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April 22, 2013

BY OVERNIGHT DELIVERY

Ann L. Palmieri
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P.O. Box 1586
Andover, MA 01810

Re: Cambridge Redevelopment Authority

Dear Ann:

As you know, we are Special Counsel to the Cambridge Redevelopment Authority (the "CRA"). We understand that you represent Joseph F. Tulimieri ("Mr. Tulimieri"). As you also know, the Board (the "Board") of the CRA previously communicated to Mr. Tulimieri its significant concerns that he may have granted himself unauthorized pay raises as the CRA's Executive Director.

Following Mr. Tulimieri's resignation from the CRA, the Board engaged this Firm to investigate Mr. Tulimieri's pay increases and related payments for accrued vacation and sick time. For the reasons set forth below, we have concluded that Mr. Tulimieri improperly awarded himself pay increases. In particular, Mr. Tulimieri awarded himself compensation in violation of the CRA's Bylaws, his employment contract, and his fiduciary duties to the CRA. This letter constitutes the CRA's demand that Mr. Tulimieri immediately return the unauthorized compensation as described fully below.

A. **The Board's Exclusive Authority to Determine the Executive Director's Compensation**

As a preliminary matter, the Board has the exclusive right to set the Executive Director's pay. Specifically, the CRA's Bylaws provide, "The compensation of the Executive Director *shall* be determined by the Authority." (Bylaws §5)(emphasis supplied). In addition to the Bylaws, Mr. Tulimieri entered into an employment agreement with the CRA, dated April 1999 ("Employment Contract"). The Employment

Contract similarly provides that "the Authority *shall* set the salary to be paid" each year. (Employment Contract §3). Despite the clear and mandatory language of both the Bylaws and the Employment Contract, Mr. Tulimieri did not seek Board approval in connection with several unauthorized pay raises.

B. Mr. Tulimieri's Unauthorized Compensation

First, on December 15, 2009, Mr. Tulimieri drafted a memorandum directing that: (i) his base salary increase from \$198,114 to \$204,100 retroactive to July 1, 2009; and (ii) his annual salary be increased an additional \$10,000 effective January 1, 2010. The CRA Board did not authorize either of these purported pay increases.

Second, Mr. Tulimieri purportedly entered into an eighth amendment to the Employment Contract, dated December 31, 2009 ("Amendment No. 8"). Among other things, Amendment No. 8 purportedly increased Mr. Tulimieri's "maximum annual compensation to \$215,000," converted his motor vehicle allowance to salary, and permitted him to continue as Executive Director on a part-time basis using a pay rate determined by the "salary rate then in effect." Although Amendment No. 8 is unsigned, it contains a handwritten notation from Mr. Tulimieri stating, "Voted: To approve the compensation of JFT as ED on a part-time basis upon his retirement..." Mr. Tulimieri was, however, fully aware that the Board had not "voted." There was no Board approval of Amendment No. 8.

Third, on November 10, 2010, Mr. Tulimieri drafted another memorandum directing that his pay be increased to \$220,500. Mr. Tulimieri initialed the memorandum instituting this raise with the notation: "OK JFT." Once again, however, the CRA Board did not authorize this pay raise.

Fourth, on December 22, 2010, Mr. Tulimieri drafted a memorandum to "Fiscal" directing the CRA to pay him a part-time salary beginning January 1, 2011 at a rate of \$113.07 per hour. Mr. Tulimieri calculated this hourly rate with a formula based on an assumed annual salary of \$220,480. Again, the CRA Board neither authorized this hourly pay rate nor the formula used to calculate the hourly rate. In this regard, the Board also did not authorize its Executive Director to transition to a part-time role.

By implementing these pay increases without Board approval, Mr. Tulimieri breached the CRA's Bylaws, the Employment Contract, and his fiduciary duties. The Bylaws and the Employment Contract clearly spell out that the Board had the exclusive authority to set Mr. Tulimieri's pay. The language is clear, unambiguous and mandatory. By awarding himself pay increases without the Board's required approval, Mr. Tulimieri breached the Bylaws and his contract. In addition, Mr. Tulimieri owed fiduciary duties to the CRA as its Executive Director. These duties included both a duty of care and a duty of loyalty. Mr. Tulimieri violated these duties by placing his individual interests in increased pay above the CRA's interests.

C. The Unauthorized Pay Increases Resulted in Significant Overpayments to Mr. Tulimieri

As a result of these unauthorized pay increases, Mr. Tulimieri was substantially overpaid. Without waiving the CRA's rights to seek additional damages, these increases fall into at least three broad categories.

First, in the period from July 2009 through December 2010, Mr. Tulimieri was paid thousands of dollars more than what was authorized by the CRA Board. In particular, the last pay raise when a full quorum of the Board was present and voted occurred in May 2009. At that point, the Board authorized Mr. Tulimieri's compensation to be \$198,100 per year. All of the increases thereafter were invalid. As a result, the difference between Mr. Tulimieri's authorized pay (\$198,100) and actual pay amounts to \$17,964.87.

Second, Mr. Tulimieri was overpaid for the part-time period from January 2011 to September 2012. As a preliminary point, the Board never authorized Mr. Tulimieri to transition to part-time work, nor did it authorize any particular formula to determine the value of any part-time compensation. At this time, the Board is not seeking the return of all the part-time employment compensation that he received, but expressly reserves the right to do so in the future.

Leaving aside the issue of whether the Board ever approved any part-time employment, it is nonetheless clear that Mr. Tulimieri was overpaid for part-time work. Specifically, Mr. Tulimieri was paid a part-time hourly rate of \$113.07 per hour. This hourly rate was calculated on the assumptions that: (i) the part-time pay formula set forth in Amendment No. 8 applied; and (ii) Mr. Tulimieri had a valid base salary of over \$220,000. Neither assumption was correct. Amendment No. 8 was never approved by the Board. Nor did Mr. Tulimieri have an authorized base salary of \$220,480. In fact, the last Board-approved pay was \$198,100. Assuming that the Board would have adopted the salary formulation of part-time pay in accordance with Amendment No. 8, the most that Mr. Tulimieri would have been entitled to would be an hourly rate of \$101.59 per hour ($\$198,100 \div 52 \text{ weeks per year} \div 37.5 \text{ hours per week}$). As a result, the CRA overpaid Mr. Tulimieri for his part-time work. At a minimum, the CRA's damages from this overpayment amounts to \$22,430.

Third, the payment for accrued vacation and compensatory leave was similarly overstated by using the incorrect hourly rate. Section 3 of the Employment Contract provides, "Notwithstanding the provisions of the Authority Personnel Policy, the Authority, upon death, retirement or termination of the Executive Director, shall pay at the salary rate then in effect: (a) one hundred percent (100%) of accrued annual leave; (b) \$25.00 per day for accrued sick leave up to a maximum of three hundred (300) days; and (c) ten percent (10%) of accrued compensatory leave. In no event shall the aggregate

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accrued leave exceed 3,500 hours. It is understood that the Executive Director, as of December 31, 1998, has an accrued leave balance of 6,719.71 hours." Mr. Tulimieri was therefore entitled to some payment upon his retirement or termination. The amount of that payment, however, was overstated. When Mr. Tulimieri calculated his accrued vacation, he utilized the incorrect rate of \$113.07 per hour to apply to the contractual cap of 3500 hours -- yielding a payment of \$395,745 for accrued leave. As set forth above, in fact, the correct rate was \$101.59 per hour -- yielding a payment of \$355,565 for accrued leave. As a result, Mr. Tulimieri's retirement payment was overstated by \$40,180.

Taken together, these three categories of overpayments amount to **\$80,574.87**.

By this letter, the CRA hereby demands that Mr. Tulimieri immediately repay the sum of \$80,574.87 to the CRA based on the above-described unauthorized payments. The CRA also hereby reserves all of its rights, including its right to seek damages through litigation.

Sincerely,



Peter L. Gelhaar

PEG/kh

cc: Kathleen L. Born
Chair, Cambridge Redevelopment Authority

Ellen K. Philbin
Executive Director, Cambridge Retirement Board

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