

RESOLUTION NO. 2017-19

AUTHORIZING THE ACQUISITION OF 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 LEASE OF SAID REAL PROPERTY TO CW JOINT VENTURE, LLC; AUTHORIZING THE EXECUTION AND DELIVERY OF THE ASSIGNMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSTRUCTION MANAGER AT-RISK AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDEMNITY AGREEMENT; 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 d/b/a Greater Cincinnati Redevelopment Authority ("Port Authority"), 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 and 16 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 Project Documents, defined herein, upon the terms and conditions provided herein and therein; and

WHEREAS, CW Joint Venture, LLC, an Ohio limited liability company and affiliate of North American Properties, Inc. and Rookwood Properties, Inc., (the "Lessee"), has requested that the Port Authority acquire that certain parcel located at the corner of Court and Walnut Streets in the City of Cincinnati, Ohio (the "Project Site") and to construct, improve and equip within a one hundred thirty-nine (139) unit residential apartment tower (the "Project"); 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 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 enhance the availability of adequate housing in the State of Ohio, 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 Ohio Revised Code Section 4582.21(B)(1) by providing assistance to projects that create and preserve jobs and employment opportunities and provide housing within Hamilton County, Ohio.

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Port 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, in the Project Documents 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.

"Assignment" means the Assignment of Rights under a Construction Contract, dated as of the Real Estate Closing Date, given by the Lessee to the Port Authority.

"Attornment Agreement" means any recognition and attornment agreement and acknowledgement of mortgage by and among the Port Authority, the Lessee, and Lessee's lender.

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

"Board" means the Board of Directors of the Port Authority.

"City" means the City of Cincinnati, Hamilton County, Ohio.

"Construction Manager At-Risk" means CW Joint Venture, LLC in its capacity as construction manager at-risk under the Construction Manager At-Risk Agreement.

"Construction Manager At-Risk Agreement" means the Construction Manager At-Risk Agreement dated as of the Real Estate Closing Date, between the Port Authority and the Construction Manager At-Risk.

"Development Agreement" the Funding Sale and Development Agreement, dated August 23, 2017, by and among the City, Kroger Limited Partnership I, CW Joint Venture, LLC, and Court & Walnut, LLC, which provides for the development of the Project and contemplates the Port Authority's participation in such development.

"Guarantor" means North American Properties, Inc. and Rookwood Properties, Inc.

"Indemnity Agreement" means the Indemnity Agreement dated as of the Real Estate Closing Date by and between the Port Authority and the Redeveloper Parties.

"Lease" means the lease of the Project Site by and between the Port Authority, as lessor, and CW Joint Venture, LLC, as lessee.

"Lessee" means the CW Joint Venture, LLC.

"Port Authority" means the Port of Greater Cincinnati Development Authority d/b/a Greater Cincinnati Redevelopment Authority, a body corporate and politic duly organized and validly existing under the laws of the State of Ohio, and its lawful successors.

“Project” means the one hundred thirty-nine (139) unit residential apartment tower, 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 Lease, the Construction Manager At-Risk Agreement, the Indemnity Agreement, the Assignment, and any Attornment Agreement.

“Project Site” means the air parcels located at Court and Walnut Streets in downtown Cincinnati and assigned parcel numbers 079-0001-0176 and 079-0001-0177 in the official records of the Hamilton County Auditor.

“Real Estate Closing Date” means the date on which the parties execute and deliver the Lease and the other Project Documents.

“Redeveloper Parties” means the Lessee, the Construction Manager At-Risk, and the Guarantor.

“Resolution” means this resolution.

"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 Project Documents.

## 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 Authority to, and the Port Authority shall acquire fee simple title in and to the Project Site as provided and authorized herein and pursuant to the authority of the Act, for the purpose of 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 Authority's authorized purposes, including without limitation, the creation or retention of jobs and employment opportunities, the creation of housing, and otherwise supporting economic development in the County, and will benefit the people of the State and the Port Authority.

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

Section 3. Acquisition of the Project Site. 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 the Lessee, 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 Authority 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 the Project have been and shall continue to be undertaken by the Port Authority in the manner provided in the Construction Manager At-Risk Agreement. The Board hereby approves the appointment of the Construction Manager At-Risk as its agent under the Construction Manager At-Risk Agreement for purposes of acquisition, construction, equipping, installation and improvement of the Project. In addition, any Authorized Officer, 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 Authority 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, Lessee shall pay all base and additional rentals and all costs and expenses associated with the ongoing leasing, management and operation of the Project, as exist from time to time. Any Authorized Officer is authorized to take all steps necessary to effect due execution and delivery of the Lease under the terms of this Resolution. 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 Authority and is in compliance with all legal requirements.

Section 6. Project Documents. This Board finds that the Port Authority’s cooperation with the City and with the Lessee is consistent with the terms of the Development Agreement and will facilitate the acquisition, construction, improvement, equipment and installation of the Project and will advance and support authorized purposes of the Port Authority. Any Authorized Officer is hereby authorized and directed, for and in the name of the Port Authority and on its

behalf, to execute and deliver to the Lessee the Lease, the Assignment, the Indemnity Agreement, and the Construction Manager At-Risk Agreement 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 forms of the aforesaid documents 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 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.

Section 7. Other Documents. Any 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 Authority 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 12-13, 2017

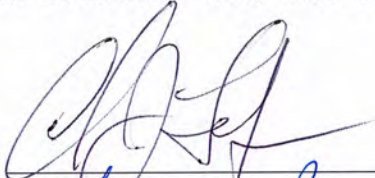
Yeas: 7

Chair

Nays:

Secretary

Abstentions: 0

  
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Thomas Gunn