

It was moved by M. WIDEMANN and seconded by P. BAKEL that the following resolution be adopted:

RESOLUTION NO. 2020-02

A RESOLUTION AUTHORIZING AND APPROVING A TRANSACTION CONCERNING THE ACQUISITION, CONSTRUCTION, EQUIPPING, INSTALLATION, AND IMPROVEMENT OF A RESIDENTIAL AND RETAIL MIXED-USE FACILITY AND OTHER RELATED APPURTENANCES RELATED CONSTITUTING A “PORT AUTHORITY FACILITY” TO BE LOCATED ON CERTAIN REAL PROPERTY TO BE ACQUIRED BY THE AUTHORITY; AUTHORIZING THE ACCEPTANCE OF THE CONVEYANCE OF REAL PROPERTY BY ONE OR MORE DEEDS; AUTHORIZING A PROJECT LEASE; AUTHORIZING AN OPEN-END FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT; AUTHORIZING A CONSTRUCTION MANAGER AT-RISK AGREEMENT; AUTHORIZING AN INDEMNIFICATION AGREEMENT; AUTHORIZING A DEVELOPMENT AGREEMENT; AUTHORIZING OTHER COLLATERAL DOCUMENTS; APPROVING A TERM SHEET; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the Port of Greater Cincinnati Development Authority (the “Authority”) is authorized to promote housing 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, Este Investors, Ltd., or one or more affiliated entities, successors, or assigns (collectively, Este Investors, Ltd. and its affiliates, successors, and assigns are referred to herein as the “Developer” or the “Lessee”) is fee owner of approximately 0.114 acres of real property within the Central Business District of the City, which real property is currently assigned parcel number 079-0001-0020-00 in the records of the Hamilton County Auditor’s Office (collectively, the “Project Site”); and

WHEREAS, the Developer plans to redevelop and rehabilitate a mixed-use, seven (7) story development comprised of approximately 26,000 square feet of residential space, which space will consist of 35 market rate apartments and street-level commercial space of approximately 2,600 square feet, to be 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 economic development, housing, and urban redevelopment goals of the Authority; and

WHEREAS, the Authority, 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 Chapter 4582, Ohio Revised Code, (a) to enter into agreements with respect to the acquisition, construction, equipping, installation, and improvement of “port authority facilities”, as defined in Section 4582.21, Ohio Revised Code, located within the boundaries of the City of Cincinnati, Hamilton County, Ohio, (b) to acquire, construct, equip, install, improve, maintain, and operate property constituting port authority facilities in furtherance of any authorized purpose of the Port Authority, including in order to create or preserve jobs and employment opportunities, to enhance housing, or to improve the economic welfare of the people of the State, (c) to lease or convey interests in real property to any person to further the purposes of the Act, and (d) to enact this Resolution, to enter into the Project Lease, the Mortgage, the Construction Manager At-Risk Agreement, the Indemnification Agreement, the Development Agreement, and any Collateral Documents, each as defined in Section 1, upon the terms and conditions provided in this Resolution; 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 upon its completion; and

WHEREAS, upon execution of the Deed, the Project Lease, the Mortgage, the Construction Manager At-Risk Agreement, the Indemnification Agreement, the Development Agreement, and any Collateral Documents, each as defined in Section 1, (a) the Project will constitute a “port authority facility” 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 jurisdictions 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:

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 shall have the following meanings unless otherwise provided and unless the context or use indicates another or different meaning or intent:

“Act” means Ohio Constitution, Article VIII, Sections 13 and 16, and Sections 4582.21 et seq., Ohio Revised Code, all as enacted and amended from time to time.

“Collateral Documents” means such security instruments, pledges, assignments, and recognition and attornment agreements and acknowledgments as shall be required by the Port Authority.

“Construction Manager At-Risk Agreement” means the Construction Manager At-Risk Agreement expected to be dated the date of issuance of the Project Lease between the Port Authority and the Lessee, as the construction manager at-risk for the acquisition, construction, equipment, installation, and improvement of the Project, as the same may be amended or supplemented from time to time in accordance with its terms.

“Deed” means the deed or deeds between the Lessee, as grantor, and the Port Authority, as grantee, which Deed shall grant the Port Authority fee title to the real property on which the Project is located, which fee title shall represent a sufficient interest in the real property on which the Project is located to enable the Port Authority to finance the Project and to cause the acquisition, construction, equipment, installation, and improvement of the Project.

“Developer” means Este Investors, Ltd. or one or more of its affiliated entities, successors and assigns.

“Development Agreement” means a development agreement between the Developer and the Port Authority with respect to the Project.

“Executive” means the Chief Executive Officer and President of the Port Authority.

“Fiscal Officer” means the Fiscal Officer of the Port Authority.

“Indemnification Agreement” means the indemnification agreement expected to be dated the date of the Project Lease by the Lessee and such other guarantors as required by the Executive, in favor of the Port Authority.

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

“Lessee” means Este Investors, Ltd. or one or more of its affiliated entities, successors and assigns.

“Mortgage” means the Open-End Fee and Leasehold Mortgage, Assignment of Leases and Rents, and Security Agreement or a similar instrument granting a security interest with respect to the Port Authority’s interest in the real property on which the Project is located, expected to be dated the date of the Project Lease, given by the Port Authority and the Lessee in favor of the Original Purchaser, as the same may be amended or supplemented from time to time in accordance with its terms.

“Port Authority” means the Port of Greater Cincinnati Development Authority, a port authority and body corporate and politic duly organized and validly existing under the laws of the State.

“Project” means the Project, as defined in the Lease, consisting of the development and redevelopment of real and personal property located or to be located at 124 East Seventh Street, Cincinnati, Ohio and constituting “port authority facilities” as defined in the Act.

“Project Lease” means the Project Lease Agreement between the Port Authority and the Lessee, which Project Lease shall require the Lessee to operate the Project and to pay Rent Payments due to the Port Authority under the Lease.

“Project Purposes” means acquiring, constructing, equipping, installing, and improving the Project to be owned by the Port Authority and leased to the Lessee for commerce, economic development, and housing purposes.

“Rent Payments” means the Rent Payments as defined in the Lease.

“State” means the State of Ohio.

“Term Sheet” means the term sheet attached hereto as Exhibit A between the Port Authority and the Lessee which describes the general terms of the proposed transaction.

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.

Section 2. Determinations by Legislative Authority. This Legislative Authority determines that (i) the Project constitutes “port authority facilities” as defined in the Act; (ii) the utilization of the Project is in furtherance of the purposes of the Act and will enhance, foster, aid, provide and promote commerce, economic development, and housing and will benefit the people of the State by improving the welfare of the people of the State; and (iii) provision of the Project requires the consummation of the transactions contemplated in this Resolution. The Port Authority is authorized to, and this Legislative Authority hereby determines that the Port Authority shall, acquire a fee ownership interest in real property on which the Project is to be located pursuant to one or more deeds and shall lease such real property to the Developer pursuant to the Project Lease for use by the Developer, and that such acquisition and lease are in furtherance of the purposes of the Act.

Section 3. Project Lease, Mortgage, Construction Manager At-Risk Agreement, Indemnification Agreement, Development Agreement, and Collateral Documents. The Executive and the Fiscal Officer are each hereby authorized and directed, for and in the name of the Port Authority and on its behalf, to execute and deliver the Project Lease, the Mortgage, the Construction Manager At-Risk Agreement, the Indemnification Agreement, the Development Agreement, and any Collateral Documents, and, all with the terms substantially similar to those provided in the Term Sheet, with such modifications as are necessary to conform to this Resolution. The terms of the Term Sheet are hereby approved. The terms of the aforesaid documents are hereby approved with such changes therein as are not inconsistent with this Resolution and not substantially adverse to the Port Authority and which are permitted by the Act and shall be approved by the officers 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 those officers.

Section 4. Other Documents and Consents. The Executive and the Fiscal Officer are each hereby authorized and directed to accept and record one or more deeds of conveyance of the real property on which the Project is to be located, the Project Lease or a memorandum of such agreement, the Mortgage, a recognition and attornment agreement and acknowledgment related to the mortgages to be recorded on the real property on which the Project is to be located, and to execute any certifications, financing statements, assignments, agreements, and instruments that are necessary or appropriate to consummate the transactions and perfect the assignments contemplated in this Resolution, the Project Lease, the Mortgage, the Construction Manager At-Risk Agreement, the Indemnification Agreement, the Development Agreement, and any Collateral Documents.

This Legislative Authority hereby finds and determines that, subject to being provided with evidence acceptable to the Executive, the Developer's assignment and transfer of a portion of its interest in the Project, to the extent permitted by the Project Lease and the Indemnification Agreement, will be in the best interests of the Port Authority and, subject to the approval of the Executive, is hereby authorized and approved. Upon being presented with evidence acceptable to the Executive regarding the form of the assignment and transfer and the information about the entity or entities involved in such assignment and transfer as required by the Project Lease and the Indemnification Agreement, the Executive is authorized to execute and deliver, on behalf of the Port Authority, consistent with the Act, this Resolution, the Project Lease, and the Indemnification Agreement, any agreement, document or instrument (including, but not limited to, any approvals, assignments, assumptions, acceptances, consents, deeds, easements, terminations, estoppels, certifications, representations, notices, declarations, waivers, or covenants) as are determined to be necessary or desirable in connection with the execution of the assignment authorized by this Section; provided, that, the execution and delivery of any of the foregoing by the Executive shall constitute conclusive evidence of the authorization and approval of the assignment, that such assignment is in the best interests of the Port Authority, and that any conditions to the execution and delivery such documents have been satisfied.

Section 5. Acquisition and Construction. It is hereby determined by this Legislative Authority that the acquisition of the real property on which the Project will be located, and the acquisition, construction, equipping, installation, and improvement of the Project, shall be undertaken by the Lessee pursuant to the Project Lease and the Construction Manager At-Risk Agreement. The Construction Manager At-Risk Agreement shall designate the Developer as the construction manager at-risk for the Port Authority and shall authorize the Developer to enter into such contracts and agreements with such other contractors or construction managers as the Developer may determine are necessary to acquire, construct, equip, install, and improve the Project.

Section 6. Sales Tax Exemption. This Board hereby authorizes the Executive, the Fiscal Officer, or either of them, upon the execution of the Deed, the Construction Manager At-Risk Agreement, and the Project Lease by the parties, 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.

Section 7. Severability. Each section of this Resolution and each subdivision or paragraph of any section thereof is hereby declared to be independent and the finding or holding of any section or any subdivision or paragraph of any section thereof to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision or paragraph of this Resolution.

Section 8. Compliance with Open Meeting Law. It is found and determined that all formal actions of this Legislative Authority concerning and relating to the adoption of this Resolution were taken in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

Section 9. Effective Date. This Resolution shall be in full force and effect upon its adoption.

The foregoing motion having been put to vote, the result of the roll call was as follows:

Voting Aye: 9

Voting Nay: 0

The undersigned, Secretary of the Board of Directors of the Port of Greater Cincinnati Development Authority, does hereby certify that the foregoing is a true and correct copy of a resolution of the Port of Greater Cincinnati Development Authority, duly adopted 1-15, 2020, and appearing upon the official records of that Board.

Adopted: 1-15, 2020

Attest: 

Chair

Attest: 

Secretary

Port of Greater Cincinnati Development Authority

EXHIBIT A

[Attach Term Sheet]