

It was moved by Mr. Steve Wilson and seconded by Mr. Dave Gully that the following resolution be adopted:

RESOLUTION NO. 2012-03

A RESOLUTION (I) RATIFYING THE EXECUTION OF A TERM SHEET CONCERNING THE ACQUISITION, CONSTRUCTION, AND IMPROVEMENT OF REAL AND PERSONAL PROPERTY FOR A REGIONAL DISTRIBUTION FACILITY CONSTITUTING A "PORT AUTHORITY FACILITY"; (II) APPROVING AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED BY THE TERM SHEET; (III) APPROVING THE EXECUTION AND DELIVERY OF A GROUND LEASE, A PROJECT LEASE, AND AN ASSENT AGREEMENT IN CONNECTION WITH THE TRANSACTIONS; AND (IV) APPROVING THE PROVISION OF OHIO SALES AND USE TAX EXEMPTION CERTIFICATES FOR THE PURCHASE OF BUILDING AND CONSTRUCTION MATERIALS INCORPORATED INTO THE REGIONAL DISTRIBUTION FACILITY.

WHEREAS, the Warren County Port Authority (the "Authority"), by virtue of the laws of the State of Ohio, particularly Ohio Revised Code Sections 4582.21 through 4582.59 (the "Act") and the authorities therein mentioned, is authorized (i) to acquire a leasehold interest in certain real property located in the City of Lebanon, Ohio along Homan Road (the "Project Site") by operation of a Ground Lease (the "Ground Lease") between Setzer Properties NCIN, LLC (collectively, with its affiliates, subsidiaries, and related entities, the "Developer"), as ground lessor, and the Authority, as ground lessee; (ii) to acquire title to a structure and other site improvements to be located on the Project Site consisting primarily of a one hundred seventy-eight thousand (178,000) square foot regional distribution facility together with necessary appurtenances thereto (collectively, the "Project") and to lease the Project and the Project Site to the Developer by operation of a Project Lease (the "Project Lease") between the Authority, as lessor, and the Developer, as lessee; and (iii) to provide an assent agreement or other covenants with respect to the mortgage on Project Site and the Project (collectively, the "Assent Agreement") between Branch Banking & Trust Company and the Authority; and

WHEREAS, attached to this Resolution as Exhibit A is a Term Sheet (the "Term Sheet") signed by the Authority and the Developer which describes the general structure and terms of the proposed transaction (the "Proposed Transaction"); and

WHEREAS, attached to this Resolution as Exhibit B is a draft of the Ground Lease; and

WHEREAS, attached to this Resolution as Exhibit C is a draft of the Project Lease; and

WHEREAS, the Developer, who is under contract to own the Project Site, has begun soliciting contracts for construction of the Project and has requested that the Authority provide certificates evidencing the exemption from State of Ohio sales and use taxes of purchases of building and construction materials for incorporation into the Project, and the Authority is willing to provide such certificates upon acquisition by the Authority of a leasehold interest in

the Project Site, an agreement by the Developer to convey ownership of the Project upon its completion, and other necessary agreements by the Developer; and

WHEREAS, the Project is expected (i) to create jobs and employment opportunities and thereby to enhance the economic welfare of the people of Warren County and the Authority and (ii) to enhance, foster, aid, provide, or promote economic development within Warren County.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Warren County Port Authority that:

Section 1. This Board does hereby find and determine, based upon the representations of the Developer, that:

(a) The Project is a "port authority facility" within the meaning of that term as defined in Ohio Revised Code Section 4582.21; and

(b) The Project is consistent with the purposes of both (i) Ohio Constitution, Article VIII, Section 13, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio, and (ii) Ohio Revised Code Section 4582.21(B)(1), to enhance, foster, aid, provide, or promote economic development within Warren County.

Section 2. This Board hereby approves the participation of the Authority in the Proposed Transaction, substantially on the terms set forth in the Term Sheet currently on file with the Board, and hereby ratifies the execution of the Term Sheet by the Executive Director of the Authority.

Section 3. This Board hereby approves the Ground Lease, substantially in the form currently on file with the Board, with such changes as shall not be materially adverse to the Authority and as may be approved by the officer or officers of the Authority executing the same. The Chairperson of the Authority, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them, are hereby authorized and directed to execute and deliver, for and in the name and on behalf of the Authority the Ground Lease, with such changes thereto as shall not be materially adverse to the Authority. The execution of the Ground Lease by a duly authorized officer or officers of the Authority shall evidence conclusively that any such changes are not materially adverse to the Authority and that any conditions to its execution and delivery have been satisfied.

Section 4. This Board hereby approves the Project Lease, substantially in the form currently on file with the Board, with such changes as shall not be materially adverse to the Authority and as may be approved by the officer or officers of the Authority executing the same. The Chairperson of the Authority, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them, are hereby authorized and directed to execute and deliver, for and in the name and on behalf of the Authority the Project Lease, with such changes thereto as shall not be materially adverse to the Authority. The execution of the Project Lease by a duly authorized officer or officers of the Authority shall evidence conclusively that any such changes

are not materially adverse to the Authority and that any conditions to its execution and delivery have been satisfied.

Section 5. This Board hereby approves the negotiation, execution, and delivery of an Assent Agreement, with such terms as are identified in the Term Sheet, with such changes as shall not be materially adverse to the Authority, and in such form, as may be approved by the officer or officers of the Authority executing the same. The Chairperson of the Authority, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them, are hereby authorized and directed to execute and deliver, for and in the name and on behalf of the Authority the Assent Agreement with such terms as are identified in the Term Sheet, with such changes thereto as shall not be materially adverse to the Authority. The execution of the Assent Agreement by a duly authorized officer or officers of the Authority shall evidence conclusively that any such changes are not materially adverse to the Authority and that any conditions to its execution and delivery have been satisfied.

Section 6. The Chairperson of the Authority, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them, are each authorized and directed to take such further actions and execute any certifications, financing statements, assignments, agreements, instruments, and other documents that are necessary or appropriate to consummate the Proposed Transaction in accordance with this Resolution and the Term Sheet. The Authority shall, 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 or appropriate to consummate the Proposed Transaction in accordance with this Resolution and the Term Sheet or as may be required by the Act and shall comply with all requirements of law applicable to the Proposed Transaction.

Section 7. This Board hereby authorizes the Chairperson of the Authority, the Executive Director of the Authority, or the Fiscal Officer of the Authority, or any of them, upon the execution of the Ground Lease, the Project Lease, and the Assent Agreement by the parties thereto, to provide the Developer or its nominees with appropriate certificates ("Exemption Certificates") to support the claim of an exemption from Ohio sales and uses taxes that might otherwise apply with respect to the purchase of building and construction materials incorporated into structures or improvements to real property, within the meaning of Ohio Revised Code Section 5739.02(B)(13), that constitute Project improvements.

Section 8. This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in full compliance with applicable legal requirements.

Section 9. This Resolution shall be in full force and effect upon its adoption.

The foregoing motion having been put to vote, the result of the roll call was as follows:

Voting Aye: Mr. Ficke, Mr. Gully, Ms. Hreben, Ms. Reindl-Johnson, Mr. Sample and Mr. Wilson

EXHIBIT A

TERM SHEET

EXHIBIT B

GROUND LEASE

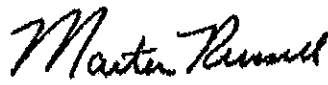
EXHIBIT C
PROJECT LEASE

Voting Nay: None

The undersigned, Secretary of the Board of Directors of the Warren County Port Authority, does hereby certify that the foregoing is a true and correct copy of a resolution of the Warren County Port Authority, duly adopted April 23, 2012, and appearing upon the official records of that Board.

Adopted: April 23, 2012

Dated: April 23, 2012

Attest: 
Secretary, Board of Directors
Warren County Port Authority