

RESOLUTION NO. 2019-20

A RESOLUTION AUTHORIZING THE ACQUISITION, CONSTRUCTION, AND DEVELOPMENT OR REDEVELOPMENT OF AND ACTIONS PERTAINING TO THE FINANCING OF REAL AND PERSONAL PROPERTY COMPRISING PORT AUTHORITY FACILITIES WITHIN THE UPTOWN NEIGHBORHOOD OF CINCINNATI; AUTHORIZING PHASED ACCEPTANCE OF TITLE TO AND THE IMPROVEMENT AND DEVELOPMENT OF THE PROJECT SITE, INCLUDING CONSTRUCTION AND EQUIPPING OF OFFICE BUILDINGS, A HOTEL, PARKING GARAGE AND RELATED INFRASTRUCTURE; AUTHORIZING THE EXECUTION AND DELIVERY OF A COOPERATIVE AGREEMENT AND SERVICE AGREEMENTS AND CONSTRUCTION MANAGER-AT-RISK AGREEMENT, ALL PERTAINING TO THE PROJECT; AUTHORIZING THE SIGNING OF RELATED DOCUMENTS AND AUTHORIZING AND APPROVING RELATED MATTERS

WHEREAS, the Port of Greater Cincinnati Development Authority (the "Port Authority") has been asked to assist in the cooperative redevelopment of the property (the "Project Site" consisting of Phase IA Parcel 1, Phase IA Parcel 2, Phase 1A Parcel 3, the Garage Parcel and the Phase IA Common Area Parcel, as described in the Cooperative Agreement) generally located between Martin Luther King JR. Drive on the north, Reading Road on the west, Lincoln Avenue on the south, and Interstate 71 on the east in the Uptown neighborhood of the City of Cincinnati, Ohio (the "City"), which redevelopment is expected to proceed pursuant to a Cooperative Tax Increment Financing and Development Agreement – Uptown Project - Phase IA, among the City, the Port Authority, Uptown SEQ Holdings, LLC or an affiliate thereof (the "Developer") and Terrex, LLC or an affiliate thereof (the "Cooperative Agreement"), in substantially the form on file with the Secretary of this Board; and

WHEREAS, the Project Site is currently owned by the Developer; and

WHEREAS, the plan for the redevelopment of the Project Site pursuant to the Cooperative Agreement (the "Development Plan"), includes without limitation the following:

- (i) passage by City Council of ordinances sufficient to authorize the City's participation in implementation of the Development Plan ("City Legislation"), including (A) an ordinance authorizing the Cooperative Agreement, and (B) an ordinance (the "TIF Ordinance") declaring the improvement (as defined in the Revised Code Section 5709.40) the Project Site to be a public purpose exempt from real property taxation for up to thirty (30) years pursuant to Revised Code Sections 5709.40 through 5709.43 (together with related statutory provisions, the "TIF Act"), requiring the owner or owners of the parcels within the Project Site to make service payments to the City ("Service Payments"), including payments in lieu of the exempted taxes, and authorizing the execution and delivery by the City of Service Agreements with the Developer, its affiliates, or other applicable parties, as fee owners of title to the Project Site or the applicable portion thereof (the "Service Agreements"); and

(ii) acquisition by the Port Authority of title to the Garage Parcel pursuant to a deed (the "Garage Parcel Deed") from the Developer the form of which is on file with the Secretary of this Board; and

(iii) subsequent acquisition by the Port Authority of title to the each of Phase IA Parcel 1, Phase IA Parcel 2, and Phase IA Parcel 3, pursuant to a series of deeds (collectively, the "Phase IA Parcel Deeds" and each a "Phase IA Parcel Deed") from the Developer or its affiliates; and

(iv) the acquisition, construction, development and operation of an approximately 1,300 to 1,500-space public parking garage (the "Parking Garage") and related public infrastructure improvements within the Garage Parcel (collectively the "Public Improvements") by or on behalf of the Authority; and

(v) the construction, equipping, furnishing, and development on Phase IA Parcel 1 of an office building containing approximately 205,000 square feet of office space expected to be leased to the University of Cincinnati, and related improvements ("Phase IA Structure 1") by or on behalf of the Authority; and

(vi) the construction, equipping, furnishing, and development on Phase IA Parcel 2 of an office building containing approximately 180,000 square feet of office space, and related improvements ("Phase IA Structure 2") by or on behalf of the Authority; and

(vii) the construction, equipping, furnishing, and development on Phase IA Parcel 3 of an approximately 158-room hotel and integrated retail space, and related improvements ("Phase IA Structure 3" and together with Phase IA Structure 1 and Phase IA Structure 2, the "Private Improvements" and the Private Improvements together with the Public Improvements, the "Project Improvements") by or on behalf of the Authority; and

(viii) the lease of Phase IA Structure 1 and Phase IA Structure 2 to the Developer or one or more affiliates thereof (collectively, the "Office Lessees" and each an "Office Lessee") pursuant to a lease agreement between the applicable Office Lessee and the Port Authority (the "Office Lease Agreements" and each an "Office Lease Agreement"); and

(ix) the lease of Phase IA Structure 3 to UC Hotel Partners, LLC or an affiliate thereof (the "Hotel Lessee" and together with the Office Lessees, the "Lessees" and each a "Lessee") pursuant to a lease agreement between the Hotel Lessee and the Port Authority (the "Hotel Lease" and together with the "Office Lease Agreements" the "Lease Agreements" and each a "Lease Agreement"); and

(x) in order to finance costs (as defined in Revised Code Section 4582.21) of the Public Improvements and of related costs including costs of issuance (collectively "TIF Costs"), issuance by the Port Authority of special obligation port authority tax increment financing revenue bonds in an aggregate principal amount not to exceed

\$55,000,000 (“TIF Bonds”), secured only by an assignment of, and payable only from, a portion of the Service Payments collected by the City, or by or on behalf of the Port Authority, and to be assigned to the Port Authority, revenues generated by the operation of the Parking Garage, and such other security as is provided under a trust indenture and other documentation agreed to by the Port Authority in connection with the issuance of the TIF Bonds (“TIF Bond Documents”); and

(xi) issuance by the Port Authority of special obligation port authority lease revenue bonds, in one or more series (collectively, “Lease Bonds” and together with the TIF Bonds, “Bonds”), secured only by an assignment of, and payable only from, the rental payments to be made by each Lessee under the respective Leases and such other security as is provided under any trust indenture or other documentation agreed to by the Port Authority in connection with the issuance of the Lease Bonds (the “Lease Bond Documents”), to finance costs of the construction of the Private Improvements and all related costs (“Lease Bond Costs” and, together with the TIF Costs, the “Project Costs”); and

(xii) engagement by the Port of authority of the Developer, or an affiliate thereof approved by the Port Authority, for construction of the Public Improvements pursuant to a Construction Manager-At-Risk Agreement (the “Public CMAR Agreement”); and

(xiii) engagement by the Port Authority of the Developer, the Hotel Lessee, or an affiliate of the Developer or Hotel Lessee respectively, as applicable, approved by the Port Authority, for construction of the Private Improvements pursuant to Construction Manager-At-Risk Agreements (collectively, the “Private CMAR Agreements” and together with the Public CMAR Agreement, the “CMAR Agreements”); and

(xiv) the guaranty by the Developer, affiliates thereof or other entities acceptable to the Port Authority, of completion of the Public Improvements, and the guaranty, by the Developer, the Hotel Lessee, or applicable affiliates thereof acceptable to the Port Authority, of completion of the Private Improvements and certain other improvements to the Project Site, or alternatively as applicable a guaranty or guaranties of payments of debt service on the TIF Bonds, (as applicable, the “Guaranties”); and

WHEREAS, under the circumstances described herein, and pursuant to the laws of the State of Ohio (the “State”), particularly Ohio Revised Code Sections 4582.21 through 4582.59 and the authorities therein mentioned, including Article VIII, Section 13, of the Ohio Constitution (collectively, “Port Act”), this Board has full authority to and desires to authorize or take those actions necessary to undertake the redevelopment of the Project Site by implementing the Development Plan, including the acquisition and construction of the real and personal property comprising the Project Improvements, and further including: (i) entering into the CMAR Agreements as provided herein and, after approval by the City, entering into the Cooperative Agreement, and entering the Service Agreement if necessary due to an ownership interest by the Port Authority in any portion of the Project Site at the time of execution (collectively, “Port Agreements”), (ii) accepting the phased conveyance by the Developer, pursuant to the Deeds, of fee title to portions of the Project Site, subject to the Lease

Agreements, and (iii) accepting the Guaranties on the terms and conditions contemplated by the Cooperative Agreement; and

WHEREAS, the Port Authority, pursuant to the Port Act, wishes to authorize or take preliminary actions in connection with the proposed issuance of the Bonds by the Port Authority to finance the Project Costs, including the Lease Bonds anticipated to be issued to finance the Lease Bond Costs, and the TIF Bonds anticipated to be issued to finance the TIF Costs;

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

Section 1. This Board hereby finds and determines, based upon information provided by the Developer, and to the extent applicable, the City, that: (i) the Port Authority has full power and authority to participate in the redevelopment of the Project Site pursuant to the Cooperative Agreement, in accordance with the Development Plan and in the manner contemplated by this Resolution, (ii) the Project Site and the Project Improvements (together, the "Project") constitute "port authority facilities" in furtherance of "authorized purposes" of the Port Authority, including the promotion of "transportation" and "economic development" as those terms are used in the Port Act, (iii) the acquisition and redevelopment of the Project Site, including the acquisition, construction, rehabilitation and equipping of the Public Improvements and the Private Improvements on the Project Site, the financing of the Project Costs in the manner contemplated hereby, and the leasing of the Private Improvements by the Port Authority in furtherance of the Development Plan is consistent with and will promote the purposes of Section 13 of Article VIII, Ohio Constitution, and will create or preserve jobs and employment opportunities and improve the economic welfare of the people of the City, County and State, (iv) it is in the best interests of the Port Authority to, and the Port Authority shall: (a) enter into the Public CMAR Agreement as soon as practicable consistent with the terms thereof and hereof, (b) enter into the Private CMAR Agreements subsequent to further authorization by this Board in furtherance of the issuance of the Lease Bonds, (c) enter into the Cooperative Agreement, (d) enter into the Service Agreements if required due to a Port Authority ownership interest in the Project Site at the time of execution, (e) accept fee title to the Project Site or portions thereof from the Current Project Site Owner in order to undertake the redevelopment of the Project Site as contemplated hereby, (f) sign and accept the Guaranties, on the terms contemplated by the Cooperative Agreement, and (g) take such other actions as are consistent with and contemplated by this resolution and the agreements and instruments authorized hereby (those actions contemplated by this subparagraph (iv) are referred to herein collectively as "Port Actions"). This Board hereby determines that the arrangements as to Port Authority fees are satisfactory to and in the best interests of the Port Authority, taking into account the aggregate principal amount of the Bonds, the concurrent determination to undertake actions with respect to the TIF Bonds and expected future determination to undertake actions with respect the Lease Bonds, and the relationship between the Project Costs payable from the TIF Bonds and the Lease Bonds.

Section 2. This Board hereby authorizes and approves the Cooperative Agreement in substantially the form on file with the Secretary of this Board. Any one or more of the Chairperson, the Vice Chairperson, the President and the Vice President (each an "Authorized Officer"), alone or together with the Secretary or any Assistant Secretary of this Board (each a "Fiscal Officer"), are hereby authorized and directed to execute the Cooperative

Agreement, substantially in that form, but with such changes as are necessary or desirable to reflect the intended terms of the transactions contemplated by this resolution and finalized by the parties to the Cooperative Agreement, such execution being conclusive evidence of approval of any such changes and that they are necessary or desirable, in accordance herewith, and are not adverse to the Port Authority.

Section 3. Based on information furnished to the Port Authority by the Developer, and the findings and determinations made by this Board in Section 1 above, this Board hereby determines that the manner in which the contracts for the redevelopment of the Project Site should be made is to enter into the CMAR Agreements and, in accordance therewith, and subject to the terms of the Cooperative Agreement, authorize the Developer or Hotel Lessee, as applicable, to act as its agent for and manager of the redevelopment of the Property, including the construction of the Public Improvements and the Private Improvements. The Developer, or an affiliate of the Developer approved by the Port Authority, under the CMAR Agreements (the "Construction Manager") shall be authorized to negotiate the terms of the construction contract or contracts, including any subcontract or subcontracts and all contracts for the supply of materials (collectively, "Construction Contracts") and all agreements with respect to the design, landscape design, engineering, architecture or similar services with respect to the redevelopment of the Project Site (the "Professional Contracts") necessary or desirable in connection therewith, all subject to applicable provisions of the Cooperative Agreement and the CMAR Agreements.

This Board hereby specifically finds and determines that such manner of negotiation and contracting with respect to the Construction Contracts and the Professional Contracts (collectively, "Contracts") will best carry out the public purposes of the Project, including the public purposes of Article VIII, Section 13 of the Ohio Constitution and, accordingly, the Contracts shall not be subject to any requirement of competitive bidding or selection unless and except to the extent specified in the Cooperative Agreement. This Board hereby authorizes and approves the appointment of the Developer, or an affiliate of the Developer approved by the Port Authority, as Construction Manager under the Public CMAR Agreement for the purpose of undertaking, managing and completing, on behalf of the Port Authority, the development of the Garage Parcel, including the construction of the Public Improvements.

This Board acknowledges the intent of the Port Authority to appoint pursuant to subsequent action the Developer, the Hotel Lessee or appropriate affiliates thereof as Construction Manager under the Private CMAR Agreements for the purpose of undertaking, managing and completing, on behalf of the Port Authority, the development of Phase IA Parcel 1, Phase IA Parcel 2, Phase IA Parcel 3, including construction of the Private Improvements.

Notwithstanding anything to the contrary in the Cooperative Agreement or the CMAR Agreements, the obligations the obligations of the Port Authority under or pursuant to the CMAR Agreements and the Contracts shall not be a general obligation, bonded indebtedness or a pledge of the general credit of the Port Authority but shall be payable solely from the proceeds of the Bonds, the proceeds of any other revenue bonds of the Port Authority issued for that purpose and any other money that may be made available to the Port Authority for that purpose, including any moneys provided by the Developer, and the CMAR Agreements and each Contract shall so state, by addendum or otherwise. Further, until and unless the Bonds have been

issued by the Port Authority, all monetary or pecuniary obligations of the Port Authority under or with respect to the CMAR Agreements or the Contracts shall be conditioned on the issuance of the Bonds (except to the extent if any funded by the Developer), and the CMAR Agreements and each Contract shall so state, by addendum or otherwise. Subject to the foregoing, this Board hereby authorized and approves the Public CMAR Agreement in substantially the form on file with the Secretary of this Board. Any one or more of the Authorized Officers, alone or together with any Fiscal Officer, are hereby authorized and directed to execute and deliver the Public CMAR Agreements, in substantially that form, but with those changes as are not substantially adverse to the Port Authority and as are approved by the officer or officers executing the Public CMAR Agreements as being necessary or desirable and in the best interest of the Port Authority, that execution being conclusive evidence of approval of any such changes as being necessary or desirable and in the best interest of the Port Authority and that they are not substantially adverse to the Port Authority.

Section 4. This Board hereby authorizes and approves the execution and delivery by the Port Authority of the Service Agreement to the extent the Port Authority is required to execute the Service Agreement as a result of any Port Authority ownership in the Project Site at the time of execution, and any other instruments or agreements included as exhibits to any of the Port Agreements, each in substantially the form on file with the Secretary of this Board. Any one or more of the Authorized Officers, alone or together with any Fiscal Officer, are hereby authorized to execute and deliver the Service Agreement and any other such instrument or agreement in substantially those forms, but with those changes as are not substantially adverse to the Port Authority and as are approved by the officer or officers executing that agreement or instrument as being necessary or desirable and in the best interest of the Port Authority, that execution being conclusive evidence of approval of any such changes as being necessary or desirable and in the best interest of the Port Authority and that they are not substantially adverse to the Port Authority.

Section 5. This Board hereby authorizes and approves the acceptance of title to the Garage Parcel by the Deed and the acceptance of the Guaranties, in form acceptable to and approved by any Authorized Officer as being reasonably necessary or desirable and in the best interest of the Port Authority and in accordance with the Cooperative Agreement, with execution of a written acceptance being conclusive evidence of approval of the Port Authority. This Board hereby further authorizes and approves all other Port Actions necessary or desirable, in the reasonable judgment of any Authorized Officer, to carry out the construction and operation of the Parking Garage, and transactions contemplated by the Port Agreements.

Section 6. The Port Authority retains the law firm of Frost Brown Todd LLC as bond counsel to provide legal services in connection with the transactions contemplated by this resolution and the participation of the Port Authority in the redevelopment of the Project Site, including the preparation, negotiation, execution and delivery of the Port Agreements and the other instruments and agreements authorized hereby, the preparation, negotiation, authorization, execution and delivery of the TIF Bond Documents and the Lease Bond Documents, the authorization, sale, issuance and delivery of the Bonds.

Section 7. This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this resolution were taken in an open meeting 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 8. This resolution shall take effect and be in force immediately upon its adoption.


A roll call being had upon the question of the passage of the foregoing resolution, the vote thereon resulted as follows:

Ayes: 7

Nays: 0



CHAIRPERSON

Attest: 

SECRETARY

CERTIFICATE

The undersigned, President of the Port of Greater Cincinnati Development Authority, hereby certifies that the foregoing is a true and complete copy of Resolution No. 2019 20 passed on the 27 day of Sept, 2019, and has not been amended or rescinded as of this date.

**Port of Greater Cincinnati Development
Authority**

9-27, 2019



FISCAL OFFICER CERTIFICATE

The undersigned, fiscal officer of the Issuer, hereby certifies that the moneys required to meet the obligations of the Issuer during the year 2019 under the foregoing resolution have been lawfully appropriated by the Issuer for such purposes and are in the treasury of the Issuer or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.



Dated: 9-27, 2019