

RESOLUTION NO. 2023-09

AUTHORIZING THE ACQUISITION OF A LEASEHOLD OR FEE SIMPLE INTEREST IN REAL PROPERTY IN THE CITY OF CINCINNATI, OHIO AND THE CONSTRUCTION THEREON OF “PORT AUTHORITY FACILITIES” WITHIN THE MEANING OF SECTION 4582.21, OHIO REVISED CODE; AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE OR ONE OR MORE DEEDS OF THE REAL PROPERTY FROM FINDLAY PARKSIDE, LLC AND THE LEASE OF THAT REAL PROPERTY TO FINDLAY PARKSIDE, LLC; AND AUTHORIZING THE EXECUTION AND DELIVERY OF A DEVELOPMENT AGREEMENT, A CONSTRUCTION MANAGER AT-RISK AGREEMENT, AN INDEMNITY AGREEMENT AND AN ASSIGNMENT AGREEMENT WITH FINDLAY PARKSIDE, LLC AND OTHERS; AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH OTHER DOCUMENTS AS MAY BE NECESSARY OR DESIRABLE IN CONNECTION WITH THE ACQUISITION AND CONSTRUCTION OF SUCH PORT AUTHORITY FACILITIES.

WHEREAS, the Port of Greater Cincinnati Development Authority (the “Port”), 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, Sections 13 and 16 of Article VIII, Ohio Constitution, and Sections 4582.21 through 4582.60, Ohio Revised Code: (a) to acquire, construct, furnish, equip, maintain, repair, sell, exchange, lease to or from, or lease with an option to purchase, convey other interests in real or personal property, or any combination thereof, related to, useful for, or in furtherance of any authorized purpose; and (b) to adopt this Resolution and to enter into the Ground Lease, the Lease, the Construction Manager At-Risk Agreement, the Development Agreement, the Indemnity Agreement, and the Assignment, each defined in this Resolution, upon the terms and conditions provided in this Resolution and in those documents; and

WHEREAS, Findlay Parkside, LLC, an Ohio limited liability company (the “Ground Lessor”), has requested the Port to either acquire a ground lease interest or fee simple interest in real property (the “Project Site”) located in the City of Cincinnati, Ohio (the “City”) and to construct, renovate, improve, and equip 9 historic buildings thereon, comprising 51 residential units and approximately 16,500 square feet of commercial space (the “Project”) for lease back to Findlay Parkside, LLC, as lessee (the “Lessee”), and for further sublease to Findlay Master Tenant, LLC (the “Master Tenant”) and for further sublease by the Master Tenant to residents of such apartment units and to tenants of the commercial space; and

WHEREAS, the Lessee has indicated that the acquisition and construction of the Project will create approximately 58 new full-time equivalent post-construction jobs with an estimated annual payroll of \$1,750,000 within 18 months following completion of the Project, and 329 related full-time temporary construction jobs for at least one year with an annual payroll of \$7,900,000; and

WHEREAS, this Board has determined that (a) the Project constitutes a “port authority facility” within the meaning of the Act, creating or retaining jobs and employment opportunities or otherwise supporting economic development and housing in the City and Hamilton County, Ohio (the “County”), (b) the acquisition, construction, 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 enhance the availability of adequate housing and to improve the economic welfare of the people of the State, 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 create and preserve jobs and employment opportunities and housing within the City and the County;

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 and in the Lease 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 Sections 13 and 16 of Article VIII of the Ohio Constitution.

“Additional Rent” has the meaning set forth in the Lease.

“Annual Rent” has the meaning set forth in the Lease.

“Assignment” means the Assignment of Construction Contract, dated as of the date of the Lease, given by the Manager to the Port.

“Attornment Agreement” means, collectively, each Recognition and Attornment Agreement and Acknowledgement of Mortgage, dated as of the date of the Lease, among the Port, the Lessee and various lenders to the Lessee.

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

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

“City” means the City of Cincinnati, Ohio.

“Construction Agreements” has the meaning set forth in Section 4 of this Resolution.

“Construction Manager At-Risk Agreement” means the Construction Manager At-Risk Agreement, dated as of the date of the Lease, between the Port and the Manager.

“Development Agreement” means the Development Agreement between the Port and the Manager.

“Ground Lease” means the Ground Lease between the Ground Lessor, as ground lessor, and the Port, as ground lessee.

“Ground Lessor” means Findlay Parkside, LLC, an Ohio limited liability company.

“Indemnitors” means The Model Group, Inc. and/or entities created by it as approved by an Authorized Officer, jointly and severally.

“Indemnity Agreement” means the Indemnity Agreement among the Port, the Lessee, the Indemnitors, and such other parties as may be deemed necessary and appropriate by an Authorized Officer.

“Lease” means the Project Lease Agreement of the Project Site between the Port, as lessor, and the Lessee, as lessee.

“Lessee” means the Findlay Parkside, LLC, an Ohio limited liability company.

“Manager” means Findlay Parkside, LLC, an Ohio limited liability company, in its capacity as construction manager at-risk under the Construction Manager At-Risk Agreement.

“Project” means the renovation of 9 historic buildings resulting in 51 residential units and approximately 16,500 square feet of commercial space, together comprising “port authority facilities” within the meaning of the Act, for the authorized purposes thereunder to enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research within the jurisdiction of the Port.

“Project Documents” means the Ground Lease, the Lease, the Construction Manager At-Risk Agreement, the Development Agreement, the Indemnity Agreement, the Attornment Agreement, and any agreement, instrument, or other document necessary or appropriate in connection with the Project.

“Project Site” means, collectively, the approximately 0.58-acre in aggregate site located at the following addresses in the City: (a) 1804, 1810, 1812, 1814, 1816, and 1822 Vine Street; (b) 29 and 31 E. McMicken Avenue; (c) 1720 Elm Street; (d) 118 Findlay Street; and (e) 116 W. Elder Street.

“State” means the State of Ohio.

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 in this Resolution with initial capital letters and not defined in this Resolution shall have the meanings given to them in the Lease.

Section 2. Determinations by the Board as to the Acquisition of the Project Site. This Board determines that:

(a) It is necessary and proper and in the best interest of the Port to, and the Port shall, acquire a ground leasehold interest in and to the Project Site as provided and authorized in this Resolution and pursuant to the authority of the Act and the Ground Lease, for the purpose of acquiring, constructing, improving, and equipping the Project for lease to the Lessee.

(b) The Project constitutes a “port authority facility” as defined in the Act and is consistent with the purposes of the Act; and the construction, equipment, installation, and otherwise improvement of the Project is consistent with purposes of Sections 13 and 16 of Article VIII, Ohio Constitution.

(c) The Project is in furtherance of the Port’s authorized purposes, including without limitation, the creation or retention of jobs and employment opportunities and otherwise supporting housing and economic development in the County, and will benefit the people of the State and the Port.

(d) It is necessary and proper and in the best interest of the Port to, and the Port shall, enter into the Project Documents as provided in this Resolution.

Section 3. Ground Leasehold or Fee Simple Interest in the Project Site. The Port is hereby authorized and directed to acquire a ground leasehold interest in and to the Project Site pursuant to the Ground Lease, subject only to those encumbrances which shall not interfere with the use of the Project Site and the Project for “authorized purposes,” as such term is defined in the Act. It is hereby determined by this Board to enter into the Ground Lease with the Ground Lessor in substantially the form now on file with the Secretary, but with such completions, revisions, and modifications as are necessary to conform to this Resolution or such other changes as may be reasonably required by any party providing financing for the Project, provided that such changes are not substantially adverse to the Port. The form of the Ground Lease is hereby approved with such changes therein as are not inconsistent with this Resolution and not substantially adverse to the Port and which are approved by the Authorized Officer executing that 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 the Ground Lease by that officer. The ground rent for the Project Site shall be as provided in the Ground Lease, which this Board determines is in the best interests of the Port and is in compliance with all legal requirements.

If an Authorized Officer determines that it would be more beneficial to the Project, then the Port Authority is hereby authorized and directed to acquire a fee simple title interest in and to the Project Site by one or more deeds from Lessee in lieu of the ground leasehold interest in and to the Project Site, subject only to those encumbrances which shall not interfere with the use of the Project Site and the Project for “authorized purposes,” as such term is defined in the Act.

The purchase price for the Project Site shall be \$100.00, which this Board determines is in the best interests of the Port and is in compliance with all legal requirements.

Section 4. Construction and Ownership of Project. It is hereby determined by the Board that for State law purposes the construction of the Project and of any improvements in connection with the Project has been and shall continue to be undertaken by the Port in the manner provided in the Construction Manager At-Risk Agreement. The Board hereby approves the appointment of the Manager as its agent under the Construction Manager At-Risk Agreement for purposes of acquisition, construction, equipping, installation, and improvement of the Project. In addition, each Authorized Officer, alone or together, in order to provide for the acquisition, construction, equipping, installation, and improvement of the Project, is authorized and directed to execute and deliver, for and in the name of the Port and on its behalf, subject to the certification of availability of funds therefor from monies available or to be available to pay costs of the Project, such contracts and agreements, including the Assignment (collectively, the "Construction Agreements"), as may be necessary for the acquisition, construction, equipping, installation, and improvement of the Project. The Project Documents will be structured in such a manner to effectuate the intent of the Ground Lessor that for federal income tax purposes, (a) the Ground Lessor will be the owner of the Project, Ground Lessor will be the party incurring "qualified rehabilitation expenditures" as such term is defined in Section 47(c)(2) of the Internal Revenue Code of 1986, as amended from time to time (the "Code"), and (b) the Ground Lessor will be entitled to historic tax credits under Section 47 of the Code, which may be passed through to Master Tenant. Nothing in this Resolution or in any of the Project Documents shall be an assertion or representation by the Port with respect to such intent, and no revisions to the forms of the Project Documents that are now on file with the Port shall be substantially adverse to the Port.

Based on information furnished to it, this Board has determined that the manner in which the Construction Agreements for acquisition, construction, equipping, installation, and improving of the Project should be made is to negotiate the terms of the Construction Agreements, and this Board hereby finds and determines that such negotiation best carries out the public purpose to be fulfilled by the Project.

Section 5. Lease of the Project Site and Project. Upon acquisition of a fee simple or ground leasehold interest in the Project Site, it is hereby determined by this Board to enter into the Lease with the Lessee in substantially the form now on file with the Secretary, but with such completions, revisions, and modifications as are necessary to conform to this Resolution or such other changes as may be reasonably required by any party providing financing for the Project, provided that such changes are not substantially adverse to the Port. Pursuant to the Lease, the Lessee shall pay Annual Rent, Additional Rent, all expenses associated with the ongoing leasing, management and operation of the Project, as exist from time to time and such other amounts, including any initial rent, as may be specified in the Lease. Each Authorized Officer is authorized to take all steps necessary to effect due execution and delivery of the Lease under the terms of this Resolution in substantially the form now on file with the Secretary, but with such completions, revisions, and modifications as are necessary to conform to this Resolution and the

requirements under the term sheet for the Lease or such other changes as may be reasonably required by any party providing financing for the Project, provided that such changes are not substantially adverse to the Port. The form of the Lease is hereby approved with such changes therein as are not inconsistent with this Resolution and not substantially adverse to the Port 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, shall be conclusively evidenced by the execution of those documents by that officer. It is determined by this Board that the rent to be paid under the Lease, as provided in this Resolution, is in the best interests of the Port and that the terms of the Lease are in compliance with all legal requirements.

Section 6. Development Agreement and Construction Manager At-Risk Agreement. Each Authorized Officer is hereby authorized and directed, for and in the name of the Port and on its behalf, alone or together with any other Authorized Officer, to execute and deliver to the Manager the Development Agreement and the Construction Manager At-Risk Agreement in substantially the forms now on file with the Secretary, but with such completions, revisions, and modifications as are necessary to conform to this Resolution and the requirements under the term sheet for the Lease. The forms of the Development Agreement and the Construction Manager At-Risk Agreement are hereby approved with such changes therein as are not inconsistent with this resolution and not substantially adverse to the Port 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, shall be conclusively evidenced by the execution of those documents by that officer.

Section 7. Other Documents. Each Authorized Officer is authorized and directed to execute the other Project Documents and any certifications, agreements, mortgages, leasehold mortgages, assignments, amendments, supplements, and other instruments and documents to take such further actions, as are necessary or appropriate to provide for the lease of the Project and Project Site and the construction of the Project and to consummate the transactions contemplated in this Resolution, and the Lease. All actions heretofore taken by the officers and officials of the Port and of this Board in connection with the Lease are hereby adopted, ratified, and approved.

Section 8. Severability. Each section of this Resolution and each subdivision or paragraph of any section of this Resolution and each sentence of a paragraph of this Resolution 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 3-8, 2023

Yeas:

Chair

Nays:

Secretary

Abstentions: 0




