

It was moved by A Spiller and seconded by D. Jones that the following resolution be adopted:

RESOLUTION NO. 2024-22

A RESOLUTION (I) AUTHORIZING AND APPROVING A TRANSACTION CONCERNING THE ACQUISITION, CONSTRUCTION, DEVELOPMENT, AND IMPROVEMENT OF A MIXED USE DEVELOPMENT AND APPURTENANCES RELATED THERETO CONSTITUTING "PORT AUTHORITY FACILITIES" TO BE LOCATED ON CERTAIN REAL PROPERTY TO BE ACQUIRED BY THE AUTHORITY; (II) AUTHORIZING THE ACCEPTANCE OF CERTAIN REAL PROPERTY BY DEED; (III) APPROVING THE EXECUTION AND DELIVERY OF A DEVELOPMENT AGREEMENT, A CONSTRUCTION MANAGER AT-RISK AGREEMENT, A PROJECT LEASE AGREEMENT, A FEE MORTGAGE, A SUBORDINATION AGREEMENT, A RECOGNITION AGREEMENT, AN INDEMNITY AGREEMENT, AND RELATED AGREEMENTS IN CONNECTION WITH THE TRANSACTION; (IV) APPROVING THE PROVISION OF OHIO SALES AND USE TAX EXEMPTION CERTIFICATES FOR THE PURCHASE OF BUILDING AND CONSTRUCTION MATERIALS INCORPORATED INTO THE PROJECT; AND (V) AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the Port of Greater Cincinnati Development Authority (the "Authority") is authorized to promote housing opportunities and economic development within the City of Cincinnati, Ohio (the "City") and Hamilton County, Ohio (the "County") by providing assistance to projects that provide housing and create and preserve jobs and employment opportunities within the City and the County; and

WHEREAS, Warsaw Creative II, LLC, an affiliate of Price Hill Will (including any applicable affiliates, the "Developer"), has acquired or will acquire a fee ownership in approximately 0.186 acres of certain real property and improvements thereon located in the Price Hill neighborhood of Cincinnati, Ohio, as further described in Exhibit A (collectively, the "Project Site"); and

WHEREAS, Developer intends to renovate and develop a mixed-use development comprised of approximately nine (9) affordable apartment units, approximately 1,774 square feet of commercial space, and necessary appurtenances related thereto located on the Project Site (collectively, the "Project"); and

WHEREAS, the Authority desires to assist the Developer with the acquisition, construction, development, and improvement of the Project in order to fulfill the shared economic development, housing, and urban redevelopment goals of the City, the County, and the Authority; and

WHEREAS, the Developer and the Authority have negotiated and entered into, or plan to enter into, a Term Sheet (the "Term Sheet") which describes the roles and responsibilities of the parties with respect to the Project; and

WHEREAS, the Authority, by virtue of the laws of the State of Ohio, particularly Ohio Revised Code Sections 4582.21 through 4582.59 (the "Act") and the authorities therein mentioned, is authorized (i) to acquire a fee interest in the Project Site by operation of one or more Deeds (collectively, the "Deed"); (ii) to cause the construction of the Project on the Project Site, and to

appoint the Developer as its construction manager at-risk or construction services provider in order to construct the Project on the Project Site pursuant to a Construction Manager At-Risk Agreement or other agreement of similar affect (the "Construction Manager At-Risk Agreement"); (iii) to lease the Project and the Project Site to the Developer pursuant to one or more Project Lease Agreements (collectively, the "Project Lease Agreement"); (iv) to enter into a development agreement with the Developer (the "Development Agreement") regarding the Project; (v) to execute or join one or more fee mortgages, if required (collectively, the "Fee Mortgage"), one or more subordination of fee interest agreements, if required (collectively, the "Subordination Agreement"), and one or more recognition and attornment agreements and acknowledgments of mortgage (collectively and including other agreements of similar effect, the "Recognition Agreement") to support the Developer's private financing of the initial acquisition of the Project Site and/or the construction of the Project; (vi) to enter into an indemnification agreement (the "Indemnity Agreement") by and among the Authority, the Developer, The Model Group, Inc., and/or any additional parties as determined necessary and appropriate by the Authority; (vii) to execute any additional agreements, documents, or certifications to cause the proper acquisition, construction, development, and improvement of the Project and the protection of the Authority's interests in connection with the Project and (viii) enter into the Term Sheet (collectively, items (i) through (viii) above are referred to herein as the "Proposed Transaction"); and

WHEREAS, the Developer intends to start soliciting contracts for construction of the Project and has requested that the Authority provide certificates evidencing the exemption from State of Ohio sales and use taxes of purchases of building and construction materials for incorporation into the Project, and the Authority is willing to provide such certificates upon acquisition by the Authority of the Project Site and the execution of an agreement by the Developer to convey ownership of the Project; and

WHEREAS, upon execution of the Deed, the Construction Manager At-Risk Agreement, and the Project Lease Agreement (a) the Project will constitute one or more "port authority facilities" within the meaning of that term as defined in Ohio Revised Code Section 4582.21(E); (b) the acquisition, construction, development, improvement, and operation of the Project will be consistent with the purposes of (i) Ohio Constitution Article VIII, Section 13, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people within the jurisdiction of the Authority and within the State of Ohio, and (ii) Ohio Constitution Article VIII, Section 16, to encourage housing opportunities within the jurisdiction of the Authority and within the State of Ohio through the acquisition and leasing of housing; and (c) the Project will be consistent with the purposes identified in Ohio Revised Code Section 4582.21(B) because the Project is expected (i) to provide housing opportunities within the jurisdiction of the Authority, (ii) to create jobs and employment opportunities and thereby to enhance the economic welfare of the people within the jurisdiction of the Authority, and (iii) to enhance, foster, aid, provide, or promote housing and economic development within the jurisdiction of the Authority.

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

Section 1. This Board does hereby find and determine that, based upon the representations of the Developer and upon execution of the Deed, the Development Agreement, the Construction Manager At-Risk Agreement, the Project Lease Agreement, and related agreements:

(a) The Project constitutes one or more “port authority facilities” within the meaning of that term as defined in Ohio Revised Code Section 4582.21(E); and

(b) The Project is consistent with, related to, useful for, and in furtherance of the activities contemplated by (i) Ohio Constitution, Article VIII, Section 13, including to create or preserve jobs and employment opportunities and to improve the economic welfare of the people within the jurisdiction of the Authority and within the State of Ohio, (ii) Ohio Constitution Article VIII, Section 16, to encourage housing opportunities within the jurisdiction of the Authority and within the State of Ohio through the acquisition and leasing of housing, and (iii) Ohio Revised Code Section 4582.21(B), including to enhance, foster, aid, provide, or promote housing and economic development within the jurisdiction of the Authority and within the State of Ohio.

Section 2. This Board hereby approves the participation of the Authority in the Proposed Transaction as described in the Term Sheet and approves and/or ratifies execution of the Term Sheet. Based on information furnished to it, this Board hereby finds and determines that the manner of negotiation and contracting with respect to the contracts related to construction of the Project, as contemplated by the Construction Manager At-Risk Agreement, will best carry out the purposes of the Project, particularly the public purposes of 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 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 3. This Board hereby approves the Development Agreement, the Deed, the Construction Manager At-Risk Agreement, the Project Lease Agreement, and the Indemnity Agreement in forms currently on file with the Board, with such changes as may be necessary to conform those forms to the Proposed Transaction and with such changes as shall not be materially adverse to the Authority and as may be approved by the officer or officers of the Authority executing such documents. The Mortgage, the Recognition Agreement, and the Subordination Agreement shall be entered into by the Authority, if required by the lender for the Project and consistent with the purposes of this Resolution, upon the advice of counsel to the Authority. The President and Chief Executive Officer of the Authority, the Secretary of the Authority, the Chair of the Authority, the Vice Chair of the Authority, or any Assistant Secretary of the Authority, or any of them, are hereby authorized and directed to execute and deliver, for and in the name and on behalf of the Authority the Development Agreement, the Construction Manager At-Risk Agreement, the Project Lease Agreement, the Fee Mortgage, the Subordination Agreement, the Recognition Agreement, and the Indemnity Agreement, with such changes to any such documents currently on file as shall not be materially adverse to the Authority. The execution of the Construction Manager At-Risk Agreement, the Project Lease Agreement, the Development Agreement, and the Indemnity Agreement by a duly authorized officer or officers of the Authority shall evidence conclusively that any such changes are necessary to conform the documents to the Proposed Transaction, that any such changes are not materially adverse to the Authority, and that any conditions to the execution and delivery of such documents have been satisfied.

Section 4. The President of the Authority, the Secretary of the Authority, the Chair of the Authority, the Vice Chair of the Authority, or any Assistant Secretary of the Authority, or any of them, are each authorized and directed to take such further actions and execute any certifications, financing statements, assignments, agreements, instruments, and other documents that are necessary or appropriate to consummate the Proposed Transaction in accordance with this Resolution, the Deed, the Construction Manager At-Risk Agreement, the Project Lease Agreement, the Development Agreement, the Fee Mortgage, the Subordination Agreement, the Recognition Agreement, and the Indemnity Agreement, or as may be required by the Act or Ohio Revised Code Chapter 5739. The Authority shall, 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 or appropriate to consummate the Proposed Transaction in accordance with this Resolution, the Deed, the Construction Manager At-Risk Agreement, the Project Lease Agreement, the Development Agreement, the Fee Mortgage, the Subordination Agreement, the Recognition Agreement, and the Indemnity Agreement, or as may be required by the Act or Ohio Revised Code Chapter 5739 and shall comply with all requirements of law applicable to the Proposed Transaction.

Section 5. This Board hereby authorizes the President and Chief Executive Officer of the Authority, the Secretary of the Authority, the Chair of the Authority, the Vice Chair of the Authority, or any Assistant Secretary of the Authority, or any of them, upon the execution of the Deed, the Construction Manager At-Risk Agreement, and the Project Lease Agreement by the parties thereto, to provide the Developer or its nominees with appropriate certificates (“Exemption Certificates”) to support the claim of an exemption from Ohio 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 Ohio Revised Code Section 5739.02(B)(13), that constitute Project improvements. The provision of the Exemption Certificates shall not be construed as a guarantee by the Authority of the availability or of the amount of any such tax savings, and the Authority shall not be required to pay any such taxes.

Section 6. 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 closing of the Proposed Transaction upon the execution of a preliminary agreement by and between the Authority and the Developer (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 7. 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 full compliance with applicable legal requirements.

Section 8. This Resolution shall be in full force and effect upon its adoption.

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

Adopted: 11-18-24

Yeas: 7

Nays: 0

Abstention: 0

M. A. R.
Chairperson

Attest: Laura N. Quinn
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. 2024 -__ passed on the 18th day of November, 2024 and has not been amended or rescinded as of this date.

**Port of Greater Cincinnati Development
Authority**

NO 18, 2024



President and Chief Executive Officer

EXHIBIT A – Project Parcels

<u>Address</u>	<u>Parcel ID</u>
3104-3106 Warsaw Avenue	173-0004-0032-00