

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

RESOLUTION NO. 1221-R2022

A RESOLUTION

TO CONSENT TO, APPROVE, AND RATIFY THE ASSIGNMENT OF THE FEE AGREEMENT BY AND AMONG LANCASTER COUNTY, SOUTH CAROLINA, K2 LANCASTER, LLC AND COOLEY, INCORPORATED TO FIP MASTER FUNDING VIII, LLC AND THE ASSIGNMENT OF THE SPECIAL SOURCE REVENUE CREDIT AGREEMENT BY AND AMONG LANCASTER COUNTY, SOUTH CAROLINA, K2 LANCASTER, LLC AND COOLEY, INCORPORATED TO FIP MASTER FUNDING VIII, LLC.

WHEREAS, Lancaster County, South Carolina (the “County”), RISC, LLC, a Delaware limited liability company (“RISC”), Cooley, Incorporated, a Rhode Island corporation (“Cooley”) entered into (i) that certain Fee Agreement, dated as of December 14, 2020 (the “Fee Agreement”) with regard to certain real property and improvements and other property located thereon (the “Project”), and (ii) that certain Special Source Revenue Credit Agreement, dated as of December 14, 2020 (the “SSRC Agreement”) with regard to certain real property and improvements and other property located at the Project;

WHEREAS, RISC conveyed the entirety of the real and personal property owned by RISC comprising the Project to K2 Lancaster, LLC, a Delaware limited liability company (the “Assignor”);

WHEREAS, Assignor was assigned, and did assume, all of RISC’s obligations, rights, titles, and interest in and to each of the Fee Agreement and SSRC Agreement by that certain Assignment and Assumption of Fee Agreement and Special Source Revenue Credit Agreement dated as of December 29, 2020; and

WHEREAS, Assignor desires to assign its rights, titles, and interests in the Fee Agreement and the SSRC Agreement to FIP Master Funding VIII, LLC (the “Assignee”) effective upon Assignor’s conveyance of the Project, pursuant to an Assignment of Fee Agreement and Special Source Revenue Credit Agreement dated as of [_____], by and between Assignor and Assignee (the “Assignment”);

WHEREAS, Assignor and Assignee have requested that the County consent to, approve, and ratify the Assignment as required by Section 12-44-120 of the South Carolina Code, as amended, and Section 9.01 of the Fee Agreement and Section 4.01 of the SSRC Agreement; and

WHEREAS, Council intends by the passage of this resolution to provide its consent to, approval and ratification of the Assignment of the Fee Agreement and the SSRC Agreement from Assignor to Assignee.

NOW, THEREFORE, BE IT RESOLVED by the Council of Lancaster County, South Carolina:

1. The County consents to, approves, and ratifies (a) the Assignor selling, assigning, transferring and setting over to Assignee all of Assignor’s rights, titles, and interests under the Fee Agreement and Assignee’s acceptance of the assignment of Assignor’s rights, titles, and interests under the Fee Agreement, to be effective upon Assignor’s conveyance of the Project to Assignee and (b) the Assignor selling, assigning, transferring, and setting over to Assignee all of Assignor’s rights, titles, and interests under the SSRC Agreement and Assignee’s acceptance of the assignment of Assignor’s rights, titles, and interests under the SSRC Agreement, to be effective upon Assignor’s conveyance of the Project to Assignee.

2. The Assignment is an assignment only of all of the rights which the Assignor may now or at any time hereafter have under, pursuant to, or in respect of, the Fee Agreement and the SSRC Agreement. Assignee shall not be deemed by virtue of the Assignment to have assumed any of the obligations of the Assignor under the Fee Agreement and the SSRC Agreement, each of which obligations the Assignor covenants and agrees to perform and observe as if the Assignment had not been executed. Notwithstanding the foregoing, in the event of any default or other non-compliance with any of the obligations under the Fee Agreement or the SSRC Agreement by Cooley or the Assignor, the Assignee shall not be entitled to any of the rights, titles, interests or other benefits of the Fee Agreement or the SSRC Agreement, as applicable, while such default or non-compliance has occurred and is continuing, and the County's consent to the assignments set forth in Section 1 hereof is made in reliance on the foregoing agreement of Assignee and Assignor.
3. The validity of each of the Fee Agreement and the SSRC Agreement, and upon the assignment of the Fee Agreement and the SSRC Agreement to Assignee, all rights of Assignee, Cooley, and the County, as parties under the assigned Fee Agreement and the assigned SSRC Agreement, are hereby affirmed.
4. The County Administrator is authorized, empowered and directed, in the name of and on behalf of Lancaster County, to execute, acknowledge and deliver such further agreements, certificates or documents as may be necessary in connection with the approval of the assignment of the Fee Agreement and the SSRC Agreement as contemplated by this Resolution, such agreements, certificates or documents to be in the forms as approved by the County Administrator upon advice of counsel.
5. This resolution takes effect upon its adoption.

[SIGNATURES FOLLOW ON NEXT PAGE]

AND IT IS SO RESOLVED

Dated this 12th day of December 2022

LANCASTER COUNTY, SOUTH CAROLINA

Brian Carnes, Vice-Chair, County Council

Billy Mosteller, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council

Approved as to form:

John DuBose, County Attorney