

RESOLUTION NO. 2007-06

A RESOLUTION AUTHORIZING THE EXECUTION OF A PRELIMINARY AGREEMENT PERTAINING TO THE PARTICIPATION OF THE PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY, IN COOPERATION WITH SYCAMORE TOWNSHIP, IN THE ACQUISITION, CONSTRUCTION, IMPROVEMENT, EQUIPPING, INSTALLATION, DEVELOPMENT AND FINANCING OF PUBLIC IMPROVEMENTS, INCLUDING A PUBLIC PARKING GARAGE, IN SUPPORT OF THE PROPOSED MIXED-USE COMMERCIAL REDEVELOPMENT OF A SITE IN THE TOWNSHIP AND IN SUPPORT OF OTHER NEARBY COMMERCIAL PROPERTIES, AND AUTHORIZING THE EXECUTION OF A CONSTRUCTION AGENCY AGREEMENT RELATING TO THE PUBLIC PARKING GARAGE PROJECT AND RELATED MATTERS.

WHEREAS, the assistance of the Port of Greater Cincinnati Development Authority (“Port Authority”) has been requested by Sycamore Township (Hamilton County), Ohio (“Township”) and Bear Creek Capital, LLC, an Ohio limited liability company (together with its affiliates and development partners, “Developer”) in connection with the acquisition, construction, improvement, equipping, installation and development (collectively, “construction”) of a public improvement project (“Project”), including an approximately 2,500-space public parking garage and any necessary and related public improvements, comprising “port authority facilities”, as defined in Revised Code Sections 4582.21 through 4582.59 and the authorities therein mentioned (collectively, “Act”), in support of the proposed redevelopment (“Development”) of an approximately 6.9-acre site generally located at the Galbraith Road crossing of I-71 within the Township (“Site”); and

WHEREAS, the proposed Development, to be known as Kenwood Towne Place, includes approximately 283,500 square feet of upscale retail and related commercial space and approximately 233,800 square feet of Class A commercial office space to be located at the Site, which is adjacent to the existing Kenwood Towne Center mall (“Mall”) and the Developer, pursuant to its agreements with respect to the Development, including its agreements with the Mall owner, has requested that the Township and the Authority assist it in meeting the public infrastructure needs of the Development and the Mall, including through the construction, operation and maintenance of the Project on a portion of the Site (“Project Site”); and

WHEREAS, the Township and the Developer have advised the Port Authority that they have reached an agreement with the Indian Hill Local School District (“School District”) that will permit the Township to declare, and that the Township expects to declare, 100% of the improvements (as defined in applicable provisions of Revised Code Chapter 5709, which provisions are referred to herein as the “TIF Act”) to the Site to be a public purpose, exempt from real estate taxes for a period of up to 30 years, subject to the condition that the owner of the Site pay, as a covenant running with the land, service payments in lieu of the exempted real estate taxes pursuant to the TIF Act (“Service Payments”); and

WHEREAS, the Port Authority is authorized, in cooperation with the Township (pursuant to Revised Code Sections 4582.43 and 4582.431), to issue port authority revenue bonds or notes that may be issued in anticipation of the issuance of such port authority revenue

bonds (collectively, “Bonds”), secured by an assignment or contribution of Service Payments to be made by the Township pursuant to a cooperative agreement between or among the Port Authority and the Township and, if applicable, the Developer or other owner or owners of the Site (“Cooperative Agreement”), and such other security as shall be required by the Port Authority and the investment banker marketing the Bonds, to finance costs of the Project; and

WHEREAS, this Board, pursuant to the Act and other applicable laws of the State of Ohio (“State”), including Article VIII, Section 13, of the Ohio Constitution, has full authority to and desires to authorize and take those actions necessary to approve the execution and delivery by the Port Authority of a preliminary agreement pertaining to the participation of the Port Authority (in cooperation with the Township) in undertaking and financing the Project, including authorizing any preliminary steps required of the Port Authority in connection with the issuance of the Bonds, the financing of the Project, and the construction of the Project on behalf of the Port Authority, and to thereby induce the Developer to undertake and complete the implementation of the Development on a portion of the Site (“Development Site”), which will create and preserve jobs and employment opportunities within the Township and within the County of Hamilton (“County”) and the State; and

WHEREAS, United States Treasury Regulations Section 1.150-2 (“Reimbursement Regulations”) prescribes conditions under which proceeds of bonds, notes or other obligations used to reimburse advances made for certain expenditures paid before the issuance of such obligations will be deemed to be expended (or properly allocated to expenditures) for purposes of Sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended (“Code”) so that upon such reimbursement the proceeds so used will not further be subject to requirements or restrictions under those sections of the Code and (i) certain provisions of the Reimbursement Regulations require (A) that there be a Declaration of Official Intent not later than 60 days following payment of the expenditure expected to be reimbursed from proceeds of such obligations and (B) that the reimbursement occur within prescribed time periods after the expenditure is paid or after the property is placed in service, and (ii) the Port Authority wishes to take steps to comply with those Reimbursement Regulations in connection with the Project and to take other preliminary actions in connection with the proposed issuance of the Bonds;

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

Section 1. This Board hereby finds and determines, based upon information provided by the Developer and the Township, that: (i) the Project constitutes or will constitute “port authority facilities” in furtherance of “authorized purposes” of the Port Authority, including the promotion of “transportation”, “governmental operations” and “economic development”, as all such terms are used in the Act, (ii) the acquisition of the Project Site, and the construction, operation, maintenance and financing of the Project by the Port Authority in support of the Development and the Mall, will assist in inducing the Developer to construct the Development on the Development Site, is consistent with and will promote the purposes of Section 13 of Article VIII, Ohio Constitution, and will create or preserve jobs and employment opportunities and improve the economic welfare of the people of the State, and (iii) the Port Authority is authorized to participate in the Project in the manner contemplated hereby subject to (A) the determination by the Port Authority, acknowledged and confirmed by the Township Board of

Trustees (“Township Board”) that the Project will be for the restoration and redevelopment of property within the Township affected or perceived to be affected by environmental contamination, the redevelopment of which is discouraged thereby, or (B) the approval of the participation of the Port Authority in the Project by the Board of County Commissioners of the County (“BOCC”) and the Council of the City of Cincinnati (“City Council”). The President, Vice President and Director of Brownfields Redevelopment are hereby authorized and directed to review available information and reports, determine whether the Site is affected or perceived to be affected by environmental contamination and whether the redevelopment of the Site is discouraged thereby and, if they shall so determine, to submit those findings to the Township Board for acknowledgment and confirmation

Section 2. In order to finance costs of the Project, this Board hereby agrees to exercise its reasonable best efforts to obtain, and hereby authorizes the staff of the Port Authority to seek, all necessary authorizations for the participation of the Port Authority in the Project in the manner contemplated hereby, including any that may be required from the BOCC, City Council or the Township Board, and, upon obtaining such authorizations, to exercise its reasonable best efforts to authorize and cause the Port Authority to issue the Bonds, in the estimated maximum aggregate face amount of \$25,000,000 pursuant to the Act and the provisions of, and subject to satisfaction of the conditions set forth in, a preliminary agreement pertaining to the issuance of the Bonds and the financing of the Project (“Preliminary Agreement”), which Preliminary Agreement shall be in substantially the form of the Preliminary Project Revenue Bond Agreement on file with the Secretary of this Board. Any one or more of the Chairperson, the Vice Chairperson, the President and the Vice President, alone or together with the Secretary or any Assistant Secretary of this Board, are hereby authorized and directed to execute the Preliminary Agreement, substantially in such form, but with such changes as are necessary or desirable to reflect the intended terms of, security for and manner of sale of the Bonds, as are not adverse to the Port Authority and as are approved by the officer or officers executing the Preliminary Agreement, such execution being conclusive evidence of approval of any such changes and that they are necessary or desirable to reflect the intended terms of, security for and manner of sale of the Bonds and are not adverse to the Port Authority. Each such authorized officer is further authorized to sign, on behalf of the Port Authority, any findings, requests, term sheets, engagement letters, commitment letters, memoranda of understandings or other preliminary approvals required in connection with the implementation of the transactions contemplated by the Preliminary Agreement and this resolution and consistent therewith. The Bonds are expected to be paid from and secured by Service Payments assigned by the Township to the Port Authority pursuant to the Cooperative Agreement, and by such other security as shall be satisfactory to the Port Authority, in its discretion, and to the investment banker marketing the Bonds.

Section 3. This Board hereby declares that the Port Authority reasonably expects that capital and other expenditures relating to the Project made by the Port Authority, the Developer, the Township or others will be reimbursed from the proceeds of “bonds” (as defined in Section 150 of the Code) and that the maximum principal amount of bonds expected to be issued for the Project is \$25,000,000. This resolution constitutes a Declaration of Official Intent under the Reimbursement Regulations.

Section 4. Based on information furnished to it by the Developer and the Township, and the findings and determinations made by this Board in Section 1 above, this Board hereby further determines that the manner in which the contracts for the construction of the Project should be made is to negotiate the terms of and enter into a construction agency agreement with the Developer (“Construction Agency Agreement”) and, in accordance therewith, authorize the Construction Agent to act as its agent for and manager of the construction of the Project and to negotiate the terms of the construction contract or contracts, including any subcontract or subcontracts and all contracts for the supply of materials (collectively, “Construction Contracts”) necessary and desirable in connection therewith, all subject to applicable provisions of the Preliminary Agreement, including Section 3 thereof, and to the condition that all pecuniary obligations of the Port Authority thereunder be, until issuance of the Bonds, expressly conditioned on the issuance of the Bonds; and this Board hereby specifically finds and determines that such manner of contracting and negotiation will best carry out the public purposes of the Project, including the public purposes of Article VIII, Section 13 of the Ohio Constitution. This Board hereby authorizes and approves the appointment of the Construction Agent as its agent under the Construction Agency Agreement for the purpose of undertaking, managing and completing, on behalf of the Port Authority, the construction of the Project on the Project Site, with such compensation, if any, for serving as that agent and construction manager as the Construction Agency Agreement shall provide. Notwithstanding anything to the contrary herein or in the Construction Agency Agreement, the obligations of the Port Authority under or pursuant to any Construction Contracts shall not be a general obligation of the Port Authority but shall be payable solely from the proceeds of the Bonds when, as and if issued, any Service Payments assigned by the Township to the Port Authority pursuant to the Cooperative Agreement, any amounts advanced or otherwise provided by the Developer or the Construction Agent, and any other “revenues”, as defined in the Act, specifically pledged thereto, and each Construction Contract shall so state. Subject to the foregoing, and with all pecuniary obligations of the Port Authority thereunder expressly conditioned on the issuance of the Bonds, this Board hereby authorizes and approves the execution and delivery by the Port Authority of a Construction Agency Agreement by and between the Port Authority and the Construction Agent, in substantially the form on file with the Secretary of this Board. Any one or more of the Chairperson, the Vice Chairperson, the President and the Vice President, alone or together with the Secretary or any Assistant Secretary of this Board, are hereby authorized and directed to execute and deliver the Construction Agency Agreement, in substantially such form, but with such changes as are not substantially adverse to the Port Authority and as are approved by the officer executing the Construction Agency Agreement as being necessary or desirable and in the best interest of the Port Authority, such execution being conclusive evidence of approval of any such changes as being necessary or desirable and in the best interest of the Port Authority and that they are not substantially adverse to the Port Authority.

Section 5. 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 issuer counsel, 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 an obligation of and shall be paid by the Developer, including pursuant to the provisions of the Preliminary Agreement obligating the Developer to indemnify the Port Authority against any and all loss, cost, expense, claims or actions arising out of or connected with the authorization, issuance or sale of the Bonds, but may be paid from proceeds of the Bonds, if and when authorized by this Board and issued by the Port Authority.

Section 6. 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 7. This resolution shall take effect and be in force immediately upon its adoption.

Adopted: April 5, 2007

Yeas: 8

Nays: 0

Chairperson

Attest: _____
Secretary