b) any and all claims and demands whatsoever which may be incurred by or asserted against the Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants and conditions contained in any of the Assigned Leases.

8. Should the Assignee incur any such liability as described in Section 7, the amount thereof, together with interest thereon at the rate charged on the Obligations, shall be payable by the Assignor to the Assignee immediately upon demand, or at the option of the Assignee, the Assignee may reimburse itself therefor out of any rents, issues or profits of the Premises collected by the Assignee.

9. All notices, requests, demands, consents or other communications given hereunder or in connection herewith (collectively the "Notice") shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to receive such Notice at its address set forth below. Either party may, by Notice given as aforesaid, change its address for any subsequent Notice. Notices shall be deemed given when mailed.

If to the Assignee: Bank Rhode Island
One Turks Head Place
Providence, Rhode Island 02903
Attn: Andrew J. Deluski, Vice President

With a copy to: Edward G. Avila, Esquire
Roberts, Carroll, Feldstein & Peirce Incorporated
10 Weybosset Street
Providence, Rhode Island 02903

If to the Assignor: Harrisburg Associates, LLC
46 Aborn Street, 4th Floor
Providence, Rhode Island 02903
Attention: Arnold B. Chace, Jr.

With a copy to: Joshua A. Berlinsky, Esquire
DarrowEverett LLP
One Turks Head Place
Providence, Rhode Island 02903

10. (a) Whenever the context so requires, reference herein to the neuter gender shall include the masculine and/or feminine gender, and the singular number shall include the plural.

(b) This Assignment and the rights and obligations of the parties hereunder, except as otherwise provided below, shall be construed and interpreted in accordance with the laws of the State of Rhode Island excluding the laws applicable to conflicts of choice of law.

(c) No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless the Assignee shall have consented thereto in writing.

(d) In the event there is any conflict between the terms and provisions of the mortgage securing the Obligations and the terms and provisions of this Assignment, the terms and provisions of this Assignment shall prevail.

(e) The terms, covenants, and conditions contained herein shall inure to the benefit of, and bind the Assignee and the Assignor and their respective successors and assigns or heirs, executors, administrators, successors and assigns, as the case may be.

[Signature Page Follows]

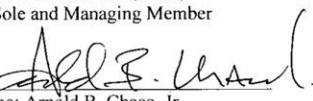
IN WITNESS WHEREOF, this Assignment is executed by the Assignor, through its duly authorized representative, on the day and year first above written.

WITNESS/ATTEST:

Harrisburg Associates, LLC

By: GWC Associates, LLC,
its Sole and Managing Member



By: 
Name: Arnold B. Chace, Jr.
Title: Authorized Signatory

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence in said county on the 2nd day of July, 2014, before me personally appeared Arnold B. Chace, Jr., the Authorized Signatory of GWC Associates, LLC, the Sole and Managing Member of Harrisburg Associates, LLC, personally known to the notary or proved to the notary through satisfactory evidence of identification, which was Wendy, to be the person whose name is signed on the preceding or attached document, and he acknowledged to the notary that he signed it voluntarily for its stated purpose.


Notary Public Jennifer M. Byrnes
My Commission Expires: 6/30/2017

That certain tract or parcel of land with all buildings and improvements thereon situated on the southeasterly side of Westminster Street, southwesterly side of Eddy Street and the northwesterly side of Middle Street, in the City of Providence, County of Providence, State of Rhode Island, being bounded and described as follows:

Beginning at the most northerly corner of the parcel herein described, said corner being further described as being the intersection of the southeasterly line of said Westminster Street with the southwesterly line of said Eddy Street;

Thence running southeasterly along said southwesterly line of Eddy Street a distance of sixty-three and thirty-one hundredths (63.31) feet to a point for a corner;

Thence turning an interior angle of $85^{\circ} 36' 40''$ and running southwesterly, bound southeasterly by other land of the grantor, a distance of forty-eight and eighty-one hundredths (48.81) feet to a point for a corner;

Thence turning an interior angle of $269^{\circ} 54' 57''$ and running southeasterly, bounded northeasterly by said other land of the grantor, a distance of twenty-three and seventy-five hundredths (23.75) feet to a point for a corner;

Thence turning an interior angle of $90^{\circ} 28' 44''$ and running southwesterly along the northwesterly line of said Middle Street, a distance of forty and nineteen hundredths (40-19) feet to a corner;

Thence turning an interior angle of $88^{\circ} 35' 51''$ and running northwesterly, bounded southwesterly by land now or formerly Down City Holdings, a distance of ninety-five and fifty-five hundredths (95.55) feet to a point for a corner;

Thence turning an interior angle of $85^{\circ} 21' 18''$ and running northeasterly along said southeasterly line of Westminster Street, a distance of eighty-two and eighty-five hundredths (82.85) feet to a point and place of beginning;

The last described course forming an interior angle of $100^{\circ} 24' 21''$ with the intersection of the first described course.

RECEIVED:

Providence
Received for Record
Jul 03, 2014 at 09:57A
Document Num: 00096739
John A Murphy
Recorder of Deeds

Exhibit K

Rent Roll with Lease Charges

RWB Associates, LLC (7200)
 As Of = 01/26/2022
 Month Year = 01/2022

Unit	Unit Type	Unit Sq Ft	Resident	Name	Market Rent	Charge Code	Amount	Resident Deposit	Other Deposit	Move In	Lease Expiration	Move Out	Balance
Current/Notice/Vacant Residents													
	1b1b-t	736.00	t0000542		2,060.00	RESI	2,000.00	2,000.00	0.00	8/10/2021	8/31/2022		-1,709.68
						Total	2,000.00						
	1b1bTWF H	488.00	t0000341		1,495.00	RESI	1,490.00	1,450.00	0.00	9/1/2020	8/31/2022		0.00
						Total	1,490.00						
	1b1b-t	566.00	t0000396		1,650.00	RESI	1,650.00	1,600.00	0.00	12/1/2020	6/30/2022		0.00
						Total	1,650.00						
	1b1b-t	732.00	t0000392		1,860.00	RESI	1,850.00	1,800.00	0.00	11/16/2020	11/30/2022		0.00
						Total	1,850.00						
	2b2b-t	1,186.00	t0000371		2,885.00	RESI	2,850.00	2,800.00	0.00	10/6/2020	9/30/2022		0.00
						Total	2,850.00						
	1b1b-t	755.00	t0000357		2,115.00	RESI	2,100.00	2,050.00	0.00	9/2/2020	9/30/2022		0.00
						Total	2,100.00						
	1b1b-t	488.00	t0000399		1,550.00	RESI	1,545.00	1,500.00	0.00	11/30/2020	10/31/2022		-775.00
						Total	1,545.00						
	1b1bTWF H	566.00	t0000637		1,700.00	RESI	1,730.00	1,730.00	0.00	1/20/2022	1/31/2023		0.00
						Total	1,730.00						
	1b1b-t	732.00	t0000376		1,860.00	RESI	1,850.00	1,800.00	100.00	10/26/2020	10/31/2021		0.00
						PREM	50.00						
						Total	1,900.00						
	2b2b-t	1,186.00	t0000342		2,885.00	RESI	2,850.00	2,800.00	100.00	9/12/2020	9/30/2022		0.00
						Total	2,850.00						
	1b1b-t	755.00	t0000352		2,115.00	RESI	2,100.00	2,050.00	0.00	9/1/2020	8/31/2022		0.00
						Total	2,100.00						
	1b1b-t	488.00	t0000444		1,550.00	RESI	1,500.00	1,500.00	0.00	3/5/2021	3/31/2022		0.00
						Total	1,500.00						

Rent Roll with Lease Charges

RWB Associates, LLC (7200)
 As Of = 01/26/2022
 Month Year = 01/2022

Unit	Unit Type	Unit Sq Ft	Resident	Name	Market Rent	Charge Code	Amount	Resident Deposit	Other Deposit	Move In	Lease Expiration	Move Out	Balance
	1b1bTWF H	566.00	t0000438		1,700.00	RESI	1,650.00	1,650.00	0.00	3/1/2021	2/28/2022	2/28/2022	0.00
						Total	1,650.00						
	2b2b-t	1,597.00	t0000425		4,640.00	RESI	4,600.00	4,500.00	0.00	1/20/2021	12/31/2022		-6,600.00
						Total	4,600.00						
	1b1b-t	764.00	t0000499		2,165.00	RESI	2,100.00	2,100.00	0.00	6/19/2021	6/30/2022		0.00
						Total	2,100.00						
	1b1bTWF H	488.00	t0000625		1,600.00	RESI	1,600.00	1,600.00	0.00	11/23/2021	11/30/2022		0.00
						Total	1,600.00						
	1b1bTWF H	566.00	t0000622		1,755.00	RESI	1,730.00	1,730.00	0.00	12/15/2021	12/31/2022		0.00
						PETRENT	30.00						
						Total	1,760.00						
			Total	RWB Associates, LLC(7200)	35,585.00		35,275.00	34,660.00	200.00				-9,084.68

Summary Groups	Square Footage	Market Rent	Lease Charges	Security Deposit	Other Deposits	# Of Units	% Unit Occupancy	% Sqft Occupied	Balance
Current/Notice/Vacant Residents	12,659.00	35,585.00	35,275.00	34,660.00	200.00	17	100.00	100.00	-9,084.68
Future Residents/Applicants	0.00	0.00	0.00	0.00	0.00	0			0.00
Occupied Units	12,659.00	35,585.00				17	100.00	100.00	
Total Non Rev Units	0.00	0.00				0	0.00	0.00	
Total Vacant Units	0.00	0.00				0	0.00	0.00	
Totals:	12,659.00	35,585.00	35,275.00	34,660.00	200.00	17	100.00	100.00	-9,084.68

Summary of Charges by Charge Code (Current/Notice Residents Only)	
Charge Code	Amount
RESI	35195
PREM	50
PETRENT	30
Total	35,275.00

Exhibit L

Rent Roll with Lease Charges

As Of = 01/26/2022

Month Year = 01/2022

Unit	Unit Type	Unit Sq Ft	Resident	Name	Market Rent	Charge Code	Amount	Resident Deposit	Other Deposit	Move In	Lease Expiration	Move Out	Balance
Current/Notice/Vacant Residents													
	SSPS-k	531.00	t0000001		1,465.00	RESI	1,420.00	1,350.00	0.00	2/10/2017	1/31/2022		0.00
						Total	1,420.00						
	1b1bKWF H	553.00	t0000581		1,410.00	RESI	1,365.00	1,365.00	0.00	8/9/2021	8/31/2022		0.00
						Total	1,365.00						
	SSPS-k	554.00	t0000537		1,465.00	RESI	1,420.00	1,420.00	0.00	8/10/2021	8/31/2022		70.00
						PETRENT	30.00						
						Total	1,450.00						
	1b1b-k	623.00	t0000489		1,640.00	RESI	1,590.00	1,590.00	0.00	5/1/2021	4/30/2022		0.00
						Total	1,590.00						
	1b1b-k	556.00	t0000005		1,570.00	PETRENT	30.00	1,480.00	0.00	3/20/2019	3/31/2022		0.00
						RESI	1,525.00						
						Total	1,555.00						
	S-K-WFH	416.00	t0000552		1,365.00	RESI	725.00	725.00	0.00	6/19/2021	6/30/2022		0.00
						Total	725.00						
	SSPS-k	537.00	t0000519		1,465.00	RESI	1,420.00	1,420.00	0.00	6/15/2021	6/30/2022		0.00
						Total	1,420.00						
	1b1bKWF H	417.00	t0000521		1,340.00	RESI	1,295.00	1,295.00	0.00	7/10/2021	7/31/2022		2,530.00
						Total	1,295.00						
	1b1b-k	433.00	t0000586		1,365.00	RESI	1,325.00	1,325.00	0.00	9/11/2021	9/30/2022		0.00
						Total	1,325.00						
	Studio-k	390.00	t0000389		1,095.00	RESI	1,100.00	1,060.00	0.00	12/10/2020	2/28/2022	2/28/2022	25.00
						PREM	25.00						
						Total	1,125.00						
	1b1bKWF H	520.00	t0000580		1,240.00	RESI	1,200.00	1,200.00	0.00	8/7/2021	8/31/2022		0.00
						Total	1,200.00						

Rent Roll with Lease Charges

As Of = 01/26/2022

Month Year = 01/2022

Unit	Unit Type	Unit Sq Ft	Resident	Name	Market Rent	Charge Code	Amount	Resident Deposit	Other Deposit	Move In	Lease Expiration	Move Out	Balance
	SSPS-k	545.00	t0000336		1,465.00	RESI	1,460.00	1,420.00	0.00	8/24/2020	8/31/2022		0.00
						Total	1,460.00						
	1b1b-k	573.00	t0000013		1,410.00	RESI	1,390.00	1,350.00	0.00	6/1/2019	3/31/2022		0.00
						Total	1,390.00						
	SSPS-k	563.00	t0000573		1,465.00	RESI	1,420.00	1,420.00	0.00	9/10/2021	9/30/2022		0.00
						Total	1,420.00						
	1b1b-k	639.00	t0000430		1,640.00	RESI	1,590.00	1,590.00	0.00	2/1/2021	1/31/2022		0.00
						PETRENT	30.00						
						Total	1,620.00						
	1b1b-k	565.00	t0000016		1,570.00	RESI	1,525.00	1,400.00	0.00	7/1/2017	6/30/2022		0.00
						Total	1,525.00						
	S-K-WFH	422.00	t0000548		1,365.00	RESI	1,325.00	1,325.00	0.00	7/17/2021	7/31/2022		0.00
						Total	1,325.00						
	SSPS-k	547.00	t0000364		1,465.00	RESI	1,465.00	1,420.00	0.00	9/4/2020	9/30/2022		-2,905.00
						Total	1,465.00						
	1b1bKWF H	422.00	t0000585		1,340.00	RESI	1,295.00	1,295.00	0.00	11/1/2021	10/31/2022		0.00
						Total	1,295.00						
	1b1b-k	443.00	t0000020		1,365.00	RESI	1,365.00	1,320.00	0.00	12/6/2019	5/31/2022		-1,390.00
						PREM	25.00						
						Total	1,390.00						
	Studio-k	404.00	t0000021		1,095.00	RESI	1,095.00	925.00	0.00	12/16/2017	12/31/2022		0.00
						Total	1,095.00						
	1b1bKWF H	532.00	t0000568		1,240.00	RESI	1,200.00	1,200.00	0.00	8/10/2021	8/31/2022		0.00
						PETRENT	30.00						
						Total	1,230.00						
	SSPS-k	545.00	t0000587		1,530.00	RESI	1,485.00	1,485.00	0.00	9/4/2021	2/28/2022		-1,420.00
						Total	1,485.00						

Rent Roll with Lease Charges

As Of = 01/26/2022

Month Year = 01/2022

Unit	Unit Type	Unit Sq Ft	Resident	Name	Market Rent	Charge Code	Amount	Resident Deposit	Other Deposit	Move In	Lease Expiration	Move Out	Balance
	1b1b-k	573.00	t0000451		1,465.00	RESI	1,420.00	1,420.00	0.00	4/1/2021	3/31/2022		0.00
						Total	1,420.00						
	SSPS-k	563.00	t0000591		1,520.00	RESI	1,475.00	1,475.00	0.00	9/10/2021	9/30/2022		0.00
						Total	1,475.00						
	1b1b-k	639.00	t0000025		1,690.00	RESI	1,675.00	1,600.00	0.00	9/4/2019	1/31/2022		0.00
						PREM	25.00						
						Total	1,700.00						
	1b1bKWF H	565.00	t0000557		1,640.00	RESI	1,590.00	1,590.00	0.00	8/9/2021	8/31/2022		0.00
						Total	1,590.00						
	Studio-k	422.00	t0000598		1,420.00	RESI	1,420.00	1,420.00	0.00	10/12/2021	10/31/2022		0.00
						PETRENT	30.00						
						Total	1,450.00						
	SSPS-k	547.00	t0000559		1,520.00	RESI	1,475.00	1,475.00	0.00	8/24/2021	8/31/2022		0.00
						Total	1,475.00						
	1b1bKWF H	422.00	t0000572		1,410.00	RESI	1,365.00	1,365.00	0.00	7/30/2021	7/31/2022		-1.94
						Total	1,365.00						
	1b1b-k	443.00	t0000387		1,420.00	RESI	1,415.00	1,375.00	0.00	11/11/2020	5/31/2022		0.00
						PREM	25.00						
						Total	1,440.00						
	Studio-k	404.00	t0000604		1,240.00	RESI	1,240.00	1,240.00	0.00	11/1/2021	10/31/2022		0.00
						Total	1,240.00						
	1b1bKWF H	532.00	t0000501		1,280.00	RESI	1,240.00	1,240.00	0.00	6/26/2021	6/30/2022		0.00
						Total	1,240.00						
	SSPS-k	545.00	t0000032		1,530.00	RESI	1,490.00	650.00	0.00	11/7/2015	10/31/2022		-5,960.00
						Total	1,490.00						

Rent Roll with Lease Charges

As Of = 01/26/2022
 Month Year = 01/2022

Unit	Unit Type	Unit Sq Ft	Resident	Name	Market Rent	Charge Code	Amount	Resident Deposit	Other Deposit	Move In	Lease Expiration	Move Out	Balance
	1b1b-k	573.00	t0000033		1,465.00	RESI	1,420.00	1,380.00	0.00	6/24/2019	6/30/2022		0.00
						Total	1,420.00						
	SSPS-k	563.00	t0000524		1,520.00	RESI	1,475.00	1,475.00	0.00	8/24/2021	8/31/2022		0.00
						Total	1,475.00						
	1b1b-k	639.00	t0000035		1,690.00	RESI	1,690.00	1,000.00	0.00	8/20/2018	2/28/2022		-2,900.00
						CORP	910.00						
						Total	2,600.00						
	1b1b-k	565.00	t0000036		1,640.00	RESI	1,565.00	1,540.00	0.00	5/20/2019	5/31/2022		0.00
						Total	1,565.00						
	Studio-k	422.00	t0000606		1,420.00	RESI	1,420.00	1,420.00	0.00	9/28/2021	9/30/2022		0.00
						Total	1,420.00						
	SSPS-k	547.00	t0000038		1,520.00	RESI	1,475.00	1,350.00	0.00	5/16/2017	5/31/2022		0.00
						Total	1,475.00						
	1b1b-k	422.00	t0000039		1,410.00	RESI	1,405.00	1,325.00	0.00	10/5/2019	10/31/2022		0.00
						Total	1,405.00						
	1b1b-k	443.00	t0000265		1,420.00	RESI	1,375.00	1,360.00	0.00	12/23/2019	6/30/2022		0.00
						PREM	25.00						
						Total	1,400.00						
	S-K-WFH	404.00	t0000616		1,240.00	RESI	1,280.00	1,280.00	0.00	1/3/2022	1/31/2023		1,197.42
						Total	1,280.00						
	1b1b-k	532.00	t0000041		1,280.00	RESI	1,280.00	1,200.00	0.00	12/8/2018	12/31/2022		0.00
						Total	1,280.00						
Future Residents/Applicants													
	Studio-k	390.00	t0000642		1,095.00		0.00	1,165.00	0.00	3/10/2022	3/31/2023		-826.77
						Total	0.00						
			Total	Kinsley MT, LLC(1100)	63,110.00		62,375.00	59,725.00	0.00				-11,581.29

Rent Roll with Lease Charges

As Of = 01/26/2022
 Month Year = 01/2022

Unit	Unit Type	Unit Sq Ft	Resident	Name	Market Rent	Charge Code	Amount	Resident Deposit	Other Deposit	Move In	Lease Expiration	Move Out	Balance
Summary Groups					Square Footage	Market Rent	Lease Charges	Security Deposit	Other Deposits	# Of Units	% Unit Occupancy	% Sqft Occupied	Balance
Current/Notice/Vacant Residents					22,495.00	63,110.00	62,375.00	58,560.00	0.00	44	100.00	100.00	-10,754.52
Future Residents/Applicants					390.00	1,095.00	0.00	1,165.00	0.00	1			-826.77
Occupied Units					22,495.00	63,110.00				44	100.00	100.00	
Total Non Rev Units					0.00	0.00				0	0.00	0.00	
Total Vacant Units					0.00	0.00				0	0.00	0.00	
Totals:					22,495.00	63,110.00	62,375.00	59,725.00	0.00	44	100.00	100.00	-11,581.29

Summary of Charges by Charge Code (Current/Notice Residents Only)	
Charge Code	Amount
RESI	61190
PETRENT	150
PREM	125
CORP	910
Total	62,375.00