

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CHARDA PROPERTIES, LLC
and DAVID IASCONI
Plaintiffs

v.

C.A. No.: 06- 117 ML

TOWN OF JOHNSTON, et al.,
Defendants

AGREEMENT FOR JUDGMENT

In the above-entitled matter it is hereby stipulated, agreed, and may be entered as an Order of this court that plaintiff , **CHARDA PROPERTIES, LLC** ("**Charda**"), a Rhode Island Limited Liability Company organized pursuant to Chapter 7-16 of the General Laws of Rhode Island, 1956, as amended ("the R.I.G.L.") and defendant, the **TOWN OF JOHNSTON** ("**the Town**"), a municipal corporation in Providence County and the State of Rhode Island and Providence Plantations, have reached and acknowledge their agreement that Judgment may enter as follows:

1. In 2003, **Charda** acquired an interest in certain real estate on or in the vicinity of 55-64 Greenville Avenue, Johnston, Rhode Island, which such property is further designated as Assessor's Plat 55, Lots 24, 64 and 75 in the land evidence records of the Town of Johnston. This real estate (consisting of approximately 28.21 acres) will hereinafter be referred to as "the Premises".

2. Following its acquisition of an interest in the Premises, **Charda** prepared and, in 2003, submitted a plan for the residential, multi-family development of the Premises to the **Town's** Planning Board and Zoning Board of Review ("the Original Plans"). The Original Plans were not approved and **Charda** thereupon amended the Original Plans, lowering (to 144) the number of units being proposed to be developed at the Premises and changing the nature of the proposed development to include low and moderate income housing units ("the Revised Plans").

3. On January 8, 2004, **Charda** submitted the Revised Plans to the Johnston Zoning Board of Review, together with a Comprehensive Permit Application ("the Application") pursuant to the provisions of Title 45, Chapter 53 of the R.I.G.L. (entitled, "Low and Moderate Income Housing").

4. **Charda** subsequently initiated this litigation, seeking a Declaratory Judgment that it is entitled to issuance of a permit, for a prerogatory writ of mandamus (requiring the **Town** to issue a permit), and for other, unspecified relief in the circumstances (“the Superior Court Action”).

5. The **Town** answered the Superior Court action and has contested **Charda’s** allegations and claims for relief.

6. **Charda** has subsequently initiated litigation against the Town and several of its past and present official in the United States District Court for the District of Rhode Island, which such matter is docketed under civil case or file number C.A. 06-117 ML (“the federal court action”).

7. The **Town** has answered the federal court action and has contested **Charda’s** allegations and claims for relief.

8. **Charda** and the **Town** have, through their representatives and legal counsel, have engaged in extensive efforts and negotiations to attempt to resolve their differences and have agreed that this matter may be resolved on the following basis so as to avoid further potentially extensive and costly litigation of uncertain outcome and to effectuate a sensible, mutually-acceptable resolution of their disputes that will be just and equitable to all parties.

Settlement Agreement of the Parties

Accordingly, and having been subject to review and approval of the **Town Council of the Town of Johnston**, it is stipulated and agreed as follows:

(A) **Charda** has submitted a further revised application (for which there will be no additional fee or costs) that has converted the Comprehensive Permit Application to a new application consisting of a total of one hundred forty-four (144) units, all of which will be of a “market rate” type.

(B) The **Town** agrees that in connection with and as part of the revised application, it will accept and approve the site plans and project density previously submitted with or as the “Pines Condominiums” in **Charda’s** Application concerning the Premises (described above) and will allow the project to be constructed entirely (100%) as a market rate facility.

(C) The **Town** will grant **Charda** those exceptions to its general zoning and/or planning requirements set forth in the attached “exhibit one” describing the exceptions waived under Articles A, B, C, E and I. As a result of these exceptions and the other matters specified herein, this Agreement will effectively change the zoning of **Charda’s** parcels so as to allow **Charda** to construct such one hundred forty-four (144) units as of right.

(D) The parties acknowledge that DEM has granted Charda an Insignificant Alteration Permit (dated October 18, 2005) and that DEM or other agencies may require other permits in the future. If any such permits expire or become required, Charda's time to complete or perform any other aspect or requirement of this Agreement shall be extended by the amount of time necessary to obtain such renewal or permits.

(E) With the **Town's** consent, **Charda** will obtain all necessary approvals to allow for the construction of a new sewer line or lines from a point which is a tie-in designated by the Narragansett Bay Commission (or its successors in name or interest) to the Premises Project. (**Charda** may utilize private wells, or new water lines as prescribed by the Providence Water Supply Board or any other form of water supply acceptable any other local or state agency having appropriate jurisdiction for the water supply for the project in its discretion, but will in any event have a water supply for the premises project.) **Charda** and its engineer will provide all necessary documentation for such sewer and/or water permits at its sole expense. With the exception of the review process described below, **Charda** will indemnify the **Town** for any and all claims, demands, actions or costs caused or arising from the actions, errors and/or omissions of its engineer(s) with respect to the activities described in this part (E). Provided, however, that if **Charda** seeks the **Town's** consent for the submission of sewer and/or water approvals of any type (including but not limited to any amendments to the existing sewer Facilities Plan for the Town of Johnston), the **Town** will have a period of sixty (60) days after receipt of the same from **Charda** or **Charda's** engineer(s) to review the documentation and application(s) for such approvals. The **Town** may utilize (at its own, sole expense) an engineering firm or consultant of its own choice as part of its review process. Upon completion of its review (but no later than the expiration of such 60 day period), the **Town** will either sign or join in the application(s) or provide **Charda** with written reasons (to include suggested changes) that the **Town** will not do so. The **Town's** assent and cooperation with this process will not be unreasonably withheld or delayed.

(F) The **Town** shall, forthwith, issue any and all building permits once final plans have been submitted with no time limit on the aforementioned application and shall, forthwith, issue all other applicable authorizations and approvals necessary or related thereto upon request by **Charda**. **Charda** may apply for such permits and units in phases over a period of three (3) to seven (7) years.

(G) **Charda's** plans will meet all requirements of the Rhode Island State Building Code (R.I.G.L. 23-27-3-100.1, et seq.) and of the Rhode Island Fire Safety Code (R.I.G.L. 23-28.1-2, et seq.) (hereinafter, "the applicable codes") concerning structural construction and fire codes. The **Town** Building Inspector will review all such plans to assure their compliance with the aforementioned applicable codes and shall issue building permits in a timely

manner not to exceed thirty (30) days from **Charda's** submission of such plans and application(s) with no limitation on the number of permits that may be applied for and issued at any given time. Permit costs shall be calculated at the rate that was applicable at the time that **Charda** first applied to the **Town** for its project (i.e., as of January 8, 2004). The **Town's** Building Inspector will also cooperate, sign, and issue all normal and customary correspondence associated with a project of this type (including, for example, a letter or letters to the appropriate state agency or agencies to apply for and/or allow a curb cut in a state roadway) as well as for blasting, rock crushing, and site work necessitated by the nature and location of the Premises.

(H) In the event that any interpretation issues or disputes concerning the plans and/or their review by the **Town's** Building Inspector and/or Engineer arise, **Charda** shall, if it so elects, effectuate resolution of such issues or dispute by submitting the names of three (3) independent, licensed professional engineers to the **Town**. The **Town** shall thereupon select one of the engineers on and from such listing and that engineer shall resolve all issues concerning the completeness or interpretation of the plans and/or whether work has been properly performed in accordance with the plans that have been submitted to him or her pursuant to this portion of the Agreement. The findings and/or decisions of such engineer shall be final and binding upon the parties. **Charda** will pay the entire expense (fees and costs) of any such independent engineer.

(I) **Charda** will develop the project herein described under or to be known by the name of the "Pines Condominiums".

(J) The Pines Condominiums will have its own Condominium Association of which **Charda** is and will initially be the and/or a member (the "Association"). All condominium documents and the Condominium Association shall remain private and are not deemed to be public despite these references to them in this Agreement for Judgment.

(K) The **Association** will be solely responsible for maintenance and plowing of roadways and utilities on and at the Premises. Since this will be a private roadway, all roadwork, and utility work will be allowed to begin prior to issuance of a building permit. Since this is all private work and since the roadways and utilities will not be turned over to the **Town**, there will be no bonds, bonding or similar security required of **Charda** for such work.

(L) The sewer line from the Premises to a tie-in designated by the **Narragansett Bay Commission** and/or any successor thereof, will be constructed at the sole expense of the **Narragansett Bay Commission** or **Charda**, and owned either by **Charda** or the **Narragansett Bay Commission** and/or any successor thereof. Any party (except the **Town** when the **Town's** use will be for municipal purposes only) that ties into the sewer line to the premises at or in the vicinity of the right of way to the premises shall pay **Charda** and/or the Association a

percentage of the total construction costs equivalent to the percentage of usage by which such new connection affects the sewer service to the premises. In any event, before any party may tie into the force main sewer line, it must first be determined to **Charda's** satisfaction that such proposed usage will not exceed the design capability, pressure and/or service capacity of such line and that any proposed connections to the force main sewer line will provide appropriately designed pressure pumping facilities (at no expense to **Charda**). To that end, any proposed connections will require that their design specifications must first be furnished to **Charda** for review and approval. (Although the **Town** has no control over the **Narragansett Bay Commission**, it agrees that it will not oppose **Charda's** right to make such determination concerning whether proposed usage will or will not exceed the design capability, pressure and/or service capacity of such lines and/or that such sewer line(s) will be appropriately designed at no expense to **Charda**.) The **Town** will provide road opening permits as such as road opening permits may be necessary for such sewer service work.

(M) It is understood that the **Town** has advised that it expects to and will either provide the **Association** a credit for charges made for the same or will undertake all trash pick-up for and at the Premises.

(N) Based upon approval by the town council **Charda** agrees that it will amend the Application so as to change the twenty (20%) percent low or moderate income housing units envisioned, proposed and approved in the application, so as to allow all of the previously described one hundred forty-four (144) residential units planned for the Premises to be constructed and sold as a gated, private community at existing and/or future real estate market rates. The **Town** will approve such amendment.

(O) The parties further agree that the **Town** will pay or reimburse **Charda** its costs and legal fees related to the aforementioned State and federal litigation by making payment in the sum of one hundred fifty thousand (\$150,000.00) dollars, to be paid in yearly installments of fifteen thousand (\$15,000.00) dollars each year for ten consecutive years, beginning on or before on or before the first day of the month next following entry of this Order and continuing each year thereafter on the 1st day of that same month until a final payment is made.

(P) The agreement expressed herein and **Charda's** rights hereunder shall not be interrupted or suspended by any order, enactment, or mandate of the **Town** creating any moratorium or suspension on the issuance of building permits or construction of any type. Furthermore, the project may be undertaken or constructed in phases or as one continuous construction project.

(Q) Notwithstanding the provisions of Section "E", above, **Charda** shall have the right to use either such private wells or to reach agreement with and use water supplied by the **Providence Water Supply Board** system from a point

which is a tie-in designated by the **Providence Water Supply Board** to the Premises Project. In the event that **Charda** utilizes water from the **Providence Water Supply Board** system, the provisions of Section "J", above (describing and providing for ownership, construction costs, usage, design, design capability, and determinations as they relate to sewer lines from the **Narragansett Bay Commission** and/or any successor thereof), shall apply equally and in like respect to the ownership, construction costs, usage, design, design capability and determinations of water lines and the **Providence Water Supply Board** system as if that Section ("J") recited the same provisions with respect to any such water pipeline service. The Town will provide such road opening permits as are required by such water supply or pipeline service work.

If the Town decides or determines that there is no enough water flow or pressure to allow proper fire fighting to take place at the Premises Project, Charda shall be allowed (in accordance with state law) to construct and utilize underground water storage tanks for firefighting, reserved for firefighting purposes, to establish such firefighting capacity in accordance with state specifications and subject to approval by the Town Fire Marshall.

(R) Certificates of Occupancy or Occupancies shall be issued immediately upon completion of final inspection(s).

(S) The terms of this agreement may be entered as a stipulation and "Agreement for Judgment" (i.e., as a judgment of the court) in the litigation before the Court. The Court shall retain jurisdiction over this action and over the parties to enforce the terms of this agreement rendered as a judgment of the Court.

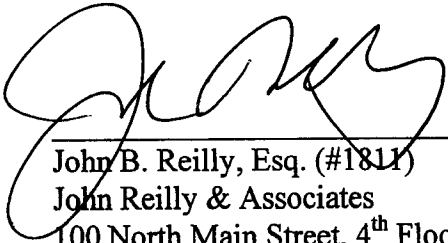
(T) Upon entry of a stipulated "Agreement for Judgment" by the Courts of the State of Rhode Island, the state action will (as it relates to **Charda**) be dismissed, with prejudice, without costs or expenses, and waiving all rights of appeal.

(U) This agreement shall inure to the benefit of and be binding upon both the **Town** and upon **Charda's** successors, assigns, vendees, grantees, successors in title, and any other claiming rights derived from **Charda**. Such parties include (but are not limited to) Condominium Association described herein.

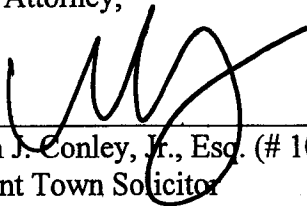
WHEREFORE, the parties have, through their authorized representatives signing below, executed this Agreement on this 11th day of FEBRUARY, 2008/9

Charda Properties, LLC.
By its Attorney,

Town of Johnston
Zoning Board of Review of the
Town of Johnston, et al
By their Attorney,



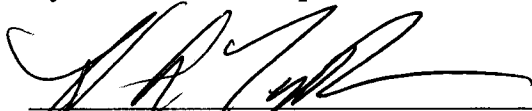
John B. Reilly, Esq. (#1811)
John Reilly & Associates
100 North Main Street, 4th Floor
Providence, R.I. 02903
(401) 272-2800
(Fax) 272-2811



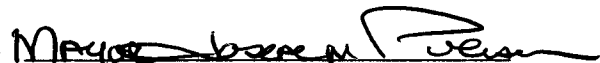
William J. Conley, Jr., Esq. (# 1028)
Assistant Town Solicitor
670 Willett Avenue
East Providence, R.I. 02915
(401) 437-0905
(Fax) 437-3618

Charda Properties, LLC.
By Its Authorized Representative:

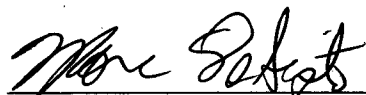
Town of Johnston
By Its Authorized Representative:



Title: OPBA member

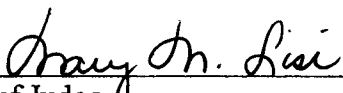


Title: Mayor



Marc DeSisto, Esq. (#2757)
DESISTO LAW
211 Angell Street
PO Box 2563
Providence, RI 02906-2563
(401) 272-4442
(Fax) 272-9937

Entered as an Order of this Court this 23rd day of February, 2009:



Chief Judge