

RESOLUTION NO. 2005- 6

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT PERTAINING TO THE PARTICIPATION, UPON APPROVAL OF THE HAMILTON COUNTY BOARD OF COUNTY COMMISSIONERS AND CINCINNATI CITY COUNCIL, OF THE PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY IN FINANCING AND OTHERWISE ASSISTING WITH RESPECT TO A PROJECT COMPRISED OF THE ACQUISITION, CONSTRUCTION AND DEVELOPMENT OF CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS TO SUPPORT PRIVATE DEVELOPMENT WITHIN THE JURISDICTION OF THE PORT AUTHORITY.**

WHEREAS, representatives of Tipton Interests, Inc., an Ohio corporation (“Developer”), the Multi-Employer Property Trust, a trust formed under 12 C.F.R. Section 9.18 (“MEPT”) and the City of Springdale, Ohio, an Ohio municipal corporation (“Springdale”), have represented to the Port of Greater Cincinnati Development Authority (“Port Authority”) that:

(a) the Developer, together with and on behalf of owners (“Owners”) of various parcels included in a site in Springdale, Hamilton County, Ohio, has undertaken a significant phased mixed-use development (“Development”), including substantial private investments by the Owners, including MEPT which has constructed Pictoria Tower on real property owned by it (“MEPT Property”) and located within the Development;

(b) Springdale has taken steps to approve tax increment financing for, and has made commitments with respect to, certain essential public infrastructure improvements (“Public Infrastructure”) necessary to support the Development including parking facilities necessary to alleviate traffic and stormwater hazards, road and other transportation improvements, public stormwater drainage and sewerage improvements and other public infrastructure improvements and has, pursuant to Revised Code Sections 5709.40(B) and 5709.82, entered into a Tax Incentive Agreement with the Princeton City School District in connection with approving that tax increment financing;

(c) pursuant to agreements among Springdale, the Owners and MEPT, the construction of the Public Infrastructure was undertaken at the request of, and for and on behalf of, Springdale pursuant to and in accordance with the requirements applicable to municipal contracts entered into by Springdale including, without limitation, municipal bidding requirements and requirements for the payment of prevailing wages pursuant to Chapter 4115, Ohio Revised Code;

(d) MEPT, as the Owner of the MEPT Property, alone (or together with any other Owner of other parcels specially benefited by the Public Infrastructure) expects to petition Springdale to impose special assessments (to be collected except to the extent that service payments are expected to be available) on the MEPT Property and any other such parcel so specially benefited whose Owner submits such a petition (“Assessed Properties”) to pay costs of the Public Infrastructure; and

(e) various benefits are expected to result from the Development and the Public Infrastructure including, through the construction, development and operation of the Development, the creation and preservation of jobs and employment opportunities in Hamilton County and the Greater Cincinnati Area, as well as potential increases in tax revenues and, through the development of the Public Infrastructure, the elimination of traffic, stormwater runoff and other hazards; and

WHEREAS, Springdale, the Developer and MEPT have requested that the Port Authority, in cooperation with Springdale, issue port authority revenue bonds (payable only from service payments and special assessments) to finance costs of, and otherwise assist in, acquiring, constructing and developing, and providing for the management, operation and maintenance of, the Public Infrastructure to support the Development (“Project”), have represented that they will pay the fees of the Port Authority, and any costs incurred by the Port Authority or its advisors, in connection with the Port Authority’s participation in the Project, including from the proceeds of the financing and from the service payments collected, and have requested that the Cincinnati City Council (“Council”) and the Hamilton County Board of County Commissioners (“BOCC”) approve the participation of the Port Authority in financing and otherwise assisting with respect to the Project; and

WHEREAS, pursuant to the laws of the State of Ohio, particularly Sections 4582.21 through 4582.59, Ohio Revised Code (“Act”), and the authorities therein mentioned, this Board, on behalf of the Port Authority, has full authority to and desires to authorize and take those actions necessary to approve the execution of an agreement pertaining to the participation of the Port Authority in financing and otherwise assisting with respect to the Project, including authorizing any preliminary required steps in connection with the issuance of revenue bonds of the Port Authority (“Bonds”) in order to assist in the financing of the Public Infrastructure in cooperation with Springdale pursuant to a cooperative agreement to be entered into with some or all of Springdale, the Developer, MEPT and Owners of any other Assessed Properties, pursuant to Sections 4582.43 and 4582.431 in the Act (“Cooperative Agreement”), which approval is and agreement and participation shall be conditioned on the approval of the Council and the BOCC;

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

Section 1. This Board does hereby find and determine, based upon the representations of the Springdale, Developer and MEPT that: (i) the Public Infrastructure constitutes or will constitute “port authority facilities”, as defined in the Act, in furtherance of authorized purposes of the Port Authority, including “transportation”, “governmental operations” and “economic development”, as those terms are used in the Act, (ii) the Project is consistent with the purposes of Section 13 of Article VIII, Ohio Constitution, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio, and (iii) upon approval by the Council and the BOCC, the Port Authority will be authorized to participate in the Project in the manner contemplated hereby.

Section 2. In order to finance costs of the Public Infrastructure, this Board hereby agrees to exercise its best efforts to authorize and issue the Bonds, in the estimated maximum aggregate face amount of \$15,000,000 pursuant to the Act, subject to satisfaction of the conditions and pursuant to the provisions contained in the form of Preliminary Agreement to Participate in Project and Issue Bonds attached hereto as Exhibit I (“Agreement”), which is hereby approved. The Chairperson, the Vice Chairperson or the President is hereby authorized and directed to execute the Agreement substantially in such form with such changes as are not adverse to the Port Authority as the officer executing the Agreement may approve, such execution being conclusive evidence of approval of any such changes and that they are not adverse to the Port Authority. The Bonds are expected to be paid only from, and secured only by, service payments in lieu of taxes (and associated rollback payments) to be generated by improvements to the parcels included in the Development and from special assessments that are to be imposed (and to be collected except to the extent that service payments are expected to be available) by Springdale on the specially benefited parcels included in the site of the Development pursuant to one or more petitions to be submitted by the owners of 100% of the lots and lands specially benefited by, and to be assessed for the costs of, the Public Infrastructure, which service payments and any special assessments collected are to be assigned by Springdale to the Port

Authority pursuant to the Cooperative Agreement. Except for the execution of the Agreement, all authorizations hereunder are preliminary and are, as are all commitments of the Port Authority under the Agreement itself, conditioned on the approval of the Council and the BOCC.

Section 3. The Port Authority retains the law firms of Squire, Sanders & Dempsey L.L.P. (“Squire Sanders”), as bond counsel, and Gonzalez, Saggio & Harlan, L.L.P. (“Gonzalez Saggio”), as counsel to the Port Authority, in each case to provide legal services in connection with the authorization, sale, issuance and delivery of the Bonds and the participation of the Port Authority in the Project. In providing those legal services, as independent contractors in an attorney-client relationship, Squire Sanders and Gonzalez Saggio shall not exercise any administrative discretion on behalf of this Board in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio or any political subdivision, or the execution of public trusts. The fees and expenses of Squire Sanders and Gonzalez Saggio for those legal services, except to the extent if any expressly agreed to by the Port Authority, shall be paid by Springdale, the Developer or MEPT, including from the proceeds of the Bonds and from service payments generated by the improvements to the parcels included in the site of the Development, or pursuant to the provisions in the Agreement obligating the Developer and MEPT to indemnify the Port Authority against any and all loss, cost, expense, claims or actions arising out of or connected with the issuance or sale of the Bonds.

Section 4. 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 compliance with the law.

Section 5. This resolution shall take effect and be in force immediately upon its adoption.

Adopted: June 9, 2005

Yeas: 15

\_\_\_\_\_  
Vice-Chairperson

Nays: 0

Attest: \_\_\_\_\_  
Secretary