

RESOLUTION NO. 2019-26

AUTHORIZING THE ACCEPTANCE OF AN ASSIGNMENT OF THE RIGHTS OF VANDERCAR, LLC, AS PURCHASER UNDER A PURCHASE AND SALE AGREEMENT WITH CINCINNATI S.I. LTD. REGARDING THE MILLENNIUM HOTEL; AUTHORIZING THE ACCEPTANCE OF FUNDING FROM HAMILTON COUNTY TO MAKE PAYMENTS DUE UNDER SUCH AGREEMENT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS NECESSARY OR DESIRABLE FOR THE PURCHASE OF THE MILLENNIUM HOTEL, SUBJECT TO AVAILABLE FINANCING FOR SUCH PURCHASE

WHEREAS, the Port of Greater Cincinnati Development Authority (the "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 4582.59, Ohio Revised Code to acquire, construct, maintain, repair, furnish, and equip real and personal property useful for, or in furtherance of any authorized purpose, for such consideration and in such manner, consistent with Article VIII of the Ohio Constitution, as the Board in its sole discretion may determine; and

WHEREAS, Vandercar, LLC ("Vandercar") has entered into a Purchase and Sale Agreement dated as of July 1, 2019 (the "PSA") with Cincinnati, S.I. Co. for the purchase of the Millennium Hotel; and

WHEREAS, the City of Cincinnati (the "City") and Hamilton County (the "County") have requested the Port to cooperate in the actions necessary for the potential acquisition and demolition of the Millennium Hotel and the construction on the site thereof (the "Site") of a new convention hotel and, if deemed appropriate by this Board, in cooperation with the City and the County, other convention facilities (the "Project"); and

WHEREAS, Vandercar has [agreed] [been requested] to assign its rights, interests and obligations under the PSA to the Port to facilitate the Project; and

WHEREAS, the County has agreed to advance funds to the Port to pay amounts due under the PSA; and

WHEREAS, in order to facilitate its contributions to the cooperative venture with the City, the County, Vandercar and the other cooperative parties and in support of the Project, the Port's staff has recommended that it is necessary and in the best interest of the Port to accept the assignment of the PSA from Vandercar and to accept grant funding from the County in order to carry out the terms of the PSA:

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

Section 1. Determinations by the Board as to the Project.

This Board determines that:

(i) it is necessary and in the best interest of the Port to accept the assignment of the PSA from Vandercar and to accept an advance of funds from the County in order to carry out the terms of the PSA.

(ii) The Project constitutes "port authority facilities" as defined in the Act and is consistent with the purposes of the Act; and the acquisition, demolition, construction, equipping, installing, furnishing and otherwise improving of the Project is consistent with purposes of Section 13 of Article VIII, Ohio Constitution.

(iii) The Project will create or retain jobs and employment opportunities and otherwise supporting economic development in the City and the County, and will benefit the people of the State and the Port.

(iv) It is necessary and proper and in the best interest of the Port to, and the Port shall, accept the assignment of Vandercar's rights, interest and obligations under the PSA.

(v) It is necessary and proper and in the best interest of the Port to, and the Port shall, accept an advance of funds from the County in order to meet a portion of the purchaser's obligations under the PSA.

Section 2. Acceptance of Assignment of Purchase and Sale Agreement.

This Board hereby authorizes the President and CEO to enter into an agreement with Vandercar to accept the assignment of Vandercar's rights, interest and obligations under the PSA; provided, however, that nothing in this resolution, the PSA or any other agreement shall represent or constitute a debt, or a pledge of the faith and credit, of the Port, the State or any political subdivision thereof, and nothing therein or herein gives the Seller and it does not have, the right to have taxes levied by this Board, or by the State or the taxing authority of any political subdivision of the State, for the payment of any amounts due pursuant to the PSA, provided, however, that nothing herein 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 resolution or the PSA.

Section 3. Acceptance of Advance of Funds from Hamilton County.

This Board hereby accepts an advance of funds from the County in the amount of One Million Three Hundred Thousand Dollars (\$1,300,000) to pay a portion of the amounts due under the PSA, subject to the assignment of Vandercar's rights, interests and obligation under the PSA, together with any other advance funding provided by the County for the payment of the costs of due diligence with respect to the proposed Project.

Section 4. Payment to Seller Pursuant to PSA. Upon the assignment of the PSA to the Port pursuant to Section 2 hereof and the receipt of funds from the County pursuant to Section 3

hereof, the President and CEO is hereby authorized and directed to pay One Million Three Hundred Thousand Dollars (\$1,300,000) to the Seller pursuant to the terms of the PSA.

Section 5. Due Diligence. The President and CEO and her designees are authorized and directed to undertake due diligence with respect to the Site and the Project including, without limitation, to obtain cost estimates, feasibility reports and other economic analysis of the proposed Project, and financial analyses of the proposed financing for the Project and to enter into agreements and other instruments and documents in connection therewith, provided, that the total cost of such due diligence shall not exceed Twenty-Five Thousand Dollars (\$25,000) (exclusive of any advance funding from the County).

Section 6. Other Documents. The President and CEO is authorized and directed to execute 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 acquisition of the Site and the undertaking of the Project and to consummate the transactions contemplated in this resolution and the PSA; provided, however, that the approval of this Board shall be required for any bonds, notes or other financing for the acquisition of the Site and the development of the Project. All actions heretofore taken by the officers and officials of the Port and of this Board in connection with the acceptance of the assignment of the PSA and grant funding are hereby adopted, ratified and approved.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 8. 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 9. 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