

RESOLUTION NO. 2017-02

A RESOLUTION AUTHORIZING AND APPROVING A PRELIMINARY COOPERATIVE REVENUE BOND FINANCING AGREEMENT AND A PRELIMINARY FINANCING TERM SHEET PERTAINING TO THE PARTICIPATION OF THE PORT AUTHORITY, IN COOPERATION WITH THE CITY OF BLUE ASH, IN ISSUING PORT AUTHORITY REVENUE BONDS TO FINANCE COSTS OF THE ACQUISITION, CONSTRUCTION, EQUIPPING, INSTALLATION AND OTHER IMPROVEMENT OF CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS, INCLUDING PUBLIC STREET, DETENTION, SEWER AND UTILITY IMPROVEMENTS, IN SUPPORT OF THE DEVELOPMENT OF THE FORMER BLUE ASH AIRPORT SITE AND ADJACENT PROPERTY; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the City of Blue Ash, Ohio (“City”) and Summit View Development, LLC, an Ohio limited liability company (“Developer”), have advised the Port of Greater Cincinnati Development Authority (“Port Authority”) that they presently anticipate entering into a Development Agreement on or before March 31, 2017 (“Development Agreement”) pertaining to the proposed multi-phase mixed-use redevelopment of approximately 107.5-acres of real property in the City (“Site”) owned or otherwise under control of the Developer and its members, Al. Neyer, LLC and Vandercar Holdings, LLC (each an Ohio limited liability company and herein, together with the Developer, “Developer Parties”), including an approximately 98-acre tract generally known as the former Blue Ash Airport site and an adjacent 9.4241-acre parcel southeast of that Airport Site and extending to the intersection of Carver Road and Carver Woods Lane; and

WHEREAS, the initial phase of the development of the Site is expected to include a single-family residential neighborhood development to begin on a portion of the Site to be transferred, upon acquisition by the Developer, to a single-family home developer (“Phase I Residential Site”) and, within a portion of the balance of the Site (that portion, the “Phase I Development Site”), the following (collectively, including the Phase I Development Site, the “Phase I Commercial Development”): (i) a hotel development, currently expected to include two limited-service hotels with a total of approximately 250 rooms, (ii) a mixed-use development, currently expected to include a 250-unit apartment complex and approximately 35,000 square feet of retail and restaurant space and (iii) a senior-living development, currently expected to include a 225-unit for-profit senior living facility (collectively, “Phase I Private Improvements”); and

WHEREAS, the City has advised the Port Authority that the development of the Site will require the construction of public infrastructure improvements including, in support of the Phase I Commercial Development (i) approximately 9,700 linear feet of on-site public roadway, together with related sidewalks, bike paths, street lighting, storm sewer and detention facilities, sanitary sewer and water mains and other utilities (collectively, and including the necessary public rights-of-way and other property or interests therein and all related improvements, the “Phase I Public Improvements”) and (ii) off-site road improvements to Glendale-Milford Road (“Phase I Off-Site Road Improvements” and together with the Phase I Public Improvements, the “Phase I Public Infrastructure Improvements”); and

WHEREAS, the City has advised the Port Authority that it has taken preliminary steps pursuant to Ohio Revised Code Section 5709.40(B) and related statutory provisions (collectively, “TIF Act”) and expects the Council of the City to enact an ordinance (“TIF Ordinance”) to exempt certain “improvements” (herein “TIF Improvements”) to the Phase I Development Site and other portions of the Site with commercial development (collectively the “TIF Site”) from real property taxes and require service payments, including minimum service payment obligations, in lieu of such exempted taxes (herein, collectively with other related or guaranty payments, “Service Payments”) to provide for the costs of “public infrastructure improvements” in support of the development of the Commercial Development Site, all as and to the extent authorized the TIF Act, and to assign such

Service Payments to the Port Authority under a cooperative agreement consistent with the laws of the State of Ohio ("State"), particularly Sections 4582.21 through 4582.59, Ohio Revised Code and the authorities therein mentioned (collectively, "Act"), as "revenues" to support "revenue bonds" issued by the Port Authority to finance or refinance costs, as defined in the Act, of such public infrastructure improvements (including any anticipatory notes, and any refunding notes or bonds, "Bonds"); and

WHEREAS, the City and the Developer Parties have now requested the assistance of the Port Authority in the financing of the costs of the Phase I Public Infrastructure Improvements and, in particular, have requested that the Port Authority now express its intention to issue (i) "senior-lien" Bonds, in a now-estimated maximum principal amount of \$20,000,000 to finance costs of the Phase I Public Improvements ("Phase I Senior Bonds") and (ii) "subordinate-lien" Bonds in a now-estimated maximum principal amount of \$4,000,000 to finance costs of the Phase I Off-Site Road Improvements ("Phase I Subordinate Bonds" and, together with the Phase I Senior Bonds, the "Phase I Bonds"), with the Phase I Senior Bonds to be structured, issued and sold to or placed by Ross Sinclair & Associates, LLC ("RSA") and the Phase I Subordinate Bonds to be sold, as a single, draw-down, revenue bond to the City; and

WHEREAS, the Port Authority, the City, RSA and the Developer Parties have negotiated certain terms and conditions for the issuance of and security for the Phase I Bonds in a Preliminary Cooperative Revenue Bond Financing Agreement and related Preliminary Financing Term Sheet, each to be in substantially the form on file with the Secretary of this Board (referred to herein, collectively, as the "Preliminary Cooperative Agreement"), pertaining to the participation of the Port Authority, in cooperation with the City, in the financing of costs of the acquisition, construction, installation equipping and other improvement of the Phase I Public Infrastructure Improvements, and the Developer has paid the initial amount required by the Preliminary Cooperative Agreement; and

WHEREAS, United States Treasury Regulations Section 1.150-2 ("Reimbursement Regulations") prescribes conditions under which proceeds of bonds, notes or other obligations used to reimburse advances made for certain expenditures paid before the issuance of such obligations will be deemed to be expended (or properly allocated to expenditures) for purposes of Sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended ("Code") so that, upon such reimbursement, the proceeds so used will not further be subject to requirements or restrictions under those sections of the Code, and certain provisions of the Reimbursement Regulations require that there be a Declaration of Official Intent not later than 60 days following payment of the expenditure expected to be reimbursed from proceeds of such obligations, and that the reimbursement occur within prescribed time periods after the expenditure is paid or after the property is placed in service; and

WHEREAS, this Board, pursuant to the Act, including Sections 13 and 16 of Article VIII, Ohio Constitution, as implemented in and pursuant to the Act, and other applicable laws of the State, has full authority to and desires to authorize, approve and take those preliminary actions required of the Port Authority for the issuance of the Phase I Bonds to finance the Phase I Public Infrastructure Improvements in cooperation with the City, to approve and authorize the signing by the Port Authority of the Preliminary Cooperative Agreement, and to take other preliminary actions necessary or desirable in connection with the authorization, structuring, issuance and sale of the Phase I Bonds and to cooperate with the City and the Developer Parties in undertaking and implementing the Phase I Public Infrastructure Improvements and the Phase I Private Improvements;

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 the Preliminary Cooperative Agreement and other representations of and information provided by the City or the Developer Parties to the Port Authority that: (i) the Phase I Public Infrastructure Improvements will constitute

“port authority facilities” in furtherance of “authorized purposes” of the Port Authority, including “transportation”, “governmental operations”, “economic development” and “housing” purposes, as all such terms are defined or used in and pursuant to the Act, (ii) the issuance of the Phase I Bonds and the financing of costs of the Phase I Public Infrastructure Improvements, in accordance with the Preliminary Cooperative Agreement, will aid in inducing the City and the Developer Parties to take the actions contemplated by the Preliminary Cooperative Agreement, the School Compensation Agreement referred to therein and the Development Agreement, including (x) the acquisition and consolidation of the Site by the Developer for subsequent subdivision and development consistent with the Development Agreement, (y) the development or redevelopment of the Site, including the development of the Phase I Residential Site, the construction of the Phase I Private Improvements and other development of the Phase I Development Site and the future development of the balance of the Site, including other portions of the TIF Site, all of which is consistent with and will promote the public purposes of Sections 13 and 16 of Article VIII, Ohio Constitution, and thereby create or preserve jobs and employment opportunities for, the availability of adequate housing in, and the general and economic welfare of the people of the City, the County and the State, and (iii) the Port Authority is authorized to and desires to participate in the financing of costs of the Phase I Public Infrastructure Improvements in the manner contemplated by the Preliminary Cooperative Agreement and hereby.

Section 2. In order to finance costs of the Phase I Public Infrastructure Improvements, this Board hereby agrees to cooperate with the City and the Developer Parties, and hereby authorizes and directs the staff of the Port Authority to cooperate with the City and the Developer Parties, in seeking the necessary authorizations and approvals for the financing of costs of the Phase I Public Infrastructure Improvements in the manner contemplated by the Preliminary Cooperative Agreement and hereby, including any that may be required from City Council, other City (and County) officials and any school district boards and, after the City and Developer Parties obtain all such authorizations to exercise its reasonable best efforts to authorize and cause the Port Authority to issue the Phase I Bonds, in the estimated maximum aggregate face amount of \$24,000,000 pursuant to the Act and a suitable cooperative agreement with the City and the Developer as contemplated in the Preliminary Cooperative Agreement (“Cooperative Agreement”), subject to satisfaction of the conditions and on substantially the terms contained in the Preliminary Cooperative Agreement, which is hereby approved in substantially the form on file with the Secretary. The Chairperson, the Vice Chairperson or the President/CEO alone or together with the Secretary or any Assistant Secretary, is hereby authorized and directed to sign and deliver the Preliminary Cooperative Agreement (including the Preliminary Financing Term Sheet therein) on behalf of the Port Authority, in substantially the form on file with the Secretary, with such changes therein as are not substantially adverse to the Port Authority and as the officer or officers signing the Preliminary Cooperative Agreement may approve, such signing being conclusive evidence of approval of any such changes and that they are not substantially adverse to the Port Authority. Debt service charges on the Bonds, including the Phase I Bonds, are expected to be paid from the Service Payments and any other “revenues” pledged under the trust indenture for the Bonds (“Bond Indenture”), as contemplated by the Preliminary Cooperative Agreement, which are to be assigned by the City to the Port Authority under the Cooperative Agreement, and from the special funds, including a reserve fund, established under the Bond Indenture.

Section 3. This Board hereby declares that the Port Authority reasonably expects that capital and other expenditures relating to the Phase I Public Improvements made by the Port Authority, the City, the Developer or others will be reimbursed from the proceeds of “bonds” (as defined in Section 150 of the Internal Revenue Code) and that the maximum principal amount of bonds expected to be issued for the Phase I Public Improvements is \$20,000,000. This resolution constitutes a Declaration of Official Intent under the Reimbursement Regulations.

Section 4. The Port Authority retains the law firm of Squire Patton Boggs (US) LLP (“Squire”), as bond counsel, to provide legal services in connection with the authorization, sale,

issuance and delivery of the Bonds. In providing those legal services, as an independent contractor in an attorney-client relationship, Squire shall not exercise any administrative discretion on behalf of this Board in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State or any political subdivision, or the execution of public trusts. The fees and expenses of Squire for those legal services, except to the extent if any expressly agreed to by the Port Authority, shall be paid by the Developer or other Developer Parties pursuant to an engagement agreement with Squire and/or the provisions of the Preliminary Cooperative Agreement, including those provisions obligating the Developer to timely pay all amounts required under the Preliminary Cooperative Agreement, including fees, issuance costs and the deposits described therein, and to indemnify the Port Authority against all costs and expenses relating to the issuance of the Phase I Bonds and the construction and financing of the Phase I Public Infrastructure Improvements, but may be paid or reimbursed from proceeds of the Bonds, if and when authorized by this Board and issued by the Port Authority. The deposits contemplated by the Preliminary Cooperative Agreement to be made by the Developer to the Port Authority shall be deposited into a segregated and restricted account and used only in accordance with the Preliminary Cooperative Agreement.

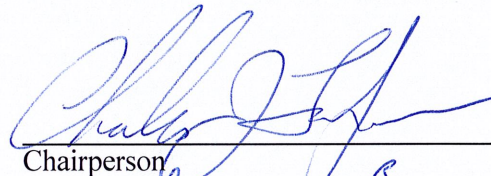
Section 5. This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this resolution were taken in an open meeting of this Board and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 6. This resolution shall take effect and be in force immediately upon its adoption.

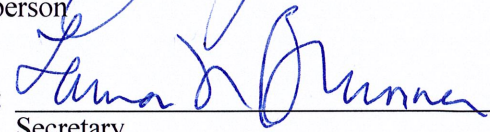
Adopted: March 8, 2017

Yeas: 9

Nays: 0



Chairperson

Attest: 

Secretary