

**RESOLUTION NO. 2016-15**

**RESOLUTION AUTHORIZING THE PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY TO MAKE CAPITAL EXPENDITURES TO ACQUIRE FOR REDEVELOPMENT THE PROPERTY GENERALLY LOCATED AT 2250 SEYMOUR AVENUE, CINCINNATI, OHIO AND TO MAKE OPERATING EXPENDITURES NECESSARY IN 2016 WITH RESPECT TO THE OWNERSHIP OF SUCH PROPERTY, AND AUTHORIZING RELATED MATTERS.**

**WHEREAS**, the “authorized purposes” of the Port Authority include activities that enhance, foster, aid, provide, or promote transportation, economic development, governmental operations, culture or research throughout the City of Cincinnati, Ohio (“City”) and the County of Hamilton, Ohio (“County”) and other activities authorized within the State of Ohio (“State”) by Article VIII, Sections 13 and 16 of the Ohio Constitution; and

**WHEREAS**, in support of such authorized purposes, the Port Authority may acquire and improve, and sell, lease, exchange or otherwise dispose of property, structures, equipment and facilities within the State for industry, commerce, distribution and research and, pursuant to such authority, this Board has previously adopted Resolution No. 2016-09 (“Patient Capital Note Resolution”) and, for the reasons further stated in the Recitals to the Patient Capital Note Resolution, which Recitals are incorporated herein by reference, authorized the issuance of revenue bonds and notes in anticipation of such revenue bonds (“Patient Capital Notes”) to provide moneys to acquire, improve, assemble, reposition and otherwise develop and redevelop former commercial and industrial sites, together with other necessary or desirable parcels, to create newly marketable sites attractive for commercial, industrial and mixed-use redevelopment, all of which will create and preserve jobs and employment opportunities within the City and the County (“Program Purposes”); and

**WHEREAS**, consistent with existing authority under the Bylaws adopted by this Board and for the Program Purposes, the Port Authority has entered into an agreement, subject to conditions (as amended from time to time, “Agreement”), for the acquisition of the approximately 19-acre commercial property generally located at 2250 Seymour Avenue, Cincinnati, Ohio (Hamilton County Auditor Parcel Nos. 120-0004-0001-00, 120-0004-0003-00, 120-0004-0062-00 and 120-0004-0063-00 and herein, collectively, the “Property”), and this Board has been advised by Port Authority staff that the Port Authority is performing the necessary due diligence with respect to the Property and that the “Due Diligence Period” under the Agreement will expire on or about July 7, 2016 (“Diligence End-Date”); and

**WHEREAS**, this Board has been further advised that the acquisition of the Property for redevelopment will require (i) an initial expenditure of approximately \$75,000 to pay or reimburse costs of the necessary due diligence with respect to the Property (“Diligence Costs”), (ii) assuming satisfactory completion of such diligence, a capital expenditure by the Port Authority of \$1.75 million to pay the purchase price for the Property (“Closing Payment”), with the required deposit of \$17,000 made on or about May 24, 2016 to be returned to the Port Authority upon payment of the Closing Payment, and (iii) assuming timely completion of such acquisition, the expenditure of additional amounts to pay certain holding or operating expenses including, without limitation, utility, tax, insurance and security costs (“Operating Costs”) to be paid by the Port Authority with respect to the Property, estimated not to exceed \$50,000 in the current year; and

**WHEREAS**, the Diligence Costs, Closing Payment and Operating Costs payable for the current year (“2016 Operating Costs”) may be paid or reimbursed from any source available for

the applicable purpose, subject to appropriation by this Board, including (but subject to all applicable restrictions as to use, including all restrictions as to location of property on which expended and any restrictions as to use for capital or operating expenditure): (i) Patient Capital Note proceeds, (ii) amounts available in the "Diligence and Holding Costs Funds" line item established and appropriated by this Board under Resolution No. 2015-22 adopted by this Board on December 9, 2015 and amended by Resolution No. 2016-14 adopted by this Board on April 13, 2016 ("Diligence and Holding Costs Appropriation"), (iii) restricted funds available for the applicable purpose ("Applicable Restricted Funds"), including restricted funds available for development and redevelopment within the Bond Hill neighborhood of the City and any proceeds available from the sale of property by the Port Authority, and (iv) unrestricted cash of the Port Authority available for the purpose ("Unrestricted Cash" and, together with available Patient Capital Note proceeds, Diligence and Holding Costs Funds and Applicable Restricted Funds eligible for the particular expenditure, "Eligible Funds"); and

**WHEREAS**, the Diligence Costs may be paid or reimbursed from Eligible Funds and are expected to be paid or reimbursed from the Diligence and Holding Costs Appropriation or Applicable Restricted Funds; and

**WHEREAS**, the Closing Payment may be paid or reimbursed from Eligible Funds, the proceeds of the Patient Capital Notes are and will be deemed appropriated upon issuance thereof and this Board anticipates that not less than \$1.3 million of such proceeds will be applied to pay a portion of the Closing Payment, supplemented with other Eligible Funds not to exceed \$450,000 ("Supplemental Closing Payment"); and

**WHEREAS**, the 2016 Operating Costs may be paid or reimbursed from Eligible Funds and are expected to be paid or reimbursed from the Diligence and Holding Costs Appropriation or Applicable Restricted Funds; and

**WHEREAS**, it is necessary, at this time, to determine whether the Port Authority will proceed with the acquisition of the Property for redevelopment and, to the extent that such determination is made, to appropriate amounts sufficient to pay the Supplemental Closing Payment and to provide for other related matters, including Diligence Costs and 2016 Operating Costs; and

**WHEREAS**, in order to expend the funds of the Port Authority necessary to pay the amounts due under the Agreement, the Annual Budget must be amended to provide for such amounts; and

**WHEREAS**, the Port Authority held \$770,441 of Unrestricted Cash (unencumbered moneys from time to time available in the General Fund) as of the most recent month-end date of May 31, 2016, which is derived from a combination of portions of the resources identified in the 2016 Appropriations Resolution and of the Port Authority's unrestricted 2015 year-end cash balance and, except to the extent payable from other Eligible Funds, amounts due under the Agreement will need to be paid from Unrestricted Cash; and

**WHEREAS**, this Board has determined that acquisition and redevelopment of the Property will promote the authorized purposes of the Port Authority, including the Program Purposes, that such acquisition for redevelopment is in the best interests of the Port Authority and the Port Authority should proceed with such acquisition and that, in order to proceed with such acquisition, it is necessary and desirable for this Board to authorize and confirm the President's authority to proceed under and acquire the Property pursuant to the Agreement, to approve all expenditures necessary to acquire and hold the Property for redevelopment, and to amend the appropriations made by this Board for 2016 to enable the President of the Port

Authority to expend the funds necessary to pay or provide for amounts due under the Agreement, including the Supplemental Closing Payment;

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

**Section 1.** The recitals hereto are incorporated herein by this reference as a statement of the findings and determinations of this Board, including as to the public purposes of the Port Authority in acquiring the Property for redevelopment and expending Port Authority funds as contemplated and authorized herein, and of this Board in authorizing the acquisition of the Property for redevelopment and the expenditures of Port Authority funds contemplated and authorized herein, and this Board further finds and determines that the acquisition and redevelopment of the Property will promote the authorized purposes of the Port Authority, including the Program Purposes, that such acquisition for redevelopment is in the best interests of the Port Authority, that the Port Authority should proceed with such acquisition and that, in order to proceed with such acquisition, this Board hereby authorizes and confirms the President's authority to proceed under and acquire the Property pursuant to the Agreement, hereby approves all expenditures necessary to acquire and hold the Property for redevelopment and, as further provided in Section 2, hereby amends the appropriations made by this Board for 2016 to enable the President of the Port Authority to expend the funds necessary to pay or provide for amounts due under the Agreement, including the Supplemental Closing Payment, from Eligible Funds, which authority is supplemental to, and not in derogation of, any other appropriation from Eligible Funds for that or any other purpose including, without limitation, the expenditures to be made from the proceeds of the sale of the Patient Capital Notes, appropriated upon issuance thereof, or to be made for from the Diligence and Holding Costs, all of which are hereby authorized and approved. This Board hereby determines that the expenditures of funds authorized by this resolution are for the purposes of economic development, and will create and retain jobs and employment opportunities in the State pursuant to and consistent with Article VIII, Section 13, of the Ohio Constitution and are consistent with all applicable requirements of Chapter 4582 of the Revised Code and the Ohio Constitution.

**Section 2.** This Board hereby authorizes the President of the Port Authority to expend \$1.75 million from the Eligible Funds to make the Closing Payment and complete the acquisition of the Property pursuant to the Agreement, which amount is expected to be derived from the following sources:

| <u>Source</u>                                 | <u>Amount</u>      |
|---|--------------------|
| Patient Capital Notes                         | \$1,300,000        |
| Applicable Restricted Funds                   | <u>\$ 450,000</u>  |
| <b>Total Expenditures for Closing Payment</b> | <b>\$1,750,000</b> |

Notwithstanding the foregoing, the Supplemental Closing Payment shall be made from such Eligible Funds as the President of the Port Authority shall determine consistent with this resolution and thereafter report to this Board, and this Board hereby authorizes the President of the Port Authority to expend up to \$450,000 from any such Eligible Funds, or from some or all Eligible Funds in such combination as the President shall determine, to pay the Supplemental Closing Payment. In addition, this Board hereby authorizes the President of the Port Authority to pay or provide for Diligence Costs and 2016 Operating Costs and to expend Eligible Funds from time to time to pay or reimburse Diligence Costs and 2016 Operating Costs. Any amounts paid from one source of Eligible Funds may thereafter be reimbursed from a different source of Eligible Funds on direction of the President of the Port Authority. All amounts contemplated to be expended under this resolution or pursuant to the Agreement, to the extent not otherwise appropriated by this Board for those purposes, are hereby appropriated from the Eligible Funds designated by the President of the Port Authority, and the Annual Budget is hereby amended by and consistent with this resolution.

**Section 3.** Notwithstanding any applicable requirements of the Bylaws, the authority granted to the President under this resolution includes the authority to enter into contracts relating to the acquisition and redevelopment of the Property (including, without limitation, the Agreement) in excess of the limits therein, and consistent with the Annual Budget and the appropriations made by this Board, to issue payments in excess of any limits therein for the purposes contemplated in this resolution, without requiring any further approval by this Board.

**Section 4.** The President of the Port Authority is authorized to execute and deliver any certifications, agreements, assignments, amendments, supplements and other instruments and documents, and to take such further actions, as are necessary or appropriate to provide for the acquisition of the Property pursuant to the Agreement and to consummate the transactions contemplated in this resolution and the Agreement. All actions heretofore taken by the President, and by any other officers and officials of the Port Authority and of this Board, in connection with acquisition of the Property pursuant to the Agreement are hereby adopted, ratified and approved.

**Section 5.** 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 6.** 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.

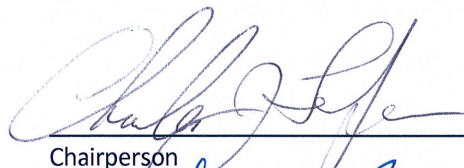
**Section 7.** This resolution shall take effect and be in force immediately upon its adoption.

Adopted: June 15 2016

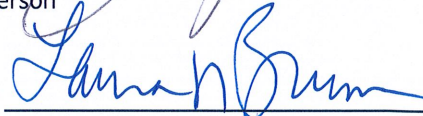
Yeas: 6

Nays: 0

Abstentions: 4

  
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Chairperson

  
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Attest:  
Secretary