

RESOLUTION NO. 2016-08

A RESOLUTION AUTHORIZING THE ISSUANCE OF NOTES IN THE AMOUNT OF \$600,000 FOR THE PURPOSE OF GRANTING THE PROCEEDS TO VICTORY WHOLESALE; AUTHORIZING THE EXECUTION AND DELIVERY OF A COOPERATIVE AGREEMENT AND CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE FOREGOING; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the Warren County Port Authority (the "Authority"), a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the "State"), is authorized and empowered by the laws of the State including, without limitation, Section 13 of Article VIII, Ohio Constitution, and Sections 4582.21 to 4582.59, Ohio Revised Code (collectively, the "Act"), among other things (a) to issue its revenue obligations for the purpose of financing costs of acquiring, constructing, equipping, furnishing and otherwise improving "port authority facilities" as defined in the Act, located within the boundaries of the County of Warren, Ohio, (b) to enter into agreements to secure such revenue obligations and to provide for the pledge or assignment of revenues expected to be sufficient to pay the principal of and interest and any premium on those revenue obligations, and (c) to adopt this Resolution and enter into such instruments, documents and agreements for which provision is made herein, all upon the terms and conditions provided herein and therein; and

WHEREAS, at the request of the City of Springboro, Ohio (the "City"), this Legislative Authority has determined to issue revenue obligations of the Authority to finance a grant in the amount of six hundred thousand dollars (\$600,000) to be provided to Brothers Trading Co., Inc., an Ohio corporation d.b.a. Victory Wholesale Group ("Developer") to incentivize the Developer to expand its business operations in the City by constructing, equipping and operating a two-hundred fifty-five thousand (255,000) square foot warehouse and distribution facility in the City (the "Project"), and to provide for the repayment of such obligations certain revenues from the City under the Cooperative Agreement, all as described herein; and

WHEREAS, the debt service on the Notes is expected to be paid by the City, subject to annual appropriation, as provided in the Cooperative Agreement; and

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

Section 1. Definitions. Each capitalized term not otherwise defined herein or by reference to another document shall have the meaning assigned to it in the Cooperative Agreement now on file with the Secretary:

"Appropriation Payments" means the payments to be made by the City to the Authority under of the Cooperative Agreement, which payments are subject to annual appropriation by the City and shall be paid from any available resources of the City that are not moneys raised by taxation to the extent lawfully available to make Appropriation Payments.

"Cooperative Agreement" means the Cooperative Agreement, dated as of the first day of the month in which the Notes are executed and delivered, among the Authority, the City, and the Developer and relating to the Notes, as the same may be amended and supplemented from time to time in accordance with its terms.

“Debt Service Charges” means, for any period or payable at any time, the principal of and interest and any premium due on the Notes for that period or payable at that time, as the case may be.

“Developer” means Brothers Trading Co., Inc., an Ohio corporation d.b.a. Victory Wholesale Group.

“Executive” means the Executive Director of the Authority.

“Legislative Authority” means the Board of Directors of the Authority.

“Original Purchaser” means the Office of the Treasurer of Warren County, Ohio.

“Notes” means the Authority revenue notes authorized by this Resolution to be issued in the aggregate principal amount of \$600,000.

“Project” means the Developer’s expansion of its business operations in the City by constructing, equipping and operating a two-hundred fifty-five thousand (255,000) square foot warehouse and distribution facility.

“Project Purposes” means the enhancement, fostering, aid and promotion of economic development within the City and the jurisdiction of the Authority

“Transaction Documents” means the Cooperative Agreement and any other agreements or documents deemed reasonably necessary in carrying out the purpose of this Resolution.

“Treasurer” means the Treasurer of the Authority.

“Revenues” means (a) the Appropriation Payments by the City under the Cooperative Agreement, (b) all other moneys, if any, received or to be received by the City or the Authority as a result of the enforcement of remedies under the Cooperative Agreement or related to the obligations of the City, the Authority or the Developer thereunder.

“State” means the State of Ohio.

The captions and headings in this Resolution are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or Sections of this Resolution.

Section 2. Determinations by the Legislative Authority. This Legislative Authority hereby finds and determines that at this time and pursuant to the authority of the Act: (i) it is necessary and proper and in the best interest of the Authority to, and the Authority shall, for the purpose of paying costs of the Project for the Project Purposes, issue, sell and deliver the Notes in an aggregate principal amount of \$600,000; (ii) the Project constitutes “port authority facilities” within the meaning of the Act, and entering into the Cooperative Agreement with the City, and the Developer is necessary and proper and in the best interest of the Authority and consistent with the purposes of Section 13 of Article VIII, Ohio Constitution; (iii) the utilization of the Project for the Project Purposes is in furtherance of the purposes of the Act, including enhancing economic development, and will benefit the people of the State, including those within the jurisdiction of the Authority, by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the State, including those within Warren County, Ohio; and (iv) the Project constitutes property that will be useful and

further the authorized purposes of the Authority and will further the purposes of the Act and Section 13 of Article VIII, Ohio Constitution.

Section 3. Issuance of the Notes.

(a) Notes Generally. The Notes (i) shall be issued only in fully registered form; (ii) shall be exchangeable for Notes of the same series of any authorized denomination or denominations, and shall be subject to any transfer restrictions provided thereon; (iii) shall be numbered in such manner in order to distinguish each Note from any other Note; (iv) shall be of such denominations as are authorized by this Resolution; (v) shall be dated as of the date of delivery; and (vi) shall be designated "Economic Development Revenue Notes, Series 2016 (Victory Wholesale Project)" or otherwise as determined by the Executive. Each Note shall bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from the date of issuance.

The Notes shall be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized: (i) the Notes shall be issued in the form of a single registered Notes representing each maturity and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (ii) the beneficial owners in book entry form shall have no right to receive Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the Authority.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Executive or the Treasurer may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Executive or the Treasurer do not or are unable to do so, the Executive or the Treasurer, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and authenticate and deliver registered Note certificates to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of Authority action or inaction, of those persons requesting such issuance.

The Executive or the Treasurer or either of them is each authorized and directed to the extent necessary or required to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining (as evidenced by their signing) that the signing thereof will not endanger the funds or securities of the Authority.

(b) Interest Rate. The Notes shall bear interest at the rate of one percent (1.0%).

(c) Principal Amount; Interest Payment; Principal Maturities of the Notes. The Notes shall be issued in the aggregate principal amount of \$600,000. Interest and Principal on the Notes shall be payable on the date that is one year after the date of delivery of the Notes.

(d) Execution. The Notes shall be signed by the Executive and the Treasurer in the name of the Authority and in their official capacities, provided that either or both of those signatures may be a facsimile.

Section 4. Sale of the Notes. The Notes are awarded and sold to the Original Purchaser at the purchase price established herein.

It is determined by this Legislative Authority that the price for and the terms of the Notes and the sale thereof, all as provided in this Resolution, are in the best interest of the Authority and are in compliance with all legal requirements.

Section 5. Application of Proceeds of Notes. The Executive and the Treasurer are authorized and directed to execute a certificate directing the amount of the proceeds to be provided to the Developer in accordance with the Cooperative Agreement and this Resolution. The proceeds of the Notes are hereby appropriated for the purpose of (i) financing the Project; and (ii) paying cost of issuance of the Notes.

Section 6. Security for the Notes. Notwithstanding anything to the contrary herein or in the Notes, the Notes do not and shall not pledge the general credit or taxing power of the Authority, the City, the State or any political subdivision, municipality or other local agency thereof. Nothing herein or in the Notes shall constitute a general obligation, debt or bonded indebtedness of the Authority, the City, the State or any political subdivision thereof; and further, nothing therein gives the owners of the Notes and they do not have, the right to have excises or taxes levied by this Legislative Authority, the City, the State or the taxing authority of any other political subdivision, municipality or other local agency thereof for the payment of Debt Service Charges. The Notes shall be payable solely from the Revenues and shall be secured by a pledge of and a lien on the Revenues, and each Note shall contain a statement to that effect. Nothing herein shall be deemed to prohibit the Authority, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations this Resolution or the Notes.

Section 7. Covenants of Authority. In addition to the covenants and agreements of the Authority herein and in the Transaction Documents to which it is a party, the Authority, by issuance of the Notes, covenants and agrees with the owners thereof, that:

(a) The Authority will use, or cause the use of, the proceeds of the Notes, together with other financing sources available for that purpose to pay costs of the Project;

(b) The Authority will segregate, for accounting purposes, the Revenues from all other revenues and funds of the Authority;

(c) The Executive or the Treasurer, or other appropriate officer of the Authority, will furnish to the Original Purchaser a true transcript of proceedings, certified by the Executive or Treasurer or such other officer, of all proceedings had with reference to the issuance of the Notes, together with such information from the Authority's records as is necessary to determine the regularity and validity of such issuance and is hereby authorized to approve, on behalf of this Legislative Authority that portion of the minutes of this Legislative Authority evidencing the passage of this Resolution or otherwise relating to the Project for inclusion in the transcript of proceedings;

(d) The Authority will, at any and all times, cause to be done all such further acts and things and cause to be executed and delivered all such further instruments as may be necessary to carry out the purposes of the Notes and this Resolution or as may be required by the Act or by Section 13 of Article VIII of the Constitution of the State, and will comply with all requirements of law applicable to the Notes;

(e) The Authority will observe and perform all of its agreements and obligations provided for by the Notes and the Transaction Documents to which it is a party, and

all of the obligations thereunder are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Authority within the meaning of Section 2731.01, Ohio Revised Code; and

(f) So long as the Notes are outstanding, the Authority will use its best efforts to comply with all of its obligations and agreements thereunder and to keep the same in full force and effect.

Section 8. Transaction Documents. To secure the payment of the Debt Service Charges on the Notes as the same shall become due and payable and the performance by the Authority as provided in this Resolution and in the Transaction Documents to which it is a party and to provide for the issuance and sale of the Notes, the Executive and the Treasurer, alone or together, are hereby authorized, for and in the name of the Authority and on its behalf and on behalf of this Legislative Authority, to execute the Transaction Documents to which it is a party in substantially the forms thereof now on file with the Secretary of the Board, with such changes therein as are not inconsistent with this Resolution and not substantially adverse to the Authority, and which are permitted by the Act and shall be approved by the officers executing those documents. The approval of changes to the Transaction Documents, and that such changes are not substantially adverse to the Authority, shall be conclusively evidenced by the execution of the Transaction Documents to which the Authority is a party by the officer or officers of the Authority authorized to execute those documents.

Section 9. Other Agreements and Documents and Further Actions. The Executive and the Treasurer, alone or together, are further authorized and directed to execute any certifications, financing statements, assignments, agreements, instruments and other documents as may be necessary in connection with the issuance of the Notes and the financing of the Project, to make or effect any election, selection, designation, choice, approval or waiver as may be required to made under federal income tax laws, to accept on behalf of the Authority such additional security, and to take such further actions, as are necessary or appropriate to effect the transactions contemplated in the Transaction Documents and to consummate the transactions contemplated in this Resolution and the Transaction Documents and to undertake, complete and finance the Project in accordance therewith, as are not inconsistent with this Resolution and not substantially adverse to the Authority and which are permitted by the Act and shall be approved by the officers executing those documents. The approval of such changes, and that such changes are not substantially adverse to the Authority, shall be conclusively evidenced by the execution of those documents by those officers. All actions heretofore taken by the officers and officials of the Authority and of this Legislative Authority in connection with the Project and the financing thereof are hereby ratified and approved.

Section 10. Severability. Each section of this Resolution and each subdivision or paragraph of any section hereof and each sentence of a paragraph hereof is hereby declared to be independent and the finding or holding of any section or any subdivision, paragraph or sentence hereof to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision, paragraph or sentence of this Resolution.

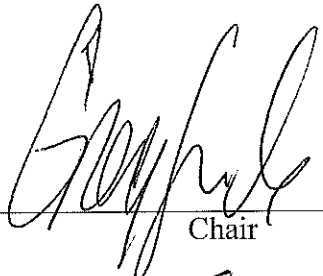
Section 11. Compliance with Open Meeting Law. It is found and determined that all formal actions of this Legislative Authority concerning and relating to the adoption of this Resolution were taken in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority and of any of its committees or subcommittees, or any other public bodies of the Authority, that resulted in such formal actions, were in meetings open to the public, in compliance with the law.

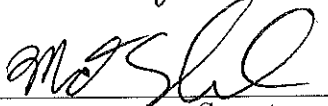
Section 12. Effective Date. This Resolution shall be in full force and effect upon its adoption.

Adopted: August 10, 2016

Yeas: **Mr. Bolton, Ms. Laine, Ms. Reindl-Johnson, Ms. Zindel**

Nays: **None**


Chair


Secretary