

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 1994-30

No. 610 AN ORDINANCE

AUTHORIZING THE ISSUANCE OF SPECIAL OBLIGATION TAX INCREMENT REVENUE BONDS AND/OR BOND ANTICIPATION NOTES TO FINANCE THE PROVIDENCE PLACE GARAGE

Approved September 23, 1994

Be it ordained by the City of Providence:

WHEREAS, the City of Providence (the "City"), the State of Rhode Island (the "State") and the Rhode Island Port Authority and Economic Development Corporation (the "Port Authority") expect to make capital expenditures of approximately \$94,500,000 (of which the City is to contribute the maximum amount of \$47,250,000) toward the acquisition of land, and the design and construction of an approximately 5,000 space parking garage (the "Garage") to be located on the property ("Providence Place") which has been designated as the Project Area under the Providence Place Tax Incremental Project Plan; and

WHEREAS, the City (following separate City Council approval), the Port Authority and Providence Place Group ("PPG") will enter into an Agreement for Payments in Lieu of Taxes (the "Tax Agreement") under Section 42-64-13(e) and 42-64-20 of the Rhode Island General Laws which fixes the property taxes on the shopping center (the "Shopping Mall") to be located above the Garage ; and

WHEREAS, pursuant to Section 33.2 of Title 45 of the Rhode Island General Laws (the "Act"), the City has designated a portion of the tax increment from PPG's construction of the Shopping Mall and certain associated improvements for the benefit of the Garage, as described in the City's Providence Place Tax Increment Project Plan, previously approved by this Council (the "Project Plan"), including, without limitation, a portion of the payments made under the Tax Agreement; and

WHEREAS, the City wishes to provide authorization for the issuance of special obligation bonds and bond anticipation notes pursuant to the Act in an aggregate outstanding

No.

CHAPTER
AN ORDINANCE

APPROVE
23 1994
James P. Brophy
MAYOR

IN CITY COUNCIL
JUN 16 1994
FIRST READING
REFERRED TO COMMITTEE ON
FINANCE
CLERK

**THE COMMITTEE ON
FINANCE**

Recommends *Be Continued*
Claire E. Brophy Stewart
July 13, 1994 **Clerk**
July 15, 1994
July 20, 1994
July 27, 1994 P.H.
Aug. 1, 1994
Aug. 11, 1994

**THE COMMITTEE ON
FINANCE**

**Approves Passage of
The Within Ordinance, as amended**
Claire E. Brophy Stewart
Sept 15, 1994 **Chairman**

Council President James Petrosinelli (By Request)

amount not to exceed \$69,500,000, which shall include no more than \$47,250,000 for capital expenditures including construction costs, plus approximately \$22,250,000 for a debt service reserve fund, capitalized interest and the costs of issuing such debt, including but not limited to, underwriter's discount and costs of credit enhancing such debt, to finance or refinance the acquisition, development and construction of the Project described in the Project Plan.

NOW, THEREFORE, be it ordained by the City of Providence:

SECTION 1. There is authorized the issuance of special obligation tax incremental revenue bonds and bond anticipation notes pursuant to the Act in an aggregate outstanding amount not to exceed \$69,500,000 to finance or refinance the acquisition, development and construction of the Project described in the Project Plan (the "TIF Debt") upon the satisfaction of the conditions set forth in Paragraph 1 of Exhibit A hereto.

SECTION 2. It is the official intent of the City that proceeds of any TIF Debt may be used to pay any costs incurred and/or paid by the City as a result of its participation in the development of the Garage, including costs incidental and related thereto, prior to the issuance of such TIF Debt hereunder.

SECTION 3. TIF Debt shall be issued for the purpose of carrying out the Project described in the Project Plan. Without limiting the generality of the foregoing, the TIF Debt shall be issued for the cost of the Project described in the Project Plan, which may include interest prior to and during the carrying out of the Project and for a reasonable time thereafter, such reserves as may be required by any agreement or arrangements securing the TIF Debt, and all other expenses with respect thereto, including, without limitation, reimbursement of expenses previously paid by the City or any other source, incidental to planning, carrying out and financing the Project.

SECTION 4. TIF DEBT SHALL BE PAYABLE SOLELY FROM "PROJECT REVENUES" AS DEFINED IN THE ACT AND SHALL NOT BE DEEMED TO BE A PLEDGE OF THE FAITH AND CREDIT OF THE CITY. EVERY BOND AND BOND ANTICIPATION NOTE SHALL RECITE ON ITS FACE THAT IT IS A SPECIAL

OBLIGATION BOND OR NOTE PAYABLE SOLELY FROM SUCH PROJECT REVENUES
PLEDGED FOR ITS REPAYMENT.

SECTION 5. The bonds and bond anticipation notes of any issue of TIF Debt shall be dated and may be made redeemable before maturity with or without premium. The City's Treasurer and Finance Director shall determine the security structure or structures for each issue of TIF Debt in accordance with the Act and the Project Plan, including the manner in which the proceeds of TIF Debt shall be escrowed and disbursed in accordance with or upon satisfaction of the conditions set forth in Paragraph 2 of Exhibit A, the manner in which tax increment received and to be received under the Act and the Project Plan and other "project revenues" under the Act, including, without limitation, the required portion of the payments received by the City under the Tax Agreement, may be escrowed, pledged or otherwise used to secure any such TIF Debt issue, and shall also determine the date or dates of the TIF Debt, their denomination or denominations, the place or places of payment of the principal and interest thereon, which may be at any bank or trust company within or without the State, their interest rate or rates, interest rate mode structure or structures in the case of TIF Debt issued as serial bonds or capital appreciation bonds in a fixed rate mode or a variable rate mode, maturity or maturities, redemption privileges, if any, and the form and other details of the TIF Debt and shall also be authorized to enter into any agreements or documents, including amendments thereto, to evidence the details of the TIF Debt including, but not limited to, remarketing agreements, trust indentures, purchase agreements, offering statements, escrow agreements, documents relating to bond insurance and other security arrangements and shall be further authorized to appoint the trustee, paying agent, remarketing agent and underwriter engaged in connection with the issuance of the TIF Debt. As set forth in subparagraph 1(b) to the issuance of TIF Debt in Exhibit A, such TIF Debt shall not be issued unless it is fully secured by project revenues, bond proceeds or other necessary security arrangements or credit enhancements supplied by PPG and is structured in a manner whereby the City will have no risk, liability or obligation with respect to such debt other than to apply Tax Agreement payments actually received by or on behalf of the City to debt service thereon;

accordingly, in such circumstances where PPG is taking the risk, liability and obligation of debt service on such TIF Debt, PPG may determine any interest rate or interest rate mode changes in connection therewith, and the City's Treasurer and Finance Director shall be authorized to execute any documents, including amendments to existing documents and take any actions necessary to give effect to such interest rate or interest rate mode changes or security arrangement changes and to provide for the termination of any escrow arrangement for the proceeds of TIF Debt.

SECTION 6. The bonds and bond anticipation notes of any issue of TIF Debt shall be signed by the City Treasurer, shall be countersigned by the Mayor of the City, either manually or by facsimile, and shall bear the seal of the City or a facsimile thereof.

SECTION 7. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or bond anticipation notes of any issue of TIF Debt shall cease to be an officer before the delivery thereof, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until the delivery.

SECTION 8. The City's Treasurer and Finance Director may sell the bonds and bond anticipation notes of any issue of TIF Debt in such manner, either at public or private sale, and for such price, as they may determine will best effect the purposes of this Ordinance and the Act.

SECTION 9. Notwithstanding any provisions of the City Charter or any general or special law to the contrary, bonds issued hereunder may be issued in more than one series and may provide for annual or more frequent installments of principal in equal, diminishing, or increasing amounts, with the first installment of principal to be due at any time within five (5) years from the date of the issuance of the bonds.

SECTION 10. Without limiting the generality of the foregoing, the City may issue one or more issues of special bond anticipation notes prior to the issuance of its special obligation bonds hereunder for the purposes and in the manner authorized hereunder.

SECTION 11. This Ordinance shall take effect immediately upon its final passage.

IN CITY COUNCIL
SEP 20 1994
FIRST READING
READ AND PASSED

Michael L. Clement CLERK

IN CITY
COUNCIL

SEP 22 1994
FINAL READING
READ AND PASSED

James H. Smith
Michael L. Clement CLERK

EXHIBIT A TO ORDINANCE
AUTHORIZING ISSUANCE OF TAX INCREMENT SPECIAL
OBLIGATION BONDS AND/OR BOND ANTICIPATION NOTES
TO FINANCE THE PROVIDENCE PLACE GARAGE

CONDITIONS FOR ISSUANCE AND DISBURSEMENT OF TIF DEBT

1. The TIF Bonds shall be issued upon satisfaction of the following conditions:
 - a. The TIF Bonds and all related documents including the Development Agreement are in a form which will enable the City's Bond Counsel to issue its approving opinion for tax-exempt bonds.
 - b. The TIF Bonds shall be marketable in accordance with standards acceptable to the City's underwriter and secured by credit enhancement supplied by PPG and structured in a manner whereby the City will have no risk, liability or obligation with respect to such debt other than to apply Tax Agreement payments actually received by or on behalf of the City to debt service thereon or to fund a debt service reserve fund therefor or for other purposes set forth in Section 3 of the Tax Agreement.
 - c. The Tax Treaty and applicable security documents shall be executed and delivered to the City.

2. The proceeds of the TIF Bonds (other than proceeds associated with costs of issuance and 5% of construction proceeds which obligations shall be secured by a letter of credit or other security acceptable to the City supplied by PPG) shall be disbursed upon satisfaction of the following conditions:
 - a. The Port Authority or the State, the City and PPG shall enter into one or more agreements on terms satisfactory to the City (a) establishing the City's pro rata fee simple interest in its portion of the Garage and establishing procedures whereby the State or Port Authority would act as contractor for the construction of the Garage; (b) confirming that the proceeds of the TIF Bonds will be used for an appropriate qualifying purpose; (c) establishing a procedure for the draw-down of funds and investments of funds; (d) establishing the City's security should the Garage and/or the Shopping Mall not be completed for any reason; and (e) establishing the Garage management rules which will maintain the tax-exempt status of the TIF Bonds as determined by the City's Bond Counsel.

 - b. PPG shall have delivered to the City satisfactory evidence that Anchor Tenant Leases for terms not less than ten (10) years and/or Anchor Tenant Financing Commitments for the construction of such Anchor Tenant Stores have been obtained for the Shopping Mall described in the Project Plan or evidence

acceptable to the City that such Anchor Tenant has available funds sufficient to pay the costs of construction indicated as the Anchor Tenant's or PPG's responsibility under the Development Agreement. Anchor tenants are to include Filenes, Lord & Taylor and Macy's. Macy's is to obtain the appropriate bankruptcy court approval to enter the Anchor Tenant Lease or evidence satisfactory to the City that such approval is not necessary.

- c. PPG shall have delivered to the City copies of financing commitments from a financial institution acceptable to the City for the construction financing or other evidence of available funds, acceptable to the City, sufficient to pay the costs of construction indicated as PPG's responsibility under the Development Agreement including, but not limited to, the costs that are attributable to access and/or support benefiting the Shopping Mall. So long as PPG is Project Coordinator pursuant to the Development Agreement, PPG shall deliver to the City satisfactory evidence that funds needed to finance or fund the budgeted costs of the Garage in excess of \$94,500,000 shall be available.
- d. The Port Authority shall have duly authorized the issuance of bonds and/or bond anticipation notes to finance its or the State's portion of the Garage construction and off-site improvements.
- g. The appropriate parties in the Development Agreement shall develop plans for the Garage and Shopping Mall which are in conformance with the design and development regulations of the Capital Center Commission and shall obtain approval for the removal of existing buildings.
- h. The State and/or Port Authority shall have received all approvals required from the Federal Highway Administration in order to pay for its portion of the Garage and off-site improvements.
- i. The TIF Bonds shall be secured by credit endorsement supplied by PPG and structured in a manner whereby the City will have no risk, liability or obligation with respect to such debt other than to apply Tax Agreement payments actually received by or on behalf of the City to debt service thereon, to fund a debt service reserve fund therefor or for other purposes set forth in Section 3 of the Tax Agreement or the Trust Indenture.