

RESOLUTION NO. 2020-24

A RESOLUTION REPEALING AND REPLACING RESOLUTION NO. 2020-20, ADOPTED ON FEBRUARY 12, 2020, AND AUTHORIZING THE ACQUISITION OF AN 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 AND APPROVING THE ISSUANCE AND SALE OF A MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$23,000,000.00 TAXABLE DEVELOPMENT REVENUE BONDS, SERIES 2020 (MADISON AND STEWART APARTMENT PROJECT) (THE "SERIES 2020 BONDS") FOR THE PURPOSE OF FINANCING COSTS OF "PORT AUTHORITY FACILITIES" WITHIN THE MEANING OF SECTION 4582.21, OHIO REVISED CODE; AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE, A MANAGEMENT AGREEMENT, A MORTGAGE, AN ASSIGNMENT OF CONSTRUCTION CONTRACT, A CONSTRUCTION MANAGER AT-RISK AGREEMENT, A BOND PURCHASE AGREEMENT, AND SUCH OTHER DOCUMENTS AS MAY BE NECESSARY OR DESIRABLE IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION, AND FINANCING OF SUCH PORT AUTHORITY FACILITIES.

WHEREAS, on February 12, 2020 the Board of Directors (the "Board") of the Port of Greater Cincinnati Development Authority (the "Port") adopted Resolution No. 2020-20 (the "Initial Resolution") to authorize and approve the issuance and sale of a maximum aggregate principal amount of \$23,000,000 of taxable lease revenue bonds for the purpose of financing costs of "port authority facilities" and to further authorize and approve the acquisition of a ground leasehold interest in certain real property located in Cincinnati's Madisonville neighborhood (the "Project Site") from Madison and Stewart, LLC, an Ohio limited liability company (the "Developer"), to facilitate the construction, installation, and equipping of an approximately 151-unit apartment community upon the Project Site (the "Project"); and

WHEREAS, under the terms of the Initial Resolution, the Port intended to enter into a project lease (the "Project Lease") with the Developer to provide for the management of the Project and the payment of rent in an amount equal to Bond Service Charges on the Bonds; and

WHEREAS, since the adoption of the Initial Resolution, the Developer has determined and the staff of the Port has agreed that for the Developer to obtain the benefits of the federal opportunity zone program, it is necessary and desirable to make certain modifications to the transaction structure as contemplated under the Initial Resolution, including the replacement of the Project Lease with a Management Agreement (defined herein) whereby the Manager (defined herein) will manage the construction and operation of the Project; and

WHEREAS, the Port 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 4582.99 of the Ohio Revised Code to: (i) 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; (ii) issue revenue bonds for the purpose of financing costs of acquiring, constructing, installing, equipping or improving “port authority facilities,” as defined in Section 4582.21, Ohio Revised Code; and (iii) to adopt this resolution and to enter into the Ground Lease and the Management Agreement, the Assignment of Construction Contract, the Assignment of Management Agreement, the Mortgage, the Construction Manager At-Risk Agreement, the Indemnity Agreement, and the Bond Purchase Agreement, each defined herein, upon the terms and conditions provided herein and therein; 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 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 improve the economic welfare of the people of the State of Ohio, and to create adequate housing within the jurisdiction of the Port 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 enhance, foster, aid, or promote economic development and housing within 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, in the Bond Purchase Agreement and in the Bonds 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 4582.99, 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 of Construction Contract” means the Assignment of Construction Contract, dated of even date with the Ground Lease, by and between the Port and the Manager.

“Assignment of Management Agreement” means the Collateral Assignment of Management Agreement dated as of the Closing Date, by and between the Port and the Original Purchaser.

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

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

“Bonds” or “Series 2020 Bonds” means the maximum aggregate principal amount of \$23,000,000 Taxable Development Revenue Bonds, Series 2020 (Madison and Stewart Apartments Project), which have been authorized by this resolution and are to be issued pursuant to the Bond Purchase Agreement.

“Bond Purchase Agreement” means the Bond Purchase Agreement by and among the Developer, the Port, the Original Purchaser and the Manager relating to the purchase of the Series 2020 Bonds, as the same may be amended from time to time.

“Bond Resolution” means this resolution.

“Closing Date” means the date on which the Bonds are delivered.

“Construction Contract” means the general contract for the construction of the Project by and between the General Contractor and the Manager.

“Construction Documents” means collectively, the Construction Contract, the Assignment of Construction Contract, and the Construction Manager At-Risk Agreement.

“Construction Manager At-Risk Agreement” means the Construction Manager At-Risk Agreement, dated of even date with the Ground Lease, between the Port and the Manager, as construction manager at-risk.

“Debt Service Payments” means the debt service payments made by the Manager to the Original Purchaser on behalf of the Port in an amount equal to the Bond Service Charges payable on the Series 2020 Bonds.

“Developer” means Madison and Stewart, LLC, an Ohio limited liability company.

“General Contractor” means the general contractor set forth in the Construction Contract.

“Ground Lease” means the lease of the Project Site by and between the Developer, as ground lessor and the Port, as ground lessee, dated as of the first day of the month in which the Bonds are issued.

“Holder” or “holder of a Series 2020 Bond” means the person in whose name a Series 2020 Bond is registered on the register maintained initially by the registrar.

“Indemnitor” means each party that is identified as an indemnitor in the Indemnity Agreement.

“Indemnity Agreement” means the Indemnity Agreement given by each Indemnitor in favor of the Port.

“Management Agreement” means the Management Agreement, by and between the Port, and the Manager, dated as of the first day of the month in which the Closing Date occurs.

“Manager” means the Developer, in its capacity as manager under the Management Agreement.

“Mortgage” means a mortgage in favor of the Original Purchaser of the Bonds encumbering the Port’s leasehold interest created under the Ground Lease.

“Original Purchaser” means the party identified as the original purchaser of the Bonds in the Bond Purchase Agreement.

“Pledged Revenues” means (a) all amounts payable to the Port under the Management Agreement, except for the Initial Port Fee and the Annual Port Fee, each as defined in the Management Agreement, (b) all income and profit from the investment of the foregoing moneys, and (c) all other moneys received or to be received by or otherwise pledged to the Port and intended to be used for Debt Service Payments.

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

“Project Documents” means the Ground Lease, the Management Agreement, and the Construction Documents.

“State” means the State of Ohio.

“Transaction Documents” means each of the following documents if and to the extent entered into by the Port in connection with the issuance of the Bonds: the Ground Lease, the Mortgage, the Management Agreement, the Bond Purchase Agreement, the Assignment of Management Agreement and the Bonds.

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 the Board. This Board determines that: (i) It is necessary and proper and in the best interest of the Port to repeal the Initial Resolution in its entirety; (ii) it is necessary and proper and in the best interest of the Port to, and the Port shall, issue, sell and deliver the Series 2020 Bonds in the maximum aggregate principal amount of \$23,000,000, as provided and authorized herein and in the Bond Purchase Agreement and pursuant to the authority of the Act, all for the purpose of financing the costs of acquiring, constructing, and equipping the Project and to pay certain costs of issuance and related costs of the Project; (iii) the Project constitutes “port authority facilities” as defined in the Act, and is consistent with the purposes of the Act and Sections 13 and 16 of Article VIII, Ohio Constitution; (iv) it is necessary and proper and in the best interest of the Port to acquire a leasehold interest from the Developer and to enter into the Management Agreement with the the Manager; (v) the utilization of the Project Site for the Project is in furtherance of the purposes of the Act and will enhance, foster, aid, provide and promote economic development, and commerce and will benefit the people of the State by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the State; and (vi) the acquisition, construction, and equipping of the Project requires the issuance, sale and delivery of the Series 2020 Bonds.

Section 3. Repeal of Initial Resolution. The Initial Resolution is hereby repealed in its entirety.

Section 4. Construction and Ownership of Project. Based on information furnished to it, this Board has determined that the manner in which the Construction Documents for acquisition, construction, equipping, installation and improving of the Project should be made is to negotiate the terms of the Construction Documents, and this Board hereby finds and determines that such negotiation best carries out the public purpose to be fulfilled by the Project.

Section 5. Ground Lease, Management Agreement, Assignment of Management Agreement, the Mortgage and Construction Documents. 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 (i) to the Developer the Ground Lease, (ii) to the Manager the Management Agreement and the Construction Documents to which the Port is a party, and (iii) to the Original Purchaser the Assignment of Management Agreement, and the Mortgage. The forms of the aforesaid documents currently on file with the Secretary are 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 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. but with such completions, revisions and modifications as are necessary to conform to this Bond Resolution.

Section 6. Terms and Provisions of the Series 2020 Bonds. The Series 2020 Bonds shall be dated the Closing Date. The Series 2020 Bonds shall (i) be stated to mature on the date specified therein; (ii) shall bear interest on the principal amount thereof from time to time outstanding at interest rates determined as provided, and payable as specified, therein; (iii) be payable solely from the Pledged Revenues as to principal and interest as provided therein; (iv) be subject to redemption as provided therein; and (v) require payment of other amounts as provided therein. The registrar of the Series 2020 Bonds shall initially be the Fiscal Officer of the Port, and following the initial advance, shall be the Original Purchaser.

Section 7. Security for the Series 2020 Bonds. As provided in the Transaction Documents, the Series 2020 Bonds shall be payable solely from the Pledged Revenues and any proceeds of the Mortgage or the Assignment of Management Agreement. Nothing in the Bond Resolution, the Series 2020 Bonds or the Transaction Documents shall constitute a general obligation, debt or bonded indebtedness of the Port; neither the general resources of the Port shall be required to be used, nor the general credit of the Port pledged, for the performance of any duty under this Bond Resolution or the Series 2020 Bonds; and further, nothing therein gives the Holders of the Series 2020 Bonds, and they do not have, the right to have excises or taxes levied by this Board, or by the State or the taxing authority of any other political subdivision, for the payment of principal of, redemption premium, if any, and interest on the Series 2020 Bonds, but the Series 2020 Bonds are payable solely from the Pledged Revenues and any proceeds of the Mortgage or the Assignment of Management Agreement as provided herein and in the Bond Purchase Agreement, and each Series 2020 Bond shall contain a statement to that effect; provided, however, that nothing in this resolution shall be deemed to prohibit the Port, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of this Bond Resolution or the Series 2020 Bonds.

Section 8. Transaction Documents and Other Documents. 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 the Bond Purchase Agreement, the Bonds, the Assignment of Management Agreement, the Mortgage and the other Transaction Documents to which the Port is a party in substantially the forms thereof now on file with the Secretary, but with such completions, revisions and modifications as are necessary to conform to the Bond 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 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, shall be conclusively evidenced by the execution of those documents by that officer. Each Authorized Officer is further authorized and directed to execute any certifications, financing statements, assignments, agreements and instruments, to accept on behalf of the Port such additional security, and to take such further actions as are necessary or appropriate to effect the transactions contemplated in the Project Documents or the Transaction Documents and to consummate the transactions contemplated in this Bond Resolution, the Project Documents, and the Transaction Documents and to undertake, complete and finance the Project in accordance therewith, so long as such actions are not inconsistent with this Bond Resolution and not materially adverse to the Port and are permitted by the Act and which shall be approved by the officers executing those documents.

Section 9. 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 10. 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 11. Effective Date. This resolution shall take effect and be in force immediately upon its adoption.

Adopted: June 10, 2020

Yeas: 10

Chair

Nays:

Secretary

Abstentions: 0

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Laura N. Gunn