

RESOLUTION NO. 2024-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LORAIN PORT AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ENTER INTO AN AGREEMENT WITH THE OBERLIN CITY SCHOOL DISTRICT TO ACCEPT PROPERTY SUBJECT TO LEGAL COUNSEL REVIEW.

WHEREAS, the Lorain Port Authority has a mission to promote economic development opportunities; and

WHEREAS, pursuant to Ohio Revised Code (ORC) Section 4582.22, the Lorain Port Authority is an instrumentality of the State of Ohio conferred with powers considered to be essential to government functions to further economic development.

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

SECTION I. That the Board accepts transfer of school owned real estate located at 198 East College Street, Oberlin, Ohio to the Lorain Port Authority.

SECTION II. It is found and determined that all formal proceedings and actions of this Board concerning and relating to the passage of this resolution were adopted in an open meeting of this Board, and that all deliberations of this Board and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including §121.22 of the Ohio Revised Code.

Ayes: 8

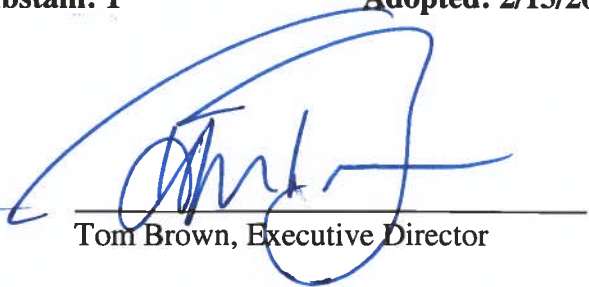
Nays: 0

Abstain: 1

Adopted: 2/13/2024



Brad Mullins, Chairman



Tom Brown, Executive Director

DISPOSITION AGREEMENT

THIS DISPOSITION AGREEMENT is made and executed this 12th day of December, 2023, at Oberlin, Ohio, by the BOARD OF EDUCATION OF THE OBERLIN CITY SCHOOL DISTRICT, an Ohio public school district and political subdivision duly organized and existing under and by virtue of the Constitution and laws of the State of Ohio (which together with any successor or public officers hereinafter designated by or pursuant to law is hereinafter called, the "Oberlin CSD"), and the LORAIN PORT AUTHORITY, a Port Authority duly organized under the Constitution and laws of the State of Ohio (hereinafter called the "Port Authority").

WITNESSETH:

WHEREAS, pursuant to Ohio Revised Code Chapter 4582.38, the Oberlin CSD is willing to sell to the Port Authority, upon the terms and conditions set forth herein, the real property commonly known as the Eastwood Elementary School, located at 198 E. College Street, Oberlin, Ohio and more fully described in Exhibit "A" attached hereto (the Property"); and

WHEREAS, the Port Authority intends to execute, simultaneously with this Disposition Agreement, a Real Estate Purchase Agreement with Liberty Development Company ("Liberty") in substantially the form attached as Exhibit B for the sale of the Property from the Port Authority to Liberty.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the Oberlin CSD and Port Authority agree as follows:

SECTION 1. AGREEMENT TO TRANSFER AND ACCEPT PROPERTY

The Oberlin CSD agrees to sell the Property to the Port Authority and the Port Authority agrees to accept the Property from the Oberlin CSD. The Property to be conveyed shall include the land, all buildings and other improvements located thereon, and all appurtenant rights, privileges and easements associated therewith.

SECTION 2. CONVEYANCE OF PROPERTY

(a) Form of Deed. On the Closing Date, the Oberlin CSD will deliver a duly executed and acknowledged Quitclaim Deed conveying title to the Property to the Port Authority.

(b) Closing Date. The Closing Date of this transaction shall be contemporaneous with the closing under the Real Estate Purchase Agreement between the Port Authority and Liberty or its nominee for said Property with the deed of conveyance from Oberlin CSD to the Port Authority being recorded prior to the recording of the deed of conveyance from the Port Authority to Liberty. It is understood and agreed that the 180-day "Due Diligence Period" and the 45-day period for closing under the Real Estate Purchase Agreement shall not be extended without the consent of the Oberlin CSD, which such consent shall not be unreasonably withheld, conditioned, or delayed, and the Closing Date of this transaction shall occur not later than 225 days following the date of this Disposition Agreement.

(c) Escrow Agent. This transaction shall be placed in escrow with North Star Title, a division of Stewart Title (hereinafter referred to as the "Escrow Agent"), who shall serve as the title company and escrow agent for the transactions contemplated under this Disposition Agreement and under the Real Estate Purchase Agreement between the Port Authority and Liberty, all in accordance with the terms of its standard escrow agreement. An executed copy of this Disposition Agreement shall be deposited by the Oberlin CSD with the

Escrow Agent by no later than five (5) business days after the Oberlin CSD receives a fully executed copy of this Disposition Agreement from the Port Authority. All other documents and funds necessary for the completion of this transactions shall be placed in escrow with the Escrow Agent on or before the Closing Date. It is understood and agreed that the obligations of the Port Authority to complete the closing on the sale of the Property from the Oberlin CSD to the Port Authority is contingent on Liberty depositing with the Escrow Agent such documents as are necessary to complete the closing on the sale of the Property from the Port Authority to Liberty.

(d) Duties of Escrow Agent. On the Closing Date, the Escrow Agent shall file for record the Quitclaim Deed and any other instruments required to be recorded, and shall thereupon deliver to each of the parties the funds and documents to which they shall be respectively entitled, together with its escrow statement, provided that the Escrow Agent shall then have on hand all funds and documents necessary to complete this transaction and provided the Escrow Agent has stated in writing that it shall be in a position to and will issue and deliver, upon the filing of the deed for record, the title insurance policy.

(e) Possession. Possession of the Property shall be delivered to the Port Authority upon filing of the Deed.

(f) Access to Property. During the Due Diligence Period referenced in Article 2(b) herein, Oberlin CSD hereby grants to Port Authority, Liberty, and their representatives, agents, and employees, upon reasonable notice to Oberlin CSD, access to the Property for the purposes of performing such studies and investigations of the Property as the Port Authority or Liberty deem desirable, including: (a) the physical condition of the Property; (b) surveys, environmental studies; and (c) such other matters relating to the Property as Port Authority and Liberty deem appropriate on the conditions that Port Authority or Liberty shall promptly repair any damage to the Property caused by such access, studies and investigations of the Property.

SECTION 3. CHARGES

The sum total of the following closing costs under this Disposition Agreement and under the Real Estate Purchase Agreement shall be paid one-half by the Oberlin CSD with Liberty being responsible for payment of the other one-half under the Real Estate Purchase Agreement:

- (a) The cost of any Title Insurance Commitments;
- (b) The cost of the issuance of any Owner's Title Policy (except that the Oberlin CSD shall not be responsible for the costs of endorsements to the Owner's Title Policy, and endorsements shall be at the sole cost and expense of the party requesting the endorsement);
- (c) Any conveyance fees, documentary stamps or transfer taxes; and
- (d) The escrow fee charged by the Escrow Agent.

The total of the following closing costs shall be paid by the Oberlin CSD under this Disposition Agreement:

- (a) The cost of one Title Examination;
- (b) The cost of preparing and recording the Quitclaim Deed from the Oberlin CSD to the Port Authority;

- (c) To the extent there are any, the full cost for obtaining and recording releases of any liens or encumbrances on the Property to which the Port Authority has objected and that Oberlin CSD has agreed in writing to release.

Inasmuch as the Property is presently exempt from taxation, there will be no proration of real estate taxes. Unpaid installments of special assessments, if any, which are a lien against the Property on the date of Closing shall be prorated as of that date on the basis of a 365-day year and the amounts shown on the then latest available tax duplicate of Lorain County, Ohio. The Oberlin CSD will pay utility charges relating to the Property to the date of Closing so as to maintain electrical services and otherwise to prevent freezing / burst pipes. The Oberlin CSD shall not be responsible for any taxes owed as a result of the conversion of the Property from a tax exempt to a taxable status. Oberlin CSD and Port Authority shall cooperate with Liberty to arrange for utilities to the Property to be transferred to Liberty at Closing.

The parties acknowledge and agree that this transaction is expected to be exempt from the real property conveyance fee under 5(a) of the Statement of Reason for Exemption from Real Property Conveyance Fee (i.e., Selling or purchasing from a State or government Agency), Ohio Department of Taxation Form DTE 100EX.

Liberty shall be responsible for the cost of preparing and recording the Quitclaim Deed of conveyance from the Port Authority to Liberty, any fees or costs associated with this transaction as required by the Port Authority, and any other costs and expense that are not specifically the responsibility of the Oberlin CSD under this Disposition Agreement, and such fees and costs for which Liberty shall be responsible shall be set forth in the Real Estate Purchase Agreement.

SECTION 4. BROKERS COMMISSION

The Oberlin CSD and the Port Authority each represent and warrant to the other that neither party has had any dealings with any real estate agent or broker so as to entitle such agent or broker to any commission in connection with the transfer of the Property to the Port Authority. If for any reason any such commission shall become due, the party dealing with such agent shall pay any such commission.

SECTION 5. NOTICES

Unless otherwise expressly required by the terms of this Agreement, notice required or permitted to be given by the parties shall be delivered personally or served by certified or registered mail to the parties at the addresses set forth below, unless different addresses are given by one party or another:

AS TO THE OBERLIN CSD;

Oberlin City School District
Attn: Dr. David Hall, Superintendent
153 North Main Street
Oberlin, Ohio 44074

With a copy to:

Squire Patton Boggs (US) LLP
Attn: Matthew L. Sagone, Esq.
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215

AS TO THE PORT AUTHORITY:

Lorain Port Authority
Attn: Tom Brown, Executive Director
319 Black River Lane
Lorain, Ohio 44052

SECTION 6. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns; provided, however, that neither party shall assign this Agreement without the prior written consent of the other party.

SECTION 7. INTEGRATED CONTRACT

This agreement shall be deemed to contain all of the terms and conditions agreed upon, and Oberlin CSD and the Port Authority agree that any modifications must be in writing and signed by all parties.

SECTION 8. SPECIAL PROVISIONS

(a) **Approval of Oberlin CSD.** Any provision of the Disposition Agreement requiring the approval of the Oberlin CSD, the satisfaction of the Oberlin CSD, certificate or certification by the Oberlin CSD shall be interpreted as requiring action by Dr. David H. Hall, Superintendent of Oberlin CSD granting, authorizing or expressing such approval, satisfaction certificate, or certification, as the case may be, unless such provision expressly provided otherwise. The Oberlin CSD agrees that any provision of this Agreement requiring the approval, satisfaction or certification of the Oberlin CSD shall be deemed to have reference to approval, satisfaction, or certification based on an objective, reasonable standard.

(b) **Removal of Personal Property.** At any time prior to and for a period of at least fourteen (14) days following Liberty and/or the Port Authority delivering notice to Oberlin CSD of their intent to proceed with Closing, Oberlin CSD reserves the right to remove from the Property, and thereby not include in the conveyance thereof, any and all movable equipment, furniture, draperies, playground equipment, and other non-mechanical, electricity, and/or plumbing (MEP) or otherwise Property system-related personalty. If the Oberlin CSD fails to remove any such item by the end of said fourteen (14) day period, those items remaining on the Property shall be included as part of the Property sold and conveyed to the Port Authority, and Oberlin CSD waives any right to thereafter remove those items from the Property, and the Port Authority agrees to accept them.

(c) **Sale Proceeds.** At the Closing of the sale from the Port Authority to Liberty, the Escrow Agent shall deliver and pay over to Oberlin CSD as it may direct, the purchase price of \$50,000, *less* Oberlin CSD's share of the Closing Costs as set forth herein.

(d) **Liberty's Development Obligations.** Liberty will redevelop the Property for mixed-use purposes (with at least one of the mixed uses being residential housing units) or for residential housing units. Subject to Force Majeure (as defined below), Liberty will have up to twelve (12) months following the Closing Date to commence construction of the redevelopment of the Property. Commencement of construction shall mean the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities have taken place. For purposes of this Agreement, "Force Majeure" shall mean delay(s) caused by fire, catastrophe, strikes or labor trouble, pandemic/epidemic, acts of war, terrorism, and/or civil commotion, acts of God, governmental prohibitions or regulation, acts or omissions of unaffiliated third-parties, inability or difficulty obtaining materials/supplies, and/or other causes beyond Liberty reasonable control. If a Force

Majeure event delays Liberty's redevelopment of the Property, then the period of such delay shall be added to the time for performance hereunder.

(e) Incorporation into Real Estate Purchase Agreement with Liberty. The Real Estate Purchase Agreement between the Port Authority and Liberty shall include a provision incorporating the development obligations of Liberty and other terms and conditions of Section 8(d) immediately above, which obligations shall be binding on Liberty and any Liberty nominee(s).

SECTION 9. PROPERTY BEING CONVEYED IN PRESENT CONDITION

The Oberlin CSD agrees to provide utilities to the Property prior to Closing as set forth herein above, but shall not be obligated to provide any other maintenance or repairs to the Property, except for such maintenance or repairs not covered by insurance and as may be reasonably necessary in an effort to prevent damage to the building envelopes and/or structural integrity of the buildings from water intrusion it being understood that the Oberlin CSD does not guarantee or warrant any results from such efforts. The Oberlin CSD agrees to provide all information, reports, findings, and public records in its possession or under its reasonable control regarding the Property, which such information and documentation the Port Authority agrees to provide Liberty. Subject to the foregoing and other terms of this Agreement, the Port Authority agrees to accept the Property in its "AS IS", "WHERE IS" condition that exists at the time of Closing and with no warranties or representations that survive the Closing as to the existence of any sub-surface, environmental, or any other conditions.

SECTION 10. CASUALTY

If, prior to Closing, the Property or any part of the Property shall be damaged by fire or other casualty, then, the Oberlin CSD shall give the Port Authority and Liberty written notice thereof accompanied by reasonable supporting documentation. The Port Authority shall then have the option to: (i) accept the Property and proceed to Closing subject to the casualty, whereupon the Oberlin CSD shall pay to the Port Authority any insurance proceeds received by the Oberlin CSD and assign to the Port Authority all of the Oberlin CSD's right, title, and interest in and to any such insurance; or (ii) terminate this Disposition Agreement, whereupon the parties shall have no further rights, duties, or obligations.

SECTION 11. DEFAULT

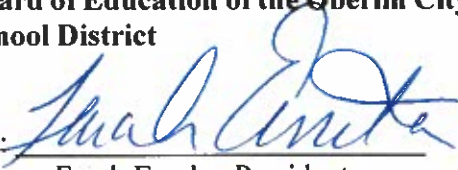
(a) If the Oberlin CSD fails to proceed to Closing by reason of default, Port Authority shall have the right to terminate this Agreement by notifying the Oberlin CSD of such termination and/or to pursue such remedies at law or equity that may be available to the Port Authority, including specific performance.

(b) If Port Authority fails to proceed to Closing by reason of default, the Oberlin CSD shall have the right to terminate this Agreement by notifying Port Authority of such termination and to retain the deposit as the Oberlin CSD's sole and exclusive remedy.

[Signature page to immediately follow]

IN WITNESS WHEREOF, the Oberlin CSD and the Port Authority have caused this Agreement to be executed by duly authorized representatives as of the date first written above.

**Board of Education of the Oberlin City
School District**

By: 
Farah Emeka, President

By: 
Robert Rinehart, Treasurer

Date: 12-12-23

Lorain Port Authority

By: _____

Its: _____

Date: _____

EXHIBIT A

TRACT 1:

Situated in the City of Oberlin, County of Lorain and State of Ohio:

And being a parcel of land 82.5 feet wide running from East to West and 165.7 ft. deep running from North to South in Original Russia Township Lot No. 86 and further bounded and described as follows:

On the East by property formerly owned by Either or both Elmer K. Hamlin or/and Lola Hamlin and new owned by the Oberlin Board of Education; on the South by property formerly owned by T. N. Hange and new owned by the Oberlin Board of Education; on the West by property of either or both Edward J. Cargill or/and Mayera Cargill; and on the North by property of the Grantor herein.

TRACT 2:

Situated in the City of Oberlin, County of Lorain and State of Ohio:

And being part of Original Russia Township Lot No. 86 and bounded and described as follows:

Beginning at the Southwest corner of land conveyed by Grantors herein to the Oberlin City Board of Education under date of October 2, 1954 which deed is recorded in Volume 610, Page 198 of Lorain County Deed Records; thence northerly along the westerly line of Grantor's land to a point in the South line of East Lorain Street; thence easterly along the southerly line of East Lorain Street a distance of 15 feet to a point; thence southerly in a line parallel with the easterly line of land owned by Grantors herein and 15 feet easterly therefrom to a point on the northerly line of land so conveyed by Grantors herein to the Oberlin City Board of Education as aforesaid; thence westerly along the northerly line of land so conveyed to the Oberlin City Board of Education on as aforesaid a distance of 15 feet to the place of beginning.

TRACT 3:

Situated in the City of Oberlin, County of Lorain and State of Ohio:

And being a part of Original Russia Township Lot No. 86 and bounded and described as follows:

Beginning at the southeast corner of Grantors' premises; thence northerly along the easterly line of Grantor's land a distance of 165.4 feet to a point; thence westerly in a line parallel with the southerly line of Grantor's land a distance of 82.5 feet to a point on the westerly line of Grantor's land; thence southerly along the westerly line of grantors' land a distance of 165.4 feet to the southwest corner of Grantors' land; thence easterly along the southerly line of American Land Title Association Commitment for Title Insurance Adopted 08-01-2016 ALTA Commitment for Title Insurance 06/01/2017) Copyright 2006-2016 American Land Title Association. All rights reserved. Page 6 of 12 Grantors' land a distance of 82.5 feet to the place of beginning and containing within said bounds about .315 an Acre of land.

TRACT 4:

Situated in the City of Oberlin, County of Lorain and State of Ohio:

And known as being parts of Lots Nos. Ten (10), Twenty-five and Twenty-six (26)

PARCEL NUMBER 1: That part in Lot Ten (10) in the southwest part thereof and is bounded South and West by lot lines; North by lands sold by Esther N. Peck to C. Lissenhoff, L. M. Edwards and Harriet Mason, said North boundary being a line 16 rods South of the South line of East Lorain Street and East by land is said Lot formerly owned by M. Goosland.

PARCEL NUMBER 2: That part in Lot No. Twenty-five (25) is a gore piece from the East side thereof, being 10 feet in width upon the center line of East College Street, and with its apex resting at the Northeast corner of said Lot 25.

PARCEL NUMBER 3: That part in Lot No. Twenty-six (26) being the West part thereof and is bounded South, West and North by lot lines, and East by land once owned by H. D. Wood in same Lot.

TRACT 5:

Situated in the City of Oberlin, County of Lorain and State of Ohio:

And known as being a part of Village Lot No. 25 in the Original Plat of Oberlin of a part of Original Russia Township Lot No. 86, and other lots as recorded in Volume 5, Page 30 of Lorain County Record of Plats.

Said part of said Village Lot No. 25 is bounded and described as follows:

Beginning in the center line of East College Street at the Southeasterly corner of land conveyed to Eli C. Hull and Anna G. Hull by Deed dated May 8, 1920, and recorded in Volume 168, Page 569 of Lorain County Deed Records; thence Northerly along the Easterly line of land conveyed to Eli C. Hull and Anna

G. Hull to the North line of Lot No. 25; thence Easterly along the North line of Lot No. 25 to the Northwesterly corner of land conveyed to Barbara L. Shreiner by Deed dated January 3, 1925, and recorded in Volume 211, Page 130 of Lorain County Deed Records; thence Southerly along the Westerly line of land conveyed to Barbara L. Shreiner to the center line of East College Street; thence Westerly along the center line of East College Street to the place of beginning, and containing about 0.87 acres of land, be the same more or less, but subject to all legal highways.

TRACT 6:

Situated in the City of Oberlin, County of Lorain and State of Ohio:

And known as being part of Original Oberlin Village Outlet No. 25 of part of Original Russia Township Lot No. 86, as shown by the recorded Plat in Volume 5 of Maps, Page 30 of Lorain County Records, and bounded and described as follows:

Beginning on the northerly line of East College Street at the Southeast corner of land conveyed to Gilbert W. Turner by deed dated September 22, 1896, and recorded in Volume 78, Page 398 of Lorain County Deed Records; thence Easterly along the northerly line of East College Street about 80.5 feet to the Southwest corner of land conveyed to David P. Simpson by deed dated July 20, 1918, and recorded in Volume 150, Page 567 of Lorain County Deed Records; thence northerly along the Westerly line of said land so conveyed to David. P. Simpson as aforesaid, about 435 feet to the northerly line of said Original Lot No. 25; thence Westerly along the Northerly line of said Original Lot No. 25 to the Northeast corner of land conveyed to Gilbert W. Turner as aforesaid; thence southerly along the easterly line of said land so conveyed to Gilbert W. Turner as aforesaid to the place of beginning, be the same more or less, but subject to all legal highways.

Lorain County, Ohio, Permanent Parcel Nos. 09-00-086-109-014, 09-00-086-109-015, 09-00-086-109-017, 09-00-086-109-021, 09-00-086-109-048, 09-00-086-109-049, 09-00-086-109-050, and 09-00-086-109-051