

COLERAIN TOWNSHIP, HAMILTON COUNTY, OHIO

RESOLUTION NO. 16-15

**A RESOLUTION PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$4,000,000 TAX INCREMENT REVENUE BONDS, BY COLERAIN TOWNSHIP, HAMILTON COUNTY, OHIO, AND PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS.**

WHEREAS, Sections 5709.73-75 of the Ohio Revised Code (“5709.73”) authorizes the issuance by townships of tax increment revenue bonds to pay the cost of constructing and/or acquiring public infrastructure improvements; and

WHEREAS, this Board of Township Trustees (the “Board”) of Colerain Township, Hamilton County, Ohio (the “Township”) has determined it to be in the best interest of the Township and its constituents to provide assistance for a tax increment project pursuant to 5709.73 consisting of the acquisition of commercial property for the purpose of demolishing existing facilities and constructing a retail grocery store on Springdale Road in the Township (the “Project”); and

WHEREAS, as security of the Bonds, the Township will enter into a Service Agreement, to be dated April 15, 2015 by and between the Township and Kroger Limited Partnership I (“Kroger”) (the “Service Agreement”) providing that Kroger pay service payments in lieu of taxes for certain real property (the “Service Payments”) exempted from taxation pursuant to 5709.73 and Resolution No. 10-15 adopted by the Board on February 24, 2015 (the “TIF Legislation”); and

WHEREAS, this Board has determined to finance public infrastructure improvements for the Project by the sale of tax increment revenue bonds, which bonds are to be secured by this Resolution, the Revenues and the Service Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of Colerain Township, County of Hamilton, Ohio:

SECTION 1. That it is hereby declared necessary to issue bonds of the Board of Trustees of Colerain Township, County of Hamilton, Ohio, in the principal amount of not to exceed \$4,000,000 for the purpose of financing public infrastructure improvements, under authority of the general laws of the State of Ohio and 5709.73, and all necessary costs in connection therewith.

This Board hereby determines that the issuance of the bonds will be for a proper public purpose and in the best interest of the Township.

SECTION 2. Said bonds of Colerain Township shall be issued under the provisions of the Ohio Revised Code, in the principal amount of not to exceed \$4,000,000 for the purpose aforesaid under authority of the general laws of the State of Ohio, particularly 5709.73. Said bonds shall be issued in denominations of \$100,000 or any integral multiple of \$5,000 in excess

of \$100,000, shall be numbered from 1 (or R-1) upward, shall be dated the date of their issuance, which shall not be later than April 30, 2015, shall mature not later than twenty-two (22) years from their date of issue as set forth in the Certificate of Award and Bond Purchase Agreement to be entered into by the Board and Kroger, the original purchaser of the bonds, (the "Bond Purchase Agreement"), shall bear interest at such rates per annum and at a net interest cost not in excess of five percent per annum, as set forth in the Bond Purchase Agreement, payable semiannually on each June 1 and December 1 (each an "Interest Payment Date") of each year, commencing June 1, 2016, or such other dates as are determined by the Township Administrator, until the principal sum is paid, as set forth in the Bond Purchase Agreement, within the limitations set forth in the Ohio Revised Code, and shall be subject to redemption prior to maturity, as set forth in the Bond Purchase Agreement. The final terms of the bonds shall be set forth in the Bond Purchase Agreement in substantially the form attached hereto and made a part hereof, which is hereby authorized to be entered into by the Board and executed by the Township Administrator or the Fiscal Officer without further action of the Board.

SECTION 3. That the bonds shall be executed by the Board of Trustees and attested to by the Fiscal Officer. The bonds shall be designated "Tax Increment Revenue Bonds (Kroger Project)" (the "Bonds"), and shall be payable by the Fiscal Officer and shall express upon their face the purpose for which they are issued and that they are issued pursuant to this Resolution.

The Fiscal Officer shall act, as paying agent, registrar and transfer agent (the "Paying Agent and Registrar") for the Bonds. The principal amount and interest thereon of each Bond shall be payable at the office of the Paying Agent and Registrar or as otherwise provided for in the Bonds and the Bond Purchase Agreement.

SECTION 4. That the Bonds shall be sold at private sale to The Kroger Co. by the Fiscal Officer, at a price of the par value of such bonds together with accrued interest thereon, if any, and the proceeds from such sale, except premium or accrued interest thereon, if any, shall be paid into the proper fund and used for the purpose set forth in Section 8 of this Resolution and for no other purpose. The Bonds shall be payable to The Kroger Co. and the Bonds shall not be transferable, except as provided for in the Bonds. The appropriate officers of the Township are hereby authorized and directed to make, on behalf of the Township, the necessary arrangements to establish the date, location, procedure and conditions for the delivery of the Bonds to Kroger, and to take all steps necessary to effect due execution and delivery to Kroger of the Bonds.

SECTION 5. That the Bonds shall be special obligations of the Township and only revenue of the Township received from service payments in lieu of taxes from the benefitted property and lawfully available for such purpose pursuant to 5709.73, the TIF Legislation, and the Service Agreement including, but not limited to the Service Payments (the "Revenues") are pledged for the payment of the same. The Bonds are secured by and payable solely from the Revenues and the covenants in the Service Agreement.

In order to better secure the payment of the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable, the Administrator, the Trustees and the Fiscal Officer are each authorized and directed to take any and all actions and to execute such documents, financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Peck, Shaffer & Williams a Division of Dinsmore &

Shohl LLP, as Bond Counsel, in order to perfect the pledge of and to secure the Revenues for the benefit of the bondholders and to effect the issuance of the Bonds and the intent of this Resolution.

The Bonds are not general obligations of the Township; bondholders shall have no right to have any taxes levied or collected for the repayment of the Bonds.

The Bonds shall contain on their faces a statement to the effect, that if the exemption from taxation to be applied for pursuant to the Service Agreements is not made or granted, or if service payments never commence or are terminated for any reason, the Issuer shall have no obligation to repay the Bonds, and the holder shall surrender to Bonds to the Issuer for cancellation.

Anything in this legislation or the Bonds notwithstanding, neither this legislation nor the Bonds constitute a debt, or a pledge of the faith or credit, or taxing power of the Board or the Township, the State or any political subdivision thereof, and the holders or owners of the Bonds shall have no right to have taxes levied by the Board, the General Assembly of the State, or the taxing authority of any political subdivision of the State for the payment of the principal of and interest on the Bonds, and the Bonds shall contain on their faces a statement to that effect. Nothing herein shall be deemed to prohibit the Board from lawfully using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this legislation or the Bonds.

SECTION 6. The final terms of the Bonds, which shall not be inconsistent with this Resolution, shall be set forth in the Bond Purchase Agreement herein authorized in Section 2. The execution of such Bond Purchase Agreement by such authorized official shall evidence acceptance of the final terms of the Bonds and that such terms are consistent with this Resolution.

SECTION 7. The proceeds from the sale of the Bonds authorized by this Resolution become and they are hereby set aside and appropriated for the payments, described in Section 8 of this Resolution.

SECTION 8. The proceeds of the sale of the Bonds, plus other lawfully available funds of the Township, shall be used to pay a portion of the cost of the Project and all costs and items of expense incurred by the Township in connection with the issuance of the Bonds, including without limitation costs of bond counsel and other legal, accounting and management services and services of other consultants and professional and related charges, fees and disbursements; costs of issuance; printing and reproduction costs; filing and recording fees; and costs of preparation, execution, transportation and safekeeping of the Bonds (the "Cost of Issuance"). The Board shall transfer to the Bond Retirement Account any moneys remaining from the proceeds of the Bonds upon determination by the Fiscal Officer that the Project costs and the Costs of Issuance have been paid.

Any accrued interest on the Bonds shall be transferred to the Bond Retirement Account and shall be applied only to the payment of the interest and principal of the Bonds and for no other purpose.

SECTION 9. That sums which are expended from the above appropriations and which are proper charges against and are repaid by any other department, any firm, person or corporation, shall be considered appropriated for such original purpose; provided that the total appropriation as increased by any such repayment shall not be exceeded.

SECTION 10. Interest on the Bonds hereby authorized shall be subject to federal income taxation under the Internal Revenue Code of 1986, as amended, unless the Bonds are accompanied by an opinion of nationally recognized bond counsel to the effect that such interest is exempt from federal income tax.

SECTION 11. The entire income and revenue resulting from the Revenues shall be set aside and deposited by the Township in a special and separate fund designated as the "Kroger TIF Site Public Improvement Tax Increment Equivalent Fund" created by Resolution 10-15 (hereinafter designated the "Revenue Fund"). The Revenue Fund shall be held and administered by the Board pursuant to Section 5709.75, Resolution No. 10-15 and this Resolution. From and after the date of issuance of the Bonds, the Revenues received in each property tax collection year shall first be used to pay Annual Debt Service, as defined below, on the Bonds and then shall be used for the legal purposes of the Revenues as set forth in the Service Agreement.

Annual Debt Service shall be the annual principal, including redemption payments, and interest payments on the Bonds and shall be calculated and paid as follows:

- (a) First: any interest accrued as of the last semi-annual interest payment date that remains unpaid as of the next semi-annual interest payment date shall be paid.
- (b) Second: interest shall be paid semi-annually on the amount of Bonds outstanding on the interest payment date calculated at the applicable interest rate or rates set forth in the Bond Purchase Agreement based on a 360 day year.
- (c) Third: principal shall be paid annually and shall be paid in the amount equal to the annual Revenues received by the Township less the interest paid from said Revenues.

SECTION 12. The Board hereby covenants and agrees with the holders of the Bonds from time to time, so long as any Bonds are outstanding, as follows:

- (a) The Board 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 purpose of the Bonds and this Resolution.
- (b) All of the obligations set forth and covenants made under this Resolution are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Board within the meaning of Section 2731.01 of the Ohio Revised Code.

- (c) The Board will observe and will satisfactorily and punctually perform all its agreements and obligations provided for by the Bonds and this Resolution.

SECTION 13. So long as any of the Bonds are outstanding, the Board shall not have the right to issue, on parity with or subordinate to the Bonds, any additional notes, bonds or other obligations payable from the sources enumerated in Section 5 above. Nothing herein shall limit the Board's unrestricted right to issue notes, bonds or other obligations payable from taxes or other revenues of the Township, other than the sources enumerated in Section 5 above.

SECTION 14. All appropriate officers of the Township are further authorized to make, execute, acknowledge and deliver such closing certificates, financing statements and other instruments, documents or agreements as are, in the opinion of bond counsel, necessary or appropriate, in order to effect the issuance of the Bonds and to carry out the purposes of this Resolution. The Fiscal Officer, or other appropriate officer of the Township, shall certify a true transcript of all proceedings with respect to the issuance of the Bonds, along with such information from the records of the Township as is necessary to determine the regularity and validity of the issuance of the Bonds.

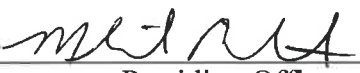
SECTION 15. Should it be judicially determined by a court having jurisdiction to pass upon the validity of this Resolution or the Bonds, that any provision of this Resolution is beyond the powers of Board or the Township, or is otherwise invalid, then such decision shall in no way affect the validity of this Resolution or the Bonds, or any proceedings related thereto, except as to the particular matters found by such decision to be invalid.

SECTION 16. That the firm of Peck, Shaffer & Williams a Division of Dinsmore & Shohl LLP ("PSW") or their successor is hereby engaged as the Board's "bond counsel" and that the Administrator is hereby authorized and directed to execute and deliver the engagement letter of PSW in the form on file with the Board.

SECTION 17. That it is found and determined that all formal actions of this Board concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Board, and that all deliberations of this Board and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

SECTION 18. That this Resolution shall be effective immediately upon its adoption.

ADOPTED: April 14, 2015.

  
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Presiding Officer





Attest:

  
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Fiscal Officer

**CERTIFICATE OF MEMBERSHIP**

**COLERAIN TOWNSHIP, HAMILTON COUNTY, OHIO**

The undersigned hereby certifies that the following were the officers and members of Board during the period proceedings were taken authorizing the issuance of not to exceed \$4,000,000 Tax Increment Revenue Bonds (Kroger Project), dated their date of issuance:

Trustee	
Trustee	
Trustee	
Fiscal Officer	
Administrator	James Rowan
Law Director	Lawrence E. Barbieri

  
Fiscal Officer

TRANSCRIPT CERTIFICATE

The undersigned, Fiscal Officer of said Township, hereby certifies that the following is a true and complete transcript of all proceedings relating to the authorization and issuance of the above identified bonds.

  
Fiscal Officer