

RESOLUTION NO. 2012 - 95

A RESOLUTION APPROVING AN AGREEMENT RELATING TO TAX INCREMENT FINANCING MATTERS, DISPENSING WITH THE SECOND READING AND DECLARING AN EMERGENCY

WHEREAS, the Board of Township Trustees is a party to a certain Tax Increment Service and Cooperative Agreement (the "Cooperative Agreement") dated as of January 1, 2008 between and among the Port of Greater Cincinnati Development Authority (the "Port Authority"), Sycamore Township, Ohio (the "Township"), Bear Creek Capital, LLC ("BCC") and Kenwood Towne Place, LLC ("KTP"); and

WHEREAS, certain defaults have occurred on the part of BCC and KTP with regard to their obligations under the Cooperative Agreement and on other obligations they incurred in relation to the real property that is subject to the Kenwood Towne Place TIF and the public improvements owned by the Port Authority and financed with such TIF; and

WHEREAS, as a result of a foreclosure on the KTP real property that is subject to the Sycamore Township Kenwood Towne Place tax increment financing project, such real property that is the subject of that TIF project is presently owned by Spyder Station LLC ("Spyder"), a Delaware limited liability company and an affiliate of Phillips Edison & Company Ltd.; and

WHEREAS, the Board of Township Trustees of Sycamore Township wishes to enter into an agreement with the Port Authority, the Port Authority's bond trustee, and Spyder in order to expedite the completion of the public and private improvements that are the subject of the Kenwood Towne Place Tax Increment Financing Project in Sycamore Township;

NOW THEREFORE, BE IT RESOLVED, by the Board of Township Trustees of Sycamore Township, State of Ohio:

SECTION 1. The Board of Township Trustees hereby approves an agreement (the "Agreement") with the Port of Greater Cincinnati Development Authority, that Port Authority's bond trustee, and Spyder Station LLC to expedite the completion of the public and private improvements that are the subject of the Kenwood Towne Place Tax Increment Financing Project, in substantially the same form as the Agreement Relating to Tax Increment Financing Matters set forth on the attached Exhibit A. The President or Vice President of the Board and the Township Administrator are hereby authorized and directed to execute the Agreement on behalf of Sycamore Township, subject to the approval of the Township Law Director, and are further authorized to execute any additional documents necessary or desirable in connection with the Agreement, the Cooperative Agreement referred to in the Recitals to this Resolution, the Transaction Documents referred to in the Cooperative Agreement, or otherwise in connection with the completion of those public and private improvements, the operation of

the public improvements, any restructuring of the revenue bonds issued by the Port Authority to finance costs of the public improvements, or the succession of Spyder or its affiliates to developer or owner obligations with respect to the Kenwood Towne Place Tax Increment Financing Project, all after the approval of the Law Director.

SECTION 2.

The Trustees of Sycamore Township upon at least a majority vote do hereby dispense with the requirement that this resolution be read on two separate days, and hereby authorize the adoption of this resolution upon its first reading.

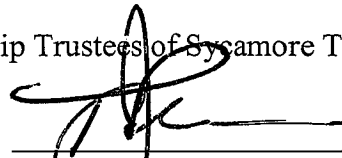
SECTION 3.

Upon the unanimous vote of the Sycamore Township Trustees, this Resolution is hereby declared to be an emergency measure necessary for immediate preservation of the public peace, health, safety and welfare of Sycamore Township. The reason for the emergency is to provide for a timely execution of the agreement in order to expedite the completion of the improvements.

VOTE RECORD:

Mr. Bishop *AYE* Mr. Connor *AYE* Mr. Weidman *AYE*

Passed at a meeting of the Board of Township Trustees of Sycamore Township this 16th day of October, 2012.



Thomas J. Weidman, President



Cliff W. Bishop, Vice President



Dennis W. Connor, Trustee

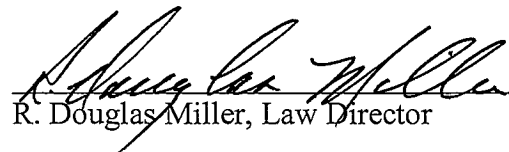
AUTHENTICATION

This is to certify that this resolution was duly passed and filed with the Township Fiscal Officer of Sycamore Township this 16th day of October, 2012.



Robert C. Porter III, Fiscal Officer
Sycamore Township, Ohio

APPROVED AS TO FORM:



R. Douglas Miller, Law Director

Agreement Relating to Tax Increment Financing Matters

This Agreement Relating to Tax Increment Financing Matters ("**Agreement**") is entered into as of the ___ day of October, 2012 by and among the Port of Greater Cincinnati Development Authority ("**Port Authority**"), a port authority and body corporate and politic organized and existing under the laws of the State of Ohio ("**State**"), Sycamore Township, Ohio ("**Township**"), a township and political subdivision organized and existing under the laws of the State, Spyder Station LLC, a Delaware limited liability company qualified to transact business in the State ("**Spyder Station**"), as the successor owner (as such, herein "**Owner**") of the Development and Development Site (those terms and any other terms used as defined terms and not otherwise defined herein being used as defined in the Master Definitions List appended to the Cooperative Agreement, Indenture and Ground Lease, each referred to below), the assignee of and successor to each of the Letter of Credit Banks (as such, herein "**Assignee**") and as the owner of all of the Bonds (as such, herein "**Bondholder**"), and U.S. Bank National Association, a national banking association authorized to exercise corporate trust powers in the State, as Trustee under the Indenture ("**Trustee**"), under the following circumstances:

A. Pursuant to a Tax Increment Service and Cooperative Agreement dated as of January 1, 2008 among the Port Authority, the Township and the Developer Parties ("**Cooperative Agreement**"), among other things: (i) the Port Authority, in cooperation with the Township, agreed to provide for the acquisition, financing, construction, management, maintenance and operation of the Project, (ii) the Developer Parties agreed to acquire and construct the Developer Private Improvements, including the Development to be constructed on the Development Site, by the Development Completion Deadline (originally June 30, 2010) in accordance with the Development Plans and Specifications, (iii) KTP agreed to timely pay, or that the Owners would timely pay, the Service Payments, the Supplemental Payments and any other amounts payable thereunder (collectively, "**Owner Payments**"), and (iv) the Township assigned the Assigned Service Payments and Supplemental Payments to the Port Authority as Township Contributions, with such Township Contributions to be further assigned, except for Unassigned Authority Rights, as part of the Pledged Revenues assigned by the Port Authority to, and to be paid on behalf of the Port Authority to, the Trustee for application in accordance with the Indenture, including to the payment of the Bond Service Charges, the Administrative Expenses and any Reimbursement Obligations; and

B. On the Closing Date, under a Trust Indenture dated as of January 1, 2008 between the Port Authority and the Trustee ("**Indenture**"), the Port Authority issued its: (i) Special Obligation Development Revenue Bonds (Variable Rate Demand, Series 2008A) (Sycamore Township Kenwood Central Public Parking Project) dated the Closing Date ("**Series 2008A Bonds**") and currently outstanding in an aggregate principal amount of \$13,630,000, and (ii) Taxable Special Obligation Development Revenue Bonds (Variable Rate Demand, Series 2008B) (Sycamore Township Kenwood Central Public Parking Project) dated the Closing Date ("**Series 2008B Bonds**") and currently outstanding in their original aggregate principal amount of \$6,115,000; and

C. In accordance with the Indenture, the Series 2008A Bonds and Series 2008B Bonds were initially issued bearing interest at the Weekly Rate and Taxable Weekly Rate respectively, and payments with respect to Bond Service Charges and the Purchase Price of any

Bonds tendered were secured by the Series 2008A Letter of Credit and Series 2008B Letter of Credit respectively, each delivered to the Trustee by LaSalle Bank National Association (together with Bank of America, N.A., as its successor, "**LOC Bank**") pursuant to the Series 2008A Reimbursement Agreement and the Series 2008B Reimbursement Agreement respectively, both between KTP and the LOC Bank; and

D. The Port Authority leased the Project Site from KTP, as the then-current "Owner" of the Site pursuant to a Ground Lease (with Declaration of Obligations, Easements, Restrictions and Covenants) dated the Closing Date between KTP and the Port Authority ("**Ground Lease**") and, pursuant to the Transaction Documents, agreed to utilize proceeds of the Bonds together with the Developer Cost Deposit, all paid or provided for at or prior to the Closing Date and deposited into or credited to applicable Accounts and Subaccounts of the Project Fund, to finance Costs of the acquisition and construction of the Project Facilities; and

E. On or prior to the Closing Date: (i) KTP agreed to construct, complete and deliver the Project Facilities, in accordance with the Project Plans and Specifications, to the Port Authority by the Project Completion Deadline (originally June 30, 2009) under an Amended and Restated Construction Agency Agreement dated as of January 1, 2008, amending and restating the Original Construction Agency Agreement referred to therein (collectively, "**KTP Construction Agreement**"), (ii) BCC agreed, pursuant to a Public Improvement Management and Maintenance Agreement dated as of January 1, 2008 ("**BCC Management Agreement**"), to operate, maintain, repair and provide for the expenses, including Routine Maintenance, Capital Repairs and other expenses, of the Project Facilities after completion and delivery to the Port Authority, and (iii) pursuant to a Guaranty of Completion dated as of January 1, 2008 ("**Completion Guaranty**"), the Developer Parties jointly and severally guaranteed to the Port Authority, the Township and the Trustee, among other things, the following: (A) performance by KTP, as Construction Agent, under and in accordance with the Cooperative Agreement and the KTP Construction Agreement with respect to the completion of the Project Facilities, and (B) completion of the Developer Private Improvements, at a guaranteed minimum cost, by the Development Completion Deadline in accordance with the Development Plans and Specifications; and

F. The LOC Bank did not extend either the Series 2008A Letter of Credit or the Series 2008B Letter of Credit beyond its initial stated expiration date of February 15, 2011 and, as a result, on February 1, 2011, all of the Bonds were tendered for purchase pursuant to the mandatory tender provisions of the Bonds and Section 4.06 of the Indenture, were purchased with proceeds of tender draws on the respective Letter of Credit, and the LOC Bank became sole owner of all of the Bonds as Pledged Bonds under the Indenture; and

G. Pursuant to litigation styled *Bank of America, N.A. v. Kenwood Towne Place, LLC et al.* (Hamilton County Court of Common Pleas Case No. A090579 - consolidated with Case Nos. A0902785, A0903274, A0903471, A0904339, A0904910, A0904645, and A0905709) (collectively, "**Litigation**"), and subject to the Subordination and Release and to the Ground Lease, including without limitation the covenants running with the land contained or referred to in, and the liens granted under, Section 9(c) of the Ground Lease ("**TIF Lien Covenants**"), as a result of failures and defaults by the Developer Parties under the Construction Financing Agreement and Construction Mortgage, the Construction Lender has foreclosed the Construction Mortgage relating to the Development and KTP's interest in the Site (excluding the Project Facilities and the

Port Authority's leasehold interest in the Project Site Leased Premises, the "**Mortgaged Premises**"), all as further described in the Court's November 4, 2011 "*Entry Granting Summary Judgment in Favor of Plaintiff Bank of America, N.A. f/k/a/ LaSalle Bank National Association and Decree of Foreclosure*" and other related orders subsequently entered by the Court (collectively, "**Foreclosure Order**") and, at the foreclosure sale auction, the Construction Lender credit bid for and purchased the Mortgaged Premises; and

H. Pursuant to the Foreclosure Order and agreements between and among Phillips Edison & Company Ltd., an Ohio limited liability company ("**Phillips Edison**"), Spyder Station and the Construction Lender, the Construction Lender sold and assigned its rights in and to its winning credit bid for the Mortgaged Premises to Spyder Station and paid the requisite amount to the Court from the proceeds of that sale, and thereafter the Sheriff of Hamilton County delivered a Sheriff's Deed to the Mortgaged Premises ("**Deed**") to Spyder Station, which Deed was recorded on September 26, 2012 in the Official Records of the Hamilton County Recorder at Book 12126, Page 2105, whereupon Spyder Station became the Owner under the Cooperative Agreement and the Ground Lessor under the Ground Lease and succeeded to all of the TIF Lien Covenants including, without limitation: (i) those covenants, agreements and obligations (of KTP originally) under the sections of the Cooperative Agreement identified in Section 9(c)(i) of the Ground Lease, and (ii) the obligation to timely pay all of the Owner Payments; and

I. In connection with entering into the agreements relating to the transfer of the Mortgaged Premises to Spyder Station, pursuant to agreements between and among Phillips Edison, Spyder Station and the LOC Bank including an Assignment and Assumption dated as of September 28, 2012 ("**LOC Bank Assignment**"), Spyder Station agreed to purchase, and has purchased, from the LOC Bank and the LOC Bank has assigned to Spyder Station, all right, title and interest of the LOC Bank in and to the Series 2008A Reimbursement Agreement, the Series 2008B Reimbursement Agreement and the remaining security for the obligations of KTP under those agreements including, without limitation all right, title and interest of the LOC Bank in and to the Bonds and, with the consent of the Port Authority, as evidenced by a letter and acknowledgment between the LOC Bank and the Port Authority included as Exhibit A hereto ("**LOC Bank Assignment Consent**"), in and to certain collateral assignments made to the LOC Bank by the Developer Parties (including collateral assignments relating to their interests in and rights under the Cooperative Agreement, the Management Agreement, the KTP Construction Agreement and other "**TIF Financing Documents**", as defined in the Construction Financing Agreement), whereupon Spyder Station became the sole owner of all of the Bonds, as Pledged Bonds, under the Indenture and assignee of, among other things, the LOC Bank's rights under the Reimbursement Agreements and the Indenture, and the Developer Parties' right, title and interest in and to the Project Plans and Specifications and under the Management Agreement and the KTP Construction Agreement; and

J. Spyder Station, as Owner and Assignee, and Phillips Edison have represented to the Port Authority, the Township and the Trustee that they are willing to complete the construction of the Project Facilities in accordance with the Project Plans and Specifications at their own cost except to the extent that any amounts may be made available for that purpose from the Project Fund pursuant to the Litigation, including pursuant to the Port Authority's setoff claim filed therein, and that such construction is reasonably expected to be completed not later than December 31, 2013 or, if later, fourteen months after execution of an agreement with the Port Authority for

that work, and they have requested an extension of the Project Completion Deadline under the Cooperative Agreement to that extent; and

K. Spyder Station, as Owner, and Phillips Edison have represented to the Port Authority, the Township and the Trustee that they are willing to complete the construction of the Developer Private Improvements in accordance with the Development Plans and Specifications, as revised consistent with the requirements of the Cooperative Agreement, all at their own cost and with an anticipated additional construction investment of not less than \$50,000,000, and that such construction is reasonably expected to be completed not later than December 31, 2014, and they have requested an extension of the Development Completion Deadline under the Cooperative Agreement to that extent; and

L. Spyder Station, as Bondholder and Assignee, has approved all matters herein relating to the rights, duties and responsibilities of the Trustee, the Holders and the Letter of Credit Banks and, to the extent relating to or affecting any rights of the Holders or of the Letter of Credit Banks, has authorized and directed the Trustee to agree to all such matters, to enter into this Agreement and to take the actions required of the Trustee pursuant to this Agreement and to the Transaction Documents as modified consistent herewith; and

M. Prior to the date hereof, all payment defaults under the Indenture have been cured as a result of the distributions made to and by the Trustee as a result of the Foreclosure Order, and the parties hereto have determined (with the Trustee acting with the consent and at the direction of the Bondholder and Assignee given below) to: (i) amend the Project Completion Deadline and the Development Completion Deadline, each to the extent described above, and to document certain additional understandings relating to the Project Facilities and the Developer Private Improvements, (ii) waive the remaining uncured Defaults and Events of Default under the Indenture, the Cooperative Agreement and the Ground Lease, but without waiving any related Defaults or Events of Default under the other existing Transaction Documents except to the extent, if any, described herein, (iii) terminate the collateral assignments by the Developer Parties to the Assignee of the right, title and interest of the Developer Parties under or with respect to the BCC Management Agreement and the KTP Construction Agreement, and (iv) address such other matters as are described herein;

NOW THEREFORE, FOR AND IN CONSIDERATION of the premises and the mutual covenants, agreements, consents, waivers and acknowledgments hereinafter contained, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, each of the parties agrees as follows:

Section 1. Recitals Incorporated Herein. The Recitals hereto, including all definitions of terms included or referred to therein, are incorporated herein by reference, and such Recitals are and shall constitute a statement of the purposes of this Agreement, the intentions of the parties, and the agreed factual basis for the covenants, agreements, consents, waivers and acknowledgments of the parties herein, and for the amendments, arrangements and other actions by the parties contemplated herein. To the extent that any such information is within the knowledge or understandings of any of the parties hereto, each such party represents to the others that the Recitals accurately state the knowledge and understandings of such party.

Section 2. Amendment of Ground Lease, Cooperative Agreement and Indenture to Extend Project and Development Completion Deadlines. The definitions of “Project Completion Deadline” and “Development Completion Deadline”, as set forth in the Master Definitions List included as Appendix I to each of the Cooperative Agreement, the Indenture and the Ground Lease, are hereby amended, in each such document, as follows:

(a) The text of the definition for “Development Completion Deadline” is hereby deleted and replaced, in whole, with the following text:

“Development Completion Deadline” means December 31, 2014.

(b) The text of the definition for “Project Completion Deadline” is hereby deleted and replaced, in whole, with the following text:

“Project Completion Deadline” means December 31, 2013 or, if later, fourteen months after execution of an agreement between the Port Authority and Spyder Station LLC, a Delaware limited liability company, or Phillips Edison & Company Ltd., an Ohio limited liability company, for the completion of the construction of the Project Facilities, but not later than March 31, 2014.”

Nothing herein is intended to or shall amend the definitions of Development Completion Deadline or Project Completion Deadline for any purpose or in any Transaction Document except as expressly stated herein, whether such definitions or the Master Definitions List are included in any other such Transaction Document or cross-referenced therein.

Section 2. Other Agreements as to Developer Private Improvements. Each of the parties hereto acknowledges and agrees that, upon delivery and recording of the Deed, Spyder Station, as Owner, succeeded to all of the TIF Lien Covenants included in Section 9(c) of the Ground Lease, including those incorporated by reference therein, and that such TIF Lien Covenants include, without limitation: (i) the obligation to timely pay all Owner Payments, (ii) the obligation to complete the Developer Private Improvements by the Development Completion Deadline consistent with Section 4.1 of the Cooperative Agreement, and (iii) obligations with respect to insurance, impositions, indemnification, operation, maintenance, repair, replacement, reserve funding, and other matters identified in the Cooperative Agreement and Ground Lease; provided, however, that the parties hereto acknowledge and agree that the reference, in Section 9(c)(i) of the Ground Lease, to Section 2.4(g) of the Cooperative Agreement was and is intended to be a reference to Section 2.4(h) of the Cooperative Agreement, and the Owner agrees that it is, and that any and all successors thereto as Owner will be, bound by that Section 2.4(h) as if the reference in the Ground Lease were to that subsection. Notwithstanding the foregoing, and notwithstanding anything to the contrary in Section 3.2(j), 4.1 or 4.2 of the Cooperative Agreement, if and so long as Spyder Station shall remain the owner of the Development and the owner of all of the Bonds and all Owner Payments shall be paid when due, the Owner shall not be required to provide a letter of credit to secure payments of Bond Service Charges with respect to the Bonds or to fund any reserve fund to secure such payments, and during such period and subject to such conditions, such requirements are hereby waived by the Bondholder, the Trustee and the Port Authority. Each of the parties hereto agrees that, as Owner, Spyder Station shall have such rights to alter, revise or change the Development Plans and Specifications as were available to KTP under Section 4.1(a) of the

Cooperative Agreement and Spyder Station agrees that it will comply with all obligations under the Cooperative Agreement with respect to the Development, the Developer Private Improvements and the Development Plans and Specifications; provided, however, that the minimum additional investment to be made by the Owner in the completion of the construction of the Developer Private Improvements shall be \$50,000,000 unless the Port Authority and the Township have approved the Development Plans and Specifications and agreed to waive such minimum investment requirement; and provided, further, that any minimum investment requirement in the Cooperative Agreement shall, to the extent inconsistent with the requirements of the foregoing proviso in this sentence, be deemed amended and replaced by the requirements of that proviso.

Section 3. Other Agreements as to Project Facilities; Notice of Default and Termination of Developer Party and Assignee Rights. The Port Authority and Spyder Station agree to use their best efforts to negotiate the terms of and enter into agreements with respect to the construction and completion, and the operation and management, of the Project Facilities as soon as practicable after execution of this Agreement and consistent with the terms and conditions of the Cooperative Agreement, but with such changes in the forms of the agreements with respect thereto as they shall, in their sole discretion, agree (collectively, “**New Project Agreements**”). The parties hereto agree that the New Project Agreements shall, without the need for any further actions on the part of any of them, be: (i) deemed the Construction Agency Agreement (with Spyder Station or Phillips Edison, as counterparty under the applicable agreement, deemed the Construction Agent) and the Management Contract (with Spyder Station or Phillips Edison, as counterparty under the applicable agreement, deemed the Manager) for all purposes of the Cooperative Agreement, the Indenture and the Ground Lease, and (ii) become part of the “Assigned Documents” under and as defined in the Collateral Assignment; provided, however, that it is understood and agreed that the terms “Construction Agency Agreement” and “Construction Agent”, as used herein and in the Transaction Documents, are defined terms for a specific document and role, that any such document was not and is not intended to create, and such terms were not and are not intended to describe, a principal-agent relationship, that any relationship with the Port Authority created under the New Project Agreements will be an independent contractor relationship, with the contractor having sole control over the means, methods, procedures and sequences for the implementation of the work required under the New Project Agreements, and that no Construction Agent has the authority or will be authorized to act, or to hold itself out to others, as an agent of the Port Authority in connection with any such work. The Port Authority and Trustee agree to take such steps as are necessary to include the New Project Agreements within any financing statements filed under the Uniform Commercial Code.

So long as the New Project Agreements do not impose any new duties on the Trustee or the Township, as applicable, to the extent if any required under the Transaction Documents, the Township and the Trustee hereby approve the Port Authority contracting with Spyder Station or Phillips Edison for the construction and completion of the Project Facilities, the appointment of Spyder Station or Phillips Edison as Manager, and the execution and delivery of the New Project Agreements, and further agree that, subject to resolution of the Litigation or approval by the Court in the Litigation, the Port Authority and the Trustee may and, upon request of the Port Authority and an Authorized Representative of Spyder Station, as Construction Agent, given in accordance with Section 5.02(d) of the Indenture, the Trustee shall disburse any available amounts in the Project Fund to pay or reimburse Costs of the construction and completion of the Project Facilities.

If required by the form of the construction and completion agreement relating to the Project Facilities, the Trustee will join in such agreement to provide for such disbursement.

The parties further acknowledge and agree that, upon execution and delivery of this Agreement, the KTP Construction Agreement, the BCC Management Agreement and the Completion Guaranty ("**Prior Project Agreements**") shall no longer be considered the Construction Agency Agreement, the Management Agreement or the Completion Guaranty, as applicable, or part of the Transaction Documents for purposes of the Ground Lease, the Cooperative Agreement or the Indenture and any defaults or events of default hereafter occurring under the Prior Project Agreements shall not be and shall not be considered, with or without notice, the lapse of time or both, a Default or Event of Default under the Ground Lease, the Cooperative Agreement or the Indenture; provided, that nothing herein shall constitute a waiver of any failure or default, whether of commission or omission, under or with respect to any obligation of the Developer Parties under, or any Event of Default under, any of the Prior Project Agreements, or a waiver of any remedies available to any party now or hereafter under any of the Prior Project Agreements.

The parties acknowledge that the Port Authority has duly given notice of certain Defaults and Events of Default by the Developer Parties under the Prior Project Agreements pursuant to the *Notice of Events of Default and Intent to Exercise Remedies* attached hereto as Exhibit B ("**Notice of Default**") and, to the extent applicable, each of the other parties hereto agrees that it will, upon request of the Port Authority, cooperate with the Port Authority in the exercise of remedies by the Port Authority under the Prior Project Agreements and that it will not exercise any available remedies with respect thereto unless requested by the Port Authority. The Owner acknowledges that it is obligated to pay or reimburse all costs related to the exercise of such remedies, including through its obligation to pay Supplemental Payments and, if and so long as Spyder Station shall remain the Owner and all Owner Payments shall be paid when due, the Port Authority agrees to consult with the Owner before exercising remedies other than termination of the KTP Construction Agreement or BCC Management Agreement pursuant to the Prior Project Agreements.

The Assignee and the Port Authority further agree as follows: (i) that the Assignment of Garage Management Agreement made and delivered effective as of the Closing Date from the Developer Parties to and for the benefit of the Letter of Credit Bank is hereby terminated and is and shall be of no further force and effect; and (ii) that the Assignment of TIF Financing Documents made and delivered effective as of the Closing Date from the Developer Parties to and for the benefit of the Letter of Credit Bank is hereby terminated and is and shall be of no further force and effect.

Notwithstanding anything herein or in the Transaction Documents, until the execution and delivery of the New Project Agreements, the Port Authority hereby authorizes the Owner to enter into and manage the Project Facilities consistent with the requirements of the Cooperative Agreement and the standards contained in the BCC Management Agreement, and to take such steps with respect to the operation, maintenance, and repair of the Project Facilities as it would take if it were operating the Project Facilities pursuant to the BCC Management Agreement; provided, that it is understood and agreed by all of the parties hereto that any actions taken by the Owner with respect to the operation, maintenance and repair of the Project Facilities (prior to execution and delivery of the New Project Agreements) are taken pursuant to the temporary

license granted in this paragraph and not pursuant to the BCC Management Agreement and any rights it may have or have had thereunder.

Section 4. Economic Inclusion. Spyder Station and Phillips Edison (by its Unconditional Limited Guaranty included herein) each acknowledges that it is familiar with the policy of the Port Authority pertaining to the inclusion of minority-owned, women-owned and small business enterprises (“**Inclusion Policy**”), a copy of which is attached hereto as Exhibit C, and that it is familiar with the goals and procedures implemented by the Port Authority to promote the Inclusion Policy and of the commitment of the Port Authority to the Inclusion Policy. Spyder Station and Phillips Edison agree that: (i) they will each provide a copy of the Inclusion Policy to each contractor and subcontractor with which they contract (in any capacity) with respect to the construction and completion of the Project Facilities or the Developer Private Improvements; (ii) that they will each consult and cooperate with the Port Authority and its Director of Inclusion and Community Relations, including providing contact information for an appropriate person to the Port Authority for the Director of Inclusion and Community Relations to directly follow-up with regarding those economic inclusion efforts and otherwise exercise their reasonable best efforts; (iii) they will require each contractor and subcontractor with respect to the construction and completion of the Project Facilities or the Developer Private Improvements to consult and cooperate with the Port Authority and its Director of Inclusion and Community Relations, including providing contact information for an appropriate person to the Port Authority for the Director of Inclusion and Community Relations to directly follow-up with regarding the contractors’ and subcontractors’ economic inclusion efforts and otherwise use their reasonable best efforts, to comply with the Port Authority’s procedures and promote the policy goals of the Inclusion Policy in connection with the construction and completion of the Project Facilities and the Developer Private Improvements; and (iv) monthly during the construction and completion of the Project Facilities and the Developer Private Improvements, and at such other times as the Port Authority reasonably requests, they will provide the Port Authority with evidence, reasonably satisfactory to the Port Authority, with respect to their efforts, and the efforts of their contractors and subcontractors pursuant to this Section 4, including such data, reports and analyses as the Port Authority shall reasonably request.

Section 5. Payment Defaults Cured; Waiver of Defaults and Events of Default under Indenture, Cooperative Agreement and Ground Lease; No other Waivers or Implied Waivers. The parties hereto acknowledge and agree that, as of the date of execution of this Agreement, each and every payment due and payable under the Indenture with respect to Bond Service Charges has been paid and the Events of Default with respect thereto have been cured and each such Event of Default is hereby waived by the Trustee, with the consent of the Bondholder, consistent with Section 7.09 of the Indenture. Each of the parties hereto represents to the others that, to the best of its knowledge, there are no other payments, whether with respect to Purchase Price, Administrative Expenses or Reimbursement Obligations, currently due, payable and unpaid under the Indenture; provided, that nothing herein is intended to or shall prevent the parties hereto from submitting for payment or reimbursement any Administrative Expenses heretofore incurred and not previously submitted for payment or reimbursement; and provided further that no representations are made with respect to payments of Costs of Project Facilities due and payable from any of the amounts on deposit in the Project Fund.

Each of the parties hereto also acknowledges and agrees that other Defaults and Events of Default have occurred and are continuing under the Transaction Documents including, without limitation, the following: (i) those Defaults and Events of Default identified in the Notice of Default included as Exhibit B hereto, (ii) other Defaults or Events of Default by KTP, as the initial Ground Lessor, under the Ground Lease, (iii) other Defaults or Events of Default under the Cooperative Agreement by, or resulting from actions or omissions of, one or more of the Developer Parties, including without limitation the failure by KTP to provide insurance or evidence thereof, and to pay taxes and other impositions, including Service Payments and Supplemental Payments, and the appointment by the Court of a receiver for the Mortgaged Premises (if the Mortgaged Premises constituted all or substantially all of the assets of KTP), and (iv) Events of Default under Section 7.01(e) and Section 7.01(f) of the Indenture resulting from other Events of Default referred to herein and in the Notice of Default (collectively, “**Existing Defaults**”).

Each of the parties to this Agreement, to the extent if any that it is a party (including by assignment, collateral or otherwise) to the Cooperative Agreement, the Ground Lease or the Indenture, or otherwise has (i) the right to exercise remedies under the Cooperative Agreement, the Ground Lease or the Indenture, or the right to consent or withhold consent to or to direct the exercise of any such remedies, (ii) the right to give, or direct the giving or withholding of, notice of Defaults or Events of Default under the Cooperative Agreement, the Ground Lease or the Indenture, or (iii) the right to waive, to direct the waiver of, or to consent or withhold consent to the waiver of, Defaults or Events of Default under the Cooperative Agreement, the Ground Lease or the Indenture, effective from and after the date hereof, hereby: (x) waives, consents to the waiver of, or directs the waiver or consent to the waiver of, the Existing Defaults under the Cooperative Agreement, the Ground Lease and the Indenture (collectively, “**Bond Document Defaults**”), and (y) agrees not to give notice of, or to exercise or enforce its rights and remedies with respect to, the Bond Document Defaults under the Cooperative Agreement, the Indenture and the Ground Lease, or, as applicable, consents to (or directs) the withholding of each such notice and directs (or consents) that such rights and remedies not be exercised or enforced.

To the extent that the Trustee or any other party has posted notices of default with respect to any Bond Document Default to any public information repository, including to the Municipal Securities Rulemaking Board (“MSRB”) established by the Securities and Exchange Commission through the Electronic Municipal Market Access system of the MSRB, such party shall, within fifteen (15) days after execution and delivery of this Agreement post a notice of the cure and/or waiver of such Bond Document Defaults. In addition, within that period, the Trustee shall return the Bond issue to non-default status and return administration of the Bonds to the Cincinnati, Ohio corporate trust office of the Trustee.

Notwithstanding the foregoing, nothing herein is or shall be construed as a waiver of any rights or remedies that have accrued prior to the date hereof against the Developer Parties under the Transaction Documents including, without limitation, as a result of the Existing Defaults. Further, nothing herein shall be construed as a waiver of any Defaults or Events of Default by the Developer Parties under the KTP Construction Agreement, the BCC Management Agreement, the Completion Guaranty, the Reimbursement Agreements or any instrument or agreement securing the obligations of the Developer Parties under any of the Transaction Documents. The waivers

herein shall be effective only with respect to the existing Bond Document Defaults and shall not extend to or affect any subsequent or other default or Event of Default under the Cooperative Agreement, the Indenture or the Ground Lease, or impair any right consequent thereon.

Section 6. Special Acknowledgments Regarding Indenture; Withdrawal of Litigation Notice. The Trustee, the Port Authority and the Assignee hereby acknowledge and agree that there are and, since the Closing Date, have been no Reimbursement Obligations outstanding under the Indenture, it being understood and further agreed that, under the terms of the Indenture, Reimbursement Obligations arise only in connection with unreimbursed draws on a Letter of Credit to pay Bond Service Charges, and Reimbursement Obligations do not result when Bonds are purchased, at the Purchase Price, pursuant to an optional or mandatory tender right granted under the Bonds and the Indenture regardless of whether the Letter of Credit Bank is reimbursed under the applicable reimbursement agreement and regardless of the terms of any such reimbursement agreement. The Port Authority, the Trustee, the Bondholder and the Assignee hereby agree that any Township Contributions or other Pledged Revenues received by the Port Authority or the Trustee pursuant to or in accordance with the Indenture or the Cooperative Agreement, with the exception of moneys collected by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of Article VII of the Indenture (or the provisions of the Cooperative Agreement or other Transaction Documents) in connection with the occurrence and continuance of an Event of Default under the Indenture, shall be deposited, distributed and applied by the Trustee in accordance with the applicable provisions of Article V of the Indenture; provided, that nothing herein shall prevent the Trustee from applying moneys available under the Indenture first to its customary fees and expenses, including reasonable attorneys' fees, incurred by the Trustee after the occurrence of a Default or an Event of Default under the Indenture. The Trustee and, as applicable, the Bondholder and the Assignee shall, as soon as practicable and in any event on or prior to October 18, 2012, take all actions necessary to withdraw the "*Notice of U.S. Bank National Association, as Indenture Trustee, with Respect to Moneys Held by the Trustee under the Indenture*" filed in the Litigation on March 27, 2012, and all related motions or claims by the Trustee, the Bondholder or the Letter of Credit Banks ("**Litigation Notice**").

Section 7. Direction to Trustee by Assignee and Bondholder. Spyder Station represents and warrants to the other parties hereto that, as further evidenced by Exhibit A hereto, it is the sole Bondholder and, as Assignee, the sole Person authorized to act as, or to give direction or consent on behalf of, the Letter of Credit Banks under the Indenture. The Bondholder and Assignee hereby authorizes and directs the Trustee to accept and agree to the terms of this Agreement, to execute and deliver this Agreement as Trustee, and to take each of the actions required of the Trustee pursuant to this Agreement and to the Transaction Documents as modified consistent herewith including, without limitation, approving the amendments of and supplemental agreements with respect to the Transaction Documents herein, waiving the Bond Document Defaults and its rights and remedies consequent thereto, taking the actions with respect to the Project Facilities, the Developer Private Improvements and the New Project Agreements contemplated hereby, and withdrawing the Litigation Notice.

Section 8. Limitation on Obligations of Township and Trustee. Anything herein or in the Transaction Documents (including, for purposes of this Section 8, the Ground Lease, the Cooperative Agreement, the Indenture and both the Prior Project Documents and the New Project Documents) to the contrary notwithstanding, each of the parties to this Agreement acknowledges

and agrees that all obligations of the Port Authority under or with respect to the Project, the Development, the Developer Private Improvements, the Transaction Documents, this Agreement or the Bonds are limited special obligations of the Port Authority payable only from the Pledged Revenues and Special Funds in accordance with the Indenture and any other applicable Transaction Documents. Anything herein or in the Transaction Documents to the contrary notwithstanding, each of the parties to this Agreement acknowledges and agrees that all obligations of the Township under or with respect to the Project, the Development, the Developer Private Improvements, the Transaction Documents, this Agreement or the Bonds are limited special obligations of the Township payable only from the Township Project Revenues in accordance with the Cooperative Agreement, the Indenture and any other applicable Transaction Documents.

Section 9. Miscellaneous. Each of the parties hereto acknowledges that it has received adequate notice of all matters contained herein and waives any further notice with respect thereto. This Agreement shall inure to the benefit of and be binding on each such party and their respective successors and permitted assigns. This Agreement and the rights and obligations of the parties hereunder shall be governed by the substantive laws of the State of Ohio, without regard to choice of law principles, and no action may be brought with respect to this Agreement, the Transaction Documents or the Bonds except in a federal or state court located in Hamilton County, Ohio, it being understood and agreed that, as a result of the location of the Project Facilities, the Development and each of the parties within Hamilton County, Ohio, any other forum is and, so long as this Agreement is in effect, will be inconvenient to all of the parties to this Agreement. This Agreement may be signed in counterpart and in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Nothing herein is intended to or shall make any party hereto a party to any instrument or agreement to which it is not otherwise a party.

[Signatures follow]

IN WITNESS WHEREOF, the Township, the Port Authority, the Trustee and Spyder Station, as Assignee, Bondholder and Owner, have each caused this Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

Approved as to form

SYCAMORE TOWNSHIP, OHIO

By: _____
Sycamore Township Law Director

By: _____
President, Board of Township Trustees

Approved as to form

And by: _____
Township Administrator

By: _____
Port Authority Counsel

PORT OF GREATER CINCINNATI
DEVELOPMENT AUTHORITY

SPYDER STATION LLC, as Assignee
By: _____

By: _____
President/CEO

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, as Trustee

And by: _____
Name:
Title:

By: _____
Vice President

SPYDER STATION LLC, as Bondholder
By: _____

SPYDER STATION LLC, as Owner
By: _____

By: _____
Name:
Title:

By: _____
Name:
Title:

And by: _____
Name:
Title:

And by: _____
Name:
Title:

UNCONDITIONAL LIMITED GUARANTY

(included as part of Agreement Relating to Tax Increment Financing Matters dated October __, 2012 among the Port of Greater Cincinnati Development Authority, Sycamore Township, Ohio, U.S. Bank National Association, as Trustee, and Spyder Station LLC, a Delaware limited liability company and an affiliate of the undersigned guarantor, and referred to herein as “this Agreement”; all capitalized terms used as defined therein)

For and in consideration of the benefits accruing and expected to accrue to it in connection with the construction, completion and operation of the Project Facilities and the Developer Private Improvements, as described in this Agreement and the Transaction Documents, Phillips Edison & Company Ltd., an Ohio limited liability company (“Phillips Edison”), as of the date of this Agreement, does hereby unconditionally guarantee to and for the benefit of the Port Authority, the Township and the Trustee (“Obligees”): (1) the payment and performance of all obligations of Spyder Station, as Owner, Construction Agent or Manager under this Agreement, the Cooperative Agreement, the Ground Lease and the New Project Agreements through the later of the Project Completion Date and the Development Completion Date, (2) all indemnification obligations of Spyder Station under this Agreement, the Cooperative Agreement, the Ground Lease and the New Project Agreements, (3) completion of the Project Facilities consistent with this Agreement and in accordance with the Project Plans and Specifications on or before the Project Completion Deadline, and (4) payment and performance of all obligations of Spyder Station under any agreements or contracts entered into or assumed by Spyder Station for or on behalf of the Port Authority in connection with the construction, completion, improvement, operation, maintenance or repair of the Project Facilities.

The obligations of Phillips Edison pursuant to this guaranty are absolute and unconditional and shall be effective without notice or demand by the Port Authority, and shall not be terminated, affected or impaired by reason of (a) the release or waiver, by operation of law or otherwise, of the performance or observance by Spyder Station of any or all of its obligations under this Agreement, the Cooperative Agreement, the Ground Lease, the New Project Agreements or any other agreement, (b) any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, liquidation or similar proceedings affecting Spyder Station or its assets, (c) any exercise of, or any failure, omission, delay or lack of diligence to enforce, assert or exercise, or any waiver of, any right or remedy with respect to the obligations of Spyder Station under this Agreement, the Cooperative Agreement, the Ground Lease, the New Project Agreements or any other agreement, (d) the settlement or compromise of any obligation whatsoever of Spyder Station, or (e) any rights of Phillips Edison against Spyder Station or of Phillips Edison or Spyder Station against any Obligee. The Obligees shall have the right to proceed first and directly against Phillips Edison under this guaranty without proceeding against or exhausting any other remedies which any of them may have and without resorting to any security held by the Obligees.

Phillips Edison agrees further to pay all expenses and charges (including court costs and reasonable attorneys’ fees) paid or incurred by the Obligees in enforcing this Agreement (including this guaranty), including following any default on the part of Phillips Edison, whether the same shall be enforced by suit or otherwise.

The obligations of Phillips Edison under this guaranty shall be binding upon it and its successors and assigns, shall be absolute and unconditional, shall remain in full force and effect until the satisfaction of its obligations hereunder and shall survive the termination of this Agreement, the Cooperative Agreement, the Ground Lease and the New Project Agreements.

IN WITNESS WHEREOF, Phillips Edison & Company Ltd. Has caused this Unconditional Limited Guaranty to be executed and delivered in its name, by its duly authorized representatives as of the date of this Agreement first set forth above.

PHILLIPS EDISON & COMPANY LTD.

By: _____

Name:

Title:

By: _____

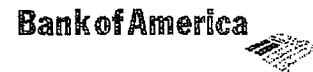
Name:

Title:

Exhibit A

Letter and Acknowledgment between LOC Bank and Port Authority

October 9, 2012



Port of Greater Cincinnati Development Authority
299 East Sixth Street, Suite 2A
Cincinnati, Ohio 45202
Attention: Laura N. Brunner, President/CEO

Re: Kenwood Towne Place

Ladies and Gentlemen:

Reference is made to (i) those certain Reimbursement Agreements, each dated as of January 29, 2008 (the "Reimbursement Agreements"), each by and between Kenwood Towne Place, LLC, an Ohio limited liability company (the "Borrower") and Bank of America, a national banking association and successor by merger to LaSalle Bank National Association (the "Bank"), pursuant to which Bank agreed to provide that certain Letter of Credit No. S603473 issued by Bank in the aggregate stated amount of \$14,995,845 (the "Series 2008A Letter of Credit") and that certain Letter of Credit No. S603752 issued by Bank in the aggregate stated amount of \$6,478,550 (the "Series 2008B Letter of Credit" and collectively with the Series 2008A Letter of Credit, the "Letters of Credit") each in favor of U.S. Bank National Association, as trustee and paying agent (the "Trustee") that were issued to support payment, respectively, of the Series 2008A Bonds and the Series 2008B Bonds as defined below; (ii) that certain Trust Indenture dated as of January 1, 2008 (the "Indenture") by and between the Port of Greater Cincinnati Development Authority (the "Port Authority") and the Trustee, under which the Port Authority issued its Special Obligation Development Revenue Bonds (Variable Rate Demand, Series 2008A) (Sycamore Township Kenwood Central Public Parking Project) in the original aggregate principal amount of \$14,315,000 (the "Series 2008A Bonds") and its Taxable Special Obligation Development Revenue Bonds (Variable Rate Demand, Series 2008B) (Sycamore Township Kenwood Central Public Parking Project) in the original aggregate principal amount of \$6,115,000 (the "Series 2008B Bonds", and collectively with the Series 2008A Bonds, the "Bonds"); (iii) that certain Assignment of Plans, Specifications, Construction and Service Contracts, Licenses and Permits ("Assignment of Plans"), dated as of January 29, 2008, by the Borrower and Bear Creek Capital, LLC ("Bear Creek") to and for the benefit of the Bank as Letter of Credit Bank; (iv) that certain Assignment of TIF Financing Documents ("Assignment of TIF Financing Documents"), dated as of January 29, 2008, by the Borrower to and for the benefit of the Bank as Letter of Credit Bank, with the consent of the Port Authority by Joinder included therein; and (v) that certain Assignment of Garage Management Agreement ("Assignment of Garage Management Agreement" and together with the Assignment of Plans and the Assignment of the TIF Financing Documents, the "Assignments"), dated as of January 29, 2008, by the Borrower and Bear Creek to and for the benefit of the Bank as Letter of Credit Bank, with the consent of the Port Authority by Joinder included therein. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Indenture.

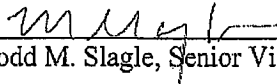
The Bank, in its capacity as Letter of Credit Bank and sole owner of all Bonds as Pledged Bonds (in such capacity, "Assignor"), hereby confirms that it has transferred on an "as is, where

is" basis all of its claims, rights, title and interest as Letter of Credit Bank and sole owner of all Bonds as Pledged Bonds, including under and in and to the Reimbursement Agreements, the Bonds, the Assignments and any other remaining security for the obligations of KTP under the Reimbursement Agreements (collectively, the "Transfer"), to Spyder Station LLC, a Delaware limited liability company (in such capacity, the "Assignee") based, in part, on our understanding that the Port Authority consents to the Transfer. This letter is to request that, for avoidance of doubt, the Port Authority confirm in writing that it has consented to the Transfer (including, without limitation, to the assignment of Assignor's claims, rights, title, and interest in and to the Assignments to the Assignor).

This letter may be relied on by the Port Authority, the Trustee (solely for the purpose of registering the Bonds in the name of the Assignee, and in taking direction from the Assignee as Letter of Credit Bank, in each instance to the exclusion of Assignor), and their respective successors and assigns.

Very truly yours,

Bank of America, N.A., as Assignor



Todd M. Slagle, Senior Vice President

This is to confirm that the Port Authority has consented to the Transfer hereinabove described and that such consent may be relied on by the Assignor, the Assignee, the Trustee, and their respective successors and assigns. Such consent shall be strictly limited to its terms. Without limiting the generality of the foregoing limitation, the Port Authority expressly reserves all of its other claims, rights, powers, and/or remedies, whether under the Indenture, the Reimbursement Agreements, the Bonds, the Assignments, the instruments and documents that were the subject matter of the Assignments, any other agreement, instrument or document, and/or applicable law.

Very truly yours,

Port of Greater Cincinnati Development Authority



Laura N. Brunner, President/CEO

Exhibit B

Notice of Events of Default Given by Port Authority

NOTICE OF EVENTS OF DEFAULT AND INTENT TO EXERCISE REMEDIES

October 9, 2012

To: Each of the Parties Identified on the Attached Notice List ("Noticed Parties")

Re: Defaults and Events of Default by Developer Parties under Certain Agreements Relating to Port of Greater Cincinnati Development Authority Special Obligation Development Revenue Bonds, Series 2008 (A & B) (Sycamore Township Kenwood Central Public Parking Project) dated January 29, 2008 ("Bonds")

Reference is hereby made to that Tax Increment Service and Cooperative Agreement dated as of January 1, 2008 ("Cooperative Agreement") relating to the Bonds identified above and, in connection with the issuance of the Bonds, executed by and among the undersigned Port of Greater Cincinnati Development Authority ("Authority") and by Sycamore Township, Ohio ("Township"), Kenwood Towne Place, LLC, an Ohio limited liability company ("KTP"), and Bear Creek Capital LLC, an Ohio limited liability company ("BCC" and, together with KTP, the "Developer Parties"). Capitalized terms used in this Notice and not defined herein are used with the meanings ascribed to such terms in Appendix I to the Cooperative Agreement.

The purpose of this Notice is to advise you of the following:

(1) Of the existence of certain Defaults and Events of Default by the Developer Parties under the Cooperative Agreement and the other Transaction Documents executed and delivered by one or more of the Developer Parties in connection with the issuance of the Bonds, including without limitation the Management Contract, the Construction Agency Agreement, the Completion Guaranty and the Reimbursement Agreements (Transaction Documents to which the Developer Parties are a party are referred to herein collectively as "Developer Party Documents");

(2) Of a limited opportunity, for a period not to exceed thirty (30) days ("Cure Period"), for the Developer Parties, their collateral assignees or other Noticed Parties to cure certain of such Defaults or Events of Default; and

(3) Of the intent of the undersigned Port Authority to exercise, upon the lapse of such Cure Period and from time to time thereafter, at such times and in such order and manner as the Port Authority shall in its sole discretion determine, any or all of the remedies available to the Port Authority including, without limitation, termination of any or all of the Developer Party Documents or termination of any or all rights of the Developer Parties, their collateral assignees, and all of their successors and assigns, under any or all of the Developer Party Documents.

By way of providing further information, and without limiting the generality of the foregoing matters identified in this Notice, the Port Authority hereby notifies each of you that:

- A. KTP has failed to complete and deliver the Project Facilities to the Port Authority in accordance with the Project Cost Budget, the Approved Construction Documents and the schedule for construction of the Project Facilities, as required by Section 3.1(a) of the Construction Agency Agreement, and has failed to cause all material punch list items with respect to the construction and testing of the Project Facilities to be completed and

the Final Completion Date for the Project Facilities to occur on or before the Project Completion Deadline of June 30, 2009, as required by Section 3.1(c) of the Construction Agency Agreement, which events constitute an Event of Default under Section 6.1(d) of the Construction Agency Agreement;

- B. BCC has not cured the defaults by KTP described in subparagraph A of this paragraph, as required by Section 2 of the Completion Guaranty, on or before the Project Completion Deadline or on or before the date of this Notice;
- C. The Developer Parties have not completed the Developer Private Improvements in accordance with the requirements of Section 1 of the Completion Guaranty on or before the Development Completion Deadline of June 30, 2010 or on or before the date of this Notice;
- D. With respect to claims or liens asserted for labor and materials with respect to the Project Facilities, the Developer Parties failed to immediately pay the amount of all such claims or liens and cause the same to be cancelled of record or to cause such claims or liens to be bonded, and have not paid such claims or liens or caused the same to be cancelled or bonded, as required by Section 3(a) of the Completion Guaranty;
- E. With respect to claims or liens asserted for labor and materials with respect to the Developer Private Improvements, the Developer Parties failed to immediately pay the amount of all such claims or liens and cause the same to be cancelled of record or to cause such claims or liens to be bonded, and have not paid such claims or liens or caused the same to be cancelled or bonded, as required by Section 3(a) of the Completion Guaranty;
- F. The Developer Parties have not, upon demand, satisfied their obligations to defend, hold harmless and indemnify the Port Authority and others against all claims, liabilities, costs, expenses, losses and actions related to the Developer Party Documents, the obligations of the Developer Parties thereunder and other related matters;
- G. On February 11, 2011, the Port Authority was notified of the existence of events of default existing under each of the Reimbursement Agreements; and
- H. Each of the events identified in subparagraphs A through G constitute Events of Default under Section 7.1(g) of the Cooperative Agreement, Section 22(a)(10) of the Management Contract and one or more subsections of Section 6.1 of the Construction Agency Agreement.

The foregoing list of Defaults and Events of Default under the Developer Party Documents is not, and is not intended to be, exhaustive and the Port Authority reserves the right to give notice of other such Defaults and Events of Default, whether or not currently existing, at such times, and from time to time, as the Port Authority, in its sole discretion, determines.

By way of providing further information, and without limiting the generality of the foregoing matters identified in this Notice, the Port Authority notifies each of you of its intention to exercise its remedies against the Developer Parties under or with respect to the Developer Party Documents and to do so at such times, and from time from time, and in such order and manner as the Port Authority shall, in its sole discretion, determine. Those remedies include, without

NOTICE LIST

Township

Sycamore Township
8540 Kenwood Road
Cincinnati, Ohio 45242
Attention: Township Administrator

R. Douglas Miller, Law Director
c/o Donnellon Donnellon & Miller
9079 Montgomery Road
Cincinnati, Ohio 45247

Trustee

U.S. Bank National Association, as
Trustee, Paying Agent and Registrar
60 Livingston Avenue
St. Paul, Minnesota 55107
Attention: Corporate Trust Department

U.S. Bank National Association
425 Walnut Street, 6th Floor
Cincinnati, Ohio 45202
Attention: Corporate Trust Department

Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
Attention: Abby E. Wilkinson

Taft, Stettinius & Hollister, LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957

MuniCap, Inc., Administrator
6760 Alexander Bell Drive, Suite 220
Columbia, Maryland 21046
Attention: Joshua Forster

Developer Parties

Bear Creek Capital LLC
Attn: Matthew C. Daniels, Member
Timothy S. Baird, Member
Gregory J. Scheper, Director
9549 Montgomery Road
Cincinnati, OH 45242

Kenwood Towne Place, LLC
Attn: Matthew C. Daniels, Manager
Thomas L. Neyer, Jr., Manager
Henry W. Schneider, Manager
Timothy S. Baird, Manager
c/o Anthony G. Covatta, Esq.
The Drew Law Firm, L.P.A.
Cincinnati, OH 45202

Kenwood Towne Place, LLC
Attn: Matthew C. Daniels, Manager
Thomas L. Neyer, Jr., Manager
Henry W. Schneider, Manager
Timothy S. Baird, Manager
c/o GFH Entity Services, Inc.
3500 Red Bank Road
Cincinnati, OH 45227

Griffin Fletcher & Herndon LLP
3500 Red Bank Road
Cincinnati, OH 45227
Attention: Brian W. Wais

Construction Lender, Collateral Assignee

Bank of America, N.A., successor to LaSalle Bank Nat'l Assoc.
135 South LaSalle Street, Suite 1730
Chicago, Illinois 60603
Attention: Commercial Real Estate Syndications

Bank of America, N.A., successor to LaSalle Bank Nat'l Assoc.
135 South LaSalle Street
Chicago, Illinois 60604
Attention: Todd M. Slagle, Senior Vice President

Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
Attention: Thomas Kiriakos

Roetzel & Andress
310 Chiquita Center
250 East Fifth Street
Cincinnati, OH 45202-4119
Attention: David Kern

LOC Bank, Collateral Assignee, Assignor

Bank of America, N.A., successor to LaSalle Bank Nat'l Assoc.
135 South LaSalle Street, Suite 1225
Chicago, Illinois 60603
Attention: Commercial Real Estate Division

Bank of America, N.A., successor to LaSalle Bank Nat'l Assoc.
135 South LaSalle Street
Chicago, Illinois 60603
Attention: Todd M. Slagle, Senior Vice President

Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
Attention: John A. Janick

Roetzel & Andress
310 Chiquita Center
250 East Fifth Street
Cincinnati, OH 45202-4119
Attention: David Kern

Assignee of LOC Bank, as Collateral Assignee

Spyder Station LLC
c/o Phillips Edison & Company Ltd.
11501 Northlake Drive
Cincinnati, Ohio 45249
Attention: David Birdsall, Senior Vice President

Thompson Hine LLP
Austin Landing I
10050 Innovation Drive, Suite 400
Dayton, Ohio 45342-1934
Attention: Arik Sherk

Thompson Hine LLP
312 Walnut Street, 14th Floor
Cincinnati, Ohio 45202-4089
Attention: Stephen King

Exhibit C

Port Authority Economic Inclusion Policy



Port of Greater Cincinnati
Development Authority

ECONOMIC INCLUSION POLICY

Supporting and empowering minority-owned, women-owned, and small businesses is a priority for the Port of Greater Cincinnati Development Authority (“Port Authority”). The adoption of policies by the Port Authority during its first year of operation demonstrated the depth of that commitment. After nearly a decade of experience, we believe even more strongly that great potential exists for a meaningful increase in the inclusion of minority-owned, women-owned, and small businesses in all Port Authority-related projects.

The plan that is outlined below has been developed with the specific intent of creating a new way of approaching economic inclusion in Cincinnati and Hamilton County. It has been developed by the Port Authority and is based on principles first put forth by the Riverfront Advisors Commission in its 1999 report. Inherent in those principles is the realization that we must fully utilize the resources of, and provide equal opportunity for, all of our citizens. By doing so, we create a welcoming environment that is conducive to inclusive economic development.

*Board of Directors
Port of Greater Cincinnati Development Authority*

The Vision

The Port of Greater Cincinnati Development Authority (“Port Authority”) strives to continually have meaningful and substantial levels of participation by Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), and Small Business Enterprises (SBEs) in the services for which it contracts, and in its various contracts for development projects. Further, the Port Authority strives to increase the equity participation and/or ownership by MBEs and WBEs within those development projects.

The Port Authority is committed to helping build and sustain strong MBEs, WBEs, and SBEs within the Greater Cincinnati community. The Port Authority is further committed to empowering entrepreneurs, generating jobs, building tax base, and providing opportunities for wealth creation in every segment of society.

All contractors, subcontractors, suppliers, and service providers should have an equal opportunity to compete on contracts for services issued by the Port Authority regardless of race, color, sex or national origin. It is also the aspiration that a fair share of contracts be awarded to small, minority, and women business enterprises. This will be promoted through the provision of educational opportunities, training, and a good faith effort by all involved to promote inclusion through locating and engaging qualified MBEs, WBEs, and SBEs. It is the Port Authority’s expectation that this aspiration can be achieved.

The Plan

In order to implement and work toward the achievement of the aspirational goals outlined under "Vision" above, the Port Authority shall:

- I. Strive to be viewed by the business community and the community-at-large as an organization that maximizes participation by MBEs, WBEs, and SBEs by building equity participation, contracting for services, and developing programs that improve the ability of MBEs, WBEs, and SBEs to participate in Port Authority-related projects.
- II. Strive to be a proactive partner with local, state, and federal governments, businesses and community organizations in providing equal opportunities in the utilization of the services of MBEs, WBEs, and SBEs; and thereby create a positive economic development environment.
- III. Be diligent in its efforts to include MBEs, WBEs and SBEs in all phases of its operations in order to play an important role in creating opportunities for increased participation by those who have been historically excluded.
- IV. Support and encourage, where economically feasible, the participation of MBEs, WBEs and SBEs through tenant/ownership in Port Authority-related projects through active recruitment, facilitation of relationships, and aggressive information-sharing.
- V. Utilize programs such as (including but not limited to) the Minority Business Accelerator (MBA) at the Cincinnati USA Chamber, the South Central Ohio Minority Supplier Development Council (SCOMSDC), the Greater Cincinnati/Northern Kentucky African American Chamber of Commerce, the Urban League of Greater Cincinnati, the Hispanic Chamber of Commerce, as well as the Cincinnati Business Incubator to assist in fostering partnership agreements between majority businesses and MBEs, WBEs and SBEs and other small/women/minority businesses.

In addition, the Port Authority will establish a management structure that will promote accountability for the efforts to promote the aspirational goals of the Port Authority, will participate in the contracting process in a way that will assist businesses in understanding the benefits of economic inclusion and assist them in their efforts to promote those aspirational goals, and establish a program of continuing outreach to governmental, non-profit, and business communities in order to further promote those goals.

Management Accountability

In order to assist in realizing the commitment of the Port Authority, a process for clear accountability within the Port Authority, persistent follow-up, and accurate measurement and reporting of results will be established.

- I. The Port Authority will manage its Economic Inclusion efforts through the Director of Economic Inclusion, and will provide the resources necessary to implement this Plan. The Director will report directly to the President of the Port Authority.

- II. The primary objectives for the Director of Economic Inclusion are to:
 - a. Encourage and facilitate a dramatic increase in the number, magnitude, and success of MBEs, WBEs, and SBEs in all development work which is within the scope of the Port Authority.
 - b. Encourage and facilitate a dramatic increase in the proportion of procurement dollars which are spent for professional services, goods, and materials from MBEs, WBEs, and SBEs relating to Port Authority operations.
- III. The Director of Economic Inclusion shall provide the President and the Board of Directors monthly report summarizing, on an annual basis, progress in meeting the established goals.
- IV. The President and Vice President of the Port Authority and individual members of the Board of Directors will assist the Director of Economic Inclusion in communicating the importance of this Plan if and when the Director identifies a perceived lack of effort by contractors, subcontractors, suppliers, providers or developers in promoting the aspirational goals of this Plan on Port Authority -related projects.

Contracting Process

While there are no set-asides or preferences for suppliers, providers or developers, the Port Authority is committed to empowering MBEs, WBEs, and SBEs; and to that end the Port Authority will be vigilant in monitoring encouraging, and facilitating the satisfaction of its goals in relation to the participation by MBEs, WBEs, and SBEs in all Port Authority-related work. The goals of the Port Authority in this regard are:

- I. To aspire to achieve a total target goal of 25% Minority Business Enterprise (MBEs), 7% Women Business Enterprise (WBEs), and 30% Small Business Enterprise (SBEs) for:
 - Construction
 - Supplies
 - Services
 - Professional Services
- II. To require that all respondents to RFPs, RFQs, and other such solicitations for proposals, qualifications, or services commit and demonstrate, in writing, what best efforts they will make in order to meet these goals. (See attached Good Faith Efforts Form).
- III. To work with the majority/prime contractors to track and support the sub-contractors they use on Port Authority-related projects. The anticipated outcome is that they establish and maintain an Economic Inclusion Program for themselves, and for their future projects. The Port Authority will assist them in finding sub-contractors to support Port Authority-related project needs.
- IV. To use the criteria for certification in identifying minority and women owned businesses as defined by the National Minority Supplier Development Council (NMSDC) and the Women's Business Enterprise National Council (WBENC).
- V. To accept certifications from the NMSDC, or the local affiliate council; the WBENC; the Small Business Administration (SBA); and local, state, and federal certifying organizations.

- VI. To encourage partnering relationships between majority owned firms and small, women-owned and minority-owned firms among professional service providers to the Port Authority. The Port Authority also encourages, where economically feasible, establishment of joint ventures and contracting partnerships by businesses of different race ownership, different gender ownership, or both, in all phases of contracting (to include, but not limited to, developer agreements, architectural and engineering design services, construction, retail-hospitality-entertainment tenant/ownership, supplies, and professional services) as a means to achieve greater levels of prime contracting opportunities for all businesses.
- VII. To require that all proposers or bidders submit an economic inclusion subcontractor utilization plan with their proposals, qualifications or bids. Failure to submit an economic inclusion subcontractor utilization plan with the proposals, qualifications or bids and other documentation that may be requested may deem the proposals, qualifications or bids as non-responsive and may result in rejection of the proposals, qualifications or bids. (See Attached Economic Inclusion Subcontractor Utilization Plan)

Continuing Outreach

The Port Authority will help MBEs, WBEs, and SBEs take advantage of economic development initiatives that are currently in place, as well as future initiatives, by providing a user-friendly point of contact for information and facilitation of access to relevant agencies. The Port Authority will:

- I. Reach out to established minority and women business organizations in the community for assistance in building capacity, so that minority and women entrepreneurs can take advantage of opportunities as opportunities arise.
- II. Sponsor forums to provide information on business opportunities, as well as networking opportunities for minority, women, and small business investors, developers, and contractors to interact with their majority counterparts.
- III. Work with other organizations (including but not limited to, the South Central Ohio Minority Supplier Development Council, the Greater Cincinnati/Northern Kentucky African American Chamber of Commerce, the Urban League of Greater Cincinnati, the Hispanic Chamber of Commerce, and Cincinnati USA Chamber Minority Business Accelerator) in order to provide technical assistance.
- IV. Develop relationships with community organizations/associations to ensure effective programs that promote business diversity and local involvement; and
- V. Hold meetings and provide other resources to acquaint businesses with the requirements and scope of procurement activities, and coordinate such efforts with organizations familiar with and willing to reduce the problems bidders may experience on contracts.