

**BOARD OF DIRECTORS
MIDDLETOWN PORT AUTHORITY**

The Board of Directors (the "Board") of the Middletown Port Authority (the "Port Authority"), met in special session on September 22, 2022, at 2:30 p.m, at One Donham Plaza, Middletown, Ohio 45042, with the following members participating:

It was moved by Nathan Cahall and seconded by Paul Lelli that the following resolution be adopted:

RESOLUTION NO. 2022-01

A RESOLUTION (I) AUTHORIZING THE EXECUTION OF A TERM SHEET CONCERNING THE ACQUISITION, CONSTRUCTION, AND IMPROVEMENT OF REAL AND PERSONAL PROPERTY FOR UP TO 21 MULTI-FAMILY BUILDINGS AND AN APPROXIMATELY 3,500 SQUARE FOOT CLUB HOUSE FACILITY, ALL CONSTITUTING "PORT AUTHORITY FACILITIES"; (II) APPROVING THE EXECUTION AND DELIVERY OF A GROUND LEASE, A PROJECT LEASE, ONE OR MORE RECOGNITION AND ATTORNMEN AGREEMENTS AND ACKNOWLEDGMENTS OF MORTGAGE IN CONNECTION WITH THE TRANSACTIONS, A CONSTRUCTION MANAGER AT-RISK AGREEMENT, AND AN INDEMNIFICATION AGREEMENT; (III) APPROVING THE PROVISION OF OHIO SALES AND USE TAX EXEMPTION CERTIFICATES FOR THE PURCHASE OF BUILDING AND CONSTRUCTION MATERIALS INCORPORATED INTO THE FACILITY AND (IV) AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the Middletown Port Authority (the "Authority"), by virtue of the laws of the State of Ohio, particularly Ohio Revised Code Sections 4582.21 through 4582.59 (the "Act") and the authorities therein mentioned, is authorized (i) to acquire a leasehold interest in certain real property in the City of Middletown, Ohio, consisting of approximately 39.6 acres (the "Project Site") by operation of a Ground Lease (the "Ground Lease") between KPG Middletown, LLC (collectively, with its affiliates, subsidiaries, and related entities, the "Developer"), as ground lessor, and the Authority, as ground lessee; (ii) to acquire title to one or more structures and other site improvements to be located on the Project Site consisting primarily of up to 21 multi-family buildings and an approximately 3,500 square-foot club house facility and related improvements, together with appurtenances related thereto, consisting of approximately 15 multi-family buildings and the club house ("Phase 1" as defined in the Project Lease) and, if elected by Developer,

approximately 6 multi-family buildings ("Phase 2" as defined in the Project Lease) to be leased to KPG Middletown, LLC for its operations (collectively, the "Project") and to lease the Project and the Project Site to the Developer by operation of a Project Lease (the "Project Lease") between the Authority, as lessor, and the Developer, as lessee; (iii) to provide one or more Recognition and Attornment Agreements and Acknowledgments of Mortgage (collectively, the "Recognition Agreement") to support the Developer's private financing of the initial acquisition of the Project Site and construction of the Project; (iv) to enter into a Construction Manager At-Risk Agreement (the "Construction Manager At-Risk Agreement") with the Developer relating to the Project; and (v) to enter into an Indemnification Agreement (the "Indemnification Agreement") with the Developer relating to the Project; and

WHEREAS, attached to this Resolution as Exhibit A is a Term Sheet (the "Term Sheet") signed by the Authority and the Developer which describes the general structure and terms of the proposed transaction (the "Proposed Transaction"); and

WHEREAS, the Developer has begun 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 a leasehold interest in the Project Site, an agreement by the Developer to convey ownership of the Project upon its completion, and other necessary agreements by the Developer; and

WHEREAS, the Project is expected (i) to enhance the availability of adequate housing in the State of Ohio and to improve the general well-being of the State of Ohio, and (ii) to enhance, foster, aid, provide, or promote housing and economic development within the City of Middletown, Ohio;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Middletown Port Authority that:

Section 1. This Board does hereby find and determine, based upon the representations of the Developer, that:

(a) The Project is a "port authority facility" within the meaning of that term as defined in Ohio Revised Code Section 4582.21; and

(b) The Project is consistent with the purposes of (i) Ohio Constitution, Article VIII, Section 16, to enhance the availability of adequate housing in the State of Ohio and to improve the general well-being of the State of Ohio and (ii) Ohio Revised Code Section 4582.21(B)(1), to enhance, foster, aid, provide, or promote housing within the City of Middletown and Warren County.

Section 2. This Board hereby ratifies the participation of the Authority in the Proposed Transaction, substantially on the terms set forth in the Term Sheet currently on file with the Board, and hereby ratifies the execution of the Term Sheet by the Deputy Director of the Authority.

Section 3. This Board hereby authorizes the Chairperson of the Board, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them individually, and such officers are hereby authorized and directed to execute and deliver, for and in the name and on behalf of the Authority, the Ground Lease, in such form as shall not be materially adverse to the Authority and not otherwise inconsistent with the Term Sheet. The execution of the Ground Lease by a duly authorized officer or officers of the Authority shall evidence conclusively that such form is not materially adverse to the Authority and that any conditions to its execution and delivery have been satisfied.

Section 4. This Board hereby authorizes the Chairperson of the Board, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them individually, and such officers are hereby authorized and directed to execute and deliver, for and in the name and on behalf of the Authority, the Project Lease, in such form as shall not be materially adverse to the Authority and not otherwise inconsistent with the Term Sheet. The execution of the Project Lease by a duly authorized officer or officers of the Authority shall evidence conclusively that such form is not materially adverse to the Authority and that any conditions to its execution and delivery have been satisfied.

Section 5. This Board hereby authorizes the Chairperson of the Board, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them individually, and such officers are hereby authorized and directed to execute and deliver, for and in the name and on behalf of the Authority, the Recognition Agreement, in such form as shall not be materially adverse to the Authority and not otherwise inconsistent with the Term Sheet. The execution of the Recognition Agreement by a duly authorized officer or officers of the Authority shall evidence conclusively that any such changes are not materially adverse to the Authority and that any conditions to its execution and delivery have been satisfied.

Section 6. This Board hereby authorizes the Chairperson of the Board, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them individually, and such officers are hereby authorized and directed to execute and deliver, for and in the name and on behalf of the Authority, the Construction Manager At-Risk Agreement, in such form as shall not be materially adverse to the Authority and not otherwise inconsistent with the Term Sheet. The execution of the Construction Manager At-Risk Agreement by a duly authorized officer or officers of the Authority shall evidence conclusively that any such changes are not materially adverse to the Authority and that any conditions to its execution and delivery have been satisfied.

Section 7. This Board hereby authorizes the Chairperson of the Board, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them individually, and such officers are hereby authorized and directed to execute and deliver, for and in the name and on behalf of the Authority, the Indemnification Agreement, in such form as shall not be materially

adverse to the Authority and not otherwise inconsistent with the Term Sheet. The execution of the Indemnification Agreement by a duly authorized officer or officers of the Authority shall evidence conclusively that any such changes are not materially adverse to the Authority and that any conditions to its execution and delivery have been satisfied.

Section 8. The Chairperson of the Board, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them, are each authorized and directed to take such further actions and execute any certifications, financing statements, assignments, agreements, instruments, and other documents that are necessary or appropriate to consummate the Proposed Transaction in accordance with this Resolution and the Term Sheet. The Authority 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 or appropriate to consummate the Proposed Transaction in accordance with this Resolution and the Term Sheet or as may be required by the Act and shall comply with all requirements of law applicable to the Proposed Transaction.

Section 9. This Board hereby authorizes the Chairperson of the Board, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them, in anticipation of the acquisition by the Authority of the leasehold interest in the Project Site, to provide the Developer or its nominees with one or more appropriate certificates ("Exemption Certificates") to support the claim of an exemption from Ohio and Warren County 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 Section 5739.02(B)(13), Ohio Revised Code, that constitute Project improvements ("Building Materials"). Upon the execution of the Ground Lease, the Project Lease, the Recognition Agreement, the Construction Manager At-Risk Agreement, and the Indemnification Agreement by the parties thereto, or at such other time as shall be determined by the Executive Director of the Authority, the Authority will (a) provide Exemption Certificates to the Developer for so long as shall be necessary to purchase all of the Building Materials for Phase 1. Authorization for Exemption Certificates for Phase 2 shall only be approved upon written receipt of Developer's intent to proceed with Phase 2 and the entering into a written amendment of the Project Lease as authorized only by further subsequent action by this Board.

Section 10. This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board 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 full compliance with applicable legal requirements.

Section 11. 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: Ken Cohen, Greg Martin, Jim Klingens, Tal Moon, Paul Solli, Nathan Calabrese, Sam Zimmerman

Voting Nay: N/A

Abstain: Mike Stautberg

The undersigned, Secretary of the Board of Directors of the Middletown Port Authority, does hereby certify that the foregoing is a true and correct copy of a resolution of the Middletown Port Authority, duly adopted Sept 22, 2022, and appearing upon the official records of that Board.

Adopted: Sept 22, 2022

Dated: Sept 22, 2022

Attest: Deborah L. Gantson
Secretary, Board of Directors
Middletown Port Authority