

RESOLUTION NO. 2022-07

AUTHORIZING THE ISSUANCE AND SALE OF A MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$8,000,000 OF REVENUE BONDS UNDER THE SOUTHWEST OHIO REGIONAL BOND FUND PROGRAM FOR THE FOUNDRY PROJECT; AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE TO SECURE SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT AND THE DISTRIBUTION OF ANY REQUIRED DISCLOSURE STATEMENT FOR THE OFFERING AND SALE OF THOSE BONDS; AND AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS NECESSARY OR DESIRABLE FOR THE ISSUANCE AND SALE OF THE BONDS.

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, Section 13 of Article VIII, Ohio Constitution, and Sections 4582.21 through 4582.60, Ohio Revised Code: (i) to 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; (ii) to secure those revenue bonds by a trust indenture, as provided herein, and to provide for "Pledged Revenues" sufficient to pay the principal of and interest and any premium on those revenue bonds; and (iii) to adopt this resolution and to enter into the Supplemental Indenture, the Contracting Party Agreement and the Purchase Agreement, each defined herein, upon the terms and conditions provided herein and therein; and

WHEREAS, by Resolutions Nos. 2015-04 and 2016-03, this Board has previously approved the Port's joinder to the Southwest Ohio Regional Bond Fund in cooperation with the Dayton-Montgomery County Port Authority (the "Dayton Port") to issue its revenue bonds for the purpose of assisting in the financing the costs of acquiring, constructing, installing, equipping or improving port authority facilities; and

WHEREAS, Fountain Place, LLC (the "Developer") has requested that the Port issue its revenue bonds in the maximum aggregate principal amount of \$8,000,000 for the purpose of financing certain improvements known as The Foundry project in the City of Cincinnati (the "City"), which development and improvements constitute "port authority facilities", and the Developer and the Port have executed a term sheet for such financing, which term sheet is now on file with the Secretary (the "Term Sheet"); and

WHEREAS, this Board has determined that it is necessary and proper and in the best interest of the Port to issue its revenue bonds through the Southwest Ohio Regional Bond Fund to assist in the financing of costs of the Project by making the bond proceeds available to the Developer;

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 or in the Basic Indenture, 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 Sections 4582.21 to 4582.60, inclusive, Ohio Revised Code, as enacted and amended from time to time.

"Authorized Denominations" means Authorized Denominations as defined in the Certificate of Award or the Supplemental Indenture.

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

“Basic Indenture” means the Amended and Restated Trust Indenture dated as of April 1, 2015, between the Port, the Dayton Port and the Trustee, as the same has previously been and may be further amended.

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

“Bond” or “Bonds” means the Port’s Development Revenue Bonds (Southwest Ohio Regional Bond Fund) Series 2022E (The Foundry Project) in the maximum aggregate principal amount of \$8,000,000 issued under the Southwest Ohio Regional Bond Fund pursuant to the Indenture and this resolution.

“Certificate of Award” means the certificate of an Authorized Officer delivered pursuant to Sections 3 and 4 of this resolution.

“Contracting Party” means, with respect to the Bonds, the Developer or its designees and, if determined to be necessary or advisable by the President/CEO for the successful financing of the costs of the Project, any additional parties, with such determination evidenced by the identification of the Contracting Party in the Supplemental Indenture.

“Contracting Party Agreement” means the Loan Agreement between the Port and the Developer, and any additional parties the Port deems necessary or advisable, or such other Agreement entered into in connection with the Bonds that constitutes an “Agreement” as defined in the Basic Indenture.

“Dayton Port” means the Dayton-Montgomery County Port Authority, a body corporate and politic duly organized and validly existing under the laws of the State of Ohio, and its lawful successors.

“Disclosure Statement” means any preliminary or final offering memorandum, official statement, placement memorandum or other document used in connection with the offering and sale of the Bonds.

“Indenture” means the Basic Indenture and all supplements or amendments to the Basic Indenture, including the Supplemental Indenture.

“Original Purchaser” means the party designated as the Original Purchaser in the Certificate of Award.

“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” means the Project, as defined in the Contracting Party Agreement, generally consisting of the acquisition, construction, improvement and equipping of improvements known as The Foundry project, which consists of the redevelopment and renovation of the former Macy’s department store building located on Fountain Square in downtown Cincinnati to contain approximately 35,000 square feet of commercial retail space and 150,000 square feet of office space and other site improvements, which constitutes “port authority facilities” as defined in the Act, as more fully described in the Contracting Party Agreement and the Term Sheet.

“Purchase Agreement” means, as to the Bonds, the bond purchase, placement or sale agreement between the Port and the Original Purchaser providing for the purchase and sale of the Bonds.

“Supplemental Indenture” means the Supplemental Trust Indenture securing the Bonds between the Port and the Trustee, as it may be duly amended or supplemented from time to time, the numerical designation of which may be assigned or changed as provided in the Certificate of Award or the Supplemental Indenture.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., New Albany, Ohio, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “Trustee” shall mean the successor Trustee.

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 Basic Indenture or the Supplemental Indenture. Any action authorized by this resolution to be taken by an Authorized Officer, may be taken by one of the individuals comprising the Authorized Officer unless otherwise expressly provided herein, and shall be performed in such officer's official capacity and on behalf of the Port.

Section 2. Board Determinations. (a) This Board determines that: (i) it is necessary and proper and in the best interest of the Port to, and the Port shall, issue, sell and deliver the Bonds in the maximum aggregate principal amount of \$8,000,000, as provided and authorized herein and in the Basic Indenture and the Supplemental Indenture, and pursuant to the authority of the Act, to assist in the financing of the costs of acquiring, constructing, equipping, installing and improving the Project; (ii) the Project constitutes a "port authority facility" as defined in the Act; (iii) the Project is in furtherance of the purposes of the Act and enhances, fosters, aids, provides and promotes economic development and governmental operations and benefits the State of Ohio, Hamilton County, and the City by improving the welfare of the people therein by enhancing the continued viability of the Project; and (iv) the terms of the Bonds contained in the Term Sheet are satisfactory and are hereby approved and incorporated herein.

### Section 3. Terms and Provisions of the Bonds.

(a) Generally. The Bonds: (i) shall be issued in one or more series in substantially the form or forms as set forth in the Supplemental Indenture; (ii) shall initially be issued to a Depository for use in a Book-Entry System unless otherwise determined by the Authorized Officer in the Certificate of Award; (iii) shall be numbered in such manner as determined by the Trustee in order to distinguish each Bond from any other Bond; (iv) shall be in Authorized Denominations; (v) shall be subject to optional, extraordinary and mandatory sinking fund redemption in the amounts, upon the conditions, and at the times and prices set forth in the Certificate of Award and in the manner set forth in the Indenture; and (vi) shall be dated as of the date designated in the Certificate of Award. The Bonds shall be designated "Port of Greater Cincinnati Development Authority Development Revenue Bonds (Southwest Ohio Regional Bond Fund) Series 2022E (The Foundry Project)" and the Supplemental Indenture shall be designated as the "Forty-Second Supplemental Trust Indenture" or, in each case, as otherwise may be designated in the Certificate of Award or the Supplemental Indenture and as may be appropriate in order to distinguish the Bonds and the Supplemental Indenture from any other series of bonds issued under the Basic Indenture and the respective supplemental indentures securing those other series of bonds.

(b) Interest Rate and Principal Maturities. The Bonds shall bear interest at the rates per annum from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from their date, payable on the interest payment dates described in the Certificate of Award, and shall mature and be subject to mandatory redemption in the years and in the principal amounts, all as set forth in the Certificate of Award; provided that no rate of interest therein specified shall exceed six percent (6%) per year, the first payment of principal shall be made not later than November 15, 2024, and all Bonds shall have been retired not later than November 15, 2048. In the Certificate of Award, the Authorized Officer shall fix the principal amount of Bonds to be issued that will provide the moneys necessary to pay costs of the Project, and costs of issuance, and make the Bond Reserve Deposit and any deposit for capitalized interest. The Certificate of Award shall fix the maturity or maturities and mandatory and optional redemption provisions of the Bonds so as to provide to the Port the lowest feasible interest cost but within the amount that is reasonably expected to be realized from payments under the Contracting Party Agreement. The procedures, credits and conditions for the satisfaction of any mandatory sinking fund requirements and redemption shall be set forth in the Basic Indenture. Other terms of the Bonds may be specified in the Certificate of Award or in the Supplemental Indenture. All matters determined in the Certificate of Award or the Supplemental Indenture, as the same may be amended or supplemented, shall be conclusive and binding.

(c) Execution. The Bonds shall be signed by any two Authorized Officers in their official capacities, provided that one or both of such signatures may be a facsimile.

Section 4. Sale of the Bonds; Disclosure Statement. The Bonds shall be awarded and sold to the Original Purchaser at the purchase price set forth in the Certificate of Award, plus accrued interest from their date to the date of delivery and payment. The purchase price of the Bonds shall be established in the Certificate of Award, provided that such purchase price shall not be less than 95% of the principal amount of the Bonds, all as determined in the Certificate of Award, which determination shall be in the best interests of the Finance Authority. Any fees payable pursuant to the Purchase Agreement in connection with the issuance and sale of the Bonds may be paid from the proceeds of the Bonds which are hereby appropriated for that purpose.

Each Authorized Officer is authorized and directed to execute and deliver the Certificate of Award and the Purchase Agreement and any amendments thereto, and to make the necessary arrangements to establish the date, location, procedure and conditions for the delivery of the Bonds to the Original Purchaser. Those officers are further authorized to take all steps necessary to effect due execution, authentication and delivery of the Bonds under the terms of this resolution, the Purchase Agreement and the Indenture.

It is determined by this Board that the price for and the terms of the Bonds, and the sale thereof, all as provided in this resolution, the Purchase Agreement and the Indenture, are in the best interests of the Port and are in compliance with all legal requirements.

The distribution of one or more Disclosure Statements of the Port relating to the original issuance of the Bonds is hereby approved, and each Authorized Officer is each hereby authorized to and directed to determine, and to certify or otherwise represent, when the Disclosure Statement is to be "deemed final" (except for permitted omissions) by the Port as of its date or is a final official statement for purposes of paragraph (b) of Rule 15c2-12. Such officers are authorized to execute, use and distribute, or authorize the use and distribution of, a preliminary Disclosure Statement and a final Disclosure Statement and any supplements thereto in connection with the issuance of the Bonds, and are each authorized and directed to advise the Original Purchaser in writing regarding limitations on the use of the preliminary Disclosure Statement and the final Disclosure Statement and any supplements thereto as the officer acting deems necessary or appropriate to protect the interests of the Port. The Authorized Officers are each authorized to execute and deliver, on behalf of the Port and in their official capacities, such certificates in connection with the accuracy of the preliminary Disclosure Statement and final Disclosure Statement and any supplements thereto as, in their judgment, may be necessary or appropriate.

Section 5. Application of Proceeds of Bonds. The proceeds of sale of the Bonds shall be allocated and deposited so that:

(a) The Series 2022E Interest Subaccount in the Interest Payment Account in the Bond Fund receives any accrued interest paid by the Original Purchaser;

(b) Unless the Bond Reserve Deposit is made in a nonmonetary form permitted by the Indenture or from a source of funds other than proceeds of the Bonds, the Series 2022E PRF Account in the Primary Reserve Fund receives an amount equal to the Bond Reserve Deposit set forth in the Certificate of Award;

(c) The Series 2022E Capitalized Interest Subaccount in the Series 2022E PF Account in the Project Fund receives the amounts for capitalized interest (which may be zero) set forth in the Certificate of Award;

(d) The Series 2022E Costs of Issuance Subaccount in the Series 2022E PF Account in the Project Fund receives the amount of the cost of issuance of the Bonds as set forth in the Certificate of Award and Supplemental Indenture;

(e) The Series 2022E Proceeds Subaccount in the Series 2022E PF Account in the Project Fund receives the balance of the proceeds of the Bonds.

Each Authorized Officer is authorized and directed to direct the Trustee as to the amount of the proceeds to be deposited in each of the aforesaid funds, accounts and subaccounts for the Bonds, which

direction may vary the foregoing allocations if that officer certifies that such variance is in the best interests of the Port and appropriate to financing the costs of the Project.

Section 6. Security for the Bonds. As provided in the Indenture, the Bonds shall be payable solely from the Pledged Revenues and shall be secured by the assignment of the Pledged Revenues under the Indenture and such other collateral as may from time to time be assigned to the Trustee under the Indenture. The Bonds are special obligations of the Port and do not represent or constitute a debt or pledge of the faith and credit or the taxing power of the Port or the State of Ohio or any of its political subdivisions, including Hamilton County and the City of Cincinnati. Each 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 resources or revenues other than the Pledged Revenues for the fulfillment of any of the terms, conditions or obligations of the Indenture, this resolution or the Bonds.

Section 7. Covenants of Port. The Port, by issuance of the Bonds, agrees with the holders of the Bonds that:

(a) Use of Proceeds. The Port shall use the proceeds of the Bonds to (i) pay costs of the Project, (ii) pay costs of issuance of the Bonds, (iii) to make the Bond Reserve Deposit if and to the extent to be made from the proceeds of the Bonds, as set forth in the Certificate of Award or the Contracting Party Agreement, and (iv) to make any Capitalized Interest deposit, as set forth in the Certificate of Award or the Contracting Party Agreement.

(b) Segregation of Funds. The Port shall segregate, for accounting purposes, the Pledged Revenues and Special Funds from all other revenues and funds of the Port.

(c) Transcript of Proceedings. An Authorized Officer, or other appropriate officer of the Port, is authorized and directed furnish to the Original Purchaser and to the Trustee a true transcript of proceedings, certified by the Authorized Officer or such other officer, of all proceedings had with reference to the issuance of the Bonds, together with such information from the Port's records as is necessary to determine the regularity and validity of such issuance.

(d) Further Actions and Delivery of Instruments. The Port shall, at any and all times, cause to be done all such further acts and things and cause to be executed and delivered all such further instruments as may be necessary to carry out the purpose of the Bonds and this resolution or as may be required by the Act and will comply with all requirements of law applicable to the Bonds.

(e) Observance and Performance of Agreements and Obligations. The Port will observe and perform all its agreements and obligations provided for by the Bonds, the Indenture, the Purchase Agreement, the Contracting Party Agreement or this resolution. All of the obligations of the Port thereunder are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Port within the meaning of Section 2731.01, Ohio Revised Code.

(f) Arbitrage Provisions and Information Return. This section shall apply only to those Bonds issued as bonds the interest on which is excluded from gross income for federal income tax purposes. The Port shall restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. Each Authorized Officer is authorized and directed to execute and deliver (i) an appropriate certificate of the Port for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the Port regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds, all as of the date

of delivery of and payment for the Bonds; and (ii) the statement setting forth the information required by Section 149(e) of the Code, which may be based in part on the relevant information provided by the Contracting Party.

The Port shall (a) take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) not take or permit to be taken any actions which would adversely affect that exclusion, and that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely rebate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. Each Authorized Officer is authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, as may be appropriate to assure such exclusion of that interest.

Section 8. Supplemental Indenture and Contracting Party Agreement. To secure the payment of the Bond Service Charges on the Bonds as the same shall become due and payable and the performance of the Port as provided in this resolution, the Bonds and the Indenture, and to provide for the sale of the Bonds, each Authorized Officer is authorized and directed, as security for the Bonds, to execute and deliver (i) to the Trustee the Supplemental Indenture and (ii) to the Contracting Party and other parties thereto, the Contracting Party Agreement, each in substantially the respective standard forms thereof used for other Southwest Ohio Regional Bond Fund transactions of the Port or in the form on file with the Secretary, with such modifications and amendments as are necessary to conform to this resolution, the Term Sheet and the Certificate of Award. The forms of the aforesaid documents are approved with such changes therein or amendments thereto as are not inconsistent with this resolution and not substantially adverse to the Port, which are permitted by the law and shall be approved by the officer or officers executing those documents. The approval of such changes or amendments, and that such changes or amendments are not substantially adverse to the Port, shall be conclusively evidenced by the execution of those documents by that officer or those officers.

Section 9. Other Documents. Each Authorized Officer is authorized and directed to execute any certifications, financing statements, agreements, assignments, amendments, supplements and other instruments and documents, and to take such further actions, as are necessary or appropriate to perfect the assignments contemplated in the Indenture and to consummate the transactions contemplated in this resolution, the Term Sheet, the Indenture, the Contracting Party Agreement, the Purchase Agreement and any Disclosure Statement, including, without limitation, any mortgages, intercreditor agreements, collateral agent agreements, disbursing agreements, escrow agreements or continuing disclosure agreements. All actions heretofore taken by the officers and officials of the Port and of this Board in connection with the issuance and sale of the Bonds are hereby adopted, ratified and approved.

Section 10. Acquisition and Construction. It is hereby determined that any acquisition, construction, equipping and installation of the Project and of any improvements in connection with it, including those paid from the proceeds of the Bonds, shall be undertaken by the Contracting Party, or its designee.

Section 11. 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 12. 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 13. Effective Date. This resolution shall take effect and be in force immediately upon its adoption.

Adopted: 4/20, 2022

Yeas: 9

Nays: 0

Abstentions: 0

MOR  
Chair

Laura B...  
Attest: Secretary