

RESOLUTION NO. 2022-46

A RESOLUTION AUTHORIZING THE ACQUISITION OF AN INTEREST IN REAL PROPERTY AND THE CONSTRUCTION THEREON OF “PORT AUTHORITY FACILITIES” WITHIN THE MEANING OF SECTION 4582.21, OHIO REVISED CODE; AUTHORIZING AND APPROVING THE ISSUANCE AND SALE OF A MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$55,000,000.00 TAXABLE DEVELOPMENT REVENUE BONDS (MERCANTILE REDEVELOPMENT PROJECT), FOR THE PURPOSE OF FINANCING COSTS OF “PORT AUTHORITY FACILITIES”; AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE, A MANAGEMENT AGREEMENT, A MORTGAGE, A CONSTRUCTION MANAGER AT-RISK AGREEMENT, A BOND PURCHASE AGREEMENT, AND SUCH OTHER DOCUMENTS AS MAY BE APPROPRIATE IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION, AND FINANCING OF SUCH PORT AUTHORITY FACILITIES; 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 THE EXECUTION OF RELATED DOCUMENTS AND MATTERS.

WHEREAS, the Port of Greater Cincinnati Development Authority (the “Port 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, Sections 13 and 16 of the Ohio Constitution and Sections 4582.21 through 4582.59 of the Ohio Revised Code (collectively, within the authorities therein mentioned, the “Act”), among other things: (a) 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, equipping, development, leasing, operation, use and management of such port authority facilities for “authorized purposes” as defined in the Act, including housing and economic development purposes; (b) to provide for the development and financing of port authority facilities to create or preserve jobs and employment opportunities, and to improve the economic welfare of the people of the State; (c) to issue revenue bonds for the purpose of financing costs of acquiring, constructing, installing, equipping or improving “port authority facilities,” as defined in Section 4582.21, Ohio Revised Code; (d) to adopt this resolution and to enter into or accept the Ground Lease, the Management Agreement, the Mortgage, the Construction Manager At-Risk Agreement, the Indemnity Agreement, and the Bond Purchase Agreement, each defined herein, upon the terms and conditions provided herein and therein; and

WHEREAS, pursuant to the request of MCA Center LLC (including affiliates thereof, the “Developer”), the Port Authority has negotiated a Preliminary Development Term Sheet (the “Term Sheet”) that sets forth the general terms pursuant to which the Port Authority has agreed to assist the Developer in the rehabilitation, construction, equipping, and furnishing of a, mixed-use development comprised of (i) approximately 156 residential units, (ii) approximately 77,000 square feet of commercial space, and (iii) related improvements within or benefiting the Project Site, as defined hereinafter (collectively, the “Project Facilities”) on an approximately 1.197-acre site generally located at or adjacent to 115 E. Fifth Street, Cincinnati, Ohio, which real property currently has been assigned tax parcel numbers 083-0001-0163-00, 083-0001-0141-00, and 083-

0001-0257-00 in the Hamilton County Auditor's Office, acquired or to be acquired by the Developer for such purpose (the "Project Site" and together with the Project Facilities, the "Project"), by (i) acquiring a leasehold interest in the Project Site, (ii) entering into a construction manager at-risk agreement (the "Construction Manager At-Risk Agreement") and management agreement (the "Management Agreement") with the Developer pursuant to which the Developer shall manage the construction and operation of the Project, (iii) issuing taxable development revenue bonds of the Port Authority (the "Bonds") to pay the costs of constructing the Project Facilities, and (iv) issuing a Sales Tax Exemption Certificate, as defined hereinafter; and

WHEREAS, this Board has determined (a) the Project constitutes a "port authority facility" within the meaning of the Act, creating or retaining jobs and employment opportunities, enhancing the availability of housing, or otherwise supporting, enhancing, fostering, and providing economic development and housing opportunities in Hamilton County, (b) the acquisition, construction, development, and improvement of the Project will be consistent with the purpose of Sections 13 and 16 of Article VIII, Ohio Constitution, to create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the State of Ohio, and to create adequate housing for the people of the State of Ohio within the jurisdiction of the Port Authority, and (c) the Project will be consistent with the purposes of Section 4582.21(B)(1), Ohio Revised Code, by providing assistance to projects that enhance, foster, aid, or promote economic development and housing within Hamilton County, Ohio;

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

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 and the Transaction Documents that are incorporated herein by reference, the following capitalized terms shall mean:

"Act" means Sections 4582.21 to 4582.59, inclusive, Ohio Revised Code, as enacted and amended from time to time pursuant to Sections 13 and 16 of Article VIII of the Ohio Constitution.

"Assignment of Construction Contract" means the Assignment of Construction Contract, or other document of similar effect, dated of even date with the Ground Lease, by and between the Port Authority, the Manager and other necessary and appropriate parties.

"Assignment of Management Agreement" means the Collateral Assignment of Management Agreement, or other document of similar affect, dated as of the Closing Date, by the Port Authority and other necessary and appropriate parties.

"Authorized Officer" means the Chair, Vice Chair, Secretary, President and CEO of this Board or of the Port Authority.

"Authorizing Legislation" means this resolution and any supplemental or amending resolution adopted by the Legislative Authority.

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

“Bond Purchase Agreement” means that certain agreement by and among the Port Authority, the Original Purchaser and any additional necessary parties relating to the purchase of the Bonds, as the same may be amended from time to time.

“Bond Resolution” means this resolution.

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

“Construction Contract” means the direct contract or contracts related to the Project by and between the Construction Manager and a general contractor, construction manager or other contractor providing similar services for the Project.

“Construction Documents” means collectively the Construction Contract and the Construction Manager At-Risk Agreement.

“Construction Manager At-Risk Agreement” means the Construction Manager At-Risk Agreement, dated of even date with the Ground Lease, between the Port Authority and the Manager, as construction manager at-risk.

“County” means Hamilton County, Ohio.

“Debt Service Payments” means the debt service payments made by the Manager to the Original Purchaser on behalf of the Port Authority in an amount equal to the Bond Service Charges payable on the Bonds.

“Developer” means MCA Center LLC, an Ohio limited liability company, or an affiliate thereof.

“Fiscal Officer” means the Secretary and any Assistant Secretary of the Port Authority.

“General Contractor” means the general contractor set forth in the Construction Contract.

“Ground Lease” means the lease of the Project Site by and between the Developer, as ground lessor and the Port Authority, as ground lessee, dated as of the first day of the month in which the Series Bonds are issued.

“Holder” or “holder of a Bond” means the person in whose name a Bond is registered on the register maintained initially by the registrar.

“Indemnitor” means each party that is identified as an indemnitor in the Indemnity Agreement.

“Indemnity Agreement” means the Indemnity Agreement provided by each Indemnitor in favor of the Port Authority.

“Management Agreement” means the Management Agreement, by and between the Port Authority, and the Manager, dated as of the first day of the month in which the Closing Date occurs.

“Manager” means the Developer, in its capacity as manager under the Management Agreement.

“Mortgage” means a mortgage, if required by, and in favor of, the Original Purchaser of the Bonds encumbering the Port Authority’s leasehold interest created under the Ground Lease.

“Original Purchaser” means the party identified as the original purchaser of the Bonds in the Bond Purchase Agreement.

“Pledged Revenues” means (a) all amounts payable to the Port Authority under the Management Agreement, except for the Initial Port Fee and the Annual Port Fee, each as defined in the Management Agreement, (b) all income and profit from the investment of the foregoing moneys, and (c) all other moneys received or to be received by or otherwise pledged to the Port Authority and intended to be used for Debt Service Payments.

“Port Authority” means the 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.

“Bonds” shall mean the Port Authority’s Taxable Development Revenue Bonds, (Mercantile Redevelopment Project), which have been authorized by this resolution and are to be issued pursuant to the Bond Purchase Agreement, and which Bonds may be otherwise designated in the Bond Purchase Agreement.

“State” means the State of Ohio.

“Transaction Documents” means each of the following documents if and to the extent entered into by the Port Authority in connection with the issuance of the Bonds: the Ground Lease, the Mortgage, the Management Agreement, the Bond Purchase Agreement, the Indemnity Agreement, the Construction Documents, and the Bonds.

“Project Purposes” means acquiring, constructing, equipping and installing real and personal property, or any combination thereof, consisting of the Project Facilities, which comprise “port authority facilities” as defined in the Act, for operating, maintaining, and repairing the Project Facilities on the Project Site pursuant to the Management Agreement, or such other uses and purposes from time to time as may be permitted by the Management Agreement and the Act.

Section 2. Determinations by Board. This Board hereby finds and determines that: (i) it is necessary and proper and in the best interest of the Port Authority to, and the Port Authority shall, issue, sell and deliver the Bonds in the maximum aggregate principal amount of \$55,000,000, as provided and authorized herein and in the Bond Purchase Agreement and pursuant to the authority of the Act, all for the purpose of financing the costs of acquiring, constructing, and equipping the Project and to pay certain costs of issuance and related costs of

the Project; (ii) the Project constitutes “port authority facilities” as defined in the Act, and is consistent with the purposes of the Act and Sections 13 and 16 of Article VIII, Ohio Constitution; (iii) it is necessary and proper and in the best interest of the Port Authority to acquire a leasehold interest in the Project Site from the Developer and to enter into the Management Agreement with the Manager; (iv) the Project Site is within the geographic jurisdiction of the Port Authority and the County and the construction and equipping of the Project Facilities is consistent with the purposes of the Act, will further the Project Purposes and will benefit the people of the State and the County, including those within the jurisdiction of the Port Authority, by, among other benefits, creating jobs and employment opportunities, and improving the economic welfare of the people of the State; and (v) the acquisition, construction, and equipping of the Project requires the issuance, sale, and delivery of the Bonds.

Section 3. Construction and Ownership of the Project. Based on information furnished to it, this Board has determined that the manner in which the Construction Documents for acquisition, construction, equipping, installation and improving of the Project should be made is to negotiate the terms of the Construction Documents in the manner contemplated by this resolution and the Construction Manager At-Risk Agreement, and this Board hereby finds and determines that such negotiation best carries out the public purpose to be fulfilled by the Project under and consistent with Article VIII, Sections 13 and 16 of the Ohio Constitution, and, accordingly, pursuant to Ohio Revised Code Section 4582.31(A)(18)(e), the contracts shall be procured and entered into pursuant to and in the manner contemplated by this resolution and the Construction Manager At-Risk Agreement and shall not be subject to any other requirements that might otherwise be applicable to the Port Authority under the Act or other Ohio laws, including, without limitation, any requirements of competitive bidding or selection or any requirements relating to the provision of security for bidding, payment or performance.

Section 4. Ground Lease, Management Agreement, Construction Manager At-Risk Agreement, the Mortgage and Construction Documents. Each Authorized Officer is hereby authorized and directed, for and in the name of the Port Authority and on its behalf, alone or together with any other Authorized Officer, to accept the Indemnity Agreement, and to execute and deliver (i) to the Developer the Ground Lease, (ii) to the Manager the Management Agreement and the Construction Documents to which the Port Authority is a party, and (iii) to the Original Purchaser the Assignment of Management Agreement and the Mortgage. The forms of the Ground Lease, the Management Agreement, the Construction Manager At-Risk Agreement, the Bond Purchase Agreement and the Indemnity Agreement, currently on file with the Secretary are approved with such changes therein as are not inconsistent with this resolution and not substantially adverse to the Port Authority and which are approved by the Authorized Officer executing those documents. The approval of such changes, and that such changes are not substantially adverse to the Port Authority, shall be conclusively evidenced by the execution of those documents by that Authorized Officer, but with such completions, revisions and modifications as are necessary to conform to this resolution. The Board hereby determines that execution of a lease agreement of similar effect to the form of Management Agreement on file shall not be inconsistent with this resolution so long as the terms of such lease are not substantially adverse to the Port Authority relative to the terms of the Management Agreement on file. That the terms of such lease are not are not substantially adverse to the Port Authority relative to the terms of the Management Agreement on file shall be conclusively evidenced by

the execution of that document by an Authorized Officer, and under such circumstance all references to the Management Agreement herein shall apply to such lease.

Section 5. Terms and Provisions of the Bonds. The Bonds shall be dated as of the Closing Date. The Bonds shall (i) be stated to mature on the date specified therein; (ii) shall bear interest on the principal amount thereof from time to time outstanding at interest rates determined as provided, and payable as specified, therein; (iii) be payable solely from the Pledged Revenues as to principal and interest as provided therein; (iv) be subject to redemption as provided therein; and (v) require payment of other amounts as provided therein. The Bonds shall be signed by an Authorized Officer and the Fiscal Officer. The registrar of the Bonds shall be determined as described in the Bond Purchase Agreement. Each Authorized Officer is hereby authorized, for and in the name of the Port Authority and on its behalf, alone or together with any other Authorized Officer, to execute the Bond Purchase Agreement in form and substance consistent with the purposes of this Resolution and the Act. Execution of the Bond Purchase Agreement by an Authorized Officer shall conclusively evidence that the Bond Purchase Agreement is in fact consistent with, and in furtherance of the purposes of this Resolution and the Act.

Section 6. Security for the Bonds. As provided in the Transaction Documents, the Bonds shall be payable solely from the Pledged Revenues. Nothing in the Bond Resolution, the Bonds or the Transaction Documents shall constitute a general obligation, debt or bonded indebtedness of the Port Authority; neither the general resources of the Port Authority shall be required to be used, nor the general credit of the Port Authority pledged, for the performance of any duty under this Bond Resolution or the Bonds; and further, nothing therein gives the Holders of the Bonds, and they do 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, for the payment of principal of, redemption premium, if any, and interest on the Bonds, but the Bonds are payable solely from the Pledged Revenues as provided herein and in the Bond Purchase Agreement, and each Bond shall contain a statement to that effect; provided, however, that nothing in this resolution shall be deemed to prohibit the Port Authority, 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 Bond Resolution or the Bonds.

Section 7. Other Documents and Further Actions. Each Authorized Officer, alone or together with any other Authorized Officer, is authorized to execute or accept a Mortgage, an Assignment of Management Agreement, an Assignment of Construction Contract, and any certifications, financing statements, assignments, agreements and instruments upon the advice of counsel and required by the Original Purchaser or otherwise necessary or appropriate to advance the Project and/or the issuance of the Bonds consistent with this resolution, the Transaction Documents and the Act. Each Authorized Officer, alone or together with any other Authorized Officer, is further authorized to take such further actions as are necessary or appropriate to implement the transactions contemplated in this resolution, the Term Sheet and the Transaction Documents and to consummate the transactions contemplated in this resolution and the Transaction Documents and to undertake, complete and fund the costs of the Project, consistent with this resolution, the Transaction Documents and the Act. All actions heretofore taken by the officers and officials of the Port Authority and of this Board in connection with the Project and the financing thereof are hereby ratified and approved.

Section 8. Port Authority Financial Obligation. Notwithstanding anything to the contrary in this resolution, the Bond Purchase Agreement, the Bonds, the Ground Lease, the Management Agreement, the Construction Documents, the Indemnity Agreement, any other Transaction Documents, or any other document, agreement, contract or instrument related to the Project, the Port Authority's execution of such documents and the Port Authority's obligations under any such document, agreement, contract or instrument do not and shall not pledge the general credit or taxing power of the Port Authority or of the State or any political subdivision thereof, and nothing herein or in any such documents shall constitute a general obligation, debt, or bonded indebtedness of the Port Authority or the State or any political subdivision thereof.

Section 9. References. Any reference herein to the Port 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 Port Authority or the Developer under this resolution, the Bond Purchase Agreement, the Bonds, the Ground Lease, the Management Agreement, the Construction Documents, the Indemnity Agreement, any other Transaction Documents, or any other instrument or document entered into in connection with any of the foregoing, except as permitted herein.

Section 10. Sales Tax Certificates. This Board hereby further authorizes any Authorized Officer, individually acting alone, upon the execution of the Transaction Documents by the parties thereto, to provide the Manager 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 Manager 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 Port Authority to pay any such sales and use taxes or be construed as a guarantee by this Board or the Port Authority of the availability or of the amount of any such sales and use tax exemption.

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. It is found and determined 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 of its

committees or subcommittees, or any other public bodies of the Port Authority, that resulted in such formal actions were in meetings open to the public, in compliance with the law.

Section 13. Counsel. The Port Authority has retained the law firm of Frost Brown Todd LLC as counsel to provide legal services in connection with the transactions contemplated by this resolution.

Section 14. Effective Date. This resolution shall be in full force and effect upon its adoption.

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

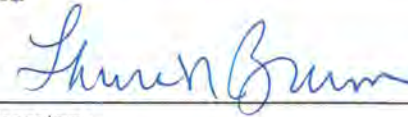
Adopted: 12-14-22

Yeas: 9

Nays: 0

Abstention: 0


Chairperson

Attest: 
Secretary