

RESOLUTION OF THE CITY COUNCIL

No. 354

Approved July 24, 2014

I. RECITALS CONCERNING THE HISTORY OF THE SO-CALLED MISCELLANEOUS PARCELS BOND PROJECT

WHEREAS, the City of Providence (the "City") has previously established Redevelopment Area Nos. 1, 3, and 4 by Section 20-2 of the Providence Code of Ordinances and reaffirmed by Resolution 143, approved March 25, 2008;

WHEREAS, each of the said Redevelopment Areas have been found by the City Council to be blighted and substandard and in need of redevelopment for the elimination and prevention of blight and substandard conditions and their revitalization through redevelopment by well-planned, sound, integrated, stable, safe and healthful neighborhoods;

WHEREAS, the American Tourister Parcel is located in Redevelopment Area No. 1 as well as the Wanskuck Redevelopment Project Area (which has been found to be an arrested blighted area as defined in R.I. General Laws § 45-31-8(2)) and its acquisition by Providence Redevelopment Agency (the "Agency") was in accordance with the Wanskuck Redevelopment Plan adopted by Chapter 2000-6 of the Providence Code of Ordinances;

WHEREAS, Parcel 12 is located in Redevelopment Area No. 3 and its acquisition by the Agency was consistent with the Downtown Providence Renewal Plan Redevelopment Plan adopted by Chapter 1977-5 of the Providence Code of Ordinances;

WHEREAS, the Port Parcels are located in Redevelopment Area No. 4 and their acquisition by the Agency was in accordance with the Port Project Redevelopment Plan adopted by Chapter 1984-23 of the Providence Code of Ordinances;

WHEREAS, pursuant to Resolution 214, approved June 30, 2010 (the "Resolution"), the Agency was authorized to and has purchased the American Tourister Parcel, Parcel 12 and the Port Parcels (collectively, the "Parcels") from the City for certain predevelopment work prior to selling them to one or more developers or other qualified persons or entities;

WHEREAS, the Resolution authorized the Agency to finance its purchase through a lease back to the City;

WHEREAS, the Agency issued its Taxable Lease Revenue Bonds Series 1 (the "Bonds") in the principal amount of \$12,600,000;

WHEREAS, RBS Citizens, N.A., purchased the Bonds;


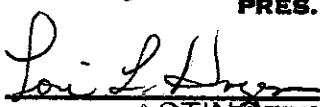
WHEREAS, the Agency and the City did enter into that certain Lease and Agreement dated August 27, 2010 and recorded in the City of Providence Land Evidence Records at Book 9803, Page 239 (the "Lease") wherein the Agency, as Lessor, did lease the Parcels to the City, as Lessee;

WHEREAS, the Agency granted that certain Mortgage, Security Agreement and Collateral Assignment of Leases and Rents as security for payment of the Bonds, which is recorded in the City of Providence Land Evidence Records at Book 9803, Page 209; and


IN CITY COUNCIL

JUL 17 2014

READ AND PASSED


PRES.

ACTING CLERK

I HEREBY APPROVE.


Mayor
Date: 7/24/14

WHEREAS, the City desires to amend the Lease in order to clarify certain provisions contained therein that are inconsistent with the objectives of the Resolution and project contemplated therein by modifying provisions relating to (i) subleasing the Parcels back to the Agency, (ii) allowing for the substitution of other real estate of equal or greater value for some of the Parcels, or providing for their withdrawal from the Lease by the Agency, and (iii) waiving and terminating the City's option to purchase the Parcels;

II. RECITALS CONCERNING SUBLEASING OF THE PARCELS BACK TO THE AGENCY

WHEREAS, the City Council hereby acknowledges, agrees and confirms that it previously authorized the Mayor to sublease the Port Parcels to the Agency for a rental of \$1 per year and to take any and all action and to execute, file and deliver such sublease and any and all agreements, notes and other documents in such form as he may deem necessary or desirable to implement the Agency's financing of the projects as authorized by the Resolution;

WHEREAS, the City desires to confirm the purpose of the Resolution by affirming the City's intention and authorization to sublease not only the Port Parcels, but also, all of the Parcels back to the Agency;

WHEREAS, the City further wishes to confirm the purpose of the Resolution by affirming the Agency's authorization to sub-sublease the American Tourister and Parcel 12 Parcels to persons or entities that the Agency deems to be appropriate; and

WHEREAS, the City desires to amend the terms of the Lease to evidence the City's intention to (a) sub-lease not only the ProvPort Parcels, but also, all of the Parcels back to the Agency; and (b) permit the Agency to sub-sublease the American Tourister and Parcel 12 Parcels;

III. RECITALS CONCERNING THE SUBSTITUTION OF LAND OR WITHDRAWAL OF LAND FROM THE LEASE

WHEREAS, the Lease did not provide the Agency with a means of substituting real estate of equal or greater value in event any of the Parcels are sold;

WHEREAS, the Lease also did not provide the Agency with a means of withdrawing some or all of the Parcels from the Lease in the event that all outstanding amounts owed under the Bonds or Notes (as defined in the Lease) for such Parcel(s) are paid;

WHEREAS, the objective of having the Agency sell the Parcels to one or more developers or other qualified persons or entities, as stated in the Resolution, is inconsistent with and impeded by the inability of the Agency to either (a) substitute real estate of equal or greater value for Parcels that are sold, or (b) withdraw said Parcel(s) from the Lease provided the outstanding amount owed under the Bonds or Notes are paid; and

WHEREAS, the City desires to amend the terms of the Lease to evidence the City's intention to: (a) permit the City and the Agency to substitute other pieces of real property as "Leased Land" if necessary, in the event any of the Parcels are sold; and (b) clarify the Agency's ability to withdraw some or all of the Parcels from the Lease and convey the same to one or more developers or other qualified persons or entities;

IV. RECITALS CONCERNING THE CITY'S PURCHASE OPTION

WHEREAS, reference is hereby made to the third recital of the Resolution which stated that the City had requested that the Agency purchase the Parcels from the City for certain predevelopment work prior to selling them to a developer or other qualified person;

WHEREAS, the foregoing clearly contemplates the Agency (and not the City) selling (or otherwise conveying) the Parcels;

WHEREAS, reference is also hereby made to the City's option to purchase the Parcels as set forth in Sections 8.1 to 8.5 of the Lease (the "Option");

WHEREAS, the language from the Resolution referenced above contemplating the Agency selling the Parcels to one or more developers or other qualified persons or entities is inconsistent with and impeded by the City's Option to purchase the Parcels from the Agency; and

WHEREAS, in order to permit the Agency to sell the Parcels the City desires to amend the Lease to waive and terminate the Option;

NOW, THEREFORE, BE IT RESOLVED, THAT:

1. For purposes of this resolution

"American Tourister Parcel" means the parcel of land, together with any improvements thereon, which the City currently leases from the Agency and located at 70 Houghton Street, identified on Tax Assessor's Plat 78 as Lot 448.

"Parcel 12" means the parcel of land which the City currently leases from the Agency and located at 5 Exchange Street, identified on Tax Assessor's Plat 19 as Lot 120.

"Port Parcels" means the parcels of land together with improvements thereon which the City currently leases from the Agency and located at 0 Harborside Boulevard and 140 Terminal Road, identified on Tax Assessor's Plat 56 as Lots 288 and 332, respectively.

2. The City Council hereby acknowledges, agrees and confirms that the Lease permits the sublease of all of the Parcels to the Agency, and further acknowledges that the sublease of the Parcels to the Agency is necessary for the effective implementation and execution of the Project (as defined in the Lease).

3. The City Council hereby acknowledges that the amendment of the Lease in order to clarify the City's ability to sublease all of the Parcels back to the Agency is necessary and proper for the Agency's implementation of the Project, and hereby consents to the amendment of the Lease, as more particularly set forth in the Amendment to Lease attached hereto as Exhibit A (the **"Amendment"**), in order to delete Section 6.8 of the Lease and replace it with the following:

SECTION 6.8 SUBLETTING. Notwithstanding anything contained herein to the contrary, the City is authorized to sublease some or all of its interest in the Project to the Agency for a rent amount of \$1.00 per year, and the Agency hereby consents to such sublease. The foregoing sublease to the Agency shall not become merged in fee title. Any other sublease of space in the Project shall not be permitted without the prior written consent of the Agency (which consent shall not be unreasonably withheld). In addition, the Agency is authorized to sub-sublet the Parcels to any persons or entities which the Agency deems to be appropriate and beneficial.

5. The City Council hereby acknowledges that permitting the substitution of other real estate (of equal or greater value), as well as the withdrawal of some or all of the Parcels from the Lease upon payment in full of the Bonds and Notes (as defined in the Lease) allocable to such Parcel(s), is both necessary and desirable in order to effectively achieve the objectives of the Resolution, and hereby authorizes the amendment of the Lease to permit the same.

6. In accordance with the foregoing, the City Council hereby consents to the amendment of the Lease (as set forth in the Amendment), in order to delete the definition of "Leased Land" set forth in Section 1.1 of the Lease and replace the same with the following:

"Leased Land" shall mean the real estate owned by the Agency and leased to the City, as more particularly described in Exhibits A-1 to A-3 hereto (as such Exhibits may be amended from time to time, as discussed below) together with all improvements thereon. The real estate and improvements described in Exhibits A-1 to A-3 may be substituted with property of equal or greater value upon written agreement of the Agency and the City, and with written notice to any Trustee and upon written consent of the holder(s) of any Outstanding Bonds or Notes, which consent is at the absolute and sole discretion of such holder(s)

7. The City Council acknowledges and agrees that the City's option to purchase the Parcels or direct their sale is inconsistent with and impedes the objective of having the Agency sell (or otherwise convey) the Parcels to one or more developers or other qualified persons or entities, and for consideration of \$1.00, hereby waives and cancels any and all rights the City

may have to purchase the Parcels (which shall include any right it may have to purchase or direct the sale of any Leased Land, as defined in the Lease, as such definition may be amended from time to time), or any part thereof, or to direct their sale, as set forth in Sections 8.1 through 8.5 of the Lease, or as set forth in any other agreement entered into between the City and the Agency, and such options are hereby declared null and void, as though never agreed to by the City or the Agency. The City Council hereby consents to the amendment of the Lease (as set forth in the Amendment) in order to modify Sections 8.1 to 8.5 as follows:

Section 8.1 is hereby deleted in its entirety and replaced with the following:

SECTION 8.1 [Intentionally Omitted]

Sections 8.2 and 8.3 are hereby deleted in their entirety and replaced with the following:

SECTION 8.2 OPTION TO TERMINATE PRIOR TO EXPIRATION OF LEASE OTHER THAN DUE TO CITY'S NONAPPROPRIATION.

(a) The Agency shall have the right to terminate this Agreement at any time prior to the expiration of the Lease Term upon receipt of payment of the price set forth in Section 8.3(b) of this Agreement (the "Project Termination Price"). The Agency may exercise such right by giving written notice to the City at least ninety (90) days prior to the date of such termination.

(b) The Agency shall have the right to terminate this Agreement with respect to any parcel which is a part of the Project at any time prior to the expiration of the Lease Term upon receipt of payment of the price set forth in Section 8.3(c) of this Agreement (the "Parcel Termination Price"), upon a showing that the Rentals previously paid equal or exceed the Parcel Termination Price and that the appraised value of the Leased Land that remains subject to the Agreement is at least equal to the principal amount and redemption premium, if any, of all Bonds and Notes Outstanding. The Agency may exercise such right by giving written notice to the City at least ninety (90) days prior to the date of such termination. Provided, however, that the Agency's right to terminate under this subpart is subject to the written consent of the holder(s) of any Bonds or Notes that remain Outstanding, which consent shall be at the absolute and sole discretion of such holder(s).

SECTION 8.3 TERMINATION PRICE.

(a) [Intentionally Omitted].

(b) The Project Termination Price shall be the amount, if any, which will be sufficient to provide for payment in full of all Bonds and Notes in conformity with the General Bond Resolution, the Series Resolution, the Note Resolution and all other obligations incurred by the Agency in connection with the Project and under the General Bond Resolution, the Series Resolution, the Note Resolution and this Agreement, plus the additional sum of One Dollar (\$1.00). Such payment in full of the Bonds and Notes shall include the principal of all the Bonds and Notes, the redemption premium, if any, and all interest accrued and to accrue on the Bonds and Notes to their earliest redemption date or their maturity date, whichever is earlier, and any expenses in connection with such payment in full. The obligation to make payments required by this Paragraph (b) shall be satisfied in the same manner as Bonds or Notes are deemed paid pursuant to the General Bond Resolution, the Series Resolution and the Note Resolution.

(c) The Parcel Termination Price shall be the amount, if any, which, will be sufficient to provide for payment in full of the Bonds and Notes allocable to such parcel in conformity with the General Bond Resolution, the Series Resolution, the Note Resolution, and all other obligations incurred by the Agency in connection with the parcel as part of the Project and under the General Bond Resolution, the Series Resolution, the Note Resolution, and this Agreement, plus the additional sum of One Dollar (\$1.00), provided, however, that such amount shall be subject to the written approval and consent of the holder(s) of any Bonds or Notes that remain Outstanding, which consent and approval shall be at the absolute and sole discretion of such holder(s). Such payment shall include the principal of the allocable Bonds and Notes, the redemption premium thereon, if any, and all interest accrued or to accrue on the allocable Bonds and Notes to their maturity date or earlier redemption date (if the conditions for redemption (other than the passage of time or giving of notice) are satisfied as of the date of payment), and any expenses in connection with such payment. The obligation to make payments required by this Paragraph (c) shall be satisfied in the same manner as Bonds or Notes are deemed paid pursuant to the General Bond Resolution, the Series Resolution, and the Note Resolution.

Section 8.4 is hereby deleted in its entirety and replaced with the following:

SECTION 8.4 [Intentionally Omitted].

Section 8.5 is hereby deleted in its entirety and replaced with the following:

SECTION 8.5 SALE OF PROJECT BY AGENCY. Notwithstanding anything contained herein to the contrary, in the event that some or all of the parcels comprising the Leased Land are withdrawn and this Agreement with respect thereto terminated (as set forth above) the Agency hereby covenants and agrees that seventy percent (70%) of any net proceeds received by the Agency from the sale of such parcel(s) to a third party individual or entity for an amount in excess of the Parcel Termination Price or Project Termination Price (as applicable) (which, to be clear, may be \$1.00 pursuant to the provisions set forth above) prior to the expiration of the Lease Term shall be remitted to the City. As used herein, "net proceeds" shall equal the amount of the proceeds actually received by the Agency in connection with the sale of a parcel to a third party individual or entity, minus the Parcel Termination Price for such parcel or Project Termination Price (as applicable), as well as all costs incurred by the Agency in redeveloping, improving, or remediating the parcel, marketing the same for sale, and consummating the sale of such parcel, including without limitation any costs associated with the environmental remediation of the parcel, demolition of structures on such parcel, any improvement allowance or other financial inducement, attorneys fees, realtors commissions, title expenses, conveyance fees, closing costs, and any other costs or expenses incurred by the Agency in connection with the redevelopment, improvement, remediation, marketing and sale of such parcel.

8. The City Council hereby authorizes the Mayor to enter into the Amendment, and the Mayor is authorized to take any and all action and to execute, file, and deliver the Amendment and any and all other documents in such form as he may deem necessary or desirable to implement the amendments to the Lease described herein.

9. This Resolution shall take effect on passage.

EXHIBIT A
AMENDMENT TO LEASE

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this “**Amendment**” or “**First Amendment**”) dated as of the ___ day of _____, 2014 (the “**Effective Date**”), between the Providence Redevelopment Agency, a redevelopment agency created pursuant to Chapters 31 through 33, inclusive, of Title 45 of the General Laws of the State of Rhode Island (“**Agency**”) and the City of Providence (the “**City**” or the “**Lessee**”).

WITNESSETH:

WHEREAS, Agency and City entered into that certain Lease and Agreement (Miscellaneous Parcels Project) dated as of August 27, 2010, and recorded in the land evidence records for the City of Providence in Book 9803 at Page 239 (the “**Lease**”) concerning those certain parcels of land located within the City of Providence, as more particularly described therein (the “**Property**”); and

WHEREAS, Agency and City desire to amend the Lease as more fully set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** Unless otherwise specifically set forth herein, all capitalized terms herein shall have the same meaning as set forth in the Lease.
2. **Subletting.** Section 6.8 of the Lease is hereby deleted in its entirety and replace with the following:

SECTION 6.8 SUBLETTING. Notwithstanding anything contained herein to the contrary, the City is authorized to sublease some or all of its interest in the Project to the Agency for a rent amount of \$1.00 per year, irrespective of the requirements of City departments, agencies and employees, and the Agency hereby consents to such sublease. The foregoing sublease to the Agency shall not become merged in fee title. Any other sublease of space in the Project shall not be permitted without the prior written consent of the Agency (which consent shall not be unreasonably withheld). In addition, the Agency is authorized to sub-sublet the Parcels to any persons or entities which the Agency deems to be appropriate and beneficial.

3. **Leased Land.** The definition of “Leased Land” set forth in Section 1.1 of the Lease is hereby deleted in its entirety and replaced with the following:

“Leased Land” shall mean the real estate owned by the Agency and leased to the City, as more particularly described in Exhibits A-1 to A-3 hereto (as such Exhibits may be amended from time to time, as discussed below) together with all improvements thereon. The real estate and improvements described in Exhibits A-1 to A-3 may be substituted with property of equal or greater value upon written agreement of the Agency and the City, and with written notice to any Trustee and upon written consent of the holder(s) of any Outstanding Bonds or Notes, which consent is at the absolute and sole discretion of such holder(s).

4. **Conveyance of Project.** Notwithstanding anything contained in Sections 8.1 to 8.5 of the Lease, the City of Providence hereby waives any and all rights it may have to purchase the Project (or any part thereof) or to direct its sale, and such options are hereby declared null and void, as though never agreed to by the City or the Agency. Any references in the Lease to the “City’s Purchase Option” or related

concept are hereby amended to refer to the Agency's option to terminate the Agreement with respect the Project (or any part thereof) as described below. Without limiting the foregoing, Sections 8.1 to 8.5 are hereby modified as follows:

Section 8.1 is hereby deleted in its entirety and replaced with the following:

SECTION 8.1 [Intentionally Omitted]

Sections 8.2 and 8.3 are hereby deleted in their entirety and replaced with the following:

SECTION 8.2 OPTION TO TERMINATE PRIOR TO EXPIRATION OF LEASE OTHER THAN DUE TO CITY'S NONAPPROPRIATION.

(a) The Agency shall have the right to terminate this Agreement at any time prior to the expiration of the Lease Term upon receipt of payment of the price set forth in Section 8.3(b) of this Agreement (the "Project Termination Price"). The Agency may exercise such right by giving written notice to the City at least ninety (90) days prior to the date of such termination.

(b) The Agency shall have the right to terminate this Agreement with respect to any parcel which is a part of the Project at any time prior to the expiration of the Lease Term upon receipt of payment of the price set forth in Section 8.3(c) of this Agreement (the "Parcel Termination Price"), or upon a showing that the Rentals previously paid equal or exceed the Parcel Termination Price and that the appraised value of the Leased Land that remains subject to the Agreement is at least equal to the principal amount and redemption premium, if any, of all Bonds and Notes Outstanding. The Agency may exercise such right by giving written notice to the City at least ninety (90) days prior to the date of such termination. Provided, however, that the Agency's right to terminate under this subpart is subject to the written consent of the holder(s) of any Bonds or Notes that remain Outstanding, which consent shall be at the absolute and sole discretion of such holder(s).

SECTION 8.3 TERMINATION PRICE.

(a) [Intentionally Omitted].

(b) The Project Termination Price shall be the amount, if any, which will be sufficient to provide for payment in full of all Bonds and Notes in conformity with the General Bond Resolution, the Series Resolution, the Note Resolution and all other obligations incurred by the Agency in connection with the Project and under the General Bond Resolution, the Series Resolution, the Note Resolution and this Agreement, plus the additional sum of One Dollar (\$1.00). Such payment in full of the Bonds and Notes shall include the principal of all the Bonds and Notes, the redemption premium, if any, and all interest accrued and to accrue on the Bonds and Notes to their earliest redemption date or their maturity date, whichever is earlier, and any expenses in connection with such payment in full. The obligation to make payments required by this Paragraph (b) shall be satisfied in the same manner as Bonds or Notes are deemed paid pursuant to the General Bond Resolution, the Series Resolution and the Note Resolution.

(c) The Parcel Termination Price shall be the amount, if any, which will be sufficient to provide for payment in full of the Bonds and Notes allocable to such parcel in conformity with the General Bond Resolution, the Series Resolution, the Note Resolution, and all other obligations incurred by the Agency in connection with the parcel as part of the Project and under the General Bond Resolution, the Series Resolution,

the Note Resolution, and this Agreement, plus the additional sum of One Dollar (\$1.00), provided, however, that such amount shall be subject to the written approval and consent of the holder(s) of any Bonds or Notes that remain Outstanding, which consent and approval shall be at the absolute and sole discretion of such holder(s). Such payment shall include the principal of the allocable Bonds and Notes, the redemption premium thereon, if any, and all interest accrued or to accrue on the allocable Bonds and Notes to their maturity date or earlier redemption date (if the conditions for redemption (other than the passage of time or giving of notice) are satisfied as of the date of payment), and any expenses in connection with such payment. The obligation to make payments required by this Paragraph (c) shall be satisfied in the same manner as Bonds or Notes are deemed paid pursuant to the General Bond Resolution, the Series Resolution, and the Note Resolution.

Section 8.4 is hereby deleted in its entirety and replaced with the following:

SECTION 8.4 [Intentionally Omitted].

Section 8.5 is hereby deleted in its entirety and replaced with the following:

SECTION 8.5 SALE OF PROJECT BY AGENCY. Notwithstanding anything contained herein to the contrary, in the event that some or all of the parcels comprising the Leased Land are withdrawn and this Agreement with respect thereto terminated (as set forth above) the Agency hereby covenants and agrees that seventy percent (70%) of any net proceeds received by the Agency from the sale of such parcel(s) to a third party individual or entity for an amount in excess of the Parcel Termination Price or Project Termination Price (as applicable) (which, to be clear, may be \$1.00 pursuant to the provisions set forth above) prior to the expiration of the Lease Term shall be remitted to the City. As used herein, "net proceeds" shall equal the amount of the proceeds actually received by the Agency in connection with the sale of a parcel to a third party individual or entity, minus the Parcel Termination Price for such parcel or Project Termination Price (as applicable), as well as all costs incurred by the Agency in redeveloping, improving, or remediating the parcel, marketing the same for sale, and consummating the sale of such parcel, including without limitation any costs associated with the environmental remediation of the parcel, demolition of structures on such parcel, any improvement allowance or other financial inducement, attorneys fees, realtors commissions, title expenses, conveyance fees, closing costs, and any other costs or expenses incurred by the Agency in connection with the redevelopment, improvement, remediation, marketing and sale of such parcel.

5. Miscellaneous. Except as otherwise expressly amended, modified and provided for in this Amendment, the City and Agency hereby ratify all of the provisions, covenants and conditions of the Lease, and such provisions, covenants and conditions shall be deemed to be incorporated herein and made a part hereof and shall continue in full force and effect. This Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, Agency and City have executed the Amendment as of the day and year first written above.

CITY OF PROVIDENCE

By _____
Angel Tavares, Mayor

STATE OF RHODE ISLAND) SS
COUNTY OF PROVIDENCE)

In the City of Providence, in said County and State, on the ____ day of _____, 20__, before me appeared the above named Angel Tavares, to me known and known by me to be the Mayor of the City of Providence, and he acknowledged the foregoing instrument by him so executed to be his free act and deed in said capacity and the free act and deed of the City of Providence.

Notary Public: _____
My Commission Expires: _____

PROVIDENCE REDEVELOPMENT AGENCY

By: _____
Name: _____
Title: _____

STATE OF RHODE ISLAND) SS
COUNTY OF PROVIDENCE)

In the City of Providence, in said County and State, on the ____ day of _____, 20__, before me appeared the above named _____, to me known and known by me to be the _____ of said PROVIDENCE REDEVELOPMENT AGENCY, and he acknowledged the foregoing instrument by him so executed to be his free act and deed in said capacity and the free act and deed of said PROVIDENCE REDEVELOPMENT AGENCY.

Notary Public: _____
My Commission Expires: _____