

RESOLUTION NO. 2021-25

AUTHORIZING THE ISSUANCE AND SALE OF DEVELOPMENT REVENUE AND REFUNDING BONDS (COURT & WALNUT PROJECT) IN THE MAXIMUM PRINCIPAL AMOUNT OF \$8,000,000 FOR THE PURPOSE OF REFUNDING BONDS PREVIOUSLY ISSUED TO FINANCE “PORT AUTHORITY FACILITIES” WITHIN THE MEANING OF SECTION 4582.21, OHIO REVISED CODE AND TO FINANCE ADDITIONAL COSTS OF SUCH “PORT AUTHORITY FACILITIES”; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE TO SECURE SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO A COOPERATIVE AGREEMENT, AN AMENDMENT TO A GUARANTY AND SUCH OTHER DOCUMENTS NECESSARY OR DESIRABLE FOR THE ISSUANCE AND SALE OF THE BONDS.

WHEREAS, the Port of Greater Cincinnati Development Authority (the “Authority”), 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, Section 13 of Article VIII, Ohio Constitution, and Sections 4582.21 through 4582.60, Ohio Revised Code: (i) to issue revenue bonds for the purpose of financing and refinancing costs of acquiring, constructing, installing, equipping or improving “port authority facilities,” as defined in Section 4582.21, Ohio, Revised Code; (ii) to secure those revenue bonds by a trust indenture, as provided herein, and to provide for “Project Revenues” sufficient to pay the principal of and interest and any premium on those revenue bonds; and (iii) to adopt this resolution and to enter into the Trust Indenture and the other Authority Documents, upon the terms and conditions provided herein and therein (with capitalized words and terms not otherwise defined herein having the meanings assigned to them in Section 1 below); and

WHEREAS, the Authority, at the request of the Developer, previously issued the \$6,830,000 Development Revenue Bonds, Series 2017A (Court and Walnut Project) (the “Series 2017A Bonds”) under the Series 2017A Trust Indenture to finance a portion of the costs of the Project; and

WHEREAS, the Authority, at the request of the Developer, previously issued the \$10,400,000 Development Revenue Bonds, Series 2017B (Court and Walnut Project) under the Series 2017B Trust Indenture to finance a portion of the costs of the Project; and

WHEREAS, the Developer has now requested the Authority to issue revenue bonds in the maximum principal amount of \$8,000,000 to refund the Series 2017A Bonds, to refund a portion of the Series 2017B Bonds, to pay certain additional costs of the Project and to fund an additional reserve in support of the Project; and

WHEREAS, upon advice from the Authority’s staff, this Board has determined that it is necessary and proper and in the best interest of the Authority to issue revenue bonds in the maximum principal amount of \$8,000,000 (the “Bonds”), and to secure the Bonds with the assignment and pledge of Project Revenues as provided in the Trust Indenture; and

WHEREAS, this Board will hold a public hearing pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended, for the purpose of informing interested parties of the proposed issuance of the Bonds and to afford those parties an opportunity to express their views on the subject both orally and in writing; and

WHEREAS, this Board has determined that (a) the Project constitutes “port authority facilities” within the meaning of the Act creating or retaining jobs and employment opportunities or otherwise supporting economic development in the City or the County of Hamilton, and (b) it is in the best interests of the Authority to issue the Bonds in accordance herewith and with the Trust Indenture.

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 Trust Indenture 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 4582.60, inclusive, Ohio Revised Code, as enacted and amended from time to time pursuant to Section 13 of Article VIII of the Ohio Constitution.

“Account” means any account within any Fund created in and maintained under the Trust Indenture

“Administrative Expenses” shall have the meaning given to such term in the Trust Indenture.

“Assigned Statutory Service Payments” means such term as defined in the Cooperative Agreement.

“Authority” means 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.

“Authority Documents” means, collectively, the Trust Indenture, the Purchase Agreement, the First Amendment to Cooperative Agreement, the First Amendment to Guaranty and any other instruments or documents entered into by the Authority to consummate the transactions contemplated by the foregoing documents.

“Authorized Denominations” means Authorized Denominations as defined in the Certificate of Award or the Trust Indenture.

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

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

“Bonds” means the bonds issued by the Authority pursuant to this Bond Legislation, designated “Development Revenue and Refunding Bonds, Series 2021 (Court & Walnut Project), in an amount not to exceed \$8,000,000.

“Bond Legislation” means this Resolution and the Certificate of Award executed pursuant to this Resolution.

“Bond Service Charges” means, for any period of time, the principal of and interest and any premium due on the Bonds.

“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 Purchase Agreement or other certificate delivered in connection with the Bonds, as the same may be amended from time to time.

“City” means the City of Cincinnati, Ohio, an Ohio municipal corporation.

“Cooperative Agreement” means the Cooperative Agreement dated as of December 29, 2017 among the Authority, the City, the Developer, the Trustee and PNC Bank National Association, as Disbursing Agent, as amended by the First Amendment to Cooperative Agreement.

“Closing Date” means the date of delivery of the Bonds.

“Debt Charges” or “Debt Service” means Bond Service Charges and scheduled Administrative Expenses.

“Developer” means Court & Walnut, LLC, an Ohio limited liability company, the sole member of which is Cincinnati Center City Development Corporation, and its permitted successors and assigns.

“Financing Payments” means, with respect to the Bonds, the sum of the Assigned Statutory Service Payments and the Minimum Service Payments.

“First Amendment to Cooperative Agreement” means the First Amendment to Cooperative Agreement among the Authority, the City, the Developer, the Trustee and PNC Bank National Association, as Disbursing Agent and delivered in connection with the issuance of the Bonds.

“First Amendment to Guaranty” means the First Amendment to Guaranty of Minimum Service Payments delivered by the Guarantor in favor of the Authority and delivered in connection with the issuance of the Bonds.

“Fund” means any fund created in and maintained under the Trust Indenture.

“Guaranty” means the Guaranty of Minimum Service Payments dated as of December 29, 2017 delivered by the Guarantor in favor of the Authority, as amended by the First Amendment to Guaranty.

“Guarantor” means The Kroger Co., an Ohio corporation

“Holder” means the person in whose name a Bond is registered on the Register maintained by the Registrar.

“Interest Payment Date” shall have the meaning given to such term in the Trust Indenture.

“Minimum Service Payments” means such term as defined in the Cooperative Agreement.

“Original Purchaser” means the Original Purchaser designated in the Certificate of Award.

“Project” means the acquisition, construction, furnishing and equipping of a 555-space parking garage located at the northeast corner of Court Street and Walnut Street in the City.

“Project Fund” means the Project Fund created under the Trust Indenture.

“Project Revenues” means (a) all amounts derived from or with respect to the Project and received by the Authority or the Trustee on behalf of the Authority, including, without limitation, all Financing Payments, (b) any moneys and investments in the Project Fund and (c) all income and profit from the investment of the foregoing moneys.

“Purchase Agreement” means the purchase agreement among the Authority, the Original Purchaser and the Developer relating to the sale and purchase of the Bonds issued hereunder.

“Series 2017A Bonds” means the \$6,830,000 Development Revenue Bonds, Series 2017A (Court and Walnut Project) issued by the Authority on December 29, 2017 under the Series 2017A Trust Indenture.

“Series 2017A Trust Indenture” means the Trust Indenture dated as of December 1, 2017 between the Authority and the Trustee authorizing and securing the Series 2017A Bonds.

“Series 2017B Bonds” means the \$10,400,000 Development Revenue Bonds, Series 2017B (Court and Walnut Project) issued by the Authority on December 29, 2017 under the Series 2017B Trust Indenture.

“Series 2017B Trust Indenture” means the Trust Indenture dated as of December 1, 2017 between the Authority and the Trustee authorizing and securing the Series 2017B Bonds.

“Special Funds” shall have the meaning given to such term in the Indenture.

“State” means the State of Ohio.

“Trust Indenture” means the Trust Indenture between the Authority and the Trustee securing the Bonds, as the same may be amended or supplemented from time to time in accordance with its terms.

“Trustee” means The Huntington National Bank, as Trustee under the Trust Indenture, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “Trustee” shall mean the successor Trustee.

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 Trust Indenture. Any action authorized by this resolution to be taken by an Authorized Officer or the Authorized Officers may be taken by any one of the individuals comprising the Authorized Officers unless otherwise expressly provided herein, and shall be performed in such officer's official capacity and on behalf of the Authority.

Section 2. Determinations by the Board as to the Bonds.

(a) This Board determines that:

(i) It is necessary and proper and in the best interest of the Authority to, and the Authority shall, issue, sell and deliver the Bonds in the aggregate principal amount set forth in the Certificate of Award but not to exceed a maximum principal amount of \$8,000,000, as provided and authorized herein, in the Trust Indenture and pursuant to the authority of the Act, for the purpose of providing funds to refund the Series 2017A Bonds, to refund a portion of the Series 2017B Bonds, to pay certain additional costs of the Project, to finance a reserve in support of the Project and to pay costs of issuance of the Bonds.

(ii) The Project constitutes a "port authority facility" as defined in the Act and is consistent with the purposes of the Act; and the financing or refinancing of the costs of acquisition, construction, equipping, installing and otherwise improving of the Project is consistent with purposes of Section 13 of Article VIII, Ohio Constitution.

(iii) The financing or refinancing of the Project is in furtherance of the authorized purposes of the Authority, including without limitation, the creation or retention of jobs and employment opportunities and otherwise supporting economic development in the City or County of Hamilton, and will benefit the people of the State and the Authority.

(iv) The refunding of the Series 2017A Bonds and a portion of the Series 2017B Bonds requires the issuance, sale and delivery of the Bonds.

(v) It is necessary and proper and in the best interest of the Authority to, and the Authority shall, enter into the Trust Indenture and therein agree to cause the Bond Service Charges and the Administrative Expenses to be paid, when due, from the Project Revenues, and to pledge the Project Revenues to that purpose in accordance herewith and with the Trust Indenture.

(b) Consistent with the Trust Indenture and the covenants and agreements of the Authority therein, this Board hereby authorizes the Authority to apply all Financing Payments and other Project Revenues received by the Authority to pay Debt Charges.

Section 3. Terms and Provisions of the Bonds.

(a) Bonds Generally. The Bonds: (i) shall be issued only in fully registered form, substantially as set forth in the Trust Indenture; (ii) shall be exchangeable for Bonds of Authorized Denominations of the same series, as provided in the Indenture; (iii) shall be numbered in such

manner as determined by the Trustee in order to distinguish each Bond from any other Bond; (iv) shall be in Authorized Denominations; (v) shall be subject to optional, extraordinary and mandatory sinking fund redemption in the amounts, upon the conditions, and at the times and prices set forth in the Certificate of Award and upon the conditions set forth in the Indenture; and (vi) shall be dated as of the date of issuance thereof. Each Bond shall bear interest, payable on the Interest Payment Dates, in accordance with the Trust Indenture, from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from the date of the Bonds.

(b) Interest Rate, Principal Maturities and Redemption of Bonds. The Bonds shall bear interest at the rates, not in excess of ten percent (10%) per annum, shall mature and be subject to redemption as set forth in the Certificate of Award. An Authorized Officer shall execute and deliver the Certificate of Award on behalf of the Authority establishing such terms of the Bonds as set forth in this Section 3 and as otherwise required by this Resolution, which such Authorized Officer shall determine to be in the best interests of the Authority.

(c) Execution of Bonds. The Bonds shall be signed by any two Authorized Officers in their official capacities, provided that one or both of such signatures may be a facsimile.

(d) Book Entry System. Notwithstanding any other provisions of this resolution or the Trust Indenture, if it is determined in the Certificate of Award that it is in the best interest of the Authority, the Bonds may be issued to a Depository (as defined in the Trust Indenture) for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Bonds may be issued in the form of a single, fully registered Bond representing each maturity and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (ii) except as otherwise provided in the Trust Indenture, the book entry interest owners of Bonds in book entry form shall not have any right to receive Bonds in the form of physical securities or certificates; (iii) ownership of book entry interests in Bonds in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its participants, and transfers of the ownership of book entry interests shall be made only by book entry by the Depository and its participants; and (iv) the Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the Authority.

Section 4. Sale of the Bonds. The Bonds shall be awarded and sold to the Original Purchaser, in accordance with the Certificate of Award and the Purchase Agreement. The purchase price of the Bonds, expressed as a percentage of the principal amount of the Bonds, shall be established in the Certificate of Award, provided that such purchase price shall not be less than 95% of the principal amount of the Bonds, as established in the Certificate of Award, subject to any further discount that would be original issue discount for federal income tax purposes, all as determined in the Certificate of Award, which determination shall be in the best interests of the Authority. Each Authorized Officer is authorized to make the necessary arrangements on behalf of the Authority to establish the date, location, procedure and conditions for the delivery of the Bonds to the Original Purchaser. Those officers are further authorized to take all steps necessary

to effect due execution, authentication and delivery of the Bonds under the terms of this resolution, the Purchase Agreement and the Trust Indenture.

It is determined by this Board that the price for and the terms of the Bonds, and the sale thereof, all as provided in the Bond Legislation, the Purchase Agreement and the Trust Indenture, are in the best interests of the Authority and are in compliance with all legal requirements.

Section 5. Application of Proceeds of Bonds. The Authorized Officer is authorized and directed to execute a certificate directing the proceeds of the Bonds to be deposited in the Funds, Accounts and Subaccounts for the Bonds established under the Trust Indenture to make available the proceeds for the refunding of the Series 2017A Bonds, refunding a portion of the Series 2017B Bonds and to pay certain additional costs of the Project. Disbursement and application of amounts deposited in those Funds, Accounts and Subaccounts, which may be deposited and held in a separate account by the Trustee if so determined in the Certificate of Award, shall be made in accordance with the Trust Indenture. The proceeds of the Bonds are hereby appropriated for the purpose of paying costs of refunding the Series 2017A Bonds, refunding a portion of the Series 2017B Bonds, paying certain additional costs of the Project, funding a reserve in support of the Project and paying the costs of issuance of the Bonds.

Section 6. Security for the Bonds. As provided in the Trust Indenture, the Bonds shall be special obligations of the Authority and the Bond Service Charges thereon shall be payable solely from the Project Revenues. The payment of Bond Service Charges on the Bonds shall be secured (i) by an assignment of and grant of a security interest in the Project Revenues and all moneys and investments in the Special Funds, to the extent and with the exceptions provided herein, provided, however that any pledge or assignment of or grant of a security interest in any Fund, Account, receivables, revenues, money or other intangible property not in the custody of the Trustee shall be valid and enforceable only to the extent permitted by law; and (ii) by the Trust Indenture.

The Authority covenants that it will promptly cause the Bond Service Charges on every Bond issued under the provisions of the Trust Indenture to be paid from such sources, at the places, on the dates and in the manner provided herein and in said Bonds, according to the true intent and meaning thereof.

The Bonds and the obligations of the Authority under the Bond Legislation and Authority Documents do not and shall not represent or constitute a debt or pledge of the faith or credit or taxing power of the Authority and shall be an obligation of the Authority solely to the extent there exist sufficient Project Revenues for the performance of such obligations, and the owners of the Bonds have no right to have taxes levied by the Authority for the payment of Bond Service Charges, and each Bond shall contain a statement to that effect; provided, however, that nothing herein or in the Bond Legislation shall be deemed to prohibit the Authority, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of the Trust Indenture, the Bond Legislation or the Bonds.

Section 7. Covenants of Port Authority. The Authority, by issuance of the Bonds, covenants and agrees with the Holders that:

(a) The Authority will use the proceeds of the Bonds to refund the Series 2017A Bonds, to refund a portion of the Series 2017B Bonds, to pay certain additional costs of the Project, to fund a reserve in support of the Project and to pay certain costs of issuance of the Bonds.

(b) The Authority will segregate, for accounting purposes, the Project Revenues and Special Funds from all other revenues and Funds of the Authority.

(c) An Authorized Officer, or other appropriate officer of the Authority, will furnish to the Original Purchaser a true transcript of proceedings, certified by an Authorized Officer or such other officer, of all proceedings had with reference to the issuance of the Bonds together with such information from the Authority's records as is necessary to determine the regularity and validity of such issuance.

(d) The Authority 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 purpose of the Bonds, this resolution or as may be required by the Act, and will comply with all requirements of law applicable to the Bonds.

(e) The Authority will observe and perform all its agreements and obligations provided for by the Bonds, the Trust Indenture, or this Resolution. All of the obligations under this resolution, the Bonds and the Trust Indenture are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Authority within the meaning of Section 2731.01, Ohio Revised Code.

(f) The Authority covenants that it will restrict the use of the proceeds of the Bonds in such manner, as advised by Bond Counsel, and to such extent as may be necessary, to the extent of its authority and control, so that the Bonds will not constitute an arbitrage bond or hedge bond under Sections 141 through 150 of the Code. Any Authorized Officer of the Authority having responsibility for the issuance of the Bonds, alone or in conjunction with the Developer or any officer, employee, agent of or consultant to the Developer, shall give an appropriate certificate of the Authority for inclusion in the transcript of proceedings for the Bonds setting forth the reasonable expectations of the Authority regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

The Authority covenants that it (i) will take, or require to be taken, to the extent of its authority and control, all actions that may be required of it, as advised by Bond Counsel, for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes and, with respect to the Bonds for which such treatment is avoidable, from treatment as an item of tax preference for purposes of the alternative minimum tax imposed on individuals under the Code, and (ii) will not take or authorize to be taken any actions that would, as advised by Bond Counsel, adversely affect that exclusion or, to the extent avoidable, cause interest to be treated as an item of tax preference. The Authorized Officers of the Authority are hereby authorized and directed to

take any and all actions and make or give such reports and certifications as may be appropriate to assure such exclusions of that interest.

In its performance of these covenants, and other covenants of the Authority pertaining to federal income tax laws, the Authority may rely upon the written advice of Bond Counsel.

Section 8. Bonds are Special Obligations. The Bonds are special obligations of the Authority, and the principal of and interest (and any premium) on the Bonds are payable solely from the Project Revenues and the Special Funds, and such payment is secured by a pledge of and a lien on the Project Revenues and the Special Funds as provided by the Act, the Trust Indenture and this Resolution.

Section 9. Authority Documents. This Board finds that the Authority's execution of the Authority Documents will facilitate the financing of the Project and will advance and support the authorized purposes of the Authority. Each Authorized Officer is hereby authorized, for and in the name of the Authority and on its behalf, alone or together with any other Authorized Officer, to execute and deliver the Authority Documents in substantially the form previously used in the issuance of the Series 2017A Bonds or otherwise customarily used in revenue bond issuances of the Authority and otherwise consistent with this Resolution, the Certificate of Award and the requirements under the term sheet for the Bonds.

Section 10. Other Documents. Each Authorized Officer is authorized to execute 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 issuance and sale of the Bonds and to consummate the transactions contemplated in this Resolution, the Bonds and the Authority Documents and to consummate the transactions contemplated in this Resolution and such documents and to undertake, complete and finance the Project in accordance therewith, so long as such actions are not inconsistent with this resolution and not materially adverse to the Authority and are permitted by the Act and which shall be approved by the Authorized Officer executing those documents. The determination that such actions and any documents executed pursuant to those actions are not materially adverse to the Authority shall be evidenced conclusively by the taking of those actions or execution of those documents by any Authorized Officer. All actions heretofore taken by the officers and officials of the Authority and of this Board in connection with the issuance and sale of the Bonds are hereby adopted, ratified and approved.

Section 11. 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 12. 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 13. Effective Date. This resolution shall take effect and be in force immediately upon its adoption.

Adopted 7-20, 2021

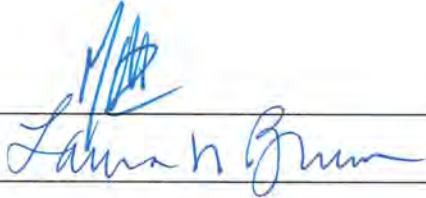
Yeas: 7

Chair

Nays: 0

Secretary

Abstentions: 0



Liana H. Green

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