

RESOLUTION NO. 2023-26

AUTHORIZING THE ISSUANCE OF A GRANT PROCEEDS ANTICIPATION NOTE IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$1,500,000, FOR THE PURPOSE OF FINANCING "COSTS" OF "PORT AUTHORITY FACILITIES" WITHIN THE MEANING OF SECTION 4582.21, OHIO REVISED CODE, INCLUDING COSTS OF THE ACQUISITION AND DEVELOPMENT OF REAL PROPERTY AND PERSONAL PROPERTY IN CONNECTION WITH THE REDEVELOPMENT OF CAREW TOWER IN THE CITY OF CINCINNATI TO PROMOTE ECONOMIC DEVELOPMENT AND THE CREATION AND RETENTION OF JOBS IN HAMILTON COUNTY AND THE CITY OF CINCINNATI AND THE PROVISION OF HOUSING; AUTHORIZING PLEDGED REVENUES TO SECURE PAYMENT OF THE NOTE; AUTHORIZING THE EXECUTION AND DELIVERY OF A DEVELOPMENT AGREEMENT AND A CONSTRUCTION MANAGER AT-RISK AGREEMENT IN CONNECTION WITH THE FOREGOING; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the authorized purposes of the Port of Greater Cincinnati Development Authority ("Port"), pursuant to and as defined in Sections 4582.21, et seq., of the Ohio Revised Code (together with other authorities therein mentioned, the "Act"), 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, pursuant to the Act, including Article VIII, Section 13 and 16 of the Ohio Constitution, the Port is authorized, in order to create or preserve jobs and employment and housing opportunities and to improve the economic welfare of the people of the State, to (among other things) acquire and improve, and to sell, lease, exchange or otherwise dispose of property, structures, equipment and facilities within the State for industry, commerce, distribution and research and to borrow money and issue its port authority revenue bonds to provide moneys for such purposes; and

WHEREAS, consistent with its charge to undertake a proactive role in economic development and redevelopment in the Greater Cincinnati region, the Port obtained a grant in the amount of \$6,439,500 through the Ohio Department of Development Brownfield Remediation Program (the "Grand Funds") for asbestos abatement, demolition activities and roof replacement (the "Project") as part of the redevelopment of Carew Tower (the "Project Site") into multifamily residential apartments; and

WHEREAS, the Port is undertaking the Project with the building owner and developer, 441 Vine Street Owner LLC (the "Developer"), which has proposed entering into a Development Agreement, Construction Manager At-Risk Agreement and related documents with the Port for the Project, and has proposed issuance by the Port of a revenue note (the "Note") whereby the Developer would lend the Port up to \$1,500,000 on a revolving basis in anticipation of receipt of Grant Funds from the State of Ohio in order to fund work on the Project prior to disbursement of the Grant Funds (such Grant Funds, once disbursed, the "Grant Proceeds"); and

WHEREAS, in furtherance of its authorized purposes, the Port is authorized and empowered, by virtue of the laws of the State including the Act, among other things (a) to issue revenue notes for the purpose of paying costs of "port authority facilities", as defined in the Act, located within the boundaries of either the City or the County, (b) provide for the pledge or assignment of revenues sufficient, together with other amounts provided therefor, to pay the principal of and interest and any premium on those revenue notes, (c) to acquire, construct, equip, furnish, improve and otherwise develop such port authority facilities for "authorized purposes", as defined in the Act, including to enhance, foster, aid, provide, or promote transportation, economic development, governmental operations, culture or

research, (d) to make and enter into such contracts and agreements and execute all instruments as may be necessary or included for the exercise of powers otherwise granted to the Port under the Act, (e) to provide for the development, financing and use of such port authority facilities to create or preserve jobs and employment and housing opportunities and to improve the economic welfare of the people of the State and to improve the economic and general well-being thereof, and to assist in providing housing for individuals and families, and (f) to adopt this resolution and issue the Note, and execute and deliver the Development Agreement and Construction Manager At-Risk Agreement and such other instruments and agreements as are provided for herein, all upon the terms and conditions provided herein and therein; and

WHEREAS, pursuant to the foregoing authority and in order to provide for the development of Project, this Board has determined that it is necessary and proper and in the best interest of the Port to issue a revenue note of the Port to the Developer in the maximum aggregate principal amount of \$1,500,000, pledge the Pledged Revenues to secure the payment of Debt Service Charges on the Note, with the expectation that the outstanding principal of the Note will be redeemed, at or prior to maturity, from Grant Proceeds available to the Port;

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

Section 1. Captions; Definitions. 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. In addition to terms defined in the recitals which are incorporated herein by reference, the following capitalized terms shall mean:

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

“Construction Manager At-Risk Agreement” means the Construction Manager At-Risk Agreement between the Developer and the Port whereby the Developer agrees to undertake construction of the Project.

“Debt Service Charges” means, for any period or payable at any time, the principal of and interest on the Note for that period or payable at that time, as the case may be.

“Developer” means 441 Vine Street Owner LLC, a Delaware limited liability company, or its designated affiliate.

“Development Agreement” means the Development Agreement between the Developer and Port for the Project.

“Grant Agreement” means the Brownfield Remediation Program Grant Agreement between the Port and the Ohio Department of Development for the Project.

“Grant Proceeds” means disbursements of the Grant Funds pursuant to the Grant Agreement.

“Note” means the revenue note to be issued by the Port pursuant to this resolution in the maximum principal amount of \$1,500,000.

“Pledged Revenues” means (a) the Grant Proceeds, (b) any moneys and investments in the Special Funds, and (c) any other moneys intended to be used for Debt Service Charges.

“Program Purposes” include, without limitation, the acquisition, improvement, and development and redevelopment of sites constituting port authority facilities, including related acquisition, demolition, rehabilitation, remediation, construction and installation of infrastructure and related activities, for “authorized purposes”, as defined in the Act, to enhance, foster, aid, provide, or promote transportation, economic development, governmental operations, culture or research in the City and County and to create and preserve jobs and employment and housing opportunities and to improve the economic welfare of the people of the State and to improve the economic and general well-being thereof.

“Project” means asbestos abatement, demolition activities and roof replacement at the Project Site, in furtherance of the redevelopment of Carew Tower.

“Project Costs” mean all costs reasonably necessary to accomplish the Project that are eligible uses of Grant Funds pursuant to the Grant Agreement and are permitted by the Act.

“Project Site” means Carew Tower in the City of Cincinnati.

“Special Funds” means the Note Fund, including the Interest Reserve Account therein to be funded by the Developer pursuant to the Development Agreement, and the Project Fund.

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. Any approval to be given or action authorized by this resolution to be taken by an Authorized Officer may be taken by any one of the individuals listed as an Authorized Officer unless otherwise expressly provided herein, and shall be performed in such officer’s official capacity and on behalf of the Port.

Section 2. Determinations by the Board. This Board hereby confirms its findings and determinations described in the recitals hereof, incorporates such recitals herein as the findings and determinations of this Board, including as to the public purposes of the Port and this Board in authorizing the issuance and delivery of the Note, and further finds and determines that pursuant to the authority of the Act, (i) it is necessary and proper and in the best interest of the Port to, and the Port shall, issue and deliver the Note in a maximum aggregate principal amount of \$1,500,000 as provided and authorized herein for the purpose of financing Project Costs for the Program Purposes; (ii) the Project constitutes “port authority facilities” within the meaning of the Act, (iii) the use of proceeds of the Note to pay Project Costs is consistent with the purposes of the Act, will further the Program Purposes and will benefit the people of the State, including those within the jurisdiction of the Port, by, among other benefits, preserving jobs and employment and housing opportunities and improving the economic welfare of the people of the State; (iv) the terms of the Note contained in this resolution are satisfactory and are hereby approved; and (v) the Note shall be secured by Pledged Revenues and as otherwise provided herein.

Section 3. Issuance of Note. The Port is hereby authorized to issue and deliver the Note to the Developer in the maximum aggregate principal amount of \$1,500,000 to provide funds to pay Project Costs. The Note shall be signed by any two Authorized Officers, in the name of the Port and this Board and in their official capacities, provided that one or both of such signatures may be a facsimile.

The Note shall be designated “Revolving Line of Credit Grant Proceeds Anticipation Note”, with such additional designations as shall be determined by the President/CEO as necessary or desirable to distinguish the Note from other port authority revenue bonds of the Port, and shall be issuable only in a single definitive (certificated) fully registered form. The Note shall be dated the date of its issuance and the outstanding principal amount of the Note shall bear interest at the Short-Term Applicable Federal Rate, as determined at the time of issuance by the President/CEO (with that determination conclusively evidenced by the President/CEO’s execution of the Note). Interest on the Note shall be payable at maturity or earlier prepayment (as to the principal prepaid), from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from its date. Interest on the outstanding principal amount of the Note shall be computed on the basis of a 360-day year and actual days elapsed.

The Note shall mature on December 31, 2025. The Note may be prepaid in whole or in part without notice, consent or penalty; provided that such prepayment shall be accompanied by accrued and unpaid interest on the amount prepaid. The Port shall be permitted to borrow, repay, and re-borrow under the Note.

Section 4. Creation of Funds; Application of Proceeds of Note. The Special Funds are hereby authorized and directed to be created, and the proceeds from the Note shall be deposited in the Project Fund and disbursed at the written direction of an Authorized Officer to pay Project Costs, and the proceeds from the sale of the Note are appropriated to those purposes.

Section 5. Security. Notwithstanding anything to the contrary herein or in the Note, the Note does not and shall not constitute a pledge the general credit or taxing power of the Port or of the State or any political subdivision, municipality or other local agency thereof and nothing herein or in the Note shall constitute a general obligation, debt or bonded indebtedness of the Port, the State or any political subdivision thereof; and further, nothing therein gives the owner of the Note, and it does not have, the right to have excises or taxes levied by this Board, or by the State or the taxing authority of any other political subdivision, municipality or other local agency thereof for the payment of Debt Service Charges. The Note is payable solely from the Pledged Revenues as provided herein, and the Note shall contain a statement to that effect; provided, however, that nothing herein, in the Note or any other document related to the Note 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 Note.

Section 6. Covenants of Port. In addition to the covenants and agreements of the Port herein, the Port, by issuance of the Note, covenants and agrees with the owner thereof that: (a) the Port will use proceeds of the Note to pay Project Costs for Program Purposes; (b) the Port will segregate, for accounting purposes, the Pledged Revenues and the Special Funds from all other revenues and funds of the Port; (c) the Secretary or an Assistant Secretary of this Board will furnish to the owner of the Note a true transcript of proceedings, certified by such officer, of all proceedings had with reference to the issuance of the Note together with such information from the Port's records as is necessary to determine the regularity and validity of such issuance; (d) the Port will, at any and all times, cause to be done all such further acts and things and cause to be executed and delivered all such further instruments as may be necessary to carry out the purposes of the Note and this resolution or as may be required by the Act, and will comply with all requirements of law applicable to the Note; (e) the Port will observe and perform all of its agreements and obligations provided for by this resolution and the Note, and that all of the obligations hereunder and thereunder are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Port within the meaning of Section 2731.01, Ohio Revised Code; (f) the Port will use its best efforts to comply with all of its obligations and agreements thereunder and to keep the same in full force and effect; and (g) the Port will, solely from the Pledged Revenues, pay or cause to be paid the Debt Service Charges on the dates, at the places and in the manner provided herein and in the Note.

Section 7. Development Agreement, Construction Manager At-Risk Agreement and Other Documents. To provide for the construction of the Project, each Authorized Officer, for and in the name of the Port, is authorized to execute and deliver the Development Agreement and Construction Manager At-Risk Agreement in substantially the forms thereof now on file with an Assistant Secretary, with such changes therein as are not inconsistent with this resolution and not substantially adverse to the Port and which are permitted by the Act and shall be approved by the Authorized 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 Authorized Officer.

Each Authorized Officer is further authorized and directed to execute any certifications, agreements or other instruments and to take such further actions, as are necessary or appropriate to provide for the issuance and sale of the Note and to consummate the transactions contemplated in this resolution, the Note, the Development Agreement and the Construction Manager At-Risk Agreement, including any bills of sale

applicable to the Project. All actions heretofore taken by the officers and officials of this Port and of this Board in connection with the issuance and sale of the Note are hereby ratified and approved.

Section 8. 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 9. 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 10. Effective Date. This resolution shall take effect and be in force immediately upon its adoption.

Adopted: 9.13, 2023

Yeas: 8

Nays: 0

Abstentions: 0



Chair



Secretary