

RESOLUTION NO. 2010-06

RESOLUTION AUTHORIZING A SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS AND EASEMENTS FOR THE 3603 EAST KEMPER ROAD PROPERTY, AND ASSIGNMENT TO THE CITY OF SHARONVILLE OF THE RIGHTS OF THE PORT AUTHORITY UNDER THE DECLARATION

WHEREAS, the Port of Greater Cincinnati Development Authority (the “Port Authority”) is engaged, among other matters, in the remediation and revitalization of environmentally challenged, “brownfield” property for productive reuse; and

WHEREAS, at the request of the City of Sharonville (the “City”) and others, the Port Authority purchased, and remediated environmental conditions at the real property and improvements commonly known as 3603 East Kemper Road in Sharonville, Ohio (the “Property”); and

WHEREAS, Kemper Crossings, LLC (“Kemper”) acquired the Property from the Port Authority for development, and entered into a Declaration of Restrictions and Easements (the “Declaration”) requiring development of the Property in phases in accordance with a time schedule; and

WHEREAS, the Declaration was amended in 2007 to extend the development deadline to December 1, 2009 for Phases I and II of the Property, and to October 1, 2014 for Phase III of the Property, those terms being defined in the Declaration; and

WHEREAS, Kemper has not yet developed the Property as required by the amended Declaration; and

WHEREAS, the amendment Declaration affords to the Port Authority rights of enforcement, including an option to repurchase the Property that may be exercised upon certain conditions; and

WHEREAS, the City is interested in the development of the Property and has proposed that it assume administration of the rights of the Port Authority under the amended Declaration; and

WHEREAS, the Board of Directors of the Port Authority has determined that it is appropriate and in the best interests of the Port Authority that the rights of the Port Authority under the amended Declaration be assigned to the City; and

WHEREAS, the City has determined that it is appropriate to permit development of Phases I and II to be postponed, and the Board of Directors of the Port Authority does not object to the extension of time as determined by the City;

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Port of Greater Cincinnati Development Authority:

Section 1. The President of the Port Authority, upon the advice and consent of the Chairperson of the Board, or his/her designee, for and in the name of the Port Authority and on its behalf and on behalf of this Board, is hereby authorized to execute a Second Amendment to Declaration of Restrictions and Easements, and Assignment to City of Sharonville, among the Port Authority, Kemper, and the City, in a form substantially similar to that on file in the Port Authority offices and/or attached hereto (with such amendments, revisions, or additions that the Chairperson of the Board, or his/her designee, and the President determine to be appropriate and consistent with the objectives of the Port Authority for the Property and not substantially adverse to the Port Authority).

Section 2. 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, and that all deliberations of this Board and of any of its committees that resulted in such formal action were held, in meetings open to the public, in compliance with the law.

Section 3. This Resolution shall be in full force and effect upon its adoption.

Adopted: June 22, 2010

Yeas: 7

Nays: 0

Chairperson

Attest: _____
Secretary

**SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS AND
EASEMENTS, AND ASSIGNMENT TO CITY OF SHARONVILLE**

THIS SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS AND EASEMENTS, AND ASSIGNMENT TO CITY OF SHARONVILLE (this “**Amendment and Assignment**”) is entered into as of _____, 2010 by the **Port of Greater Cincinnati Development Authority**, an Ohio port authority created pursuant to Ohio Revised Code Sections 4582.21 through 4582.59 (the “**Port Authority**”); **Kemper Crossings, LLC**, an Ohio limited liability company (“**Declarant**”); and the **City of Sharonville**, an Ohio municipal corporation (the “**City**”).

Recitals

A. At the request of the City and others, the Port Authority purchased, and remediated environmental conditions at the real property described in Exhibit A, attached hereto (the “**Property**”).

B. Declarant purchased the Property from the Port Authority for redevelopment, pursuant to that certain Purchase, Sale and Development Agreement between Declarant and the Port Authority, dated March 14, 2005 (the “**Purchase Agreement**”).

C. In accordance with the requirements of the Purchase Agreement, Declarant executed a Declaration of Restrictions and Easements dated May 23, 2005, which was filed with the Hamilton County Recorder on June 2, 2005 in Official Record Volume 9946, commencing at Page 2219, affecting the Property (the “**Original Declaration**”).

D. The Original Declaration was amended by a First Amendment to Declaration of Restrictions and Easements dated December 21, 2007, executed by Declarant and Port Authority, which was filed with the Hamilton County Recorder on January 4, 2008 in Official Record Volume 10740, commencing at Page 00238 (the “**First Amendment**”). The Original Declaration as amended by the First Amendment is referred to herein as the “**Declaration**.”

E. The Declaration requires Declarant to take certain redevelopment and construction actions in phases by certain dates with respect to the Property. Declarant has not taken such actions in accordance with the time schedules in the Declaration, with respect to Phase I and Phase II of the development (as those terms are defined in the Declaration).

F. The Declaration affords to the Port Authority rights of enforcement, including an option to repurchase the Property that may be exercised upon certain conditions. The City is interested in the development of the Property and has proposed that it assume administration of the rights of the Port Authority under the Declaration. Accordingly, the Port Authority and the City mutually desire that all rights of the Port Authority under the Declaration should be assigned to the City, as permitted under the Declaration.

G. Declarant owns a parcel of real estate of approximately 26 acres adjacent to the Property (“**Park 42**”). Declarant is implementing a redevelopment approach for the Property and Park 42 with the goal of an integrated office campus as shown in Exhibit B to the Declaration (as attached to the First Amendment). At this time, part of the Property is used for parking required by a large employer tenant at Park 42. Accordingly, the City has determined that it is appropriate to permit development of Phases I and II to be postponed, as provided herein.

H. Declarant represents to the City and the Port Authority that it is the sole owner of fee title to the 3603 East Kemper Road Property.

Statement of Amendment and Assignment

NOW, THEREFORE, in consideration of the matters described in the foregoing Recitals (which are incorporated herein and made a part hereof), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows, effective as of the date of this Amendment and Assignment:

1. In accordance with Paragraph 6 of the Declaration, Paragraph 1(b) (“**Construction Schedule**”) of the Declaration is hereby amended in its entirety to read as follows:

“b. **Construction Schedule.** Declarant shall commence construction of the first and second buildings on the property (“**Phase I**” and “**Phase II**”, respectively) by May 31, 2011. (To “commence construction” as used herein means to pour foundations for the building, with construction activities diligently continued thereafter.) Declarant shall complete construction of Phase I and Phase II by May 31, 2012. (To “complete construction” as used herein means to substantially complete construction of the building, such that a certificate of occupancy for at least 90% of the building space shall have been issued.) Declarant shall commence construction of the third building on the Property (“**Phase III**”) by October 1, 2014. Declarant shall complete construction of Phase III by September 30, 2015.

2. The Port Authority hereby assigns to the City all of the Port Authority’s rights under the Declaration (including all options to repurchase rights, and rights to enter into any further amendments to the Declaration as may be determined by the City), and the City hereby accepts such assignment and assumes the rights of the Port Authority under the Declaration. The Declarant acknowledges and consents to the foregoing Assignment.

3. Except as set forth herein, all other terms of the Declaration, as previously amended, are affirmed and remain in full force and effect.

[Signature pages follow.]

EXECUTED as of the date first set forth above.

**PORT OF GREATER CINCINNATI
DEVELOPMENT AUTHORITY**

By: _____
Kimberly A. Satzger, President

STATE OF OHIO
COUNTY OF HAMILTON:

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by Kimberly A. Satzger, President of the Port of Greater Cincinnati Development Authority, an Ohio port authority, on behalf of the port authority.

Notary Public

My commission expires: _____

KEMPER CROSSINGS, LLC, an Ohio
limited liability company

By: _____
Edward J. Neyra, Manager

STATE OF OHIO
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by Edward J. Neyra, Manager of Kemper Crossings, LLC, an Ohio limited liability company, on behalf of the limited liability company.

Notary Public

My commission expires: _____

CITY OF SHARONVILLE

By: _____
Name: _____
Title: _____

STATE OF OHIO
COUNTY OF HAMILTON:

The foregoing instrument was acknowledged before me this ____ day of _____, 2010,
by _____, the _____ of the City of Sharonville, an Ohio municipal
corporation, on behalf of the municipal corporation.

Notary Public

My commission expires: _____

This instrument was prepared by:

Donald B. Lewis
Vorys, Sater, Seymour and Pease LLP
Suite 2000, Atrium Two
221 East Fourth Street
Cincinnati, OH 45202

Exhibit A: Legal description of the Property

Exhibit A

Legal description of the Property

SITUATE IN THE TOWNSHIP OF SYCAMORE, COUNTY OF HAMILTON, AND STATE OF OHIO, IN SECTION 24, TOWN 4, ENTIRE RANGE 1, VILLAGE OF SHARONVILLE, PART OF REGISTERED LAND CERTIFICATE 105207, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 24; THENCE ALONG THE NORTH LINE OF SAID SECTION 24, NORTH 88° 13' 00" EAST, 272.35 FEET TO A POINT WHERE SAID LINE IS INTERSECTED BY THE EAST LINE OF THE C.C.C. & ST. L.R.R. RIGHT OF WAY; THENCE WITH THE EAST LINE OF THE C.C.C. & ST. L.R.R. RIGHT OF WAY, SOUTH 00° 29' 00" EAST, 30.01 FEET TO THE NORTHWEST CORNER OF REGISTERED LAND CERTIFICATE NUMBER 11188, SAID POINT ALSO BEING IN THE SOUTH LINE OF KEMPER ROAD; THENCE WITH THE NORTH LINE OF SAID REGISTERED LAND CERTIFICATE NO. 11188, AND THE SOUTH LINE OF SAID KEMPER ROAD, NORTH 88° 13' 00" EAST, 425.32 FEET TO THE NORTHWEST CORNER OF SAID REGISTERED LAND CERTIFICATE NO. 105207 AND THE REAL PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE CONTINUING ALONG THE NORTH LINE OF SAID REGISTERED LAND CERTIFICATE NO. 105207 AND THE SOUTH LINE OF SAID KEMPER ROAD, NORTH 88° 13' 00" EAST, 1,079.92 FEET TO A POINT; THENCE SOUTH 0° 29' 00" EAST, 337.79 FEET TO A POINT; THENCE SOUTH 33° 29' 42" WEST, 205.78 FEET TO A POINT; THENCE SOUTH 0° 29' 00" EAST, 192.89 FEET TO A POINT IN THE EAST LINE OF SAID REGISTERED LAND CERTIFICATE NUMBER 105207 AND THE WEST LINE OF SAID U.S.B. 42 (LEBANON ROAD); THENCE SOUTH 44° 41' 00" WEST ALONG THE EAST LINE OF SAID REGISTERED LAND CERTIFICATE NUMBER 105207 AND THE WEST LINE OF SAID U.S. 42 (LEBANON ROAD) A DISTANCE OF 57.08 FEET TO A POINT; THENCE ALONG THE SOUTH AND WEST LINE OF SAID REGISTERED LAND CERTIFICATE NUMBER 105207 THE FOLLOWING FOUR COURSES AND DISTANCES: NORTH 45° 19' 00" WEST, 98.60 FEET TO A POINT; NORTH 0° 29' 00" WEST, 333.85 FEET TO A POINT; SOUTH 89° 31' 00" WEST, 854.64 FEET TO A POINT; NORTH 0° 29' 00" WEST, 313.29 FEET TO THE POINT OF BEGINNING; CONTAINING 9.239 ACRES.