

## RESOLUTION NO. 06

**A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN OMNIBUS AGREEMENT AMENDING AND TERMINATING CERTAIN DOCUMENTS RELATED TO PREVIOUSLY ISSUED LEASE REVENUE BONDS (GALLERY AT KENWOOD – RESIDENTIAL AND RETAIL PROJECT); AUTHORIZING THE ISSUANCE AND SALE OF PORT AUTHORITY REVENUE REFUNDING BONDS IN A MAXIMUM PRINCIPAL AMOUNT OF \$62,500,000 FOR THE PURPOSE OF REFINANCING A PORTION OF THE COSTS TO DEVELOP “PORT AUTHORITY FACILITIES” WITHIN THE MEANING OF SECTION 4582.21, OHIO REVISED CODE AND REDEEMING A PORTION OF OUTSTANDING REVENUE BONDS, FOR THE BENEFIT OF KENWOOD SCA, LLC; AUTHORIZING THE AMENDMENT OR TERMINATION OF CERTAIN EXISTING DOCUMENTS; AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS AND RELATED MATTERS.**

WHEREAS, THE PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY (the “Port Authority”), a port authority and a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the “State”), is authorized and empowered by virtue of the laws of the State including, without limitation, Article VIII, Sections 13 and 16 of the Ohio Constitution and Sections 4582.21 through 4582.59 of the Ohio Revised Code (collectively, within the authorities therein mentioned, the “Act”), among other things: (a) to issue its revenue bonds for the purpose of financing and refinancing costs of acquiring, constructing, improving and developing “port authority facilities,” as defined in the Act, (b) to lease such port authority facilities to provide rental payments and other revenues, and to provide for the pledge or assignment of those revenues, together with other amounts available therefor, sufficient to pay the principal of and interest and any premium on those revenue bonds, (c) to acquire interests in real or personal property, or any combination thereof, and construct, improve and develop port authority facilities and enter into agreements with respect to the construction, development, leasing, operation, use and management of such port authority facilities for “authorized purposes” as defined in the Act, including commercial, housing and economic development purposes, (d) to make and enter into such contracts and agreements, and to execute and deliver all such instruments, as may be necessary, proper, appropriate or otherwise included in or for the exercise of powers otherwise granted to the Port Authority under or pursuant to the Act, (e) to provide for the development, financing, refinancing, and leasing of port authority facilities to create or preserve jobs and employment opportunities, to enhance the availability of adequate housing, and to improve the economic welfare of the people of the State, and (f) to adopt this resolution, to issue, sell and deliver the Revenue Refunding Bonds (defined herein) in the manner contemplated hereby, and to execute and deliver the Omnibus Agreement, the Bond Assignment Agreement, and the Disbursing Agreement (each as defined herein) and such other agreements and instruments as are provided for herein; and

WHEREAS, pursuant to Resolution 2019-31 adopted by this Board on December 11, 2019 (the “Prior Resolution”), at the request of Kenwood SCA, LLC, or an affiliate thereof (the “Residential Lessee”) and Kenwood SCR, LLC, or an affiliate thereof (the “Retail Lessee” and together with the Residential Lessee, the “Lessees”), this Board had previously determined that it was necessary and proper and in the best interest of the Port Authority to assist the Lessees in the construction, equipping, and improvement of approximately 248 market-rate apartments

encompassing approximately 300,000 square feet (the “Residential Project Facilities”) and approximately 13,000 total square feet of commercial space (the “Retail Project Facilities”), as well as related site improvements and infrastructure (collectively, the “Project Facilities”) on a site located within an area generally bound by Kenwood Road, Happiness Way, Frolic Drive, and Duneden Avenue (the “Project Site” and, together with the Project Facilities, the “Project”) within Sycamore Township, Ohio (the “Township”), by (i) acquiring a ground leasehold interest in the Project Site, (ii) issuing its lease revenue bonds to pay a portion of the costs of acquiring, constructing and otherwise improving the Project Facilities, (iii) acquiring, constructing, equipping and installing the Project Facilities on the Project Site, and (iv) leasing the Project or portions thereof to the applicable Lessee; and

**WHEREAS**, in furtherance of the foregoing, the Port Authority previously (a) issued and sold its Lease Revenue Bonds (Gallery at Kenwood – Residential and Retail Project), dated January 21, 2020 (the “Revenue Bonds”) in the maximum aggregate principal amount of \$54,000,000, for the purpose of paying a portion of the costs of acquiring a ground leasehold interest in the Project Site and acquiring, constructing and otherwise improving the Project Facilities, (b) adopted the Prior Resolution to provide for the issuance, sale, delivery and terms of the Revenue Bonds and the security for the payment of the principal of and interest on the Revenue Bonds (collectively, the “Prior Bond Service Charges”), (c) entered into a Ground Lease for the Residential Project Facilities, dated as of January 21, 2020 (the “Original Residential Ground Lease”) between the Residential Lessee, as ground lessor (in such capacity, the “Residential Ground Lessor”), and the Port Authority, as ground lessee (in such capacity, the “Residential Ground Lessee”), pertaining to the Project Site, and a Construction Services Agreement for the Residential Project Facilities, dated as of January 21, 2020 (the “Original Residential Construction Services Agreement”) between the Port Authority and the Residential Lessee, as the Port Authority’s construction services provider (in such capacity, the “Residential Construction Services Provider”), (d) entered into a Ground Lease for the Retail Project Facilities, dated as of January 21, 2020 (the “Original Retail Ground Lease”, and together with the Original Residential Ground Lease, the “Original Ground Leases”) between the Retail Lessee, as ground lessor (in such capacity, the “Retail Ground Lessor”), and the Port Authority, as ground lessee (in such capacity the “Retail Ground Lessee”), pertaining to the Project Site, and a Construction Services Agreement for the Retail Facilities Project, dated as of January 21, 2020 (the “Original Retail Construction Services Agreement”, and together with the Original Residential Construction Services Agreement, the “Original Construction Services Agreements”) between the Port Authority and the Retail Lessee, as the Port Authority’s construction services provider (in such capacity, the “Retail Construction Services Provider”), (e) leased the Residential Project Facilities to the Residential Lessee pursuant to the Capital Lease, dated as of January 21, 2020 (the “Original Residential Lease”) between the Port Authority, as lessor, and the Residential Lessee, as lessee, to provide for rental payments and other revenues sufficient to pay a portion of the Prior Bond Service Charges, (f) leased the Retail Project Facilities to the Retail Lessee pursuant the Capital Lease, dated as of January 21, 2020 (the “Original Retail Lease”, and together with the Original Residential Lease, the “Original Leases”) between the Port Authority, as lessor and the Retail Lessee, as lessee, to provide for rental payments and other revenues to pay the remaining portion of the Prior Bond Service Charges, (g) assigned those revenues to the registered owners of the Revenue Bonds pursuant to and on the conditions stated in the Bond Advance Agreement and Assignment of Lease and Rental Payments, dated as of January 21, 2020 (the “Original Bond Assignment Agreement”) by and between the Port Authority, the original purchaser and initial holder of the Revenue Bonds, (h) provided for the disbursement of proceeds of the Revenue Bonds pursuant to a Disbursing Agreement, dated as of January 21, 2020, by and among the Port Authority,

the Lessees, the original purchaser of the Revenue Bonds and the disbursing agent named therein (the "Original Disbursing Agent"), and (i) granted a mortgage in the Port Authority's interest in the Project and the Project Site to the original purchaser of the Revenue Bonds or its designee (the "Original Mortgage," and together with the Original Ground Leases, the Original Leases, the Original Construction Services Agreements, the Original Bond Assignment Agreement, and the Original Disbursement Agreement, the "Original Documents"); and

**WHEREAS**, the construction of the Project Facilities has been completed and the Port Authority and the Lessees agree that it is now in the best interest of both the Port Authority and the Lessees to modify the Original Documents and the terms of the financing for the Project in order to refinance the Revenue Bonds; and

**WHEREAS**, in order to modify the terms of the financing for the Project, this Board has determined that it is necessary and proper and in the best interest of the Port Authority to: (a) issue and sell the Revenue Refunding Bonds at this time, in the maximum aggregate principal amount of \$62,500,000, for the purpose of refinancing the Revenue Bonds; (b) adopt this resolution to provide for the issuance, sale, delivery and terms of the Revenue Refunding Bonds and the security for the payment of the principal of and interest on the Revenue Refunding Bonds (collectively, the "Bond Service Charges"), (c) enter into the Omnibus Agreement, the Bond Assignment Agreement, the Disbursing Agreement, and any related agreements and instruments, and (d) authorize the amendment, modification, supplementation, restatement, replacement and/or termination of any of the Original Documents, as necessary, to effectuate the issuance of the Revenue Refunding Bonds and the refinancing and redemption of the Revenue Bonds;

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

**Section 1. Captions; Definitions.** The captions and headings in this resolution are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or Sections of this resolution. In addition to terms defined in the recitals and the Lessor Documents that are incorporated herein by reference, the following capitalized terms shall mean:

"Act" means Sections 4582.21 to 4582.59, inclusive, Ohio Revised Code, as enacted and amended from time to time pursuant to Sections 13 and 16 of Article VIII of the Ohio Constitution.

"Authorized Officer" means the Chair, Vice Chair, Secretary, President and CEO and any Assistant Secretary of this Board or of the Port Authority.

"Authorizing Legislation" means this resolution and any supplemental or amending resolution adopted by the Board of Directors of the Port Authority, together with any documents executed by the Executive establishing final terms of the Revenue Refunding Bonds.

"Bond Assignment Agreement" means the Bond Advance Agreement and Assignment of Lease and Rental Payments, between the Port Authority and the initial Holder of the Revenue Refunding Bonds in effect upon the issuance of the Revenue Refunding Bonds, including if applicable the Original Bond Assignment Agreement as amended in furtherance of the purposes of this resolution.

“Bond Fund” means the Bond Fund created pursuant to Section 8 hereof and held by the Disbursing Agent pursuant to the Disbursement Agreement.

“Disbursing Agreement” means the Disbursing Agreement by and among the Port Authority, the Residential Lessee, the Original Purchaser and the disbursing agent named therein in effect after the issuance of the Revenue Refunding Bonds, including if applicable the Original Disbursing Agreement as amended in furtherance of the purposes of this resolution.

“Executive” means the President and CEO of the Port Authority.

“Fiscal Officer” means the Fiscal Officer of the Port Authority.

“Ground Lease” means the Ground Lease between the Residential Lessee, as ground lessor and the Port Authority, as ground lessee in effect upon the issuance of the Revenue Refunding Bonds, including if applicable the Original Ground Lease as amended in furtherance of the purposes of this resolution.

“Holder” means the registered owner of a Revenue Refunding Bond as shown on Register.

“Interest Payment Date” means each date interest is due and payable on the Revenue Refunding Bonds as set forth therein.

“Lease” means the Capital Lease between the Port Authority, as lessor, and the Residential Lessee, as lessee in effect upon the issuance of the Revenue Refunding Bonds, including if applicable the Original Lease as amended in furtherance of the purposes of this resolution.

“Lessor Documents” means, collectively, the Ground Lease, the Lease, the Bond Assignment Agreement, the Construction Services Agreement, the Mortgage, the Recognition Agreement, and the Disbursing Agreement.

“Mortgage” means the mortgage on the Port Authority’s interest in the Project and the Project Site granted to the initial Holder of the Revenue Refunding Bonds or its designee in effect upon the issuance of the Revenue Refunding Bonds.

“Omnibus Agreement” means the Omnibus Agreement to be entered into by the Port Authority and the Lessees for the purpose of amending, supplementing, or terminating the Original Documents, as applicable.

“Original Purchaser” means the original purchaser and initial Holder of the Revenue Refunding Bonds.

“Pledged Revenues” means the Rental Payments, and all other moneys received or to be received by the Port Authority or the Holder, intended to be used for payment of Bond Service Charges, any moneys or investments in or to be credited to the Special Funds, and all income and profit derived from the investment of the foregoing.

“Project Fund” means the Project Fund created pursuant to Section 6 hereof and held by the Disbursing Agent pursuant to the Disbursing Agreement.

“Project Purposes” means acquiring, constructing, equipping and installing, real and personal property, or any combination thereof, consisting of the Project Facilities, which comprise “port authority facilities” as defined in the Act, for lease to the Residential Lessee or its designee on a site located in the Township, or such other uses and purposes from time to time as may be permitted by the Lease or the Act.

“Recognition Agreement” means the Recognition, Subordination, and Attornment Agreement, by and among the Port Authority, and the Residential Lessee, for in favor of the Original Purchaser.

“Register” means the books kept and maintained by the Registrar for registration of ownership of the Revenue Refunding Bonds, and of the outstanding principal amount thereof, and for registration of any permitted transfer or exchange of a Revenue Refunding Bond or Revenue Refunding Bonds.

“Registrar” means the person designated by the Executive from time to time to keep and maintain the Register and means initially the Fiscal Officer.

“Rental Payments” means the Rental Payments required to be paid by the Residential Lessee to or for the account of the Port Authority pursuant to the Lease.

“Special Funds” means the Bond Fund and the Project Fund created by the Disbursing Agreement.

Any approval to be given or action authorized by this resolution to be taken by the Executive and the Fiscal Officer, or the Executive or the Fiscal Officer, may be taken by any one of the individuals comprising the Executive or Fiscal Officer unless otherwise expressly provided herein, and shall be performed in such officer’s official capacity and on behalf of the Port Authority.

**Section 2. Determinations by Board.** This Board hereby finds and determines that: (i) the Project constitutes “port authority facilities,” within the meaning of the Act, and is consistent with the purposes of Article VIII, Sections 13 and 16 of the Ohio Constitution; (ii) it is necessary and proper and in the best interest of the Port Authority to, and the Port Authority shall: (a) refinance costs thereof as contemplated by this resolution, (b) enter into the Omnibus Agreement, the Bond Assignment Agreement, and the Disbursing Agreement; (c) amend, modify, supplement, restate, replace, and/or terminate any of the Original Documents as necessary to fulfill the purpose of this resolution; (iii) the Project Site is within the geographic jurisdiction of the Port Authority and the construction of the Project, and the financing and/or refinancing of the Project by the Port Authority, is consistent with the purposes of the Act, will further the Project Purposes and will benefit the people of the State, including those within the jurisdiction of the Port Authority, by, among other benefits, creating jobs and employment opportunities, enhancing the availability of adequate housing, and improving the economic welfare of the people of the State; (iv) the refinancing of costs of the Project requires the issuance of the Revenue Refunding Bonds, and it is necessary and proper and in the best interest of the Port Authority to, and the Port Authority shall, issue, sell and

deliver the Revenue Refunding Bonds in the maximum aggregate principal amount of \$62,500,000 for the purpose of financing and/or refinancing costs of the acquiring, constructing and otherwise improving the Project for the Project Purposes; (v) the terms of the Revenue Refunding Bonds, and of the sale, execution and delivery of and payment for the Revenue Refunding Bonds contained in or authorized by this resolution are satisfactory and are hereby approved; (vi) the Revenue Refunding Bonds shall be secured as provided herein and in the Lease, the Mortgage and the Bond Assignment Agreement, and all such provisions are reasonable and proper for the security of the Revenue Refunding Bonds; and (vii) the agreements contemplated hereby will further the purposes of the Act, including the purposes of Article VIII, Sections 13 and 16 of the Ohio Constitution.

**Section 3. Authorizing the Omnibus Agreement, Bond Assignment Agreement, and Disbursing Agreement.** This Board hereby authorizes and approves the Omnibus Agreement in substantially the form on file with the Secretary of this Board. Any one or more of the Authorized Officers, alone or together with the Secretary or any Assistant Secretary of this Board, are hereby authorized and directed to execute the Omnibus Agreement, substantially in such form, but with such changes as are necessary or desirable to reflect the intended terms of the transaction contemplated by this resolution and finalized by the parties to the Omnibus Agreement, such execution being conclusive evidence of approval of any such changes and that they are necessary or desirable, in accordance herewith, and are not adverse to the Port Authority.

**Section 4. Issuance and Terms of Revenue Refunding Bonds.**

(a) **Terms Generally.** The Revenue Refunding Bonds shall be issued initially in one or more instruments as set forth in the Bond Assignment Agreement, payable in installments, in fully registered form, substantially in the form set forth in the Bond Assignment Agreement, and in the maximum outstanding principal amount authorized hereby; provided that, the outstanding principal amount of the Revenue Refunding Bonds shall, at any time, be equal to the aggregate amount of the Bond Advances (defined in and determined pursuant to the Bond Assignment Agreement) less the amount, if any, of outstanding principal paid or prepaid, which amount shall be determined by reference to the Register. In the absence of manifest error, the Register shall be conclusive as to the amount of the Bond Advances. The outstanding principal amount of the Revenue Refunding Bonds shall bear interest at the interest rate described in the Revenue Refunding Bonds from the date of each Bond Advance, payable on each Interest Payment Date, until the principal amount has been paid or provided for. The Revenue Refunding Bonds shall mature on the date or dates set forth therein, which shall be no later than forty (40) years after their date of issuance, and shall be payable in full no later than that date, subject to prepayment as described in the Lease and the Revenue Refunding Bonds. The Revenue Refunding Bonds shall be dated their date of issuance; shall be designated “Port of Greater Cincinnati Development Authority Taxable Lease Revenue Refunding Bonds (Gallery at Kenwood – Residential Refunding Project),” or such other designation as determined by the Executive; shall be numbered as provided in the Bond Assignment Agreement; and shall be a negotiable instrument in accordance with the Act, subject to the transfer restrictions provided in the Revenue Refunding Bond and the Bond Assignment Agreement; and shall be in a minimum denomination of \$100,000. The outstanding principal amount of the Revenue Refunding Bonds shall bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from the date of each Bond Advance. Bond Service Charges shall be payable to each Holder in lawful money of the United States of America, without deduction for the services of any paying agent.

(b) Execution. The Revenue Refunding Bonds shall be signed by two Authorized Officers, in the name and on behalf of the Port Authority and in their official capacities, provided that either or both of such signatures may be a facsimile and that any such official so authorized, if such official is at the time of signing so authorized, is authorized to execute the Revenue Refunding Bonds whether or not such official is such officer at the time of delivery of any Revenue Refunding Bonds, including any replacement Revenue Refunding Bond or Revenue Refunding Bond issued upon any exchange or transfer. Each such officer is hereby authorized to execute and deliver the Revenue Refunding Bonds in accordance with this resolution and the Executive is authorized to execute and deliver the Bond Assignment Agreement, but subject to satisfaction or waiver of any conditions stated therein. The purpose for which the Revenue Refunding Bonds are issued shall be set forth in the form of the Revenue Refunding Bonds, which may contain such other statements or legends as may be required by law or otherwise advisable.

(c) Registrar. The Fiscal Officer is appointed to act as the initial authenticating agent, bond registrar and transfer agent (collectively, the "Registrar") for the Revenue Refunding Bonds. In accordance with applicable law, the Executive may hereafter designate a different person to serve as Registrar and enter into a contract for the provision by that person of services as Registrar. No Revenue Refunding Bond shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this resolution or the Bond Assignment Agreement unless and until a certificate of authentication, as printed on the form of Revenue Refunding Bond, is signed by the Registrar as authenticating agent. Authentication by the Registrar shall be conclusive evidence that the Revenue Refunding Bond so authenticated has been duly authenticated and delivered under this resolution and is entitled to the security and benefit of this resolution and the Bond Assignment Agreement. The certificate of authentication may be signed by any officer or officers of or designated as the Registrar. It shall not be necessary that the same authorized person sign the certificate of authentication on each Revenue Refunding Bond.

So long as the Revenue Refunding Bonds remain outstanding, the Register shall be maintained and kept by the Registrar, at the office of the Registrar, for the registration, exchange and transfer of the Revenue Refunding Bonds as provided in this Section, including a current and accurate record of the name and address of each Holder. The registered Holder of a Revenue Refunding Bond shall be regarded as the absolute owner of that Revenue Refunding Bond for all purposes of this resolution and the Bond Assignment Agreement Payment of or on account of Bond Service Charges on each Revenue Refunding Bond shall be made only to or upon the order of that Holder. Neither the Port Authority, the Registrar nor the Residential Lessee shall be affected by any notice to the contrary, but the registration may be changed as herein provided. The Registrar shall establish procedures for the exchange, transfer or replacement of the Revenue Refunding Bonds. Any Revenue Refunding Bond issued upon a transfer or exchange, or to replace a lost, stolen, destroyed or mutilated Revenue Refunding Bond, shall be the valid special obligation of the Port Authority, evidencing the same debt, and entitled to the same benefits under this resolution and the Bond Assignment Agreement, as the Revenue Refunding Bond surrendered upon that transfer or exchange or lost, stolen, destroyed or mutilated.

**Section 5. Sale and Delivery of Revenue Refunding Bonds.** In accordance with the Bond Assignment Agreement and that certain agreement between the Original Purchaser and the Residential Lessee related to the purchase of the Revenue Refunding Bonds (the "Bond Purchase Agreement"), the Revenue Refunding Bonds are awarded and sold to the Original

Purchaser at a purchase price equal to 100% of the principal amount thereof, subject to any conditions set forth in the Bond Assignment Agreement; provided, that such purchase price shall be paid in accordance with the Bond Assignment Agreement by the payment of Bond Advances upon the delivery to the Holders of Bond Advance Requisitions in the form required by the Bond Assignment Agreement. Other terms of the Revenue Refunding Bonds and the sale thereof may be specified in the Bond Assignment Agreement. All matters determined in the Bond Assignment Agreement shall be conclusive and binding on the Port Authority. Any fees payable in connection with the issuance and sale of the Revenue Refunding Bonds, including, without limitation, any counsel fees and any other fees to be paid in connection with the structuring and sale of the Revenue Refunding Bonds may be paid and are hereby appropriated from the proceeds of the sale of the Revenue Refunding Bonds.

The Executive and the Fiscal Officer are authorized to make the necessary arrangements with the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Revenue Refunding Bonds in accordance with the Bond Assignment Agreement and subject to the conditions stated therein and in the Bond Purchase Agreement, including delivery of an investor acknowledgement letter, in form satisfactory to the Executive. It is determined by this Board that the price for and the terms of the Revenue Refunding Bonds and the sale thereof, all as provided in this resolution, the Bond Assignment Agreement and other related instruments, are in the best interests of the Port Authority and are in compliance with all legal requirements.

**Section 6. Application of Proceeds of the Revenue Refunding Bonds; Creation of Project Fund.** A portion of the proceeds from the sale of the Revenue Refunding Bonds shall be used to refinance the costs of the Project, including to refund the Revenue Bonds, which portion of the sale of the Revenue Refunding Bonds, upon receipt of a Bond Advance, shall be deposited in and credited to a deposit account (except when invested as hereinafter provided) which is hereby created and shall be held by the Disbursing Agent pursuant to the Disbursing Agreement (the "Project Fund"). Money in the Project Fund may be invested if and as provided in the Disbursing Agreement and shall be held and disbursed in accordance with the Disbursing Agreement to refinance the Project, including costs of issuance of the Revenue Refunding Bonds or other costs of the refinancing of the Project, and the proceeds from the sale of the Revenue Refunding Bonds, and any other moneys provided to or on behalf of the Port Authority for that purpose, are appropriated for that purpose, all as set forth in the Disbursing Agreement. The money and investments to the credit of the Project Fund shall, pending disbursement, constitute a part of the Pledged Revenues assigned as security for the payment of Bond Service Charges.

**Section 7. Security for the Revenue Refunding Bonds.** The Revenue Refunding Bonds shall be payable solely from the Pledged Revenues and the Special Funds, as provided herein, and shall be secured by an assignment of the Pledged Revenues and by the Bond Assignment Agreement. Notwithstanding anything to the contrary herein or in the Revenue Refunding Bonds, the Revenue Refunding Bonds do not and shall not pledge the general credit or taxing power of the Port Authority or of the State or any political subdivision thereof, and nothing herein or in the Revenue Refunding Bonds or in the Bond Assignment Agreement or any other Lessor Document, shall constitute a general obligation, debt or bonded indebtedness of the Port Authority or the State or any political subdivision thereof; and further, nothing herein or therein gives the Holder of a Revenue Refunding Bond, and it does not have, the right to have excises or taxes levied by this



Board, or by the State or the taxing authority of any other political subdivision thereof, for the payment of Bond Service Charges or any other charges on the Revenue Refunding Bonds or any obligations under the Revenue Refunding Bonds or any Lessor Document. The Revenue Refunding Bonds shall contain a statement to that effect and that the Revenue Refunding Bonds are payable solely from the Pledged Revenues. Nothing herein shall be deemed to prohibit the Port Authority, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of this resolution or the Revenue Refunding Bonds.

**Section 8. Assignment of Pledged Revenues.** The Port Authority hereby assigns to the Holders, as security for the payment of the Bond Service Charges, its right, title and interest in the Pledged Revenues, including, without limitation, all Rental Payments, which under the terms of the Lessor Documents shall be paid by the Residential Lessee to the Disbursing Agent for deposit in the Bond Fund and application to the payment of Bond Service Charges. The assignment shall be, and is intended to be, immediately effective without further action; provided that the Port Authority shall execute and deliver the Bond Assignment Agreement and shall take such other action as may be deemed necessary or appropriate to further evidence that assignment. The Rental Payments, and any payments under the Lease intended to be used to pay Bond Service Charges, shall be paid to the Disbursing Agent pursuant to the Lessor Documents and shall be deposited in and credited to a deposit account (except when invested as hereinafter provided) (the "Bond Fund"), which is hereby created.

**Section 9. Covenants of Port Authority.** In addition to other covenants and agreements of the Port Authority herein, and in the Lease, the Mortgage, the Recognition Agreement, and the Bond Assignment Agreement, the Port Authority, by issuance of the Revenue Refunding Bonds, covenants and agrees with each Holder of a Revenue Refunding Bond:

(a) **Use of Proceeds.** The Port Authority will use, or cause the use of, the proceeds of the Revenue Refunding Bonds to refund the Revenue Bonds and costs and fees payable in connection with the issuance of the Revenue Refunding Bonds.

(b) **Pledged Revenues.** The Port Authority will segregate, or cause to be segregated, for accounting purposes, the Pledged Revenues and the Special Funds established under this resolution and the Bond Assignment Agreement from all other revenues and funds of the Port Authority, and will not pledge, assign or transfer the Pledged Revenues or the Special Funds, or create or permit to be created any debt, lien or charge thereon other than the assignment under this resolution and the Bond Assignment Agreement.

(c) **Transcript.** The Fiscal Officer will furnish to the Original Purchaser a true transcript of proceedings, certified by the Fiscal Officer, of all proceedings had by the Port Authority with reference to the issuance of the Revenue Refunding Bonds, together with such information from the Port Authority's records as is available and necessary to determine the regularity and validity of such issuance.

(d) **Bond Service Charges.** The Port Authority will, solely from the Pledged Revenues and the Special Funds, pay or cause to be paid the Bond Service Charges on the dates,

at the places and in the manner provided herein and in the Revenue Refunding Bonds and the Bond Assignment Agreement.

(e) Records and Filings. The Port Authority will, at the expense of the Residential Lessee, cause the Ground Lease and the Lease (or memoranda thereof), the Mortgage, if applicable, the Recognition Agreement, and the Bond Assignment Agreement, and any amendments or supplements to either, and any related documents or instruments relating to the pledge and assignment made by it to secure the Revenue Refunding Bonds, to be recorded and filed in such manner and in the places which may be required by law in order to fully preserve and protect the security of the Holders.

(f) Further Actions. The Port Authority will, at any and all times, cause to be done all such further acts and things and cause to be executed and delivered all such further instruments as may be necessary to carry out the purposes for which the Revenue Refunding Bonds are issued and this resolution, or as may be required or authorized by the Act, the Bond Assignment Agreement or the Lease, and shall comply with all requirements of law applicable to the Revenue Refunding Bonds.

(g) Performance of Covenants. The Port Authority will observe and perform all of its agreements, covenants, understandings and obligations provided for by the Revenue Refunding Bonds and this resolution, the Lease, the Mortgage, the Recognition Agreement, the Bond Assignment Agreement, the Disbursing Agreement, and any other Lessor Document to which it is a party, and all of the obligations of the Port Authority thereunder are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Port Authority within the meaning of Section 2731.01, Ohio Revised Code.

(h) Maintain Lease and Bond Assignment Agreement in Effect. So long as the Revenue Refunding Bonds are outstanding, the Port Authority will comply with all of its obligations and agreements under this resolution, the Revenue Refunding Bonds, the Mortgage, the Recognition Agreement, the Bond Assignment Agreement and the other Lessor Documents and use its best efforts to keep the Bond Assignment Agreement and the other Lessor Documents in full force and effect.

(i) Representations. The Port Authority represents that (i) it is, and upon delivery of the Revenue Refunding Bonds will be, duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Revenue Refunding Bonds, to execute and enter into the Lessor Documents and to provide the security for payment of the Bond Service Charges in the manner and to the extent set forth herein and in the Bond Assignment Agreement and the Revenue Refunding Bonds; (ii) all actions on its part for the issuance of the Revenue Refunding Bonds and execution and delivery of the Bond Assignment Agreement and the other Lessor Documents have been or will be taken duly and effectively; and (iii) the Revenue Refunding Bonds will be legal, valid, binding and enforceable special obligations of the Port Authority according to their terms.

(j) Inspection of Project Books. All books and documents in the Port Authority's possession relating to the Project and the Pledged Revenues shall be open at all times

during the Port Authority's regular business hours to inspection by such accountants or other agents of any Holder as the Holder may from time to time designate.

(k) **Rights Under and Enforcement of the Lease.** The Holders, in their names or in the name of the Port Authority, may enforce the payment of Rental Payments and all rights of the Port Authority except for Unassigned Lessor's Rights, as defined in the Lease, and may enforce all obligations of the Residential Lessee under and pursuant to the Lease, whether or not the Port Authority is in default of the pursuit or enforcement of those rights and obligations; provided that, the Port Authority shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on its part to be observed and performed under the Lease and the other Lessor Documents and will take all actions within its authority to keep the Lease in effect in accordance with the terms thereof.

**Section 10. Lessor Documents.** To provide for the issuance and terms of and security for the Revenue Refunding Bonds, the Executive and the Fiscal Officer are hereby authorized, for and in the name of the Port Authority and on its behalf, to execute each Lessor Document, in substantially the standard forms thereof used for other capital lease transactions of the Port Authority, with such changes therein as are not inconsistent with this resolution and not substantially adverse to the Port Authority and that are permitted by the Act and shall be approved by the officer or officers executing those documents. The approval of such changes, and that such changes are not inconsistent with this resolution, not substantially adverse to the Port Authority and are permitted by the Act shall be conclusively evidenced by the execution of the Lessor Documents by the officer or officers executing the same. The Lease provides for the grant to the Residential Lessee of an option or options to purchase the Project in connection with any permitted termination of the Lease and subject to the conditions stated in the Lease. In connection with any such exercise by the Residential Lessee of its option to purchase the Project, the Executive and the Fiscal Officer are hereby authorized to execute all such instruments, for and in the name and on behalf of the Port Authority, as may be necessary to effect the transfer of the Project to the Residential Lessee, without the necessity of any further action by this Board.

**Section 11. Other Documents and Further Actions.** The Executive and the Fiscal Officer are further authorized to execute any certifications, financing statements, assignments, agreements and instruments, and to take such further actions as are necessary or appropriate to implement the transactions contemplated in the Revenue Refunding Bonds and the Lessor Documents, to consummate the transactions contemplated in this resolution and the Lessor Documents, to refinance the costs of the Project, consistent herewith and with the Lessor Documents, to redeem the Original Revenue Bonds, and to terminate the Original Retail Ground Lease, the Original Retail Lease, and the Original Construction Services Agreements. All actions heretofore taken by the officers and officials of the Port Authority and of this Board in connection with the Project and the financing thereof are hereby ratified and approved.

**Section 12. References.** Any reference herein to the Port Authority, to this Board, or to any member or officer of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions. Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Ohio Revised Code, or to any statute of the United States of America includes that section, provision or chapter as amended, modified, revised, supplemented

or superseded from time to time; provided, that no such amendment, modification, revision, supplement of superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the Port Authority, the Original Purchaser, the Holder or the Residential Lessee under this resolution, the Revenue Refunding Bonds, the Lease, the Bond Assignment Agreement, the Mortgage, the Recognition Agreement, or any other instrument or document entered into in connection with any of the foregoing, including, without limitation, any alteration of the obligation to pay the Bond Service Charges in the amount and manner, at the times and from the sources provided in this resolution, the Lease and the Bond Assignment Agreement, except as permitted herein.

**Section 13. Payment and Discharge.** If the Port Authority shall pay or defease the Revenue Refunding Bonds, or cause the Revenue Refunding Bonds to be paid, defeased and discharged, the covenants, agreements and other obligations of the Port Authority securing the Revenue Refunding Bonds hereunder and in the Revenue Refunding Bonds, the Ground Lease, the Lease, the Mortgage, the Recognition Agreement, the Disbursing Agreement, the Construction Services Agreement and the Bond Assignment Agreement shall be discharged and satisfied.

**Section 14. Severability.** Each section of this resolution and each subdivision or paragraph of any section hereof and each sentence of a paragraph hereof is hereby declared to be independent and the finding or holding of any section or any subdivision, paragraph or sentence hereof to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision, paragraph or sentence of this resolution.

**Section 15. Compliance with Open Meeting Law.** It is found and determined 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 of its committees or subcommittees, or any other public bodies of the Port Authority, that resulted in such formal actions were in meetings open to the public, in compliance with the law.


**Section 16. Counsel.** The Port Authority has retained the law firm of Frost Brown Todd LLP as bond counsel to provide legal services in connection with the transactions contemplated by this resolution.

**Section 17. Effective Date.** This resolution shall be in full force and effect upon its adoption.

A roll call being had upon the question of the passage of the foregoing resolution, the vote thereon resulted as follows:

Ayes: 10

Nays: 0

  
\_\_\_\_\_  
CHAIRPERSON

Attest:   
\_\_\_\_\_  
SECRETARY

**CERTIFICATE**

The undersigned, President of the Port of Greater Cincinnati Development Authority, hereby certifies that the foregoing is a true and complete copy of Resolution No. 2023-06 passed on the 8th day of March, 2023, and has not been amended or rescinded as of this date.

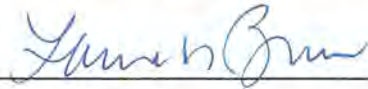
**Port of Greater Cincinnati Development  
Authority**

3-8-23, 2023

*James R. Brown*

**FISCAL OFFICER CERTIFICATE**

The undersigned, fiscal officer of the Port Authority, hereby certifies that the moneys required to meet the obligations of the Port Authority during the year 2023 under the foregoing resolution have been lawfully appropriated by the Port Authority for such purposes and are in the treasury of the Port Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

  
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Dated: 3-8, 2023