

RESOLUTION 23-38 - CERTAIN EASEMENTS FOR IMPROVEMENTS TO PICCARD ROAD

WHEREAS, the Delaware River and Bay Authority (the “DRBA”) leases the New Castle Airport in New Castle, Delaware (the “Airport”) from New Castle County (“NCC”) pursuant to a long-term lease; and

WHEREAS, the Airport is subject to certain conditions, reservations, and restrictions pursuant to the 1949 Instrument of Transfer and arising pursuant to the acceptance of certain Federal Aviation Administration (“FAA”) grant funds; and

WHEREAS, certain easements (the “Easements”) on the Airport property, identified upon Exhibit “A” specifically identified in red, blue and green shading thereon were purportedly granted to the owner of NCC tax parcel no. 10-024.00-025 (the “Adjacent Parcel”), as part of the Record Major Land Development Plan for the New Castle County Town Center, Application 2008-0271-S (the “Town Center Plan”), prepared by Apex Engineering, dated July 15, 2010, and last revised on August 10, 2010 and recorded in the Office of the Recorder of Deeds in and for New Castle County (“Recorder’s Office”) on August 22, 2012 at Instrument No. 20120822-0046986; and

WHEREAS, the Easements also appear on (i) the recorded Record Major Land Development Plan Site Plan for 650 Churchmans Road, Application No. 2018-0513-S/Z (the “Major Plan”), prepared by Duffield Associates, dated February 21, 2020, and last revised on May 6, 2020, and recorded in the Recorder’s Office on May 27, 2020 at Instrument No. 20200527-0042226 and (ii) the Record Resubdivision Plan of 650 Churchmans Road, Application No. 2021-0630-S (the “Resubdivision Plan”), prepared by Duffield Associates, dated January 28, 2022 and last revised on May 19, 2022, and recorded in the Recorder’s Office on June 13, 2022 at Instrument No. 20220613-0060508; and

WHEREAS, on December 20, 2021, the Adjacent Parcel was conveyed to KSIP I Piccard, LLC (“KSIP” or “Grantee”) by and through deed instrument no. 20211227-0147068; and

WHEREAS, the Easements were made without the consent of the FAA or the DRBA and were entered into, executed and recorded without consideration in violation of FAA requirements; and

WHEREAS, Grantee has recently agreed to extinguish a portion of the existing Easements on the Airport property being 4.8610 +/- acres, identified upon Exhibit “A” only in red shading (“Easement Area To Be Extinguished”); and

WHEREAS, approval is currently being sought from the FAA for the Easements identified in the green (permanent easement area -- 0.7128 acres) and blue (temporary construction easement area -- 0.3455 acres) shaded areas totaling 1.0583 acres appearing on Exhibit “A” (collectively, the “Easement Areas To Be Utilized”); and

WHEREAS, the Airport shall receive fair market value for the Easement Areas To Be Utilized, subject to any reduction authorized by the FAA from any benefits to the Airport property arising as a direct result of the new road improvements; and

WHEREAS, the use of the Easement Areas To Be Utilized is limited to the construction of a portion of the new road called "Picard Road", identified and approved upon the Major Plan and Resubdivision Plan referenced above and shall expressly prohibit any activity that would be incompatible with airport operations or would create a hazard or interference to the operation of aircraft and/or communication facilities; and

WHEREAS, the Easement Areas To Be Utilized shall (a) provide for the maximum height for structures and objects of natural growth in such easement area, (b) provide a right of flight for the passage of aircraft in the space above such easement area, and (c) provide the DRBA, New Castle County and airport tenants and users the right to create or generate such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of flight using said airspace; and

WHEREAS, subject to receiving all necessary approval from the FAA, satisfaction with the conditions set forth herein and Grantee's extinguishment of the Easement Area to Be Extinguished, the DRBA agrees that it will execute all necessary documents related to the Easements Areas To Be Utilized.

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to finalize the terms and conditions of the Project documents contemplated herein and, subject to the satisfaction of the conditions set forth herein, with the advice and consent of counsel, to have the documents relating to the Easement Areas to Be Utilized executed by the Chairperson, Vice Chairperson and Executive Director, and to have any other ancillary Project related documents executed, with the advice and consent of counsel, by the Executive Director.

Resolution 23-38 Executive Summary

- Resolution:** Authorizing the Grant of Certain Easements for Improvements to Piccard Road
- Committee:** Economic Development
- Committee/Board Date:** June 21, 2023
- Purpose of Resolution:** To consent to various permanent and temporary construction easements related to improvements to a new road called “Piccard Road” adjacent to the New Castle Airport.
- Background for Resolution:** A commercial warehouse development is under construction along Piccard Road. Time is of the essence for that development.
- Part of the development will include improvements to Piccard Road along the property line of the Airport. There will be permanent easements of 0.7128 acres, temporary construction easements of 0.3455 acres, and the extinguishment of certain existing permanent easement of 1.4344 acres. FAA approval is being sought and DRBA will not consent to easement rights granted by New Castle County across its leased premises until FAA approval and fair market value have been obtained and the disputed easements are extinguished.