

May 13, 2019

**STATE OF RHODE ISLAND  
PROVIDENCE, SC**

**SUPERIOR COURT**

Nicholas E. Cambio, Trustee,  
The Nicholas E. Cambio, Roney A.  
Malafronte, and Vincent A.  
Cambio Trust

Petitioners

v.

Commerce Park Realty, LLC  
Commerce Park Properties, LLC  
Commerce Park Commons, LLC  
Commerce Park Associates 4, LLC  
Catapult Realty, LLC

Respondents

P.M. No. 13-0350

Matthew J. McGowan, as and only as  
Receiver for Commerce Park Realty, LLC  
Commerce Park Properties, LLC  
Commerce Park Commons, LLC  
Commerce Park Associates 4, LLC, and  
Catapult Realty, LLC

Petitioner

vs.

Commerce Park Management, LLC

Respondent

P.B. No. 13-5001

**FEBRUARY 2019 CONSENT ORDER CONCERNING RESOLUTIONS WITH  
TOWN OF COVENTRY**

The Receiver of Commerce Park Realty, LLC ("CPR"), Commerce Park Properties, LLC,  
Commerce Park Commons, LLC, Commerce Park Associates 4, LLC, Catapult Realty, LLC, and

Commerce Park Management, LLC (“CPM”) (collectively, the “Receivership Entities”) and the Town of Coventry, Rhode Island, a municipal body politic incorporated under the laws of the State of Rhode Island, including acting by and through its duly appointed Town Council (the “Town”) (the Receiver and the Town being referred to herein sometimes as the “Parties” hereto, and each being a “Party” hereto), hereby agree as follows:

### *Recitals*

A. The Receivership Entities, except for CPM (which owns no real estate), own various improved and unimproved properties within the Centre of New England (“CNE” or the “Centre”), which covers over 400 acres primarily within Coventry, Rhode Island, but also within West Greenwich, and, to a far lesser extent, East Greenwich, Rhode Island. Within CNE are large-scale, “big-box” retail stores, including Home Depot, BJ’s Wholesale Club, and a Walmart Supercenter. In addition, there are three nationally franchised hotels, a large assisted living center, smaller retail stores and businesses, restaurants, a 400+ unit apartment complex, and fully and partially completed residential condominiums. CPR owns or holds title to most of the unsold properties in CNE.

B. The roadways, sewer system, water system, common areas, and other such infrastructure in CNE are privately owned and maintained, with CPR, for example, owning the main road, Centre of New England Boulevard (“CNE Boulevard”), a six-lane roadway with a center island, which runs through the Centre. The middle of that center island marks the town line between Coventry and West Greenwich, Rhode Island. Also, the water and sewer lines that run under CNE Boulevard have been privately constructed and are privately owned, presumably by CPR, as well.

C. Owners and occupants of improved property at CNE pay common area maintenance charges (“CAM”) for the maintenance of all such roadways (including for roadway repairs, sanding, salting, snowplowing, and sweeping). To provide an incentive for businesses to locate in and buy property at CNE, the Town entered into a tax treaty, a January 15, 1997 “Economic Development Tax Incentive Agreement” (“Existing Tax Treaty”), covering CNE property situated in the Town (CNE property titled in the name of a Receivership Entity and situated in the Town being sometimes hereafter referred to as “CNE Property” or the plural, “CNE Properties”) that provided certain economic incentives and limited tax relief to CNE Property owners for a term of years. The Existing Tax Treaty expires in 2023. Its benefits (except for those provided for in the Existing Tax Treaty that carry on beyond such term) last for a term of ten years. Thus, the last time that one owning CNE Property would have received the full benefit of the Existing Tax Treaty for its entire ten-year time horizon would have been if one acquired CNE Property in 2013. One acquiring CNE Property in 2018, for example, would only receive the benefits under the Existing Tax Treaty for five years, until 2023.

D. There was Master Plan approval granted by the Town on October 12, 2003 concerning the entirety of the CNE project and development, covering all of the CNE Properties (“Master Plan Approval”).

E. The Receiver and the Town share several common goals, including to make CNE as aesthetically and financially attractive as possible for businesses and others interested in locating in and buying property at the CNE development, for CNE ultimately to be fully built out and developed in a prudent and responsible manner, which will strengthen and expand the Town’s tax base, and for CNE Property to be sold so that proceeds therefrom can be paid to the

Town for its allowed claims, as provided herein.

F. At the same time, the Receiver has worked with others on creating a structure for the proposed imposition of and use of monies from special assessments to be used for the proposed reconstruction and completion of CNE’s private roadways (which, after approaching almost two decades of deferred construction and completion, are in a serious state of deterioration—and simply must be addressed) and the proposed construction of a wetlands crossover and other infrastructure improvements, which, if completed, will similarly preserve and enhance the value of CNE Property and make CNE an attractive and desirable development, all of which will also benefit the Town. Further, there are also public safety concerns of the Town that have been considered and are proposed to be addressed through such wetlands crossover work, which, if completed, will connect what are presently two “sectors” at CNE (with that connection alone creating synergies and adding considerable value to CNE and its properties) and thereby greatly reduce the time for fire and rescue vehicles to respond to emergencies at CNE. The Receiver has sought the approval of the Court which is overseeing these proceedings to impose such special assessments so that the roadway reconstruction and wetlands crossover work can be performed.

G. The Receiver and others have had numerous meetings with the Town, its Solicitor, department heads, Town Council members, and others about these shared goals, impediments to and incentives that will assist in advancing and achieving them, an extension of the Existing Tax Treaty, the Town’s claims for taxes, assessments, fees and other charges, and the Receiver’s objections thereto, controls on the use of CNE Property, and an array of other and related matters of importance to the Parties. Following such discussions and exchanges of



information, and subject to this Consent Order being approved as an Order of the Court and it also being approved by the Town's Council, the Receiver and the Town hereby agree as follows:

1. Real Estate Tax Claims and Town's Option To Allocate to Pre-Petition Sewer Use Charges: The Town shall be paid at the closings on the sale of CNE Properties for its allowed real estate property tax claims secured by each such property as of the date of the closings on the sale of such Properties, or any portion of any such property, but exclusive of penalties and interest (except to the extent that penalties and interest are first to be allowed following the end of the "Moratorium Period"). The allowed amount of the Town's secured real estate property tax claims to be paid at such closings for these purposes will thus be the "pure" amount thereof, that is, the amount of the property tax alone to the date of transfer, but exclusive of penalties and interest. The Town's analysis shows that (subject to the right of the Receiver to confirm the accuracy of the same), as of March 1, 2018, there were pure unpaid real estate property taxes secured against the CNE Properties (exclusive of the presently vacant 29 lots in the Highlands) in the amount of \$418,955.04, again, with that amount excluding penalties and interest. Further, notwithstanding anything in this Consent Order to the contrary, the Parties agree that at least 418,955.04(subject to confirmation) will be paid to the Town for its real estate property taxes on CNE Properties within three (3) years of the "Effective Date," as defined herein. The "Effective Date" shall be the first date that this Consent Order, after having been approved by the Rhode Island Superior Court in the above-captioned proceedings (the "Court"), becomes a final order of the Court and with that then Court-approved Consent Order not then being the subject of any further review, consideration or re-consideration, or of an appeal or a petition for writ of certiorari, and it not being stayed in whole or in part. Notwithstanding

anything in section 2 or otherwise in this Consent Order to the contrary, if at least 418,955.04 (subject to confirmation) is not paid within the specified three-year period, then interest at the rate of 10% per annum on the portion of such 418,955.04 (subject to confirmation) that has not been paid by the end of such period shall begin to accrue on that unpaid portion beginning on the first day after the end of such specified three-year period.

Without limiting the effect or enforceability of any of the foregoing provisions of this section 1, and notwithstanding anything elsewhere in this Consent Order to the contrary, the Town may at any time opt to treat or allocate, in its sole and absolute discretion, any payment or other collection of the amounts identified in this section 1 and in section 10 to pre-receivership sewer use charges. The reason for this is that CPM was indebted to the Town for pre-receivership sewer use charges in an amount greater than the amount of pure real estate property taxes identified in this section 1. CPM, however, owned and continues to own no real estate, and at the time of his appointment as receiver of CPM, the Receiver had no tangible assets nor any other assets of significance in the CPM receivership estate other than claims against various individuals and others, including for the alleged conversion or misappropriation of sewer use charges. Notwithstanding any such allocation by the Town, payments made by the Receiver or his Consent Order Designee to the Town under this section 1 and under section 10 shall operate to discharge the outstanding real estate property taxes that are specified in section 1 and the obligations identified in section 10 hereof. No such allocation made by the Town pursuant to the provisions of this section 1 or any other allocation provisions of this Consent Order shall diminish or otherwise alter or affect any claims of the Receiver or the Town against any third party who may be responsible for the conversion or misappropriation of sewer use charges.

Further, no allocation by the Town under the provisions of this section 1 shall affect the rights or obligations of the Parties under sections 2 or 4 of this Consent Order.

2. Limited Moratorium and Waiver of Post-Effective Date Interest and on Tax

Takings. The Parties agreed to a limited moratorium and waiver of post-Effective Date interest and penalties and on the exercise of the Town's tax sale authority and takings with respect to the CNE Properties, as follows:

- Except as and to the extent that interest may be provided at 10% through the provisions of section 1 hereof, for a period of five (5) years after the Effective Date of this Consent Order (such specified five-year period being the "Moratorium Period"), there will be no interest or penalties accrued on real estate taxes on CNE Properties while owned by the Receiver or, following the Receiver's transfer, owned by his designee under this Consent Order ("Consent Order Designee"). Further, there shall be no tax takings or tax sales by the Town of any CNE Property over the Moratorium Period. Notwithstanding the foregoing, such waiver and moratorium shall no longer exist as to a specific CNE Property(ies) upon the sale of any CNE Property by the Receiver or by his Consent Order Designee to a third party purchaser made within the Moratorium Period. Sufficient proceeds from each such sale of a CNE Property by the Receiver or his Consent Order Designee to a third party made *within* the Moratorium Period shall be paid and transmitted to the Town, ahead of all other liens, claims or encumbrances of any kind or nature whatsoever on such CNE Property (except solely for those of the United States of America or State of Rhode Island), for the payment of all outstanding pure real estate property taxes on such specific CNE Property being sold within such Moratorium Period (along with interest at 10%, as and to the extent provided for in section 1 hereof), calculated to the date of



closing. Additionally, sufficient proceeds from each such sale of a CNE Property by the Receiver or his Consent Order Designee to a third party made *beyond* the Moratorium Period shall be paid and transmitted to the Town, ahead of all other liens, claims or encumbrances of any kind or nature whatsoever on such CNE Property (except solely for those of the United States of America or State of Rhode Island) for the payment of all outstanding pure real estate property taxes on such specific CNE Property being sold beyond such Moratorium Period (along with interest at 10%, as and to the extent provided for in section 1 hereof), and for all post-Moratorium Period accruing penalties and interest, all as calculated to the date of closing. .

- The moratorium on interest and penalties accruing and on any tax takings or tax sales will only be as to real estate taxes on CNE Property and only during the period that such property is held by the Receiver or his Consent Order Designee, and shall not extend beyond the five-year Moratorium Period. For avoidance of doubt, there will be no “recapture” of any penalties or interest on real estate taxes accrued over the Moratorium Period. Nothing herein, however, shall be read to alter or affect the agreement of the Parties or the provisions of this Consent Order that address obligations other than those for real estate taxes on CNE Property.

- Following such sales and conveyances by the Receiver or his Consent Order Designee to a third party buyer(s), whether during or after the Moratorium Period, the Town may then assess real estate taxes and post-closing interest and penalties in the ordinary course on such property then held by and titled in the name of such third party.

3. Impact Fees and Sewer Assessments In Highlands at Hopkins Hills Condominium Development. Based upon historical precedent and the substantial outlays of money that will need to be contributed to pay for the construction costs of completing existing road and

infrastructure improvements at CNE and further substantial outlays for infrastructure work in the so-called Highlands at Hopkins Hill residential condominium development, which is part of the CNE development and located within the Town and whose residents have aired various concerns to Town officials, and in exchange for the resolution of claims, arguments, disputes and defenses thereto, including as set forth in pending litigation with the Town, concerning impact fees and sewer assessments, the Town and Receiver hereby agree as follows:

a. As to the remaining 29 vacant lots/parcels and residential units to be constructed thereon in the existing and already developed Highlands at Hopkins Hill residential condominium development (with, exclusive of such 29 lots, their being 123 already completed units in the existing Highlands), \$6,600 shall be paid to the Town up-front and in full at the time of the closing on the Court-approved sale of the raw land (and foundations on five of such lots/parcels) encompassing such 29 lots/parcels (29 lots x \$6,600 = \$191,400) in full satisfaction of any impact fees and sewer assessments on such 29 lots/parcels, provided that the construction of a residential unit has been completed to the point that a certificate of occupancy has been issued for each such unit by June 30, 2020. As to any of such 29 lots/parcels as to which the construction of a residential unit has not been completed to the point that a certificate of occupancy has been issued therefor by June 30, 2020, an additional assessment of 3% per lot (on such \$6,600 sum) shall be assessed and payable at the time of the issuance of a certificate of occupancy for such unit for each 12-month period or any portion thereof after June 30, 2020 and until a certificate of occupancy therefor is issued.

b. Beyond the 29 lots/parcels provided for in sub-paragraph a. above, there are 52 lots/parcels/units available in the Highlands at Hopkins Hill residential condominium



development (including the phases and sub-phase(s) thereof), based on the Town's reading of the Master Plan Approval, which reading the Receiver, for purposes of this Consent Order and in consideration of the benefits and agreements set forth in this Consent Order, shall not contest.

The Town recognizes, however, that a plan for 66 lots, not just 52 lots, had been sketched out encompassing the presently undeveloped phases and sub-phase(s) of the overall Highlands development that are outside of the so-called existing Highlands as identified in sub-paragraph a. above. With respect to the next 26 lots/parcels/units (beyond the 29 lots/parcels/units identified in sub-section a. above), wherever the same may be located in the Highlands at Hopkins Hill residential condominium development (including the phases and sub-phase(s) thereof), and the sale of the raw land encompassing or to be used for the development of such 26 lots/parcels/units by the Receiver, \$6,600 per lot/parcel/unit shall be paid to the Town, up-front and in full, at the closing on a sale of such raw land in full satisfaction of any impact fees and sewer assessments on the next such 26 lots/parcels/units ( $\$6,600 \text{ per lot/parcel/unit} \times 26 = \$171,600$ ).

Notwithstanding the foregoing, however, as to any of such 26 lots/parcels identified in this sub-section as to which the construction of a residential unit has not been completed to the point that a certificate of occupancy has been issued therefor by June 30, 2022, a further 3% assessment per lot shall be assessed and payable at the time of the issuance of a certificate of occupancy for such unit for each 12-month period or any portion thereof after June 30, 2022 and until a certificate of occupancy therefor is issued.

c. As to the next and remaining 26 lots/parcels/units (of the 52 lots/parcels/units), similarly wherever the same may be located, and in full satisfaction of any impact fees and sewer assessments thereon, the Receiver or a buyer from him shall have the

*"DeBlois Parcel"*

option of either (i) paying \$6,600 per lot/unit, payable at the time of the post-certificate of occupancy residential closing on each such separate and individual lot/parcel/unit, or (ii) \$7,450.50, first incurred at the time of the post-certificate of occupancy residential closing on each such separate and individual lot/parcel/unit, but payable over 20 years, with interest thereon as such interest is provided in the Town's ordinance or other applicable law, as to each such separate and individual lot/parcel/unit. Notwithstanding the foregoing, however, as to any of such 26 lots/parcels identified in this sub-section c. as to which the construction of a residential unit has not been completed to the point that a certificate of occupancy has been issued therefor by June 30, 2024, an additional assessment of 3% per lot shall be assessed and payable at the time of the issuance of a certificate of occupancy for such unit for each 12-month period or any portion thereof after June 30, 2024 and until a certificate of occupancy therefor is issued.

d. As to the final and remaining 14 lots/parcels/units that are sketched out in the plan for 66 lots identified in sub-section b. above or as are otherwise provided for (overall, the same encompassing Highlands lot/parcel/unit numbers 205 through 218, inclusive; 123 units in existing Highlands, plus 29, plus 52 = 204), similarly wherever the same may be located, and provided that Town Planning Board or Commission approval is obtained for those 14 lots/parcels/units (or so many thereof as the Receiver, the Consent Order Designee or a buyer from either of them may, in his or such buyer's discretion, seek to obtain), the Town agrees that, under the circumstances, it will not require that there be an amendment to the existing Master Plan Approval that exists in regard to such up to 14 lots/parcels/units (without determining or presuming that any such amendment was ever actually required), but that such an amendment is deemed to have been granted; but that, following such required Planning Board or Commission

approval, \$7,600 shall be paid at the time of each of the separate and individual post-certificate of occupancy residential closing on each such separate lot/parcel/unit, in full satisfaction of any impact fees and sewer assessments thereon. Notwithstanding the foregoing, however, as to any of such up to 14 lots/parcels identified in this sub-section d. on which a residential unit is intended to be constructed, if the construction of a residential unit has not been completed to the point that a certificate of occupancy has been issued therefor by June 30, 2026, an additional assessment of 3% per lot shall be assessed and payable at the time of the issuance of a certificate of occupancy for such unit for each 12-month period or any portion thereof after June 30, 2026 and until a certificate of occupancy therefor is issued. Nothing herein shall be read or construed to require the Receiver or a buyer therefrom to develop any or all of such 14 lots/parcels.

e. Other than obtaining (i) Town Planning Board or Commission approval as to the 29 and 52 lots/parcels/units, and also obtaining such approval as to the up-to 14 lots/parcels/units provided for in this Consent Order, and appropriate (ii) building permits, and (iii) certificates of occupancy, and (iv) compliance with the applicable provisions of Town Ordinance § 191-4 ("Building Sewers and Installation") and § 191-5 ("Construction of Sewers by Private Developers") and inspections that may be required thereunder, except to the extent, if at all that the same are inconsistent with the provisions of this Consent Order (in which event the provisions of this Consent Order shall control), neither the Receiver, the Consent Order Designee, nor any buyer(s) from the Receiver or Consent Order Designee shall be obligated to, nor shall the Town require, any other approvals, permits or authorizations in connection with the sale, development, construction and occupancy of the 29, 52 and up-to 14 lots/parcels/units identified in this Consent Order.



f. Further, other than (i) payment at the time provided for of the pure real estate property taxes on the 29 vacant lots in the Highlands in the amount of \$15,802.73 plus interest thereon in the amount of \$5,718.13 (each as calculated as of March 1, 2018); (ii) payment at the times provided for herein of the pure real estate taxes on the other-than-29 lots Highlands property that may be identified in section 1 of this Consent Order, (iii) obligations for the specified amounts (\$6,600, \$7,450.50 plus interest, and \$7,600, plus such 3% upward adjustments per lot/parcel additions as provided in this Consent Order) required to be paid at or following the operative closing dates identified in sub-sections a-d above, (iv) the customary fees and costs for building permits and certificates of occupancy, (v) those obligations for post-operative closing date incurred sewer use charges, and (vi) such tangible personal property taxes as may be assessed by the Town, and (iv) sewer connection or tie-in fees (presently \$300/unit), there shall be no additional taxes, assessments, fees or costs imposed by the Town on the Receiver, the Consent Order Designee or any buyer from either as to such 29, 52 and up-to 14 lots/parcels/units identified in this Consent Order.

g. The Receiver agrees that the 66 vacant lots/parcels/property(ies) identified in this section 3 and its sub-sections are intended to be developed for residential use. However, if the Receiver determines that it is not feasible for such lots/parcels and property to be so developed, or if he otherwise wishes to have such lots/parcels/property(ies) used for a non-residential purpose, then he shall have the right, subject to approval of the Town Council and such approvals as may be required of the Town Planning Board or Commission (in each instance, within the existing purview, power and authority of such Council, Board or Commission), to change such presently intended use and to have such lots/parcels and property be developed for a

non-residential use that is authorized under the Master Plan Approval for the Centre of New England development, or that may be granted or otherwise authorized by the Town Council. Nothing in this sub-section is intended nor shall be construed as expanding any of the rights, power or authority of the Town Council or of the Town Planning Board or Commission beyond those that existed, or the extent to which they existed, as of the date this Consent Order has been entered into.

4. Pre and Post-Petition Sewer Use Charges; Releases. The Town recognizes and acknowledges that during the pendency of these receivership proceedings there has been a transition of billing and collecting of sewer use charges from the Receiver to the Town, in respect to which and as to all aspects thereof the Parties agree they will continue to cooperate, and the Town agrees that it hereby waives any and all claims for sewer use charges assessable or assessed against or owing by the Receivership Entities and/or CNE Property prior to March 30, 2015. To the extent, if at all, he has not already done so, the Receiver shall, however, remit to the Town the amount of sewer use charges actually collected by him during the pendency of these receivership proceedings and not previously remitted to the Town. Notwithstanding anything in this Consent Order to the contrary, the Receivership Entities and all third party buyers of CNE Property shall be fully liable for all sewer use charges on improved CNE Property incurred following the Effective Date and upon such Property thereafter first being liable for such sewer use charges under applicable law, ordinances and regulations.

The Receiver and the Receivership Entities shall assign, to the Town, unconditionally but without recourse, all rights to collect such sewer use charges from the defendants named in the Receiver's or Receivership Entities' Superior Court Complaints or in other actions, or under any



Court order(s), or otherwise in connection with any claims that seek the recovery thereof.

The Parties shall also exchange, to be effective on the Effective Date, mutual releases of all other claims against each other (other than those claims provided for or arising under or related to this Consent Order), including those pending in any administrative or court proceedings, including such court proceedings identified in Exhibit A hereto. Such claims shall be dismissed with prejudice. The Parties acknowledge that it is only the claims that such Parties hold against the other that are being released hereby, and it is fully recognized, for example, that the Receiver can release and dismiss only such claims that he as Receiver of the Receivership Entities has against the Town, and cannot and does not purport to release or discharge any claims of any person or entity that is not a Receivership Entity.

5. Sewer Assessments. The Parties agree that, for purposes of this Consent Order but without the same affecting any rights of the Parties against any third parties for the same, there are no unpaid sewer assessments of the Receiver, Receivership estates, or on any CNE Property as of the Effective Date. They further agree that for a period of five (5) years after the Effective Date residential sewer assessments attributable to any CNE Property, other than that CNE Property identified in section 3 hereof (concerning the lots/parcels/units in the Highlands, as to which impact fees/sewer assessments have been provided for in such section 3), sold during such five-year period shall be fixed and shall remain for such period at the \$9,950.50 per residential unit and shall be payable over the 20-year period provided for under applicable law. Such \$9,950.50 shall be in full satisfaction of both any impact fees and sewer assessments on all such identified residential units. All non-residential sewer assessments on CNE Property shall be in the amount as provided in the Town sewer ordinance as it existed as of January 1, 2018, which

the Parties agree is based on flow. Such non-residential sewer assessments are payable over a 20-year period, with interest as provided in such ordinance or other applicable law.

The so-called “commercial condominium” building at 87 Centre of New England Boulevard owned by a receivership entity is merely a “shell” of a building, with no interior construction work on it having been performed and with no water or other utilities having been provided to it. The Parties agree that a sewer assessment(s) on such property and building is not now owing and shall not be first incurred until a certificate of occupancy has been issued for that building or, as applicable, a unit therein (whether then owned by the Receiver, his Consent Order Designee, or any third party), and in that latter instance, only as to the unit(s) as to which such a certificate(s) has been issued, and that such sewer assessments shall be as provided for in the Town sewer ordinance as it existed as of January 1, 2018, which the Parties agree is based on flow. Such an assessment shall be payable over a 20-year period, with interest, as provided in such ordinance or other applicable law. The Parties shall attempt in good faith to agree on what the amount of the sewer assessment should be on that “commercial condominium” building, but, if they cannot, then it will be determined through whatever the challenge process and procedures are that the Parties would otherwise have been required to follow administratively within the Town (the Parties agreeing for these purposes that such process and procedures have not been foreclosed at this point), with the first of the papers and filings required to commence that process and procedure required to be filed within thirty (30) days after the date that the Receiver receives a written notification from the Town that it will not agree with his proposed amount of the sewer assessment on that property and informing the Receiver in that writing that he will need to commence the administrative process with the Town to challenge the amount of the

Town's proposed sewer assessment thereon.

6. Outside-of-Highlands Impact Fees. The Parties further agree that, in exchange for the Receiver's concession provided in section 5 above as to the amount of the sewer assessment, there shall be no impact fees assessed or required to be paid on or for any of the residential units identified in such section 5.

7. Except as otherwise provided in this Consent Order, nothing in this Consent Order shall be construed as diminishing the authority of the Town of Coventry Planning Board or Commission to approve, modify or reject any proposal for residential or commercial development in accordance with the powers vested in such Commission pursuant to state law and the Coventry Town Charter, and the ordinances, policies, protocols, rules and regulations adopted pursuant thereto. The Town Council has no objection to, but has determined that, other than as provided for in this Consent Order and through the existing Master Plan and other existing approvals, the Town of Coventry Planning Board or Commission shall be entitled to decide issues concerning (i) the remaining 14 lots/parcels/units that are sketched out in the plan for 66 lots identified in section 3 b. above, (ii) the construction of roadways and related matters as to the development of the up-to-66 lots/units in the additional phases or sub-phases of the Highlands, and (iii) the conditions under which one developing such additional phases or sub-phases shall be entitled to begin constructing residential units there, including, if the Board or Commission approves of the same, prior to roadways and other infrastructure there being in place and fully completed.

8. Use Restrictions. The CNE Property shall be subject to a permanent use prohibition, running with the land, prohibiting junk yards, recycling of solid waste activities, a



private airstrip, and a sewage treatment facility being located on CNE Property.

9. Extension of Tax Treaty; "Tacking". Upon approval of this Consent Order as an Order of the Court and its entry, the term of the Existing Tax Treaty shall be extended to December 31, 2038. The benefits under the Existing Tax Treaty, as extended and as may be modified through this Consent Order, shall thus apply to any CNE Property that is either acquired by a third party buyer after the entry of this Consent Order or such Property that has previously been so acquired and which will be entitled to the benefit of the "tacking" provisions as provided below so that it will thus receive the benefits of the Tax Treaty for a full ten-year time horizon. One who has acquired Property qualifying for the Tax Treaty (as hereby extended) by 2028 will receive the benefits under the Tax Treaty (as hereby extended) for a full ten-year time horizon. One who has acquired Property after 2028 will be entitled to the benefits under that Tax Treaty (as so extended) for whatever time remains thereunder until such benefits expire on December 31, 2038. All provisions under the Existing Tax Treaty and that Treaty as hereby extended that did not have a term or other temporal limitations shall continue on. The ability of a CNE Property owner to freely convey the benefits under the Existing Tax Treaty and that Treaty as hereby extended to a buyer from it for the full or such portion of the ten-year term that remains, as applicable, shall remain and is unaffected by this agreement and Consent Order. In no event shall any property which has already received the full ten-year term of tax and other benefits provided under the original Tax Treaty receive any tax or other benefits under the extension of the Tax Treaty provided herein. However, a property which, as of the date of the entry of this Consent Order or hereafter, has received or will receive benefits under the Existing Tax Treaty for less than a full ten-year term shall be entitled to receive benefits for the remainder of up to a

ten-year period under the Existing Tax Treaty as so extended and modified hereunder until December 31, 2038. For example, a property that has received benefits under the existing Tax Treaty for three years shall be permitted to “tack onto” and receive the benefits under the Existing Tax Treaty as extended and modified hereunder for years four through ten, provided that such years do not extend beyond December 31, 2038. All property to which the Existing Tax Treaty, as extended, applies shall be entitled to the benefits thereunder, including the following, Coventry Tax Assessor’s Parcels/Lots: 5/11, 5/12, 5/14, 5/14.1, 5/14.2, 5/14.3, 5/21, 5/21.1, 5/22, 5/25, 6/2.2, 6/3.1, 6/4, 6/5, 6/6, 7/1.3, 7/2, 7/36, 13/14, 13/14.1, 14/01, 14/1.2, 14/65, 14/96, 15/98, 21/102.

- There shall continue to be no taxes on common areas as provided in the Existing Tax Treaty and nothing herein shall be read or construed to curtail or diminish the provision of that Treaty concerning the same. The 100-acre maximum set out in the Existing Tax Treaty shall no longer apply, thereby expanding the scope of the benefits of the Existing Tax Treaty to the entire CNE development and to the entirety of the CNE Properties. Further, the successor in title to any CNE Property comprising or consisting of CNE roadways and common areas shall continue to benefit from the real estate tax and other exemptions provided for in the Existing Tax Treaty, as hereby extended.

- The Existing Tax Treaty addresses and provides relief from wholesale and retail inventory taxes and that relief shall continue under the Existing Tax Treaty and under that Treaty as extended. Rhode Island General Laws § 44-3-29.1, which became effective after the Existing Tax Treaty came into effect, has mandated that cities and towns phase out wholesale and retail inventory taxes (phase-out apparently completed in 2006). Nothing herein shall be read or



construed to derogate from the command of or benefits provided in § 44-3-29.1 and all owners and lessees of CNE Property shall be entitled to the full benefit thereof. However, if there is any resumption in any wholesale or retail inventory taxes provided by state law or any other authority over the period that any party is entitled to benefits under the Existing Tax Treaty or under that Treaty as hereby extended, then, unless the state law providing for such a resumption expressly provides otherwise, the relief from wholesale and retail inventory taxes as and to the extent provided under the Existing Tax Treaty and under such Treaty as extended shall remain in effect. Except as otherwise expressly modified through this Consent Order, the terms and conditions of the Existing Tax Treaty shall not otherwise be modified, and they shall continue to cover only “commercial, non-residential enterprises.”

- Unless the State of Rhode Island expressly mandates otherwise, the Town agrees that it will not impose or re-impose any new or further taxes or charges on “commercial non-residential enterprises” situated in the CNE development or otherwise affecting the CNE Properties over the period as to which a CNE Property owner or lessee is receiving benefits under the Existing Tax Treaty and under such Treaty as hereby extended. Nothing in the foregoing sentence shall be read or construed to relieve CNE Property from the obligations expressly provided for under this Consent Order.

10. Girls Softball Payments; Reservation of Allocation. The Parties agree that \$150,000 shall be paid to the Town in connection with the so-called “girls softball field(s)” matter in full satisfaction of that alleged obligation and any claims of the Town and Receiver relating thereto. No further payments shall be due, including none from future home/lot sales or sales of any other CNE Property, in payment of that disputed obligation. Such \$150,000 shall be

paid to the Town within one year of the Effective Date. As noted in section 1, the Town has reserved a right to opt to treat or allocate, in its sole and absolute discretion, any payment of the amounts identified in this section 10 to pre-receivership sewer use charges, for the reasons noted in such section 1. Notwithstanding any such allocation by the Town, payments made by the Receiver or his Consent Order Designee to the Town under this section 10 shall operate to discharge the outstanding obligations identified in this section

11. Other Agreements and Confirmations.

- The Parties shall continue to share information and discuss the administrative and other details of the Receiver and his successors and/or assigns and his current agent and property management company, Peregrine Property Management, giving their full good faith effort and cooperation to working with the Town to complete the transition to the Town responsibility for billing and collecting sewer use charges directly to CNE Property owners, their lessees, occupants and other end users. Such transition shall be planned and undertaken efficiently and with no undue, unnecessary or unreasonable requirements, and both the effective date thereof shall be agreed upon and the logistics of such transition undertaken in such a manner as to ensure that the Receiver and his agents, designees and assigns receive the maximum amount collectible for such charges for all time periods up to the effective date of such transition. As part of such transition, and both before and after the effective date thereof the Receiver and his agents, designees and assigns shall take accurate and reliable water meter readings of water users at the CNE development and, upon the Town paying what is a fair and reasonable amount therefor, shall transmit or otherwise share such readings with the Town as to all CNE Property to enable and assist the Town in measuring and calculating sewer usage for each CNE Property to which

sewer services have been provided. The Town shall pay such fair and reasonable amount for all periods for which the Receiver and his agents, designees and assigns have provided and shall continue to provide and otherwise share such water meter readings with the Town, and any disagreements or disputes as to the amount of the same shall be presented to the Court for its determination thereof. Notwithstanding the foregoing, the Town reserves the right to attempt to gather and be responsible for water meter readings using its own personnel, or agents, assigns or designees. The Parties commit to this transition being fully completed within one year of the Effective Date, unless the Town shall opt to attempt to gather water meter reading on its own.

- There are not now and there shall be as to CNE Property no low-moderate income set aside requirements on any residential development at any CNE Property including but not limited to as to any apartment complexes or otherwise in the entire CNE development, which prohibition shall run with the land in perpetuity. Further, the Receiver, his successors, designees and assigns agree that they shall not submit or advance any “comprehensive permit” or other applications for low-moderate income housing, and this prohibition shall similarly run with the land.

- The Town will recognize and acknowledge, to the exclusion of all others, the Receiver, as Receiver of all of the Receivership Entities, as well as his successors, designees and assigns, as the sole “Developer” under the Existing Tax Treaty and as such Treaty is extended, and will also later recognize and acknowledge the successors, designees and assigns of and to the Receiver for purposes of the Existing Tax Treaty, such Treaty as extended, and otherwise in respect to the overall resolution reached with the Town, including as provided in this Consent Order.

• The Town agrees that it will cooperate with the Receiver, his designees, successors and assign in connection with his or their creation and enforcement of assessments and liens on CNE Property, including liens for payment of common area maintenance charges and for water services. In no event, however, shall any such liens have priority over or interfere with the Town's liens, whether arising by statute or through any other means. The Receiver agrees that the provisions set forth in this Consent Order do not require, expressly, impliedly, or otherwise, that the Town take over the private roadways at the CNE development, nor the water or sewer lines beneath them, nor water meter pits, sewer pump stations or any other like infrastructure at the CNE development, and the Town shall be under no obligation whatsoever to do so. Nothing herein, however, shall preclude the Town or Receiver from discussing such a takeover at any point in the future, but the Parties agree that any such takeover shall only occur on terms mutually acceptable to the Town and Receiver, and in the sole discretion of each.

12. Binding Nature. In all respects this agreement and Consent Order shall be binding upon the Receiver, the Receivership Entities, the Receiver's successors, designees and assigns, and the CNE Property.

13. Effect of February 23, 2004 Consent Judgment. To the extent that this Consent Order has the effect of modifying the terms and conditions of that certain Consent Judgment dated February 23, 2004 the Parties hereto do expressly hereby assent to such modifications and agree that they shall be bound by such February 23, 2004 Consent Judgment as it may be or construed to be hereby modified and without regard to the outcome of any collateral attack by any individual or entity not a party to this Consent Order, on either the terms of this Consent Order or on the February 23, 2004 Consent Judgment.



14. Business Park Designation. Other than the terms of this Consent Order that expressly allow for residential development on the CNE Properties, nothing in this Consent Order shall be construed as modifying the status of the CNE Properties as being subject to their current designation under the Zoning Ordinance and Zoning map of the Town of Coventry as a “Business Park” and subject to the terms thereof in every respect, as modified by the terms of the February 23, 2004 Consent Judgment. The Parties recognize and agree that, except to the extent otherwise provided in this Consent Order, the development of “commercial non-residential properties” and any proposal for residential or commercial development in the CNE development is subject to the authority of the Town of Coventry Planning Commission to approve, modify or reject in accordance with the powers vested in such Commission pursuant to state law and the Coventry Town Charter, and the ordinances, policies, protocols, rules and regulations adopted pursuant thereto.

15. No Effect on Police Powers. In no event shall this Consent Order or any agreement based thereon, be construed as in any way limiting the general police powers of the Town pursuant to the Town Charter, the Rhode Island General Laws, any Public Law, Act or Resolution vesting such power or authority in the Town, or pertaining to local matters within the powers of the Town pursuant to Article XIII of the Rhode Island Constitution, unless such power is specifically limited by the terms of this Consent Order.

16. No Effect on Existing Master Plan and Other Approvals—Other Than As Expressly Provided. The Parties acknowledge, recognize and accept that both the Master Plan Approval for the Centre of New England development and all zoning and other approvals provided by the Town or its boards and commissions in regard to property within that



development remain in full force and effect and, except to the extent otherwise provided in this Consent Order, the CNE development is subject to the authority of the Town of Coventry Planning Commission to approve, modify or reject any proposal for residential or commercial development in accordance with the powers vested in such Commission pursuant to state law and the Coventry Town Charter, and the ordinances, policies, protocols, rules and regulations adopted pursuant thereto.

17. Condition to Consent Order Being Binding; Earlier Consent Order; Resolution.

The Parties agree that the Receiver's entry into this Consent Order is subject to and conditioned upon approval of the Court of this February 2019 Consent Order. Upon approval of this Consent Order by a majority of the members of the Town Council at a duly noticed and x conducted public meeting therefor, this February 2019 Consent Order shall be a Resolution of the Town Council. This February 2019 Consent Order is identical to the Consent Order earlier approved by the Receiver, the Town, and its Town Council and a majority of the members thereof in December 2018, except for a deletion in section 6 above to a "cap" number that had been placed as to certain residential units that has now been made in this February 2019 Consent Order and resulting changes and clarifications.

**Agreed and Consented to:**

\*Agreed to subject to Court Approval

February \_\_, 2019

/s/ Matthew J. McGowan\*

Matthew J. McGowan, Esq., as Receiver  
Salter McGowan Sylvia & Leonard, Inc.  
56 Exchange Terrace  
Providence, RI 02903  
(401) 274-0300

Case Number: KC-2024-0766  
Filed in Kent County Superior Court  
Submitted: 07/20/2024 12:10 PM  
Envelope: 1930835  
Reviewed in Providence/Bristol County Superior Court  
Submitted: 3/20/2019 11:05 AM  
Envelope: 1930835  
Reviewed in Providence/Bristol County Superior Court  
Submitted: 2/19/2019 9:07 AM  
Envelope: 1930835  
Reviewer: Brittany A.

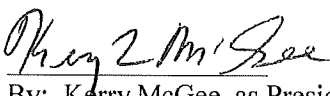
(Bar No. 2770)  
[mmcgowan@smsllaw.com](mailto:mmcgowan@smsllaw.com)

Town of Coventry  
By its Solicitor

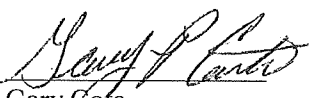
/s/ Nicholas Gorham  
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25 Danielson Pike  
Scituate, RI 02857-0046  
(401) 647-1400  
[nickgorham@gorhamlaw.com](mailto:nickgorham@gorhamlaw.com)


Town of Coventry  
By its Town Council and Members Thereof:

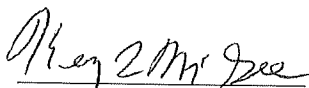
Coventry Town Council

  
By: Kerry McGee, as President

Its Members:

  
Gary Cote  
District 4

  
Gregory Laboissonniere,  
Vice-President  
District 2



Kerry McGee  
District 3



Ann Dickson  
District 1

\_\_\_\_\_  
Debra Bacon  
District 5

The foregoing is hereby approved and entered as an Order of this Court:

**Enter:**

/s/ Sarah Taft-Carter

\_\_\_\_\_  
Sarah Taft Carter  
Associate Justice

Dated: May 13, 2019

**Per Order:**

/s/ Danubia Puig Deputy Clerk 1

Clerk \_\_\_\_\_

Dated: May 13, 2019