

It was moved by WIDEMAN and seconded by BAKEL that the following resolution be adopted:

RESOLUTION NO. 2023-30

A RESOLUTION AUTHORIZING THE ACQUISITION, CONSTRUCTION, DEVELOPMENT, AND REDEVELOPMENT OF, AND ACTIONS PERTAINING TO THE FINANCING OF, REAL PROPERTY AND IMPROVEMENTS THERETO COMPRISING PORT AUTHORITY FACILITIES WITHIN THE CITY OF BLUE ASH, OHIO; AUTHORIZING THE EXECUTION AND DELIVERY OF A COOPERATIVE AGREEMENT, A GROUND LEASE AGREEMENT, A CAPITAL LEASE AGREEMENT, A CONSTRUCTION SERVICES AGREEMENT, AN INDEMNITY AGREEMENT, AND OTHER RELATED AGREEMENTS IN CONNECTION WITH THE TRANSACTION; APPROVING THE PROVISION OF AN OHIO SALES AND USE TAX EXEMPTION CERTIFICATE FOR THE PURCHASE OF BUILDING AND CONSTRUCTION MATERIALS INCORPORATED INTO THE PROJECT; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the Port of Greater Cincinnati Development Authority (the "Authority"), a port authority and a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the "State"), is authorized and empowered by virtue of the laws of the State including, without limitation, Article VIII, Section 13 of the State Constitution and Sections 4582.21 through 4582.59 of the Ohio Revised Code (collectively, the "Act"), among other things: (a) to enter into any contracts or other arrangements with persons and municipalities created by or under the authority of the laws of the State of Ohio (the "State") for the purposes of financing, acquiring, constructing, improving, and developing "port authority facilities" as defined in the Act, (b) to acquire interests in real or personal property, or any combination thereof, and construct, improve and develop port authority facilities and enter into agreements with respect to the construction, development, leasing, operation, use and management of such port authority facilities for "authorized purposes" as defined in the Act, including commercial and economic development purposes, (c) to make and enter into such contracts and agreements, and to execute and deliver all such instruments, as may be necessary, proper, appropriate or otherwise included in or for the exercise of powers otherwise granted to the Authority under or pursuant to the Act, (d) to provide for the development, financing and leasing of port authority facilities to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, (e) to adopt this resolution, (f) to finance, develop, and redevelop the Project (as defined herein) (g) to execute and deliver the Cooperative Agreement, the Ground Lease, the Capital Lease, the Construction Services Agreement, and the Indemnity Agreement, (as defined herein) and such other agreements and instruments as are provided for herein, all upon the terms and conditions provided herein, therein, and in the Preliminary Lease and Redevelopment Term Sheet between the Authority and the Developer for the transaction contemplated herein (the "Term Sheet"); and

WHEREAS, the Authority has been asked to assist in the cooperative development and redevelopment of hangar facilities within the City of Blue Ash, Ohio (the "City"), on property encompassing approximately 1.9 acres of real estate located at the City's Summit Park (the "Project Site"), which redevelopment is expected to proceed pursuant to a Cooperative Agreement (the "Cooperative Agreement"), by and among the Authority, the City, and MadTree Parks & Rec, LLC (the "Developer"), and as described in a Lease dated October 24, 2023, by and between the City and the Developer (the "Original Lease"); and

WHEREAS, the plan for redevelopment of the Project Site (the "Redevelopment Plan") includes the construction, reconstruction, rehabilitation, and redevelopment of a currently non-operational airplane

hangar located on the Project Site into an approximately 15,000 square foot food and beverage facility (the "Project Facilities" and together with the Project Site, the "Project") to serve the City's Summit Park and surrounding areas; and

WHEREAS, the Project Site is currently owned by the City and subject to the terms of the Original Lease; and

WHEREAS, this Board has determined that it is necessary and proper and in the best interest of the Authority (a) to enter into the Cooperative Agreement to provide for financing, development, and redevelopment of the Project; (b) to acquire a ground leasehold interest in and to the Project Site pursuant to a Ground Lease between the City, as ground lessor, and the Authority as ground lessee (the "Ground Lease") upon termination of the Original Lease, (c) to enter into a Construction Services Agreement or agreement of similar effect (the "Construction Services Agreement") between the Authority and the Developer, as the Authority's construction manager or services provider for the acquisition, construction and otherwise improving of the Project (in such capacity, the "Construction Services Provider"), (d) upon termination of the Original Lease and execution of the Ground Lease, to lease the Project to the Developer, pursuant to a lease agreement (the "Capital Lease") between the Authority, as lessor, and the Developer, as lessee (the "Lessee") to provide for rental payments and other revenues sufficient to repay the City for all or a portion of the City funding used to develop and redevelop the Project, among other uses, (e) to assign a portion of those revenues to the City for such purpose pursuant to and on the conditions stated in the Ground Lease and the Cooperative Agreement; and (f) to execute and deliver such other agreements, contracts, documents, and instruments as may be necessary or desirable to advance the development and redevelopment of the Project as described herein and in the Term Sheet;

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

Section 1. Determinations by Board. This Board hereby finds and determines, based upon information provided by the Developer, and to the extent applicable, the City, that: (i) the Authority has full power and authority to participate in the development and redevelopment of the Project Facilities and the Project Site pursuant to the Cooperative Agreement, in accordance with the Development Plan and in the manner contemplated by this Resolution and the Term Sheet, (ii) the Project Site and the Project Facilities (together, the "Project") constitute "port authority facilities" in furtherance of "authorized purposes" of the Authority, including the promotion of recreation and economic development as those terms are used in the Port Act, (iii) the redevelopment of the Project Site, including the construction, reconstruction, rehabilitation, and equipping of the Project Facilities on and within the Project Site, and the funding of the costs of the Project Facilities in the manner contemplated hereby, in furtherance of the Development Plan, is consistent with and will promote the purposes of Article VIII, Section 13 of the Ohio Constitution, and will create or preserve jobs and employment opportunities and improve the economic welfare of the people of the City, Hamilton County, and State, (iv) it is in the best interests of the Authority to, and the Authority shall: (a) enter into the Cooperative Agreement consistent with the terms thereof, hereof, and the Term Sheet, (b) accept a leasehold interest in the Project Site and any improvements thereon pursuant to the Ground Lease, (c) enter into the Construction Services Agreement in order to undertake construction of the Project Facilities on and within the Project Site as contemplated hereby, (d) enter into the Capital Lease with the Lessee to ensure construction, reconstruction, rehabilitation, and redevelopment of the Project, to provide for ongoing maintenance, management and operation of the Project, and to ensure payment of rent and other amounts sufficient to repay the City for all or a portion of the City funding used to develop and redevelop the Project, and (e) take such other actions as are consistent with and contemplated by this resolution, the Term Sheet, and the agreements and instruments authorized hereby. This Board hereby determines that the arrangements as to Authority fees described in the Term Sheet are satisfactory to and in the best interests of the Authority, taking into account the determination to undertake actions and obligations with respect to the Project.

Section 2. Transaction Documents. This Board hereby authorizes and approves the Cooperative Agreement, the Ground Lease, the Capital Lease, and the Indemnity Agreement (collectively, the "Transaction Documents"), in substantially the form on file with the Secretary of this Board. Any one or more of the Chairperson, the Vice Chairperson, and the President and Chief Executive Officer (each an "Authorized Officer"), alone or together with the Secretary or any Assistant Secretary of this Board (each a "Fiscal Officer"), are hereby authorized and directed to execute the Transaction Documents, substantially in each such form, but with those changes as are not substantially adverse to the Authority, as are approved by the Authorized Officer executing, and as necessary or desirable to reflect the intended terms of the transactions contemplated by this resolution and finalized by the parties to each such agreement, such execution being conclusive evidence of approval of any such changes and that they are necessary or desirable, in accordance herewith, and are not adverse to the Authority. The Capital Lease provides for the grant to the Lessee or the City, as applicable, of an option or options to purchase the Project in connection with any permitted termination of the Capital Lease and subject to the conditions stated in the Capital Lease. In connection with any such exercise by the Lessee of its option to purchase the Project, any Authorized Officer and the Fiscal Officer are hereby authorized to execute all such instruments, for and in the name and on behalf of the Authority, as may be necessary to terminate the Capital Lease and the Ground Lease and effect the transfer of the Project to the Lessee or the City, as applicable, on such terms as the officer or officers deem necessary or appropriate and in the best interest of the Authority, without the necessity of any further action by this Board.

Section 3. Exemption Certificate. This Board hereby authorizes any Authorized Officer, individually acting alone, upon the execution of the Transaction Documents by the parties thereto, to provide the Construction Services Provider or its nominees with appropriate certificates (the "Sales Tax Exemption Certificate") to support the claim of an exemption from Ohio and County sales and uses taxes that might otherwise apply with respect to the purchase of building and construction materials incorporated into structures or improvements to real property, within the meaning of Section 5739.02(B)(13), Ohio Revised Code, that constitute Project improvements. The Construction Services Provider shall be solely responsible for the determination of whether any particular purchase of building and construction materials qualifies for exemption from State sales and use taxes by virtue of the provisions of Section 5739.02(B)(13) of the Ohio Revised Code. Nothing herein, or in any Transaction Document or any other document or instrument, shall require the Authority to pay any such sales and use taxes or be construed as a guarantee by this Board or the Authority of the availability or of the amount of any such sales and use tax exemption.

Section 4. Preliminary Agreement. To the extent determined necessary and prudent by the President and Chief Executive Officer of the Authority, in consultation with counsel to the Authority, the President and Chief Executive Officer may execute and deliver, on behalf of the Authority, a Sales and Use Tax Exemption Certificate prior to the execution of the Capital Lease upon the execution of a preliminary agreement by and between the Authority and the Lessee (the "Preliminary Agreement"). The terms of the Preliminary Agreement shall be consistent with this Resolution and shall be subject to the approval of the Authority in its sole discretion. Authority approval and the Preliminary Agreement's consistency with this Resolution shall be conclusively evidenced by the execution of the Preliminary Agreement by the President and Chief Executive Officer executing the same.

Section 5. Project Construction. Based on information furnished to the Authority by the Developer, and the findings and determinations made by this Board in Section 1 above, this Board hereby determines that the manner in which the contracts for the acquisition, construction and equipping of the Project Facilities and redevelopment of the Project Site should be made is to enter into the Construction Services Agreement and, in accordance therewith, and subject to the terms of the Cooperative Agreement, the Ground Lease, and the Capital Lease, authorize the Developer, or an affiliate thereof acceptable to the Authority, to act as its agent for and manager of the construction of the Project Facilities on and within

the Project Site. The Developer, or an affiliate of the Developer approved by the Authority, under the Construction Services Agreement (the "Construction Services Provider") shall be authorized to negotiate the terms of the construction contract or contracts, including any subcontract or subcontracts and all contracts for the supply of materials (collectively, "Construction Contracts") and all agreements with respect to the design, landscape design, engineering, architecture or similar services with respect to the redevelopment of the Project Site (the "Professional Contracts") necessary or desirable in connection therewith, all subject to applicable provisions of the Cooperative Agreement, the Capital Lease, and the Construction Services Agreement.

This Board hereby specifically finds and determines that such manner of negotiation and contracting with respect to the Construction Contracts and the Professional Contracts (collectively, "Contracts") will best carry out the public purposes of the Project, including the public purposes of Article VIII, Section 13 of the Ohio Constitution and, accordingly, the Contracts shall not be subject to any requirement of competitive bidding or selection or any requirements relating to the provision of security for bidding, payment, or performance, unless and except to the extent specified in the Cooperative Agreement and/or the Capital Lease. This Board hereby authorizes and approves the appointment of the Developer, or an affiliate of the Developer approved by the Authority, as Construction Services Provider under the Construction Services Agreement for the purpose of undertaking, managing and completing, on behalf of the Authority, the redevelopment of the Project Site, including the construction of the Project Facilities.

Notwithstanding anything to the contrary in the Cooperative Agreement or the Construction Services Agreement, the obligations of the Authority under or pursuant to the Construction Services Agreement and the Contracts shall not be a general obligation, bonded indebtedness or a pledge of the general credit of the Authority but shall be payable solely from funds made available by the City or the Developer, and any other money that may be made available to the Authority for that purpose, and the Construction Services Agreement and each Contract shall so state, by addendum or otherwise. Further, all monetary or pecuniary obligations of the Authority under or with respect to the Construction Services Agreement or the Contracts shall be conditioned on the provision of funds by the City or the Developer, and the Construction Services Agreement and each Contract shall so state, by addendum or otherwise. Subject to the foregoing, this Board hereby authorizes and approves the Construction Services Agreement in substantially the form on file with the Secretary of this Board. Any one or more of the Authorized Officers, alone or together with any Fiscal Officer, are hereby authorized and directed to execute and deliver the Construction Services Agreement, in substantially that form, but with those changes as are not substantially adverse to the Authority and as are approved by the officer or officers executing the Construction Services Agreement as being necessary or desirable and in the best interest of the Authority, that execution being conclusive evidence of approval of any such changes as being necessary or desirable and in the best interest of the Authority and that they are not substantially adverse to the Authority.

Section 6. Additional Instruments. This Board hereby authorizes and approves the execution and delivery by the Authority of any other instruments or agreements included as exhibits to any of the Transaction Documents, each in substantially the form on file with the Secretary of this Board. Any one or more of the Authorized Officers, alone or together with any Fiscal Officer, are hereby authorized and directed to execute and deliver any such instrument or agreement in substantially those forms, but with those changes as are not substantially adverse to the Authority and as are approved by the officer or officers executing that agreement or instrument as being necessary or desirable and in the best interest of the Authority, that execution being conclusive evidence of approval of any such changes as being necessary or desirable and in the best interest of the Authority and that they are not substantially adverse to the Authority.

Section 7. Further Actions. The President and Chief Executive Officer and the Fiscal Officer are further authorized to execute any certifications, financing statements, assignments, agreements and instruments, including indemnity agreements and any easement, declaration, recognition agreement, mortgage, or subordination or similar agreements for the Project as are not inconsistent with this resolution and that are permitted by the Act and shall be approved by the officer or officers executing those documents, and to take such further actions as are necessary or appropriate to implement the transactions contemplated in the Transaction Documents and to consummate the transactions contemplated in this resolution, the Term Sheet and the Transaction Documents, and to undertake, complete and finance a portion of the costs of the Project, consistent herewith and with the Transaction Documents. All actions heretofore taken by the officers and officials of the Authority and of this Board in connection with the Project and the financing thereof are hereby ratified and approved.

Section 8. References. Any reference herein to the Authority, to this Board, or to any member or officer of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions. Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Ohio Revised Code, or to any statute of the United States of America includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no such amendment, modification, revision, supplement of superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the Authority or the Lessee under this resolution, the Ground Lease, the Capital Lease, the Construction Services Agreement, the Indemnity Agreement, or any other instrument or document entered into in connection with any of the foregoing.

Section 9. 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 10. Compliance with Open Meeting Law. 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 of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

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

A roll call being had upon the question of the passage of the foregoing resolution, the vote thereon resulted as follows:

Adopted: 12-13-23

Yeas: 8

Nays: 0

Abstention: 0

Matt  
Chairperson

Attest: Lauren Brun  
Secretary

**CERTIFICATE**

The undersigned, President and Chief Executive Officer of the Port of Greater Cincinnati Development Authority, hereby certifies that the foregoing is a true and complete copy of Resolution No. 2023 -\_\_ passed on the 13th day of December, 2023, and has not been amended or rescinded as of this date.

**Port of Greater Cincinnati Development  
Authority**

12 13, 2023

  
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President and Chief Executive Officer