

RESOLUTION NO. 2008 - 08

**RESOLUTION AUTHORIZING THE PORT OF GREATER CINCINNATI
DEVELOPMENT AUTHORITY TO PREPARE AND SUBMIT
AN APPLICATION FOR A CLEAN OHIO REVITALIZATION FUND GRANT
AND TO ENTER INTO MULTIPLE AGREEMENTS RELATED TO THE
NUTONE PROPERTY REVITALIZATION**

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, RBM Development Company, LLC ("RBM Development Company") has purchased certain real property and improvements commonly known as the former NuTone facility in Cincinnati, Ohio ("Property"), and desires to remediate and rehabilitate the Property for office, retail, commercial, and residential use; and

WHEREAS, the Port Authority has been asked by RBM Development Company to make an application for a Clean Ohio Revitalization Fund ("CORF") grant to the Ohio Clean Ohio Council ("Clean Ohio Council"), with RBM Development Company as its Development Partner, in order to fund the environmental restoration and demolition/renovation of the Property ("Project"); and

WHEREAS, the Port Authority and RBM Development Company have determined that a Development and Site Preparation Agreement between them is necessary to govern their overall business relationship, including RBM Development Company's future development of the Property and Project; and

WHEREAS, if the CORF grant application is approved, the Ohio Department of Development will tender to the Port Authority a CORF Grant Agreement for execution by the Port Authority to govern the Port Authority's receipt and use of CORF Grant monies and such CORF Grant Agreement is expected to be substantially similar to CORF and Clean Ohio Assistance Fund Grant Agreements executed by the Port Authority in the past (including, without limitation, provisions requiring the Port Authority to repay the grant funds under certain conditions); and

WHEREAS, because the CORF Grant Agreement will require the Port Authority to repay the grant funds under certain circumstances, the Port Authority will require, as conditions of entering into the CORF Grant Agreement, that: (a) RBM Development Company agree to pay or reimburse the Port Authority for any such repayments of the grant funds that the Port Authority is required to make (unless resulting from the negligent or wrongful acts of the Port Authority); (b) Bear Creek Capital, LLC ("Bear Creek"), an affiliate of RBM Development Company, guarantee the obligations of RBM Development Company as described in clause (a) above; and (c) either (i) RBM Development Company and/or Bear Creek cause a bank reasonably satisfactory to the Port Authority to issue to the Port Authority an unconditional,

irrevocable letter of credit (the "Letter of Credit") in the amount of \$3,000,000, in form and substance satisfactory to the Port Authority, that will remain outstanding until the CORF Grant Agreement has been fully performed, as security for the obligations of RBM Development Company and Bear Creek as described in clauses (b) and (c) above, or (ii) Bear Creek or another entity satisfactory to the Port Authority as guarantor of the obligations of RBM Development Company as described in clause (a) above (such other entity being called "Additional Guarantor") furnishes to the Port Authority the current financial statements of Bear Creek or Additional Guarantor, as applicable, which are in form and detail satisfactory to the Port Authority and disclose a financial condition of Bear Creek or Additional Guarantor, as applicable, satisfactory to the Port Authority; and

WHEREAS, the Port Authority desires and intends to prepare and file the CORF grant application noted above and enter into the various agreements noted above, and conduct activities, engage contractors, and provide services in the exercise of its powers as set forth in Ohio Revised Code Chapter 4582, and in furtherance of economic development activities contemplated in Section 13 of Article II of the Ohio Constitution.

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

Section 1. By the close of business on August 20, 2008, subject to extension beyond such time as the Port Authority staff allows in its discretion consistent with the filing deadline for the application for a CORF grant as described above, the Port Authority shall receive either: (a) a comfort letter from Bank of America, N.A. or another bank reasonably satisfactory to the Port Authority staff that, although not a binding commitment, indicates that, barring any material adverse change in the financial condition of Bear Creek, such bank anticipates that it will be in a position to issue the Letter of Credit to the Port Authority at such time that the Port Authority enters into the CORF Grant Agreement, which comfort letter and form of Letter of Credit shall be satisfactory to the Port Authority staff; or (b) the current financial statements of Bear Creek or Additional Guarantor in form and detail satisfactory to the Port Authority staff, which financial statements disclose a financial condition of Bear Creek or Additional Guarantor, as applicable, satisfactory to the Port Authority staff.

Section 2. Subject to Section 1, the Port Authority staff is hereby authorized for and in the name of the Port Authority and on its behalf and on behalf of this Board, to prepare and file an application for a CORF grant in connection with the Property as described above and to execute the following contracts:

A. Development and Site Preparation Agreement between the Port Authority and RBM Development Company in a form substantially similar to that on file in the Port Authority offices and/or attached hereto; and,

B. Grant Agreement for Clean Ohio Revitalization Fund monies between the Port Authority and the Ohio Department of Development in a form substantially similar to that on file in the Port Authority offices and/or attached hereto; provided that as conditions of entering into such Grant Agreement: (i) RBM Development Company shall agree to pay or reimburse the Port

Authority for any repayments of the grant funds that the Port Authority is required to make under the CORF Grant Agreement (unless resulting from the negligent or wrongful acts of the Port Authority); (ii) Bear Creek and, if applicable, Additional Guarantor shall guarantee the obligations of RBM Development Company as described in clause (i) above; and (iii) either (x) RBM Development Company and/or Bear Creek shall cause Bank of America, N.A. or another bank reasonably satisfactory to the Port Authority staff to issue to the Port Authority the Letter of Credit in the amount of \$3,000,000, in form and substance satisfactory to the Port Authority staff, that will remain outstanding until the CORF Grant Agreement has been fully performed, as security for the obligations of RBM Development Company and Bear Creek as described in clauses (i) and (ii) above, or (y) Bear Creek or Additional Guarantor shall furnish to the Port Authority the current financial statements of Bear Creek or Additional Guarantor, as applicable, which are in form and detail satisfactory to the Port Authority staff and disclose a financial condition of Bear Creek or Additional Guarantor, as applicable, satisfactory to the Port Authority staff.

Section 3 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 4. This Resolution shall be in full force and effect upon its adoption.

Adopted: August 14, 2008

Yeas: 11

Chairman

Nays: 0

Attest: _____

Secretary