

RESOLUTION NO. 2018-23

A RESOLUTION AUTHORIZING THE ACQUISITION OF AN INTEREST IN REAL PROPERTY IN THE CITY OF CINCINNATI, OHIO AND THE CONSTRUCTION THEREON OF "PORT AUTHORITY FACILITIES" WITHIN THE MEANING OF SECTION 4582.21, OHIO REVISED CODE; AUTHORIZING AND APPROVING THE ISSUANCE AND SALE OF A MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$250,000,000.00 TAXABLE LEASE REVENUE BONDS, SERIES 2018 (FC CINCINNATI STADIUM PROJECT) FOR THE PURPOSE OF FINANCING COSTS OF "PORT AUTHORITY FACILITIES"; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE OF SAID REAL PROPERTY AND THE IMPROVEMENTS TO BE CONSTRUCTED THEREON TO WEST END VENTURE LLC; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSIGNMENT OF CONSTRUCTION CONTRACT, CONSTRUCTION MANAGER AT-RISK AGREEMENT, AN INDEMNITY AGREEMENT, A BOND PURCHASE AGREEMENT, AN ASSIGNMENT OF LEASES AND RENTS AND SUCH OTHER DOCUMENTS AS MAY BE NECESSARY OR DESIRABLE IN CONNECTION WITH THE ACQUISITION AND CONSTRUCTION OF SUCH PORT AUTHORITY FACILITIES.

WHEREAS, the Port of Greater Cincinnati Development Authority ("Port Authority"), a body corporate and politic duly organized and validly existing under the laws of the State of Ohio, is authorized and empowered, by virtue of the laws of the State of Ohio, including, without limitation, Section 13 of Article VIII, Ohio Constitution, and Sections 4582.21 through 4582.99 of the Ohio Revised Code to: (i) acquire, construct, furnish, equip, maintain, repair, sell, exchange, lease to or from, or lease with an option to purchase, convey other interests in real or personal property, or any combination thereof, related to, useful for, or in furtherance of any authorized purpose; (ii) issue revenue bonds for the purpose of financing costs of acquiring, constructing, installing, equipping or improving "port authority facilities," as defined in Section 4582.21, Ohio Revised Code; and (iii) to adopt this resolution (the "Bond Resolution") and to accept the Project Site Deed and enter into the Project Lease, the Assignment of Construction Contract, the Construction Manager At-Risk Agreement, the Indemnity Agreement, the Bond Purchase Agreement, and the Assignment of Leases and Rents, each defined herein, upon the terms and conditions provided herein and therein; and

WHEREAS, West End Venture LLC, an Ohio limited liability company ("Developer"), is or will soon become the owner of certain real property located in the West End neighborhood of the City of Cincinnati, situated between Wade Street on the north and Robert A. Taft Information Technology High School and 15th Street on the south, John Street on the west and Central Parkway on the east (the "Project Site") and intends to transfer the Project Site to the Port Authority; and

WHEREAS, upon acquisition of the Project Site, the Port Authority intends to construct, install and equip an approximately 25,000-seat Major League Soccer stadium and related private improvements (the "Project"), together with such public infrastructure improvements as are necessary to support the Project (the "Public Improvements"); and

WHEREAS, the Port Authority intends to engage Developer as its construction manager at-risk to construct, install and equip the Project and to lease the Project Site and the Project to Developer; and

WHEREAS, this Board has determined that (a) the Project constitutes a “port authority facility” within the meaning of the Act, creating or retaining jobs and employment opportunities or otherwise supporting economic development in Hamilton County, (b) the acquisition of the Project Site, and the construction, development, and improvement of the Project upon the Project Site will be consistent with the purpose of Section 13, of Article VIII, Ohio Constitution, to create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the State of Ohio within the jurisdiction of the Port Authority and (c) the Project will be consistent with the purposes of Section 4582.21(B)(1), Ohio Revised Code, by providing assistance to projects that enhance, foster, aid, or promote economic development within Hamilton County, Ohio.

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Port of Greater Cincinnati Development Authority:

Section 1. Definitions. In addition to the words and terms elsewhere defined in this Bond Resolution, the following words and terms as used in this Bond Resolution, in the Bond Purchase Agreement and in the Bonds shall have the following meanings unless otherwise provided in those documents and unless the context or use indicates another or different meaning or intent:

“Act” means Sections 4582.21 to 4582.99, inclusive, Ohio Revised Code, as enacted and amended from time to time pursuant to Sections 13 and 16 of Article VIII of the Ohio Constitution.

“Assignment of Construction Contract” means the Assignment of Construction Contract, dated as of the first day of the month in which the Closing Date occurs, by and between the Port Authority and Developer.

“Assignment of Leases and Rents” means the Assignment of Leases and Rents, dated as of the first day of the month in which the Closing Date occurs, given by the Port Authority to the Original Purchaser.

“Authorized Officer” means the Chair, Vice Chair, Secretary, President and CEO and any Assistant Secretary of this Board or of the Port Authority.

“Board” means the Board of Directors of the Port Authority.

“Bonds” means the Taxable Lease Revenue Bonds, Series 2018 (FC Cincinnati Stadium Project), which have been authorized by this Bond Resolution and are to be issued pursuant to the Bond Purchase Agreement.

“Bond Purchase Agreement” means the Bond Purchase Agreement by and among Developer, the Port Authority, and the Original Purchaser relating to the original purchase of the Bonds, as the same may be amended from time to time.

“Closing Date” means the date on which the Transaction Documents are fully executed and delivered and the first advance of the Bonds is issued.

“Construction Manager” means Developer, as construction manager at-risk for the Project.

“Construction Manager At-Risk Agreement” means the Construction Manager At-Risk Agreement, dated as of the date of the Project Lease, between the Port Authority and the Construction Manager.

“Holder” or “holder of a Bond” means the person in whose name a Bond is registered on the register maintained initially by the registrar.

“Indemnitor” means FC Cincinnati Holdings, LLC, a Delaware limited liability company.

“Indemnity Agreement” means the Indemnity Agreement, dated as of the first day of the month in which the Closing Date occurs, by and among Developer, Indemnitor and the Port Authority.

“Mortgage” means the Open-End Construction Mortgage, dated as of the first day of the month in which the Closing Date occurs, given by the Port Authority to the Original Purchaser.

“Original Purchaser” means such party or parties identified in the Bond Purchase Agreement.

“Pledged Revenues” shall mean the Base Rent paid by the Project Lessee under the Project Lease, which shall be equal to the Bond Service Charges due on the Bonds.

“Project Lease” means the lease of the Project and Project Site dated as of the first day of the month in which the Closing Date occurs, by and between the Port Authority, as Project Lessor, and Developer, as Project Lessee.

“Project Lessee” means Developer.

“Project Lessor” means the Port Authority.

“Project Site Deed” means the deed to the Project Site.

“State” means the State of Ohio.

“Transaction Documents” means each of the following documents if and to the extent entered into and accepted by the Port Authority in connection with the acquisition of the Project Site and the issuance of the Bonds: the Bond Purchase Agreement, the Assignment of Leases and Rents, the Project Site Deed, the Project Lease, the Construction Manager At-Risk Agreement, the Indemnity Agreement, the Assignment of Construction Contract, and the Mortgage.

The captions and headings in this Bond Resolution are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or sections of this Bond

Resolution. Words or terms used herein with initial capital letters and not defined herein shall have the meanings given to them in the Bond Purchase Agreement.

Section 2. Determinations by the Board as to the Bonds.

(a) It is necessary and proper and in the best interest of the Port Authority to, and the Port Authority shall, acquire a fee simple interest in and to the Project Site as provided and authorized herein and pursuant to the authority of the Act, for the purpose of constructing, improving and equipping the Project Site with the Project and in connection therewith the Port Authority shall accept the Project Site Deed and enter into the Project Lease and the other Transaction Documents as herein provided.

(b) This Board determines that: (i) It is necessary and proper and in the best interest of the Port Authority to, and the Port Authority shall, issue, sell and deliver the Bonds in the maximum aggregate principal amount of \$250,000,000.00, as provided and authorized herein and in the Bond Purchase Agreement and pursuant to the authority of the Act, all for the purpose of financing the costs of acquiring, constructing, and equipping the Project and to pay certain costs of issuance and related costs; (ii) the Project constitutes "port authority facilities" as defined in the Act, and are consistent with the purposes of the Act and Section 13 of Article VIII, Ohio Constitution; (iii) the utilization of the Project is in furtherance of the purposes of the Act and will enhance, foster, aid, provide and promote economic development, and commerce and will benefit the people of the State by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the State; and (iv) the acquisition, construction, and equipping of the Project requires the issuance, sale and delivery of the Bonds.

Section 3. Acceptance of Project Site Deed. It is hereby determined by this Board to accept the Project Site Deed from Developer to acquire a fee simple interest in and to the Project Site, in substantially the form now on file with the Secretary, subject only to those encumbrances which shall not interfere with the use of the Project Site for "authorized purposes," as such term is defined in the Act. Each Authorized Officer is authorized to take all steps necessary to effect acceptance of the Project Site Deed under the terms of this Bond Resolution. The purchase price for the Project Site shall be \$100.00, to be paid in advance, which this Board determines is in the best interests of the Port Authority and is in compliance with all legal requirements.

Section 4. Construction and Ownership of Project. It is hereby determined by the Board that the construction of the Project and of any improvements in connection with the Project has been and shall continue to be undertaken by the Port Authority in the manner provided in the Construction Manager At-Risk Agreement. The Board hereby approves the appointment of the Construction Manager as its agent under the Construction Manager At-Risk Agreement for purposes of acquisition, construction, equipping, installation and improvement of the Project, together with public improvements necessary therefor. In addition, each Authorized Officer, alone or together, in order to provide for the acquisition, construction, equipping, installation and improvement of the Project Site with the Project, is authorized and directed to execute and deliver, for and in the name of the Port Authority and on its behalf, subject to the certification of availability of funds therefor from monies available or to be available to pay costs of the Project, such contracts and agreements, including the Assignment of Construction Contract (collectively, "Construction

Agreements”) as may be necessary for the acquisition, construction, equipping, installation and improvement of the Project Site.

Based on information furnished to it, this Board has determined that the manner in which the Construction Agreements for acquisition, construction, equipping, installation and improving of the Project Site should be made is to negotiate the terms of the Construction Agreements, and this Board hereby finds that such negotiation best carries out the public purpose to be fulfilled by the Project.

Section 5. Lease of the Project Site and Project. Upon acquisition of the Project Site by acceptance of the Project Site Deed, it is hereby determined by this Board to enter into the Project Lease with the Project Lessee for an Initial Term of three hundred sixty (360) days in substantially the form now on file with the Secretary, but with such completions, revisions and modifications as are necessary to conform to this Bond Resolution. The form of the aforesaid document is approved with such changes therein as are not inconsistent with this Bond Resolution and not substantially adverse to the Port Authority and which are approved by the officer executing those documents. The approval of such changes, and that such changes are not substantially adverse to the Port Authority, shall be conclusively evidenced by the execution of those documents by that officer.

Pursuant to the Project Lease, the Project Lessee shall pay Initial Rent, Annual Rent, Base Rent, Additional Rent, and all expenses associated with the ongoing leasing, management and operation of the Project and Project Site, as such expenses arise during the term of the Project Lease. Each Authorized Officer is authorized to take all steps necessary to effect due execution and delivery of the Project Lease under the terms of this Bond Resolution. It is determined by this Board that the rent to be paid under the Project Lease, as provided in this Bond Resolution, is in the best interests of the Port Authority and is in compliance with all legal requirements.

Section 6. Construction Manager At-Risk Agreement. Each Authorized Officer is hereby authorized and directed, for and in the name of the Port Authority and on its behalf, alone or together with any other Authorized Officer, to execute and deliver to Developer the Construction Manager At-Risk Agreement in substantially the form now on file with the Secretary, but with such completions, revisions and modifications as are necessary to conform to this Bond Resolution and the requirements under the Project Lease. The form of the aforesaid document is approved with such changes therein as are not inconsistent with this Bond Resolution and not substantially adverse to the Port Authority and which are approved by the officer executing those documents. The approval of such changes, and that such changes are not substantially adverse to the Port Authority, shall be conclusively evidenced by the execution of those documents by that officer.

Section 7. Other Transaction Documents. Each Authorized Officer is authorized and directed to execute the other Transaction Documents and any certifications, agreements, assignments, mortgages, amendments, supplements and other instruments and documents to take such further actions, as are necessary or appropriate to provide for the acceptance of the Project Site Deed and the execution of the Project Lease, the construction of the Project, and to consummate the transactions contemplated in this Bond Resolution, the Project Lease, and the Bond Purchase Agreement. All actions heretofore taken by the officers and officials

of the Port Authority and of this Board in connection with the acceptance of the Project Site Deed and the execution of the Project Lease are hereby adopted, ratified and approved.

Section 8. Terms and Provisions of the Bonds. The Bonds shall be dated the Closing Date. The Bonds shall (i) be stated to mature on the date specified therein and in the Bond Purchase Agreement but not later than December 1, 2063; (ii) shall bear interest on the principal amount thereof from time to time outstanding at interest rates determined as provided, and payable as specified, therein and in the Bond Purchase Agreement, but not more than fifteen percent (15%) per annum; (iii) be payable solely from the Pledged Revenues as to principal and interest as provided therein; (iv) be subject to redemption as provided therein and in the Bond Purchase Agreement; and (v) require payment of other amounts as provided therein. The registrar of the Bonds shall initially be the Fiscal Officer of the Port Authority, and following the initial Advance, shall be the Original Purchaser.

Section 9. Security for the Bonds. As provided in the Transaction Documents, the Bonds shall be payable solely from the Pledged Revenues. Nothing in this Bond Resolution, the Bonds or the Transaction Documents shall constitute a general obligation, debt or bonded indebtedness of the Port Authority; neither the general resources of the Port Authority shall be required to be used, nor the general credit of the Port Authority pledged, for the performance of any duty under this Bond Resolution or the Bonds; and further, nothing therein gives the Holders of the Bonds, and they do not have, the right to have excises or taxes levied by this Board, or by the State or the taxing authority of any other political subdivision, for the payment of principal of, redemption premium, if any, and interest on the Bonds, but the Bonds are payable solely from the Pledged Revenues as provided herein and in the Bond Purchase Agreement, and each Bond shall contain a statement to that effect; provided, however, that nothing in this Bond Resolution shall be deemed to prohibit the Port Authority, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of this Bond Resolution or the Bonds.

Section 10. Other Documents and Further Actions. Each Authorized Officer is authorized and directed to execute any certifications, financing statements, assignments, agreements and instruments, to accept on behalf of the Port Authority such additional security, and to take such further actions as are necessary or appropriate to effect the transactions contemplated in the Transaction Documents and to consummate the transactions contemplated in this Bond Resolution and the Transaction Documents and to undertake, complete and finance the Project in accordance therewith, so long as such actions are not inconsistent with this Bond Resolution and not materially adverse to the Port Authority and are permitted by the Act and which shall be approved by the officers executing those documents. The determination that such actions and any documents executed pursuant to those actions are not materially adverse to the Port Authority shall be evidenced conclusively by the taking of those actions or execution of those documents by those officials. All actions heretofore taken by the officers and officials of the Port Authority in connection with the Project and the financing thereof are hereby ratified and approved.

Section 11. Severability. Each section of this Bond Resolution and each subdivision or paragraph of any section hereof and each sentence of a paragraph hereof is hereby declared to be independent and the finding or holding of any section or any subdivision, paragraph or sentence hereof to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision, paragraph or sentence of this Bond Resolution.

Section 12. Compliance With Open Meeting Law. This Board finds and determines that all formal actions of this Board and any of its committees concerning and relating to the adoption of this Bond Resolution were taken in an open meeting of this Board or its committees and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 13. Effective Date. This Bond Resolution shall take effect and be in force immediately upon its adoption.

Adopted: November 14, 2018

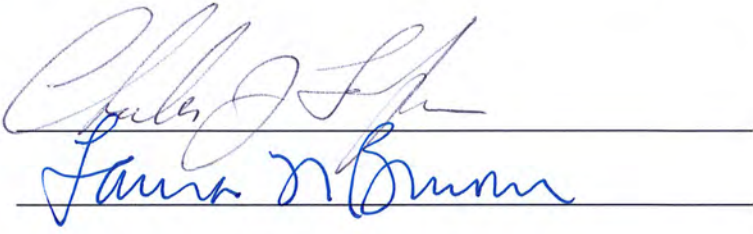
Yeas: 6

Chair

Nays: 0

Secretary

Abstentions: 2



Two handwritten signatures in blue ink are positioned above two horizontal lines. The top signature is cursive and appears to read 'Charles J. Smith'. The bottom signature is also cursive and appears to read 'James M. Brown'.