

9/20/94

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TOWN OF RIVERHEAD
COMMUNITY DEVELOPMENT AGENCY

Resolution # 5

At a special meeting of the Members of the Town of Riverhead Community Development Agency, Town of Riverhead, Suffolk County, New York, held at the Town of Riverhead Town Hall, 200 Howell Avenue, in Riverhead, New York, in said Town, on September 20, 1994, at 7:00 o'clock P.M., Prevailing Time.

The meeting was called to order by Member Stark, and upon roll being called, the following were

PRESENT:

James R. Stark, Member
Victor J. Prusinowski, Member
Frank W. Creighton, Member
Harriet A. Gilliam, Member

ABSENT:

Joseph F. Janoski, Chairman

The following resolution was offered by Member PRUSINOWSKI, who moved its adoption, seconded by Member GILLIAM to-wit:

A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF THE AGENCY'S EAST MAIN STREET URBAN RENEWAL BONDS, SERIES 1994 (OKEANOS AQUARIUM OF LONG ISLAND FACILITY), AND THE EXECUTION OF RELATED DOCUMENTS.

WHEREAS, by Articles 15 and 15-A, and Section 680-c of Article 15-B, of the General Municipal Law of the State of New York, as amended (collectively, the "Act"), the Town of Riverhead Community Development Agency (the "Agency") was created with the authority and power to, among other things, acquire, construct, reconstruct and equip certain projects in accordance with the Act and to issue its revenue bonds to pay costs of such projects;

WHEREAS, there has been submitted to the Agency a proposal by the Okeanos Ocean Research Foundation, Inc. ("Okeanos") (i) for the construction of an approximately 82,000 square foot aquarium and marine mammal/marine vertebrate/sea turtle rescue, rehabilitation and education center and the acquisition of land located on East Main Street, in Riverhead, New York, including original furnishings, equipment, machinery, apparatus, appurtenances and incidental improvements and expenses in connection therewith (the "Facility"), (ii) for the issuance of not exceeding \$58,000,000 East Main Street Urban Renewal Bonds, Series 1994 (Okeanos Aquarium of Long Island Facility) of the Agency (the "Bonds") to provide financing to pay costs of the Facility and capitalized interest and a debt service reserve fund on the Bonds and certain costs of issuance thereof, and (iii) to enter into a sale agreement, dated as of October 1, 1994, by and between the Agency and Okeanos pursuant to which Okeanos will occupy the Facility and will acquire the Facility from the Agency after the Bonds have been paid (the "Sale Agreement"); and

WHEREAS, PaineWebber Incorporated (the "Underwriter") has stated its intention to act as underwriter of the Bonds and to underwrite the issuance and sale of the Bonds;

NOW, THEREFORE, BE IT RESOLVED by the Agency as follows:

Section 1. The Agency hereby finds and determines that it is desirable and in the public interest for the Agency to purchase and construct the Facility and to issue the Bonds in an aggregate principal amount not to exceed \$58,000,000, or in such lesser aggregate principal amount as may be approved by the Chairman or the Vice Chairman, it being specifically recognized and understood that such amount will not be finally determined until such Bonds are sold, the Bonds to be issued upon the terms and conditions set forth in a certain Trust Indenture, dated as of October 1, 1994, and a certain First Supplemental Trust Indenture, dated as of October 1, 1994 (collectively the "Indenture"), by and between the Agency and United States Trust Company of New York (the "Trustee") and in a certain Bond Purchase Agreement dated the date of sale of the Bonds to the Underwriter (the "Bond Purchase Agreement"), by and between the Agency and the Underwriter.

Section 2. In consequence of the foregoing the Agency hereby determines to: (i) issue and sell the Bonds to the Underwriter pursuant to the terms and conditions set forth in the Indenture and the Bond Purchase Agreement; (ii) use the proceeds of the Bonds to acquire and construct the Facility pursuant to the Sale Agreement; (iii) secure the Bonds by pledging and assigning to the Trustee certain of the Agency's rights and remedies under the Sale Agreement and certain moneys due and to become due thereunder pursuant to the Indenture and by granting a mortgage on the Facility in favor of the Trustee pursuant to a Mortgage, dated as of October 1, 1994, by and between the Agency and the Trustee (the "Mortgage"); (iv) execute a Tax and Arbitrage Certificate in connection with the issuance of the Bonds (the "Tax and Arbitrage Certificate"); (v) execute a Preliminary and a Final Official Statement relating to the Bonds (the "Official Statement"), and authorize the distribution, publication and use thereof by the Underwriter in the offer and sale of the Bonds; (iv) execute a Payment in Lieu of Tax Agreement, dated as of October 1, 1994 (the "PILOT Agreement"), by and between the Agency, Okeanos and the Town of Riverhead (the "Town"); and (vi) do all other things necessary in connection with the issuance, execution, delivery and sale of the Bonds and the execution and delivery of the Financing Documents (as defined herein).

Section 3. The Agency is hereby authorized to accomplish the transaction described in Section 2 hereof and to do all things necessary or appropriate for the accomplishment thereof and all acts heretofore taken by the Agency with respect to such transaction are hereby ratified and approved.

Section 4. The form and substance of the Bonds (in substantially the form presented to this meeting), are hereby approved.

Section 5. The form and substance of the Indenture (in substantially the form presented to this meeting), are hereby approved.

Section 6. The form and substance of the Bond Purchase Agreement (in substantially the form presented to this meeting), are hereby approved.

Section 7. The form and substance of the Sale Agreement (in substantially the form presented to this meeting), are hereby approve.

Section 8. The form and substance of the Mortgage (in substantially the form presented to this meeting), are hereby approved.

Section 9. The form and substance of the PILOT Agreement (in substantially the form presented to this meeting), are hereby approved.

Section 10. The form and substance of the Official Statement (in substantially the form of the Preliminary Official Statement presented to this meeting), are hereby approved and the distribution and use of the Preliminary and Final Official Statement by the Underwriter in the offer and sale of the bonds is hereby authorized. The Agency hereby delegates to the Chairman or the Vice Chairman the authority to, on behalf of the Agency, to deem the Preliminary Official Statement "final" for purposes of Rule 15(c)2-12 promulgated by the United States Securities and Exchange Commission.

Section 11. The Agency is hereby authorized to issue, execute and deliver to the Underwriter the Bonds pursuant to the Act and in accordance with the provisions of the Indenture and the Bond Purchase Agreement, provided that:

(a) The Bonds authorized to be executed and delivered pursuant to this Section 11 shall (i) be issued, executed and delivered at such time as the Chairman or the Vice Chairman of the Agency shall determine, and (ii) bear interest at the rate or rates, be issued in such form, be subject to redemption prior to maturity, and have such other provisions and be issued in such manner and on such conditions as are set forth in the Bonds, the Indenture and the bond Purchase Agreement, which terms are specifically incorporated herein with the same force and effect as if fully set forth in this resolution.

(b) The Bonds shall be issued solely for the purpose of providing funds to finance the cost of acquiring and constructing the Facility pursuant to the Sale Agreement, and the administrative, legal, financial and other expenses of the Agency in connection with the Facility and incidental to the issuance of the Bonds, including the funding of the debt service reserve fund pursuant to the Indenture.

(c) The Bonds, the premium, if any, and the interest thereon are not and shall never be a debt of the State of New York or any political subdivision thereof (except the Town pursuant to a certain limited guarantee of the Bonds) and neither the State nor any political subdivision thereof shall be liable thereon (except the Town pursuant to a certain limited guarantee of the Bonds).

(d) Neither the members, officers, employees or agents of the Agency, nor any person executing the Bonds, the Indenture, the Bond Purchase Agreement, the Sale Agreement, the Mortgage, the PILOT Agreement or the Official Statement shall be liable thereon or be subject to any personal liability by reason of the issuance, sale, execution, delivery, distribution or use thereof.

(e) The Bonds, together with the premium, if any, and interest payable thereon, shall be special obligations of the Agency payable solely from the revenues and receipts derived from the Sale Agreement and the Mortgage and from the

enforcement of the security provided by the Indenture and the Mortgage.

(f) Notwithstanding any other provision of this resolution, the Agency covenants that it will make no use of the proceeds of the Bonds or of any other funds which, if such use had been reasonably expected on the date of issue of the Bonds, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(f) of the Code.

Section 12. (a) The Chairman or the Vice Chairman of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Indenture, the Bond Purchase Agreement, the Sale Agreement, the Mortgage, the PILOT Agreement and the Bonds (hereinafter collectively called the "Financial Documents") and the Official Statement and the Secretary of the Agency is hereby authorized to affix the sale of the Agency thereto and to attest the same, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman or the Vice Chairman shall approve, including a determination of the aggregate principal amount of the Bonds to be executed and delivered, the rate or rates of interest to be borne, and the amortization of the Bonds. The execution thereof by the Chairman or the Vice Chairman shall constitute conclusive evidence of such approval.

(b) The Chairman or the Vice Chairman is further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Indenture).

Section 13. The members, officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Financing Documents, and to execute and deliver all such additional certificates, agreements, instruments and documents, including the Tax and Arbitrage Certificate, pay all fees, charges and expenses and to do all such further acts and things as may be necessary, or in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Financing Documents binding upon the Agency.

Section 14. A copy of this resolution, together with the Financing Documents, shall be placed on file in the office of the Agency where the same shall be available for public inspection during regular business hours.

Section 15. This resolution shall take effect immediately and the Bonds are hereby ordered to be issued in accordance with this resolution.

The question of the adoption of the foregoing resolution was duly put to vote on roll call, which resulted as follows:

<u>Joseph F. Janoski</u>	VOTING	<u>Absent</u>
<u>James R. Stark</u>	VOTING	<u> </u>
<u>Victor J. Prusinowski</u>	VOTING	<u> </u>
<u>Frank W. Creighton</u>	VOTING	<u> </u>
<u>Harriet A. Gilliam</u>	VOTING	<u> </u>
<u> </u>	VOTING	<u> </u>

The resolution was thereupon declared duly adopted.

BY ACCLAMATION.

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

I, the undersigned Secretary of the Town of Riverhead Community Development Agency, Town of Riverhead, Suffolk County, New York, DO HEREBY CERTIFY:

1) That I have compared the annexed extract of the minutes of the meeting of the Members of said Agency, including the resolution contained therein, held on September 20, 1994, with the original thereof on file in my office, and that the same is a true and correct transcript therefrom and of the whole of said original so far as the same relates to the subject matters therein referred to; and

I FURTHER CERTIFY that all Members of said Agency had due notice of said meeting.

I FURTHER CERTIFY that, pursuant to Section 103 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public.

I FURTHER CERTIFY that, PRIOR to the time of said meeting, I duly caused a public notice of the time and place of said meeting to be given to the following newspapers and/or other news media as follows:

Newspaper and/or other news media

Date given

I FURTHER CERTIFY that PRIOR to the time of said meeting, I duly caused public notice of the time and place of said meeting to be conspicuously posted in the following designated public location(s) on the following dates:

Designated Location(s)
of posted notice _____

Date of Posting

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency on September 20, 1994.

Secretary
ANDREA LOHNEISS

(CORPORATE
SEAL)

STATE OF MINNESOTA
COUNTY OF _____
I, _____
of the County of _____
do hereby certify that _____
is the true and correct copy of _____