

RESOLUTION NUMBER 2004-8

**RESOLUTION AUTHORIZING THE PORT OF GREATER CINCINNATI
DEVELOPMENT AUTHORITY TO ENTER INTO A REIMBURSEMENT
AGREEMENT WITH RED BANK ROAD LLC.**

WHEREAS, in the Agreement for the Creation of the Port of Greater Cincinnati Development Authority (the "Port Authority"), the City of Cincinnati, Ohio and the County of Hamilton, Ohio each determined that a basic responsibility of the Port Authority would be the identification, restoration and redevelopment of properties in Hamilton County affected or perceived to be affected by environmental contamination ("Brownfields Redevelopment"); and

WHEREAS, this Reimbursement Agreement by and between the Port of Greater Cincinnati Development Authority ("Port") and Red Bank Road LLC, a Delaware limited liability company, ("Redeveloper") is made this ___ day of March, 2004; and

WHEREAS, Port and Redeveloper (together with the Village of Fairfax, Ohio) are parties to the Site Preparation and Development Agreement – 4000 Red Bank Road Site, effective June 5, 2003 ("Agreement"); and

WHEREAS, the application to the Clean Ohio Revitalization Fund ("CORF") referenced in the Agreement was made in 2003, has been approved by the CORF, and the Port is now prepared to proceed with the Remediation Project (as defined in the Agreement); and

WHEREAS, the Agreement provides (in the first sentence of Section II.C) for compensation and reimbursement to Port for its services under Section II.A of the Agreement; and contemplates (in Section I.C.2(g) and the second sentence of Section II.C) that the Redeveloper and Port will agree on compensation for other Port services to rendered under the Agreement (the "Continuing Port Services"); and

WHEREAS, Redeveloper agrees to reimburse Port for its expenses in connection with the Continuing Port Services in the following manner:

a. Internal staffing: Redeveloper will pay Port the sum of \$7,500 per month ("Base Reimbursement Fee") commencing March 2004 and continuing each month thereafter until the end of the month in which Continuing Port Services are concluded. Such conclusion of the Continuing Port Services is expected to be (i) the later of issuance by the Ohio EPA of a Covenant Not to Sue for the Property, or completion of other Continuing Port Services (such as assistance in identifying and/or providing financing for public improvements, in accordance with Section II.D of the Agreement), or (ii) the date Port's obligations under the Agreement are terminated. Redeveloper shall pay an additional sum of \$75 per hour to Port for each hour in excess of 100 hours in any given month in which time spent working on the Continuing Port Services by Port staff (or contractor engaged to provide staff support) exceeds 100 hours in the aggregate. Port's

invoice for any sums in excess of the Base Reimbursement Fee will include a time summary.

b. Third party expenses and costs: Redeveloper shall reimburse Port for its reasonable out-of-pocket, third-party expenses and costs, including but not limited to legal fees, consulting or other professional fees associated with the Continuing Port Services (not otherwise paid for from the CORF grant), photocopying, long distance tolls, facsimile charges, courier costs, travel costs, meals, and related charges. Port's invoice for such expenses and costs will include reasonable explanatory detail.

c. The Base Reimbursement Fee shall be due and payable, without any necessity of invoice by Port to Redeveloper, on or before the last day of each month for which the Base Reimbursement Fee is applicable. Port's invoices for all other matters set forth herein shall be issued no more frequently than monthly and shall be due and payable within 30 days of receipt by Redeveloper. All Base Reimbursement Fees or other invoiced charges not paid when due shall accrue interest at a monthly rate of 1.5 %, which Redeveloper agrees to pay.

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

Section 1. The Port Authority staff are hereby authorized for and in the name of the Port Authority and on its behalf and on behalf of the Board, to enter into negotiations with the Redeveloper regarding the reimbursement agreement.

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 was 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: March 11, 2004

Yeas: 14

Chairperson: _____

Nays: 0

Attest: _____

Secretary