

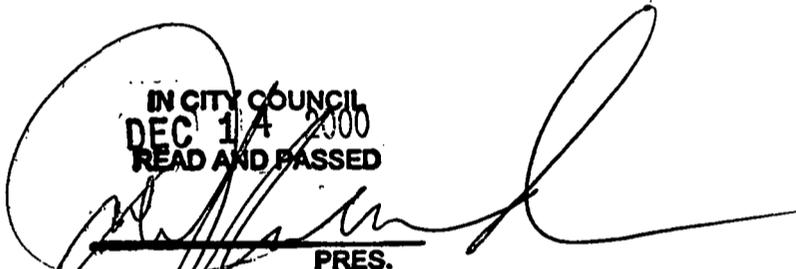
RESOLUTION OF THE CITY COUNCIL

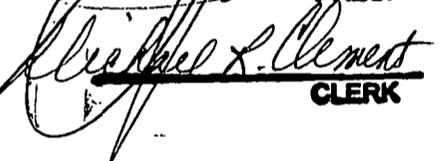
No. 770

Approved December 15, 2000

RESOLVED, that His Honor, the Mayor, is hereby authorized to execute all documents relative to an agreement among the PROVIDENCE REDEVELOPMENT AGENCY, the CITY OF PROVIDENCE, and STATE STREET BANK & TRUST COMPANY relative to certificates of participation for PROVPORT, in substantially the form attached.

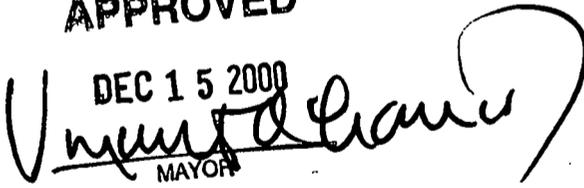
IN CITY COUNCIL
DEC 14 2000
READ AND PASSED


PRES.


CLERK

APPROVED

DEC 15 2000


MAYOR

CLERK
PRES.
READ AND PASSED
IN CITY COUNCIL

IN CITY COUNCIL
Nov. 2, 2000
FIRST READING
REFERRED TO COMMITTEE ON
FINANCE

Mectul K. Clayton

THE COMMITTEE ON
FINANCE
Approves Passage of
The Within Resolution

As Amended
Beth A. Garcia
Clerk
11/15/2000

Councilman Allen + Councilman Aponte

This AGREEMENT dated as of September 1, 2000, is entered into by and among PROVPORT, INC., a Rhode Island non-profit corporation (the "Corporation"), the PROVIDENCE REDEVELOPMENT AGENCY (the "Agency"), THE CITY OF PROVIDENCE, RHODE ISLAND (the "City") and STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company, as trustee and successor in interest to Fleet National Bank (the "Trustee").

W I T N E S S E T H:

WHEREAS, the Agency issued its Certificates of Participation (Port of Providence Lease) Series 1994 A, in the original aggregate principal amount of \$19,700,000 (the "Certificates") under a Trust Agreement, dated as of September 1, 1994 (the "Trust Agreement"), by and among the City, the Agency, the Corporation and Fleet National Bank, as trustee, to fund the Corporation's acquisition from the City of the City-owned marine terminal and related appurtenant facilities comprising the Port of Providence (the "Facilities") pursuant to a Port of Providence Purchase Agreement, dated as of September 1, 1994, by and between the City and the Corporation; and

WHEREAS, capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Trust Agreement; and

WHEREAS, the Certificates currently are outstanding in the aggregate principal amount of \$18,490,000; and

WHEREAS, Prudential Municipal Bond Fund, High Income Series, Van Kampen Tax Free High Income Fund, Van Kampen Municipal Income Fund, Van Kampen National Municipal Trust, and John Hancock High Yield Tax Free Fund, collectively, (the "Owners") are the beneficial owners of 100% of the outstanding Certificates;

WHEREAS, contemporaneously with the Corporation's purchase of the Facilities from the City, (i) the Corporation leased the Facilities to the Agency pursuant to a Facilities Lease, dated as of September 1, 1994 (the "Facilities Lease"), by and between the Agency and the Corporation, (ii) the Agency subleased the Facilities back to the Corporation pursuant to a Facilities Sublease, dated as of September 1, 1994 (the "Facilities Sublease"), by and between the Agency and the Corporation, (iii) the Corporation assigned all present and future lease agreements covering all or any part of the Facilities and improvements located thereon to the Agency pursuant to a Collateral Assignment of Rents and Leases, dated as of September 1, 1994 (the "Assignment of Rents"), by and between the Corporation and the Agency, and (iv) the Corporation and the Agency assigned their right to receive payments under the Facilities Lease (the "Lease Payments") and the Facilities Sublease (the "Sublease Payments"), respectively, and the Agency assigned its rights under the Assignment of Rents, to the Trustee, pursuant to an Assignment Agreement, dated as of September 1, 1994 (the "Assignment Agreement"), by and among the Corporation, the Agency and the Trustee; and

WHEREAS, on September 1, 1999 and March 1, 2000 there were on deposit in the Lease Payment Fund amounts insufficient to pay Lease Payments due on such dates, so, in accordance with the Trust Agreement, the Trustee transferred from the Reserve Account amounts sufficient to make such payments; and

WHEREAS, in accordance with Section 5.04(f) of the Trust Agreement, on September 1, 2000, the City shall deposit \$722,642.78 with the Trustee to replenish the Reserve Account; and

WHEREAS, the Executive Director of the Narragansett Bay Commission (the "Commission"), on behalf of the State of Rhode Island, pursuant to Title 37, Chapter 6 and Title 46, Chapter 25 of the Rhode Island General Laws (1956, as amended), and in exercise of the powers and authority conferred by said sections did, upon authorization by the State Properties Committee on March 21, 2000, take by condemnation a portion of the Facilities (the "Condemned Property") designated in the land records of the City of Providence, Rhode Island as Parcel No. "1A" of Plat No. 56; and

WHEREAS, in connection with said taking and simultaneously with this Agreement, the Corporation, as owner of the Condemned Property, is entering into an Advance Release dated _____, 2000 (the "Advance Release") with the Trustee, the City and the Agency, as interested parties; and

WHEREAS, the Owners have authorized and directed the Trustee to execute the Advance Release; and

WHEREAS, in accordance with the Advance Release, as compensation for the taking of the Condemned Property, the Commission, on behalf of the State of Rhode Island, has paid to the Trustee, on behalf of the Corporation, \$1,200,000 (the "Condemnation Proceeds"), and has paid to the Corporation for deposit with a federally-insured financial institution in the State of Rhode Island the sum of \$170,000 to be held in escrow to pay for any environmental remediation costs (the "Holdback") in accordance with the Escrow Conditions attached to the Advance Release; and

WHEREAS, the Corporation has reserved its right to challenge and may challenge the compensation paid by the Commission for the taking; any additional compensation paid by the Commission for the taking (the "Additional Condemnation Proceeds"), shall be paid to the Corporation for delivery to the Trustee and the City in accordance with the terms herein; and

WHEREAS, the terms of the Trust Agreement, the Facilities Lease and the Facilities Sublease provide that any condemnation proceeds shall be applied to (i) the repair, restoration or replacement of the Facilities or (ii) to the prepayment of all unpaid Principal Components of the Lease Payments; and

WHEREAS, the Certificates are not rated by any Rating Agency; and

WHEREAS, notwithstanding the provisions of the Trust Agreement, the Facilities Lease and the Facilities Sublease to the contrary, at the direction of and with the consent of the Owners, the Corporation, the Agency, the City and the Trustee seek to apply the Insurance Proceeds as set forth herein to (i) effect a partial prepayment of the Principal Components of the Lease Payments, (ii) reimburse the City for its replenishment of the Reserve Account, and (iii) provide the Corporation with funds for capital improvements to the Facilities; and

WHEREAS, simultaneously herewith, in accordance with Sections 8.02 and 9.10 of the Trust Agreement, the Trustee has received an opinion of Counsel stating that this agreement has been duly and lawfully entered into by the parties hereto (other than the Trustee and Owners), is authorized or lawfully entered into by the parties hereto (other than the Trustee and the Owners), is authorized or permitted by the Trust Agreement and is valid and binding upon the parties hereto (other than the Trustee and Owners) in accordance with its terms, constitutes a Supplemental Trust Agreement as provided by Section 8.02 of the Trust Agreement, and constitutes an amendment, alteration or modification of the Facilities Lease and the Facilities Sublease as provided by Section 9.10 of the Trust Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, at the direction and with the consent of the Owners, the parties hereto agree as follows:

Section 1. Notwithstanding anything in the Trust Agreement to the contrary, including without limitation Section 5.09, in accordance with the Advance Release, the sum of \$1,200,000 of Condemnation Proceeds shall be deposited with the Trustee and applied as follows:

(i) \$700,000 shall be deposited to the Lease Payment Account and applied first to the payment of outstanding fees and expenses of the Trustee in the amount of \$25,000 and the balance to the prepayment of \$675,000 portion of the Principal Component of the Certificates due September 1, 2024 in accordance with Section 3 below.

(ii) \$300,000 shall be delivered to the City as a partial reimbursement for amounts delivered by the City to the Trustee to replenish the Reserve Account as described above in accordance with the written instructions set forth in Schedule A hereto; provided, however, the City's acceptance of such \$300,000 shall be and is without prejudice to such rights as the City may have, if any, to recover from the Corporation amounts which have been delivered by the City to the Trustee to replenish the Reserve Account.

(iii) \$200,000 shall be deposited into the Reserve Account and applied in accordance with the Trust Agreement.

Section 2. (a) The Advance Release provides that the Holdback be held in escrow in accordance with the terms of the Advance Release. Notwithstanding anything to the contrary in the Trust Agreement, the parties hereto agree as follows:

- (i) that the portion, if any, of the Holdback released from escrow in accordance with the terms of the Advance Release, shall be divided equally upon receipt by the Corporation between the City and the Trustee for the benefit of the owners of the Certificates.
- (ii) any Additional Condemnation Proceeds shall be divided equally upon receipt by the Corporation among the Corporation, the City and the Trustee.

(b) Any portion of the Holdback paid to the Trustee in accordance with this Section 2 shall be deposited in the Lease Payment Account and shall be applied at the election of those holding 100% of the outstanding Certificates in accordance with subsection (d) below.

(c) Any Additional Condemnation Proceeds paid to the Trustee in accordance with this Section 2 shall be deposited in the Lease Payment Account and subject to the conditions set forth in subsection (d) below, applied at the election of those holding 100% of the outstanding Certificates to either (i) payment of the next succeeding Interest Component or Principal Component in accordance with the Trust Agreement or (ii) prepayment of the Certificates in part on any Interest Component Payment Date in integrals of \$5,000, without premium, plus accrued interest to the prepayment date.

(d) The Trustee shall notify the owners of the Certificates in writing of the Trustee's receipt of any portion of the Holdback or Additional Condemnation Proceeds ("Payment Notice"). Such Payment Notice shall be sent by regular mail and deemed received by the owners of the Certificates within three (3) Business Days of being mailed by the Trustee. Each owner of a Certificate shall within 60 days of its receipt of a Payment Notice, instruct the Trustee in writing to apply the funds subject to the Payment Notice to either (i) payment of the next succeeding Interest Component or Principal Component in accordance with the Trust Agreement or (ii) prepayment of the Certificates in part on any Interest Component Payment Date in integrals of \$5,000, without premium, plus accrued interest to the prepayment date; provided, however, if a consensus cannot be reached among those holding 100% of the outstanding Certificates as to how the funds subject to the Payment Notice are to be applied, the Trustee shall deposit the amounts subject to the Payment Notice into the Capital Improvement Account and applied in accordance with the terms of the Trust Agreement.

Section 3. Notwithstanding anything in the Trust Agreement, Facilities Lease or Facilities Sublease to the contrary including without limitation the provisions listed in Schedule B hereto, which are hereby waived or modified, the Agency hereby elects to prepay the Certificates in part without premium on October [], 2000 (the "Prepayment Date"), plus accrued interest to the Prepayment Date. The aggregate Principal Component to be prepaid on

the Prepayment Date is \$675,000, which sum shall be applied to Certificates due September 1, 2024. After the Prepayment Date, the remaining total Principal Component of Certificates due September 1, 2024 shall be \$990,000. Accordingly, attached as Schedule C is a revised Schedule of Lease Payments, which schedule shall replace the schedule contained in Exhibit A to the Facilities Lease.

Section 4. Notwithstanding anything in the Trust Agreement, Facilities Lease or Facilities Sublease to the contrary, the parties hereto agree to waive any default or Event of Default resulting from or to result in the future from the actions taken in accordance with this Agreement and the Advance Release; provided, however, the City's acceptance of the \$300,000 described in Section 1 (ii) of this Agreement shall be and is without prejudice to such rights as the City may have, if any, to recover from the Corporation amounts which have been delivered by the City to the Trustee to replenish the Reserve Account.

Section 5. This Agreement was drafted by the Trustee for the convenience of the parties and it shall not be construed against the Trustee or the Owners by virtue of that fact.

Section 6. In the event any portion of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall be construed in accordance with the laws of the state of Rhode Island.

IN WITNESS WHEREOF, the undersigned has executed this agreement by its duly authorized officer as of the date first written above.

PROVPORT, INC.

PROVIDENCE REDEVELOPMENT AGENCY

THE CITY OF PROVIDENCE, RHODE
ISLAND

STATE STREET BANK AND TRUST
COMPANY, as Trustee

STATE OF RHODE ISLAND

City of Providence

On this _____ day of October, 2000, before me, a Notary Public, State of Rhode Island, duly commissioned and sworn, personally appeared _____, known to me to be the Chairman, that executed the within instrument on behalf of said corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to a resolution of the Board of Directors of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year in this certificate first above written.

Notary Public

STATE OF RHODE ISLAND

City of Providence

On this _____ day of October, 2000, before me, a Notary Public, State of Rhode Island, duly commissioned and sworn, personally appeared _____, known to me to be the Secretary of the Providence Redevelopment Agency, and _____, known to me to be the Chairman, that executed the within instrument on behalf of said Agency therein named, and acknowledged to me that such Agency executed the within instrument pursuant to a resolution of the Board of Directors of said Agency.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year in this certificate first above written.

Notary Public

STATE OF RHODE ISLAND

City of Providence

On this _____ day of October, 2000, before me, a Notary Public, State of Rhode Island, duly commissioned and sworn, personally appeared _____, known to me to be the Mayor for the City of Providence, Rhode Island, and acknowledged to me that the Mayor executed the Agreement in his capacity as Mayor on behalf of the City of Providence, Rhode Island.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year in this certificate first above written.

Notary Public

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

On this _____ day of October, 2000, before me, a Notary Public in and for said County and State, duly commissioned and sworn, do hereby certify that Susan M. Calise, known to me to be a Vice President of the above named State Street Bank and Trust Company, and known to me to be the person that executed the within instrument on behalf of said State Street Bank and Trust Company, appeared before me this day in person and acknowledged that she, as Vice President, signed and delivered the said instrument as the free and voluntary act as such Vice President thereunto duly authorized for the uses and purposes therein set forth..

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year in this certificate first above written.

Notary Public

[City please provide wire instructions for transfer of \$300,000]

Certain Provisions of the Trust Agreement, Facilities Lease and Facilities Sublease
Waived or Modified by the Agreement

Trust Agreement

Section 4.01(b) (prepayment from Condemnation Proceeds shall be in whole)

Section 4.02 (advance notice of prepayment to Trustee)

Section 4.03 (advance notice of prepayment to owners of Certificates)

Section __ (modification/amendment of Trust Agreement)

Facilities Lease

Section 3.2(b) (prepayment from Insurance Proceeds shall be in whole)

Section 5.4(a)(ii) (prepayment from Insurance Proceeds shall be in whole)

Section 5.5(b) (Agency must provide fund sufficient when added to Insurance Proceeds for prepayment to be in whole)

Section 8.1(c) (Event of Default due to Agency's failure to comply with any covenant)

Facilities Sublease

Section 3.2(b) (prepayment from Insurance Proceeds shall be in whole)

Section 5.4(a)(ii) (prepayment from Insurance Proceeds shall be in whole)

Section 5.5(b) (Agency must provide fund sufficient when added to Insurance Proceeds for prepayment to be in whole)

Section 8.1(c) (Event of Default due to Agency's failure to comply with any covenant)

Schedule of Lease Payments

[to follow - revised schedule to take into account prepayment. We need to discuss who is preparing this schedule. Under the Trust Agreement, it is the Agency's responsibility]