

RESOLUTION NO. 2019-23

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 \$13,500,000 TAXABLE LEASE REVENUE BONDS, SERIES 2019 (MADISON & WHETSEL PHASE II DEVELOPMENT PROJECT) (THE "SERIES 2019 BONDS") FOR THE PURPOSE OF FINANCING COSTS OF "PORT AUTHORITY FACILITIES" WITHIN THE MEANING OF SECTION 4582.21, OHIO REVISED CODE; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE OF SAID REAL PROPERTY TO MADISONVILLE PHASE II LLC; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSIGNMENT OF CONSTRUCTION CONTRACT, CONSTRUCTION MANAGER AT-RISK AGREEMENT, AN INDEMNITY AGREEMENT, A BOND PURCHASE AGREEMENT, A CONSTRUCTION MONITORING AND DISBURSEMENT AGREEMENT, A RECOGNITION AGREEMENT, 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"), 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, Sections 13 and 16 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 and to enter into the Ground Lease and the Project Lease, the Assignment of Construction Contract, the Construction Manager At-Risk Agreement, the Indemnity Agreement, and the Bond Purchase Agreement, each defined herein, upon the terms and conditions provided herein and therein; and

WHEREAS, Madisonville Phase II LLC ("Developer") is the owner of certain real property located on the northeast block at the intersection of Madison Road and Whetsel Avenue (the "Project Site") and intends to construct, install and equip a certain mixed-use development project upon the Project Site comprised of approximately 120 apartment units and approximately 8,000 square-feet of retail and commercial space (the "Project"); 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 and housing in Hamilton County, (b) the acquisition, construction, development, and improvement of the Project will be consistent with

the purpose of Sections 13 and 16, 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, and to create adequate housing within the jurisdiction of the Port 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 and housing 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 resolution, the following words and terms as used in this 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 October 1, 2019, by and between the Port and the Developer.

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

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

“Bonds” or “Series 2019 Bonds” means the Taxable Lease Revenue Bonds, Series 2019 (Madison & Whetsel Phase II Development Project), which have been authorized by this resolution and are to be issued pursuant to the Bond Purchase Agreement.

“Bond Legislation” means this resolution and the Certificate of Award.

“Bond Purchase Agreement” means the Bond Purchase Agreement by and among the Developer, the Port, and the Original Purchaser relating to the original purchase of the Series 2019 Bonds, as the same may be amended from time to time.

“Certificate of Award” means the Certificate of an Authorized Officer delivered pursuant to Sections 3 and 4 of this resolution, which certificate may be part of the Bond Purchase Agreement or other certificate delivered in connection with 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.

“Construction Manager At-Risk Agreement” means the Construction Manager At-Risk Agreement, dated as of the date of the Project Lease, between the Port and the Developer, as construction manager at-risk.

“Construction Monitoring and Disbursement Agreement” means that certain Construction Monitoring and Disbursement Agreement by and among the Original Purchaser, the Port, and the Developer.

“Developer” means Madisonville Phase II LLC, an Ohio limited liability company.

“General Contractor” means Al. Neyer, LLC.

“Ground Lease” means the lease of the Project Site dated as of October 1, 2019, by and between the Developer, as ground lessor and the Port, as ground lessee.

“Holder” or “holder of a Series 2019 Bond” means the person in whose name a Series 2019 Bond is registered on the register maintained initially by the registrar.

“Indemnitors” means each of 625 Investments, LLC, an Ohio limited liability company, Ackermann Family Limited Partnership, an Ohio limited partnership, and Vision Real Estate II, LLC, an Ohio limited liability company.

“Indemnity Agreement” means the Indemnity Agreement, dated as of October 1, 2019, by and among the Port, the Developer and the Indemnitors.

“Manager” means Madisonville Phase II, LLC, as construction manager for the Project.

“Original Purchaser” means First Financial Bank.

“Pledged Revenues” shall mean the Rent paid by the Project Lessee under the Project Lease, which shall be equal to the principal of and interest due on the Bonds.

“Port” means the Port of Greater Cincinnati Development Authority, a body corporate and politic duly organized and validly existing under the laws of the State of Ohio, and its lawful successors.

“Project Documents” means the Ground Lease, the Project Lease, the Construction Manager At-Risk Agreement, the Assignment of Construction Contract and the Indemnity Agreement.

“Project Lease” means the lease of the Project Site dated as of October 1, 2019, by and between the Port, as Project Lessor, and the Developer, as Project Lessee.

“Recognition Agreement” means that certain Recognition and Attornment Agreement and Acknowledgement of Mortgage by and among the Port, the Developer and the Original Purchaser.

“State” means the State of Ohio.

“Transaction Documents” means each of the following documents if and to the extent entered into by the Port in connection with the issuance of the Bonds: the Bond Purchase Agreement, the Ground Lease, the Project Lease, the Construction Manager At-Risk Agreement,

the Indemnity Agreement, the Assignment of Construction Contract, the Construction Monitoring and Disbursing Agreement, and the Recognition Agreement.

The captions and headings in this 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 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 to, and the Port shall, acquire a 15-year ground lease of 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 for lease to the Developer and in connection therewith the Port shall, enter into the Ground Lease, the Project Lease and the other Project Documents as herein provided.

(b) This Board determines that: (i) It is necessary and proper and in the best interest of the Port to, and the Port shall, issue, sell and deliver the Series 2019 Bonds in the maximum aggregate principal amount of \$13,500,000 at this time, 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 a paying portion of the costs of the Project; (ii) the Project constitutes "port authority facilities" as defined in the Act, and is consistent with the purposes of the Act and Sections 13 and 16 of Article VIII, Ohio Constitution; (iii) the utilization of the Project Site for 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 Series 2019 Bonds.

Section 3. 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 it has been and shall continue to be undertaken by the Port in the manner provided in the Construction Manager At-Risk Agreement. The Board hereby approves the appointment of the 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.

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 should be made is to negotiate the terms of the Construction Agreements, and this Board hereby finds and determines that such negotiation best carries out the public purpose to be fulfilled by the Project.

Section 4. Lease of the Project Site and Project. Upon acquisition of the Project Site pursuant to the Ground Lease, it is hereby determined by this Board to enter into the Project Lease with the Developer in substantially the form now on file with the Secretary, but with such

completions, revisions and modifications as are necessary to conform to this resolution. Pursuant to the Project Lease, the Developer, as Project Lessee, shall pay Initial Rent, Annual Rent, Additional Rent, and all expenses associated with the ongoing leasing, management and operation of the Project, as exist from time to time. It is determined by this Board that the rent to be paid under the Lease, as provided in this resolution, is in the best interests of the Port and are in compliance with all legal requirements.

Section 5. Ground Lease, Project Lease, and Construction Documents. Each Authorized Officer is hereby authorized and directed, for and in the name of the Port and on its behalf, alone or together with any other Authorized Officer, to execute and deliver to the Developer the Ground Lease, the Project Lease, the Construction Manager At-Risk Agreement, In addition, each Authorized Officer, alone or together, in order to provide for the acquisition, construction, equipping, installation and improvement of the Project, each in substantially the form now on file with the Secretary, but with such completions, revisions and modifications as are necessary to conform to this resolution and the requirements under the term sheet for the Project Lease. The form of the aforesaid document is approved with such changes therein as are not inconsistent with this resolution and not substantially adverse to the Port 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, shall be conclusively evidenced by the execution of those documents by that officer.

Section 7. Other Project Documents. Each Authorized Officer is authorized and directed to execute the other Project Documents and any certifications, agreements, assignments, amendments, supplements and other instruments and documents to take such further actions, as are necessary or appropriate to provide for the Ground Lease and Project Lease of the Project Site and the construction of the Project and to consummate the transactions contemplated in this resolution, the Ground Lease and the Project Lease. All actions heretofore taken by the officers and officials of the Port and of this Board in connection with the Ground Lease and the Project Lease are hereby adopted, ratified and approved.

Section 8. Terms and Provisions of the Series 2019 Bonds. The Series 2019 Bonds shall be dated the Closing Date. The Series 2019 Bonds shall (i) be stated to mature on the date specified therein; (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; (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 (v) require payment of other amounts as provided therein. The registrar of the Series 2019 Bonds shall initially be the Fiscal Officer of the Port, and following the initial Advance, shall be the Original Purchaser.

Section 9. Security for the Series 2019 Bonds. As provided in the Transaction Documents, the Series 2019 Bonds shall be payable solely from the Pledged Revenues. Nothing in the Bond Legislation, the Series 2019 Bonds or the Transaction Documents shall constitute a general obligation, debt or bonded indebtedness of the Port; neither the general resources of the Port shall be required to be used, nor the general credit of the Port pledged, for the performance of any duty under this Bond Legislation or the Series 2019 Bonds; and further, nothing therein gives the Holders of the Series 2019 Bonds, and they do not have, the right to have excises or taxes levied by this Legislative Authority, 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 Series 2019 Bonds, but the Series 2019 Bonds are payable solely from the Pledged Revenues as provided herein and in the Bond Purchase Agreement, and each Series 2019 Bond shall contain a statement to that effect; provided, however, that nothing in this resolution shall be deemed to prohibit the Port, 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 Legislation or the Series 2019 Bonds.

Section 10. Transaction Documents. To secure the repayment of the principal of and interest on the Bonds as the same shall become due and payable and the performance by the Port as provided in the Bond Legislation and in the Transaction Documents to which it is a party, and to provide for the issuance and sale of the Series 2019 Bonds, each Authorized Officer is authorized to execute and deliver the Transaction Documents to which the Port is a party in substantially the forms thereof now on file with the Secretary, but with such completions, revisions and modifications as are necessary to conform to the Bond Legislation.

Section 11. 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 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 the Bond Legislation and the Transaction Documents and to undertake, complete and finance the Project in accordance therewith, so long as such actions are not inconsistent with the Bond Legislation and not materially adverse to the Port 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 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 in connection with the Project and the financing thereof are hereby ratified and approved.

Section 12. Severability. Each section of this 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 resolution.

Section 13. 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 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 14. Effective Date. This resolution shall take effect and be in force immediately upon its adoption.

Adopted: September 27, 2019

Yeas: 7

Chair

Nays: 0

Secretary

Abstentions: 0



