

RESOLUTION NO. 2022-39

AUTHORIZING THE ACQUISITION OF A LEASEHOLD 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 OF SAID REAL PROPERTY FROM PL RACE, LLC AND THE LEASE OF SAID REAL PROPERTY TO PL RACE, 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 PL RACE, 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, is authorized and empowered, by virtue of the laws of the State of Ohio, including, without limitation, Sections 13 of Article VIII, Ohio Constitution, and Sections 4582.21 through 4582.59, Ohio Revised Code: (i) 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 (ii) 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 herein, upon the terms and conditions provided herein and therein; and

WHEREAS, PL Race, LLC, an Ohio limited liability company (the "Ground Lessor"), has requested The Port to acquire a ground lease interest in real property located in the City of Cincinnati, Ohio (the "Project Site") and to construct, renovate, improve and equip thereon approximately 12,000 square feet of commercial space (the "Project") for lease back to PL Race, LLC, as lessee (the "Lessee") and for further sublease to tenants of the commercial space; and

WHEREAS, the Lessee has indicated that the acquisition and construction of the Project will create approximately 28 new jobs with an annual payroll of \$1,072,000 by 2025 and approximately 61 full time temporary construction jobs for at least one year with an annual payroll of \$1,228,000; 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 in the City of Cincinnati and Hamilton 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 and to improve the economic welfare of the people of the State of

Ohio, 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 within the City of Cincinnati and Hamilton County, Ohio;

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 4582.59, 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.

"Additional Rent" shall have the meaning set forth in the Lease.

"Annual Rent" shall have the meaning set forth in the Lease.

"Assignment" means the Assignment of Rights under a 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 PL Race, 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 PL Race, LLC, an Ohio limited liability company.

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

“Project” means approximately 12,000 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 authority.

“Project Documents” means the Ground Lease, the Lease, the Construction Manager At-Risk Agreement, the Development Agreement, the Indemnity Agreement and the Attornment Agreement.

“Project Site” means the 0.071-acre site located at 2429 Gilbert Avenue in the City.

"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 herein with initial capital letters and not defined herein 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:

(i) 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 herein 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.

(ii) 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.

(iii) 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 economic development in the County, and will benefit the people of the State and The Port.

(iv) It is necessary and proper and in the best interest of The Port to, and The Port shall, enter into the Ground Lease, the Lease and the other Project Documents as herein provided.

Section 3. Ground Leasehold Interest in the Project Site. The Port Authority 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. 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.

Section 4. Construction and Ownership of Project. It is hereby determined by the Board that the construction of the Project and of any improvements in connection with it 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, "Construction Agreements") as may be necessary for the acquisition, construction, equipping, installation and improvement of the Project.

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 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. 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. 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, 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 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 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 11-21, 2022

Yeas: 7
Chair
Nays: 0
Secretary
Abstentions: 0



