

COMMISSIONERS JOURNAL NO. 56 - DELAWARE COUNTY  
 MINUTES FROM REGULAR MEETING HELD FEBRUARY 2, 2012

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present:  
 Dennis Stapleton, President  
 Ken O'Brien, Vice President  
 Tommy Thompson, Commissioner

RESOLUTION NO. 12-129

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JANUARY 30, 2012:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on January 30, 2012; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

Vote on Motion Mr. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 12-130

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0201, MEMO TRANSFERS IN BATCH NUMBERS MTAPR0201:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0201 and memo transfers in batch numbers MTAPR0201 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Desc	Line Account	Amount	Line
R1202213	PROSECUTORS	CSEA CONTRACT	10011102 - 5360	\$10,000.00	0001
R1202483	B & C COMMUNICATIONS	misc. equipment	21411306 - 5201	\$4,000.00	0001
R1202483	B & C COMMUNICATIONS	repair and maintenance	21411306 - 5328	\$3,000.00	0002
R1202527	LEO MEYERS UNIFORM	EMS UNIFORMS	10011303 - 5225	\$20,000.00	0001
R1202532	JOHN DEERE FINANCIAL	DIESEL FUEL	10011303 - 5228	\$20,000.00	0001
R1202536	TURNING POINT	DOMESTIC VIOLENCE	24911311 - 5301	\$28,500.00	0001
R1202551	FILTER TECHNOLOGY INC	FURNACE FILTERS FOR DEL COUNTY OFCS	10011105 - 5201	\$9,186.79	0001
R1202551	FILTER TECHNOLOGY INC	SHIPPING & HANDLING	10011105 - 5331	\$250.00	0002
R1202558	OWENS STATE COMMUNITY COLLEGE	TUITION BOOKS FEES	22311611 - 5348	\$5,200.00	0001

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 12-131

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

The Court of Common Pleas Adult Court Services is requesting that Mark Taglione attend a Resiliency Training For Managers in Columbus, Ohio February 9-10, 2012, at the cost o \$40.00 (Fund Number 25622303).

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

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**RESOLUTION NO. 12-132**

**IN THE MATTER OF ACCEPTING THE TREASURER’S REPORT FOR THE MONTH OF DECEMBER 2011:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to accept the Treasurer’s Report for the month of December 2011.

(Copy available for review at the Commissioners’ Office until no longer of administrative value.)

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

**RESOLUTION NO. 12-133**

**IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR THE ECONOMIC DEVELOPMENT DEPARTMENT:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

**Transfer of Appropriation**

<b>From</b>	<b>To</b>
21011113-5310 Economic Development/Travel	21011116-5382 Economic Development Business Development Meetings/ Meals \$4,000.00

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Aye

**RESOLUTION NO. 12-134**

**IN THE MATTER OF APPROVING A SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT AND ESTOPPEL CERTIFICATE BY AND BETWEEN KEMBA FINANCIAL CREDIT UNION, THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO AND RRH, LTD FOR THE EMERGENCY MEDICAL SERVICES LEASE:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

**SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMEN T AGREEMENT AND ESTOPPEL CERTIFICATE**

This Subordination, Non-Disturbance and Attornment Agreement and Estoppel Certificate (the "Agreement") is made and executed as of the 2<sup>ND</sup> day of February, 2012, by and between Kemba Financial Credit Union, an Ohio Non-Profit Corporation ("Lender"), Board of County Commissioners, Delaware County, Ohio AKA Emergency Medical Services ("Tenant"), and RRH, Ltd ("Landlord").

RECITALS

A. Tenant has entered into a lease with Landlord dated March 21<sup>st</sup>, 2011 (the "Lease"), whereby Tenant has agreed to lease the real property described in the Lease as the leased or demised premises, which leased or demised premises are located in Delaware County, State of Ohio, together with the improvements now or hereafter located thereon, and are more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. On the condition that the Lease and all of Tenant’s rights in the Property (the "Lease Rights") be subordinated as provided below, Lender has made or will make a loan(s) (the "Loan") to Landlord. In connection with the Loan, Landlord has executed or will execute a Promissory Note(s), Mortgage (the "Mortgage"), general Assignment of Rents (the "Assignment of Rents"), Loan Agreement (the "Loan Agreement"), and other documents required by Lender to evidence and/or secure Landlord’s obligations under the Loan (collectively "Loan Documents").

AGREEMENT

NOW THEREFORE, In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Lender, Landlord and Tenant agree as follows:

1. Estoppel Certificate. Tenant hereby certifies to and agrees with Lender that as of the date of this Agreement, Lender is relying on all of the following certifications and agreements of Tenant as consideration for Lender executing this Agreement, and in the making of the Loan evidenced by the Note and secured by the Mortgage, Assignment, and other collateral identified in the Loan Documents:

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- a. The Lease is in full force and effect and is the valid and binding obligation of Tenant, enforceable in accordance with its terms.
- b. All requirements for the commencement and validity of the Lease have been satisfied.
- c. Neither Tenant nor Landlord is in default under the Lease and no event has occurred and no condition exists, which with the giving of notice, the passage of time, or both, would constitute a default by Tenant or Landlord under the Lease.
- d. There are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease and no claim by Tenant of any nature exists against Landlord under the Lease. All obligations of Landlord have been fully performed.
- e. None of the rent which Tenant is required to pay under the Lease has been prepaid, or will in the future be prepaid, more than one month in advance.
- f. Tenant has no right or option contained in the Lease or in any other document to purchase all or any portion of the Property.
- g. The Lease has not been modified, terminated, or amended, by "side letter" or otherwise, and shall not after the date of this Agreement be modified, terminated, or amended, by "side letter" or otherwise, without prior written notice to Lender for any termination and each such amendment or modification.
- h. Tenant has not assigned, mortgaged, sublet, encumbered or otherwise transferred any or all of its interest under the Lease and, during the term of the Loan, agrees to not assign, mortgage, sublet, encumber, or otherwise transfer any or all of its interest under the Lease without the prior written consent of Lender.

2. Subordination to Loan Documents. Notwithstanding anything in the Lease to the contrary, the Lease and Lease Rights are hereby made subject, subordinate, inferior, and junior to the Loan Documents and the liens created by the Loan Documents, and to all sums advanced on the security for the Loan Documents, including all sums advanced or costs incurred in connection with the Loan Documents or the Loan, and including all renewals, modifications, consolidations, replacements, and extensions of the Loan and any of the Loan Documents, and any future lien or liens affecting the Property held by or made for the benefit of Lender. The Lease and Lease Rights are hereby subordinated to the Loan Documents and the liens created by the Loan Documents, the same and as fully as if the Loan Documents had been executed and delivered, and recorded, where applicable, prior to execution, delivery, and recording of the Lease. If there is any inconsistency between the provisions of the Loan Documents and the provisions of the Lease, the provisions of the Loan Documents shall prevail and govern the Lease.

Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender, and its successors and assigns, without the prior written consent of Lender.

3. Acknowledgement of Assignment of Rents. Tenant agrees and acknowledges that it has notice, and notwithstanding anything to the contrary in the Lease hereby consents, that the Lease, the Lease Rights, the rents, and all other sums due under the Lease have been assigned or are to be assigned to Lender. Specifically, but without limitation, Tenant consents to the Assignment of Rents executed by Borrower to Lender. In the event that Lender notifies Tenant, in writing, of a default under any of the Loan Documents and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise required pursuant to such notice.

4. Notice and Opportunity to Cure. Tenant agrees to deliver to Lender, within five (5) days of delivery to Landlord, a copy of all notices and other documents delivered to Landlord in connection with the Lease, specifically including, but without limitation, any notices of default or termination. If any default occurs under the Lease, Lender shall have the right for a period of sixty (60) days after receipt of notice of the default to cure such default. If the nature of the default is such that it cannot reasonably be cured within such sixty (60) day period, then Lender shall have such longer period as is reasonably necessary to cure such default. No default shall be deemed to exist under the Lease so long as Lender is seeking, in good faith, to cure the default.

5. Requirement of Non-Disturbance. Tenant agrees and acknowledges that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

6. Non-Disturbance. In the event the foreclosure of the Mortgage, or upon a transfer of the Property by conveyance in lieu of foreclosure (collectively, a "Transfer"), then so long as Tenant complies with this Agreement and is not in default under any of the terms, covenants, or conditions of the Lease, Lender shall not name or join Tenant in any foreclosure proceeding, unless such joinder is necessary, in Lender's discretion, to complete the foreclosure, nor shall Lender disturb the possession of Tenant, its successors and assigns. In the event of a Transfer, Lender will perform and be bound by all of the obligations imposed on Landlord by the Lease for the balance of the term of the Lease, and any extension or renewals of the Lease, as long as no event of default has occurred under the Lease, which has continued to exist for such period of time, after notice and opportunity to cure, if any, required by the Lease, as would entitle Landlord under the Lease to terminate the Lease, or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant under the Lease.

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7. Attornment. Tenant hereby agrees to attorn to, adhere to and accept any such successor owner as landlord under the Lease, and to be bound by and perform all of the obligations imposed by the Lease, such attornment to be self-operative without the execution of any further instruments, upon a Transfer of the Property.

8. No Liability for Lender. Lender, or any successor owner of the Property resulting from a Transfer, shall not be (a) liable for any obligations under the Lease which arise or accrue prior to a Transfer or which arise or accrue at any time after Lender ceases to be the owner of the Property; (b) liable for any damages or other relief attributable to any act or omission of a prior landlord, including Landlord; (c) liable for any damages or other relief attributable to any latent or patent defect in the Property; (d) liable for any damages or other relief attributable to any breach by any prior landlord, including Landlord, under the Lease or any representation or warranty made in connection with the Lease; (e) subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord; (f) bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord, including Landlord, for a period in excess of one month or by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord, including Landlord; (g) bound by any assignment, subletting, renewal, extension or any other agreement or modification of the Lease made without the prior written consent of Lender; or (h) liable for any indirect or consequential damages, including loss of sublet rentals, loss of profits, or damage to goodwill or reputation.

Nothing in this Agreement is intended to constitute an agreement by Lender to perform any obligation of Landlord as landlord under the Lease prior to the time Lender obtains title to the Property by Transfer or otherwise obtains possession of the Property pursuant to the terms of the Loan Documents. Specifically, but without limitation, Lender shall have no obligations with respect to the erection or completion of any improvements on the Property, either at the commencement of the term of the Lease or upon any renewal or extension of the term of the Lease, or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

In the event that Lender shall acquire title to the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Property, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Property for the payment and discharge of any obligations imposed upon Lender under this Agreement or under the Lease, and Lender is hereby released and relieved of any other obligations under this Agreement and the Lease.

9. No Derogation of Liens. Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien and charge or provisions of the Mortgage, Assignment, or any other lien created by the Loan Documents.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

11. Successors and Assigns. This Agreement is and shall be binding upon and shall inure to the benefit of Tenant, Lender and their respective successors and assigns.

EXECUTED as of the day and year first above written.

Vote on Motion Mr. O'Brien Nay Mr. Thompson Aye Mr. Stapleton Aye

**COMMISSIONERS' COMMITTEES REPORTS**

**Commissioner O'Brien**

**-Email From Central Ohio Youth Center; Special Full Joint Board Meeting February 16<sup>th</sup> 4:00pm; Tours Start At 3:00pm**

**-911 Training Took Place This Week**

**-In Review Of Ethics Policy; Comments On Compliance With ORC**

**Commissioner Thompson**

**-Heart Of Ohio RC&D Conservation District Meeting At Arts Castle; 2013 Uncertain**

**Commissioner Stapleton**

**-DKMM Grant Reviews; The Group Might Need Another Commissioner To Help**

**-Tech Columbus Banquet Is Tonight; Director Comstock Is Attending**

**-Employee Review Form**

**RESOLUTION NO. 12-135**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF DISCIPLINE OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL AND FOR COLLECTIVE BARGAINING:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to adjourn into Executive Session at 10:14AM.

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Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

**RESOLUTION NO. 12-136**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to adjourn out of Executive Session at 11:08AM.

Vote on Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Thompson Aye

**RESOLUTION NO. 12-137**

**IN THE MATTER OF APPROVING PERSONNEL ACTIONS:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, on February 1, 2012 the Delaware County Commissioners received from Kelly Mills, Child Support Enforcement Agency Employee, a request for a "Step 3" meeting under Delaware County's Complaint Procedures Policy; and

In That Regard, a meeting is scheduled at 12:30PM on Monday February 6, 2012 in the Commissioners' Hearing Room 101 North Sandusky Street Delaware, Ohio 43015.

Further Be It Resolved, that the Assistant County Administrator, is directed to contact Kelly Mills, Child Support Enforcement Agency Employee, to inform her of the meeting date and time.

Vote on Motion Mr. O'Brien Aye Mr. Stapleton Aye Mr. Thompson Aye

There being no further business, the meeting adjourned.

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Ken O'Brien

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Dennis Stapleton

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Tommy Thompson

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Jennifer Walraven, Clerk to the Commissioners