

RESOLUTION NO. 2007-04

RESOLUTION AUTHORIZING THE AMENDMENT OF A LEASE WITH SOUTHSIDE INDUSTRIAL PARTNERS I, LLC, AS LESSEE; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT WITH THAT LESSEE AND RELATED PARTIES AND A LEASE AMENDMENT WITH THAT LESSEE; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, in order to create and preserve jobs and employment opportunities and to promote other authorized purposes of the Port of Greater Cincinnati Development Authority (“Port Authority”), including transportation, commerce, distribution and other economic development within the territory served by the Port Authority, on or about November 22, 2002, the Port Authority and The Port Group LLC signed a letter of intent (“LOI”) with respect to the development of certain properties (“Properties”) off Southside Avenue in the City of Cincinnati (“City”); and

WHEREAS, by Limited Warranty Deed filed for record in Hamilton County Official Records on October 8, 2003, Southside Industrial Partners I, LLC, an Indiana limited liability company (“SIPI”) conveyed a parcel of approximately 0.078 acres of river-bottom property (“Dock Site”) to the Port Authority; by Lease dated as of September 19, 2003 (“Lease”), the Port Authority leased the Dock Site back to SIPI for quarterly payments of rent to be calculated based on: (1) tariffs imposed on certain products imported to or exported from the Properties based on a schedule included in the Lease (“Scheduled Tariffs”) and (2) minimum tariffs (less the amount of Scheduled Tariffs) imposed by the Lease (“Minimum Tariffs”); and by Declarations of Obligations filed with respect to certain of the Properties (“Burdened Properties”), the obligation to pay the Scheduled Tariffs, but not the Minimum Tariffs, constitutes an encumbrance running with the Burdened Properties; and

WHEREAS, the development expectations of the parties, as set forth in the LOI, which served as the basis for the determination of the amount of the Minimum Tariffs imposed by the Lease, have not been realized and are unlikely to be realized; in the absence of the realization of those development expectations, the current rent obligations under the Lease are a burden that is likely to prevent any further development of the Properties; and SIPI is presently in default under the Lease as to the payment of both the Scheduled Tariffs and the Minimum Tariffs; and

WHEREAS, SIPI and certain of its affiliates (“Affiliates”) are in negotiations, including with the City, to sell one of the Properties for redevelopment concurrently with the City’s sale of an adjacent parcel for redevelopment (“Redevelopment”) and, with the proceeds of the sale of such Property in connection with the Redevelopment, to resolve certain outstanding obligations, and SIPI and the Affiliates have requested that the Port Authority consider an offer to resolve outstanding obligations of SIPI under the Lease, including payment of an amount at least equal to the Scheduled Tariffs due under the Lease, as further described in the draft “Term Sheet for Resolution of Southside Lease Issues” attached hereto as Exhibit A (“Draft Term Sheet”); and

WHEREAS, this Board has now determined that resolution of the outstanding obligations to the Port Authority under the Lease, substantially in accordance with the terms outlined in the Draft Term Sheet, will enable TPG Noramco, LLC, an Indiana limited liability company and one of the Affiliates (“Noramco”), to maintain and expand its operations on the Burdened Properties and will assist the City and others in the Redevelopment, all of which will preserve jobs and employment opportunities and promote transportation, commerce, distribution and other economic development within the territory served by the Port Authority, and will create opportunities for the Port Authority to further assist Noramco as it expands those operations, and that it is therefore in the best interest of the Port Authority to approve the settlement of the Port Authority’s claims under the Lease on substantially the terms set forth in the Draft Term Sheet,

and to authorize the execution and delivery of an agreement to include the terms of such settlement, an amendment to the Lease consistent therewith, and other related documents;

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

Section 1. This Board hereby determines that resolution of the outstanding obligations to the Port Authority under the Lease, substantially in accordance with the terms outlined in the Draft Term Sheet, will enable Noramco to maintain and expand its operations on the Burdened Properties and will assist the City and others in the Redevelopment, all of which will preserve jobs and employment opportunities and promote transportation, commerce, distribution and other economic development within the territory served by the Port Authority, and will create opportunities for the Port Authority to further assist Noramco as it expands those operations, and that it is therefore in the best interest of the Port Authority to, and this Board hereby does, approve the settlement of the Port Authority's claims under the Lease on substantially the terms set forth in the Draft Term Sheet and the amendments of the Lease contemplated thereby, and authorizes and approves the execution and delivery, on behalf of the Port Authority, of a term sheet ("Term Sheet") and a settlement/forbearance agreement ("Agreement") to include the terms of such settlement, which shall be substantially consistent with the Draft Term Sheet, and of an amendment to the Lease ("Lease Amendment") consistent therewith.

Section 2. The Chairperson, the Vice Chairperson and the President (including anyone acting at the time as any such officer on an interim or temporary basis) are each hereby authorized to complete the negotiation of and finalize the Term Sheet with SIPI and its Affiliates, with substantially the terms contained in the Draft Term Sheet, and to sign the Term Sheet on behalf of the Port Authority, but with such changes therein as are not substantially adverse to the Port Authority in the judgment of the officer signing the same, to be evidenced conclusively by that signing; provided, that any reduction of the minimum payment amount to the Port Authority (below the amount contemplated by the Draft Term Sheet) shall be subject to the approval of the Chairperson or, in the absence or unavailability of the Chairperson, the Vice Chairperson. Upon the execution of the Term Sheet, the Chairperson, the Vice Chairperson and the President (including anyone acting at the time as any such officer on an interim or temporary basis) are each hereby further authorized and directed, alone or together with the Secretary or any Assistant Secretary of this Board, to execute and deliver, on behalf of the Port Authority, the Agreement and the Lease Amendment, together with such other documents, agreements or instruments as shall, in the judgment of the officials signing the same, be reasonably necessary or desirable in connection therewith, all on substantially the terms set forth in the Term Sheet, but with such changes if any therein as are, in the judgment of the officer or officers signing the same, in the best interest of and not substantially adverse to the Port Authority, all to be evidenced conclusively by that signing.

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 actions 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: February 22, 2007

Yeas: 8

Nays: 0

Chairperson

Attest: _____
Secretary

EXHIBIT A

**TERM SHEET FOR RESOLUTION OF SOUTHSIDE LEASE ISSUES
(Key Elements of Revised Counterproposal by Port Authority)**

I. Parties:

- **Lessor:** Port of Greater Cincinnati Development Authority (“Port Authority”)
- **Lessee:** Southside Industrial Partners I, LLC (“SIPI”)
- **Affiliates:** Southside Industrial Partners II, LLC (“SIPII”); TPG Noramco, LLC (“Noramco”); The Port Group Holding Company, LLC (collectively, “Affiliates”)

II. Timing:

- **By March 1, 2007:**
 1. Term Sheet signed by Port Authority, SIPI and Affiliates
 2. SIPII extends its current real estate sale contract (“Sale Contract”) relating to 40-acre “Conrail” parcel north of Southside Avenue (“Conrail Parcel”) to a date (“Scheduled Closing Date”) that is not later than June 30, 2007 or, if subject to condition precedent of court action to quiet title, not later than December 31, 2007
 3. SIPI and Affiliates deliver documentation of tonnage imported or exported (1/01/04 through 12/31/06) across SIPI properties, consistent with existing Declarations of Restrictive Covenants (“Declarations”) burdening those properties (“Burdened Properties”), and with calculations/evidence of “Scheduled [Non-Minimum] Tariffs” in form and substance satisfactory to Port Authority
 4. SIPII delivers copy of Sale Contract, as extended, to Port Authority, with acceptable Scheduled Closing Date and no remaining conditions unacceptable to Port Authority
- **By April 15, 2007:**
 1. Execution and delivery of a Settlement/Forbearance Agreement (“Agreement”) between (i) Port Authority and (ii) SIPI and Affiliates, jointly and severally obligated (collectively, “Obligors”)
 2. Payment by Obligors on date of execution and delivery of Agreement (“Agreement Date”) of “Initial Payments” due to Port Authority and its counsel under Agreement, and of “Quarterly Lease Rent” then due (aggregating \$2,500)
 3. Form of First Amendment to Lease attached to Agreement is signed, to be recorded and become effective only upon full satisfaction of conditions in Agreement (“Lease Amendment Effective Date”)
- **From Agreement Date through Closing Date:**
 1. Obligors diligently pursue closing of sale by SIPII of Conrail Parcel under Sale Contract (“Closing”), with arrangements satisfactory to Port Authority for payments required by Agreement to be made from escrow on date of Closing (“Closing Date”)
 2. Obligors file or agree to filing of (i) supplemental declarations or other instrument further encumbering Burdened Properties (A) acknowledging the actual amount of Scheduled Tariffs and (B) including other amounts owed under Agreement in payments secured by Declarations, and (ii) mortgage or other instrument imposing a lien on the Conrail Parcel securing all obligations of Obligors under the Agreement and Lease
 3. Port Authority does not enforce Lease or encumbrances on Burdened Properties absent a default under Agreement

4. Port Authority and Obligors will use reasonable efforts to cooperate in order to assist SIPI and Noramco in development efforts, with standard Port Authority fees or, if not standard, negotiated in advance
 5. On behalf of SIPI, Obligors pay quarterly rent of \$1,250 in advance under Lease (“Quarterly Lease Rent”) in addition to other amounts due under Agreement
- **Closing Date:** On the Closing Date under the Sale Contract, all amounts remaining due under the Agreement will be paid out of escrow

III. Payments:

- **Aggregate Payments under Agreement:**
 1. To Port Authority: \$_____ (being an amount generally based on (i) the known and estimated amounts of “Scheduled Tariffs” from 1/01/04 through 12/31/06 and (ii) a minimum payment amount determined by the Port Authority in its sole discretion and which, in the absence of additional information, will be \$65,000). The amount in excess of \$50,000 is due on the Agreement Date (“Port Authority Initial Payment”) and the balance (“Port Authority Balance”) is to be paid on the Closing Date or otherwise as described below
 2. To Port Authority counsel, \$_____ (being the sum of (i) the “Minimum Tariff” of \$45,000 due to be paid to that counsel in 2003, (ii) \$15,000 for the fees of such counsel (calculated at less than 80% of standard rates) incurred from the signing of the Lease through 10/31/06, and (iii) 100% of the fees of such counsel, at standard rates, from 11/01/06 through 01/31/07). The amount in excess of \$50,000 is due on the Agreement Date (“Counsel Initial Payment”) and the balance (“Counsel Balance”) is to be paid on the Closing Date or otherwise as described below
 3. To Port Authority, the Quarterly Lease Rent due and payable for the period from and after 01/01/07 including, on the Agreement Date, \$2500 for the amounts theretofore due (“Past Due Rent”)
 4. To Port Authority Counsel, upon presentation of invoices, 100% of the fees of such counsel, at standard rates, for the period from and after 02/01/07 (“Ongoing Counsel Fees”) including, on the Agreement Date, amounts due for February 2007 (“February Counsel Fees”)
- **Timing of Payments under Agreement:**
 1. Port Authority Initial Payment, Past Due Rent, Counsel Initial Payment and February Counsel Fees due on Agreement Date
 2. Ongoing Counsel Fees due within 30 days of invoice, addressed to SIPI’s Lease Notice Address
 3. On the first business day of each calendar quarter, the Quarterly Lease Rent is due without need for invoice
 4. Port Authority Balance and Counsel Balance (and any outstanding Ongoing Counsel Fees) due on the Closing Date
 5. In the event that the Closing does not occur on or before the Scheduled Closing Date, on the first business day of each month thereafter through December 2008, the Obligors shall pay the Port Authority equal monthly amounts determined by dividing \$55,000 by the number of such payments anticipated at the time of the initial such payment (“Number of Anticipated Payments”), those payments to be in addition to Quarterly Lease Rent

6. In the event that the Closing does not occur on or before the Scheduled Closing Date, on the first business day of each month thereafter through December 2008, the Obligors shall pay the Port Authority's counsel equal monthly amounts determined by dividing \$55,000 by the Number of Anticipated Payments, those payments to be in addition to any amounts due for Ongoing Counsel Fees
 7. In the event that the Closing occurs after the Scheduled Closing Date and before December 2, 2008, the Obligors may reduce the amount of both the Port Authority Balance and Counsel Balance payments due on the Closing Date by a pro rata amount based on the number of months elapsed (and number of payments made) from the Scheduled Closing Date through the day preceding the Closing Date divided by the Number of Anticipated Payments
 8. So long as no default has occurred, if the Closing occurs on or after December 2, 2008, no Port Authority Balance or Counsel Balance payment will be due at Closing
- **Defaults:** Any default by Obligors will void the Agreement, the Lease Amendment will not go into effect, and the Port Authority and Obligors will return to their former positions, as if the Agreement and Lease Amendment had never been signed, but with a credit for payments actually made

IV. Lease Amendment Provisions:

- **Effective Date:** Lease Amendment Effective Date on full satisfaction of all payment obligations under Agreement; provided, that from 1/01/07 through Lease Amendment Effective Date, in the absence of default under the Agreement, rent under the Lease will be determined as described herein
- **Rent:** In the absence of any default under the Agreement:
 1. All rent and tariff obligations under the Lease through 12/31/2006 will be subsumed in and resolved through the payment provisions of the Agreement
 2. Commencing as of 1/01/07, in lieu of the tariffs payable under Section 2 of the Lease, rent of \$5,000 per year for possession/use of the dock site and related easements ("Leased Property") will be payable quarterly in advance on or before the first day of each calendar quarter
- **Port Authority obligations:**
 1. Port Authority will use reasonable efforts to cooperate with SIPI and Noramco and to assist in development/relocation efforts, with standard Port Authority fees or, if not standard, negotiated in advance
 2. Except for obligations to provide possession of Leased Property and, subject to fees, to use reasonable efforts to cooperate and assist in development/relocation efforts, all Port Authority obligations under Lease will be conditioned on reaching a satisfactory agreement with SIPI and Noramco as to fees and/or costs of the Port Authority
- **Restrictive Covenants** – Will secure all Lease payment obligations and, if and as necessary, Declarations will be amended/recorded on the Closing Date to that effect
- **Lease Termination** – After Lease Amendment Effective Date, so long as Lessee is not then in default under Lease, unless the Lease is further amended (to include additional property or any additional obligations or requirements on the part of the Lessee), the Lease may be terminated at the option of the Lessee on 30 days' notice

- **Agreement Default** – Lease Amendment is void, *ab initio*, upon default by Obligors under Agreement, but with credit against rent/tariffs for actual payments made

Port of Greater Cincinnati Development Authority

By _____
Kimberly A. Satzger
Acting President and Secretary

ACCEPTED BY:

Southside Industrial Partners I, LLC

By: _____
Daniel B. Altman, Manager

TPG Noramco, LLC

By: _____
Mark Wetterich, President

The Port Group Holding Company, LLC

By: _____
Daniel B. Altman, Manager

Southside Industrial Partners, II, LLC

By: _____
Daniel B. Altman, Manager