

PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY

The Board of Directors (the "Legislative Authority") of the Port of Greater Cincinnati Development Authority (the "Issuer"), met in regular session on June 13, 2012, at 8:00 a.m. at 35 East Seventh Street, Room 209, Cincinnati, Ohio 45202, with the following members present:

OTTO Buzig; Lyndis Marmen; Clark Hardy; Lydia Jacobs-Hanson;
MARTY DUND; DANA Smith

MARTY DUND introduced the following resolution and moved its passage:

RESOLUTION NO. 2012-06

A RESOLUTION AUTHORIZING THE ISSUANCE OF UP TO \$30,000,000 OF PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2012 (DRAKE CENTER PROJECT) IN ORDER TO ASSIST DRAKE CENTER, INC. IN REFINANCING A PORTION OF DEBT PREVIOUSLY INCURRED, THE PROCEEDS OF WHICH WERE USED TO REFUND THE COUNTY OF HAMILTON VARIABLE RATE HOSPITAL FACILITIES REVENUE BONDS, SERIES 1999A (DRAKE CENTER, INC.), SUCH BONDS BEING ORIGINALLY ISSUED TO FINANCE IMPROVEMENTS OF CERTAIN FACILITIES OWNED BY DRAKE CENTER, INC., AND TO PAY THE PURCHASE PRICE OF CERTAIN FACILITIES PREVIOUSLY LEASED TO DRAKE CENTER, INC. BY THE COUNTY OF HAMILTON, OHIO; PROVIDING FOR THE ASSIGNMENT OF REVENUES FOR THE PAYMENT OF THE BONDS; AUTHORIZING A LOAN AGREEMENT WITH RESPECT THERETO; AND AUTHORIZING AN INDENTURE APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND FURTHER TO SECURE THE PAYMENT OF THE BONDS; AND AUTHORIZING A BOND PURCHASE AGREEMENT, A TAX REGULATORY AGREEMENT AND SUCH OTHER DOCUMENTS AND ACTIONS WITH RESPECT THERETO.

WHEREAS, THE PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY (hereinafter called the "Issuer"), a port authority existing under the laws of the State of Ohio (the "State"), is by virtue of the laws of the State, including Section 13 of Article VIII of the Ohio Constitution and Chapter 4582 of the Ohio Revised Code and other authorities mentioned therein, authorized and empowered, among other things, (a) to issue revenue bonds in order to refinance a portion of the Interim Debt (as defined herein), (b) to enter into a Loan Agreement, as hereinafter defined, with Drake Center, Inc. (the "Obligor") as owner of the Purchased Facilities (as defined herein) and the improvements financed by the Prior Bonds (as defined herein) providing for revenues, as defined in Section 4582.21(G) of the Ohio Revised Code, sufficient to pay the principal of and interest and any premium on such revenue bonds, (c) to secure such revenue bonds by an Indenture between the Issuer and a corporate trustee and (d) to enact this Bond Legislation and enter into the Indenture, the Loan Agreement, the Tax Regulatory Agreement and the Bond Purchase Agreement all as hereinafter defined, upon the terms and conditions provided therein; and

WHEREAS, the Obligor has requested the Issuer to issue a new series of revenue bonds in an aggregate principal amount of up to \$30,000,000; and

WHEREAS, the Bonds will be issued as tax-exempt bonds in a total principal amount of up to \$30,000,000 and the proceeds of such issuance are to be used to refinance a portion of the Interim Debt; and

WHEREAS, the Issuer hereby finds and determines that the refinancing of the Interim Debt requires the issuance, sale and delivery of revenue bonds in the aggregate principal amount of up to \$30,000,000.

NOW, THEREFORE, BE IT RESOLVED by the Port of Greater Cincinnati Development Authority:

Section 1. Definitions. In addition to the words and terms elsewhere defined in this Bond Legislation or in the Agreement and used herein as defined words and terms, the following words and terms as used in this Bond Legislation shall have the following meanings unless the context or use clearly indicates another or different meaning or intent:

“Act” means Chapter 4582 of the Ohio Revised Code as enacted and amended from time to time.

“Bank” means initially, PNC Bank, National Association, and its successors and assigns in its capacity as the original purchaser of the Bonds.

“Bond Counsel” means Thompson Hine LLP or such other firm of nationally recognized bond counsel as is selected by the Obligor and approved by the Issuer and the Trustee.

“Bonds” means the Port of Greater Cincinnati Development Authority Economic Development Revenue Bonds, Series 2012 (Drake Center Project), or as otherwise designated in the Certificate of Award, of the Issuer authorized in Section 3 of this Bond Legislation and in Section 2.01 of the Indenture.

“Bond Fund” means the Bond Fund created by Section 6 hereof and Section 5.03 of the Indenture.

“Bond Legislation” means this legislation providing for the issuance of the Bonds.

“Bond Purchase Agreement” means the Bond Purchase Agreement among the Bank, the Issuer and the Obligor relating to the Bonds.

“Bond Service Charges” means, during any time period, the principal, interest and redemption premium, if any, and purchase price required to be paid by the Obligor on the Bonds during such time period.

“Certificate of Award” means a certificate of award executed by the Executive or the Fiscal Officer designating the final terms of the Bonds as authorized or permitted by this Bond Legislation.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations (whether temporary

or final) under that Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“Executive” means the President and Secretary of the Issuer.

“Fiscal Officer” means the Secretary or Assistant Secretary of the Issuer or any duly authorized deputy.

“Holder” or “Holder of a Bond” or “Bondholder” means the Person in whose name a Bond is registered on the Register.

“Indenture” means the Indenture, provided for in Section 9 hereof, between the Issuer and the Trustee, dated as of June 1, 2012, as amended or supplemented from time to time.

“Interim Debt” means the Credit Agreement, dated as of March 1, 2012, between Obligor and PNC Bank, National Association, and all documents derived therefrom, the proceeds of which helped refund the Prior Bonds and pay the purchase price of the Purchased Facilities.

“Issuer” means the Port of Greater Cincinnati Development Authority, a port authority existing under the Act.

“Issuer’s Counsel” means Frost Brown Todd, LLC.

“Legislative Authority” or “Issuing Authority” means the Board of Directors of the Issuer.

“Loan” means the loan by the Issuer to the Obligor of the proceeds received from the sale of the Bonds.

“Loan Agreement” means the Loan Agreement provided for in Section 9 hereof between the Issuer and the Obligor, dated as of June 1, 2012, as amended or supplemented from time to time.

“Loan Payments” means the amounts required to be paid by the Obligor in repayment of the Loan pursuant to Section 4.1 of the Loan Agreement.

“Obligor” means Drake Center, Inc., an Ohio nonprofit corporation, and its lawful successors and assigns.

“Person” or words importing Persons mean firms, associations, corporations, limited liability companies, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, business trusts, limited liability companies, public or governmental bodies, other legal entities and natural Persons.

“Prior Bonds” means the County of Hamilton, Ohio Variable Rate Hospital Facilities Revenue Bonds, Series 1999A (Drake Center, Inc.), dated December 22, 1999, in the original principal amount of \$25,500,000.

“Purchased Facilities” means certain facilities previously leased to Obligor by the County of Hamilton, Ohio and subsequently purchased by Obligor from the County of Hamilton, Ohio.

“Register” means the books kept and maintained by the Registrar for registration and transfer of Bonds pursuant to Section 3.06 of the Indenture.

“Revenues” means (a) all of the moneys received or to be received by the Issuer or the Trustee in respect of payment of the Loan Payments with respect to the Bonds, (b) all moneys and investments in the Bond Fund, including without limitation moneys received by the Trustee under or pursuant to a Letter of Credit, as defined in the Indenture, (c) any moneys and investments in the Refunding Fund, and (d) all income and profit from the investment of the foregoing moneys.

“State” means the State of Ohio.

“Tax Regulatory Agreement” means the Tax Regulatory Agreement, among the Issuer, the Obligor and the Trustee for the Bonds, as amended or supplemented from time to time.

“Trustee” means the Trustee at the time acting as such under the Indenture, originally Deutsche Bank National Trust Company, and any successor thereto, as Trustee, and any successor Trustee as determined or designated under or pursuant to the Indenture.

Any reference herein to the Issuer, to the Legislative Authority, or to any officers thereof, shall include any entity which succeeds to its or their functions, duties or responsibilities pursuant to or by operation of law. Any reference to a section or provision of the Ohio Constitution or the Act or to a section, provision or chapter of the Ohio Revised Code shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented, or superseded; provided, however, that no such change in the Constitution or laws (a) shall alter the obligation to pay the Bond Service Charges in the amounts and manner, at the times, and from the sources provided in any Bond Legislation and any Indenture, except as otherwise herein permitted or (b) shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer or the Obligor under the Agreement. Any reference to the Obligor shall include any surviving, resulting or transferee partnership or corporation permitted by the Agreement.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms “hereof”, “hereby”, “hereto”, “hereunder”, and similar terms, mean this Bond Legislation and the Indenture. Terms not defined herein shall have the meanings set forth in the Indenture.

Section 2. Determinations by the Issuing Authority. The Issuing Authority hereby determines:

- (a) that the Interim Debt is to be refinanced in part by permanent financing through a Loan of the proceeds of the Bonds, and that such Loan is now useful, and the utilization of such property is consistent with the purposes of the Act; and
- (b) the Purchased Facilities and the improvements financed by the Prior Bonds are “facilities” as that term is defined in Section 4582.21 of the Ohio Revised Code, are consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution and the Act and will benefit the people of the Issuer by creating or preserving jobs and employment opportunities and promoting the commercial, distribution, industrial and economic development of the Issuer and the State; and

- (c) the refinancing of the Interim Debt is consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution and the Act and will benefit the people of the Issuer by creating or preserving jobs and employment opportunities and promoting the industrial and economic development of the Issuer and the State; and
- (d) the Purchased Facilities and the improvements financed by the Prior Bonds are within the geographic jurisdiction of the Port Authority.

Section 3. Authorization and Terms of Bonds. To accomplish the purpose of the Act and to provide a portion of the funds necessary to assist the Obligor in the financing of the Purchased Facilities and the improvements financed by the Prior Bonds, the issuance of the Bonds of the Issuer in the aggregate principal amount of up to \$30,000,000 is hereby authorized and approved. The Bonds shall be dated the date of their issuance. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, up to \$30,000,000 aggregate principal amount of its Bonds for the purpose of assisting the Obligor in the refinancing the Purchased Facilities and the improvements financed by the Prior Bonds. The Bonds shall be designated "Economic Development Revenue Bonds, Series 2012 and shall bear the modifier "(Drake Center Project)," or as otherwise designated in the Certificate of Award.

The Bonds shall be issued in the form and denomination and shall be executed, dated, be subject to redemption on the dates and at the prices and be payable on the dates as provided in the Certificate of Award and in the Indenture hereinafter authorized.

The Bonds shall be retired either at stated maturity or by redemption over a period not to exceed 30 years and shall bear interest at a rate not in excess of 4% per annum, final maturities, rates and other terms to be determined and set forth in the Certificate of Award and in the Indenture.

The Bonds shall be payable at the corporate trust office of the Trustee or any successor trustee.

Section 4. Terms of all Bonds. All Bonds shall bear such designation as may be necessary to distinguish them from Bonds of any other series. Bond Service Charges on all Bonds shall be payable in lawful money of the United States of America. Subject to provisions of the applicable Bond Legislation and of the Code, the Bonds shall be issued as fully registered Bonds and may be exchanged for Bonds of other denominations, all as provided in the Indenture. All Bonds shall be negotiable instruments within the meaning of the Act, subject to applicable provisions for registration, and shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law.

All Bonds shall be executed in the manner provided in this Bond Legislation authorizing their issuance or in the manner provided by the applicable law in effect at the time of their issuance.

The Bonds shall be signed by the Executive or the Fiscal Officer or both after the Issuing Authority has voted to adopt this Resolution, provided that any or all of such signatures may be facsimiles.

In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the issuance, authentication or delivery of such Bonds, such

signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until that time.

Section 5. Sale of the Bonds and Allocation of Purchase Price. The Bonds will be sold and awarded to the Bank at a price of 100% of the principal amount of the Bonds in accordance with the terms and provisions of this Bond Legislation and the Executive is hereby authorized and directed to make the necessary arrangements on behalf of the Issuer with the Bank to establish the date, location, procedure and conditions for the delivery of the Bonds to, or for the account of, the purchasers thereof. The Executive further is hereby authorized and directed to take all steps necessary to effect due execution, delivery and security of the Bonds under the terms of this Bond Legislation and the Indenture. It is hereby determined that the aforesaid purchase price and the interest rate for the Bonds and the manner of sale, as provided in this Bond Legislation, and in the Indenture, are in the best interest of the Issuer and consistent with all legal requirements. The Secretary of the Issuer shall furnish to Bond Counsel and to the Bank a true transcript of proceedings had with reference to the issuance of the Bonds, certified by said Secretary, along with such information from the Secretary's records as is necessary to determine the regularity and validity of the issuance of said Bonds.

Section 6. Source of Payment - Bond Fund. As provided in the Loan Agreement, Loan Payments sufficient in time and amount to pay the Bond Service Charges as they come due, are to be paid to the Trustee for the account of the Issuer and deposited in the Bond Fund.

The Bond Fund shall have such accounts and sub-accounts contained therein and shall be invested as provided in the Indenture.

Moneys in the Bond Fund shall be used for redemption or defeasance of Bonds and payment of Bond Service Charges as provided in the Indenture.

Section 7. Refunding Fund. The "Port of Greater Cincinnati Development Authority Refunding Fund" provided for in the Indenture shall have such accounts and sub-accounts contained therein as provided in the Indenture. Proceeds from the initial sale of the Bonds, in an amount determined in the Indenture shall be deposited for investment in the Refunding Fund. Such moneys shall be invested and disbursed as provided in the Indenture.

Section 8. Covenants of Issuer. In addition to other covenants of the Issuer in this Bond Legislation and the Indenture contained, the Issuer further covenants and agrees as follows:

(a) **Payment of Bond Service Charges.** The Issuer will pay all Bond Service Charges, or cause them to be paid, solely from the sources provided herein and in the Indenture, on the dates, at the places and in the manner provided in the Indenture.

(b) **Performance of Covenants, Authority and Actions.** The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in this Bond Legislation, the Indenture, the Loan Agreement, the Bond Purchase Agreement, the Tax Regulatory Agreement, and in the Bonds executed, authenticated and delivered under this Bond Legislation, and in the Indenture, and in all proceedings of the Issuer pertaining to the Bonds, the Indenture, or the Loan Agreement. The Issuer warrants and covenants that it is, and upon delivery of the Bonds will be, duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds and to execute the Loan Agreement, the Indenture, the Tax Regulatory Agreement, and the Bond Purchase Agreement, to provide the security for payment of

the Bond Service Charges in the manner and to the extent herein set forth; that all actions on its part for the issuance of the Bonds and execution and delivery of the Loan Agreement, the Indenture, the Tax Regulatory Agreement, and the Bond Purchase Agreement, have been or will be duly and effectively taken; and that each Bond in the hands of the Holder will be a valid and enforceable special obligation of the Issuer according to the terms thereof. Each provision of this Bond Legislation, the Loan Agreement, the Bonds, the Indenture, the Tax Regulatory Agreement, and the Bond Purchase Agreement is binding upon each such officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duties required by such provision.

(c) **Revenues.** The Issuer will not assign the Revenues or create or authorize to be created any debt, lien or charge thereon, other than the assignment thereof under the Indenture.

(d) **Recordings and Filings.** At the direction and expense of the Obligor, the Issuer will cause the Indenture, and any related instrument or documents relating to the assignment made by it under this Indenture to secure the Bonds, to be recorded and filed in the manner and in the places (if any) which may be required by law in order to preserve and protect fully the security of the Holders and the rights of the Trustee under the Indenture.

(e) **Inspection of Books.** All books, instruments and documents in the Issuer's possession relating to the Revenues shall be open to inspection and copying (at the expense of the Person making such copies) at all times during the Issuer's regular business hours and subject to reasonable written notice of at least twenty-four (24) hours, by any accountants or other agents of the Trustee, the Obligor or the Bank which the Trustee, the Obligor or the Bank may designate from time to time.

(f) **Rights under Agreement.** Except as those documents otherwise provide, the Trustee, in its name or in the name of the Issuer, may, for and on behalf of the Holders, enforce all rights of the Issuer and all obligations of the Obligor under and pursuant to the Loan Agreement and Tax Regulatory Agreement, whether or not the Issuer is in default of the pursuit or enforcement of such rights and obligations.

(g) **Maintenance of Loan Agreement.** The Issuer shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on the part of the Issuer under the Loan Agreement, and will take all actions within its authority to maintain the Loan Agreement in effect in accordance with the terms thereof and to enforce and protect the rights of the Issuer thereunder, including actions at law and in equity, as may be appropriate.

(h) **Arbitrage Provisions.** The Issuer will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Bonds are delivered to the Bank, so that they will not constitute "arbitrage bonds" under Section 148 of the Code. The Fiscal Officer or any other officer having responsibility with respect to the issuance of the Bonds, is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the Issuing Authority, or any officer of the Obligor, and upon receipt of satisfactory indemnities, to give an appropriate certificate on behalf of the Issuer, for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 and regulations thereunder.

Section 9. Loan Agreement, Indenture Tax Regulatory Agreement, and Bond Purchase Agreement. The Executive or Fiscal Officer is hereby authorized and directed to execute, acknowledge and deliver a Loan Agreement, Indenture, Tax Regulatory Agreement, Bond Purchase Agreement, and assignments in substantially the forms submitted to the Issuer, and such other documents, certificates and agreements related to the issuance of, and security for, the Bonds as are approved by Bond Counsel and Issuer's Counsel, which instruments are hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officials executing the same. The approval of such changes by said officials, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of the Loan Agreement, Indenture, Tax Regulatory Agreement, Bond Purchase Agreement, and assignments, and such other instruments respectively, by such officials.

Section 10. Other Documents. The Executive and/or the Fiscal Officer are hereby further authorized and directed to execute financing statements, other assignments and any other instruments as are, in the opinion of Issuer's Counsel and Bond Counsel, necessary to consummate the transactions provided for in the Indenture, Loan Agreement, Bond Purchase Agreement, and Tax Regulatory Agreement. The Executive and/or the Fiscal Officer are further authorized to file any information statement with respect to the Bonds that may be requested or required by the Code.

Section 11. Trustee and Bond Registrar. Deutsche Bank National Trust Company, Chicago, Illinois is hereby designated Trustee and Registrar for the Bonds under the Indenture.


Section 12. Compliance with Section 121.22, Ohio Revised Code. It is hereby found and determined that all formal actions of this Legislative Authority concerning and relating to the passage of this Bond Legislation were taken in an open meeting of this Legislative Authority and that all deliberations of this Legislative Authority and of any of its committees, if any, that resulted in such formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22, Ohio Revised Code.

Section 13. Effective Date. This Bond Legislation shall take effect and be in force immediately upon its passage.

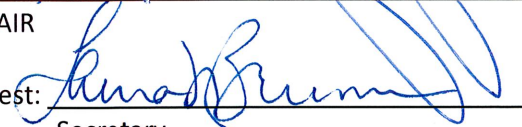
Lydia Jackson-Horsman seconded the motion and, after discussion, a roll call being had upon the question of the passage of the foregoing resolution, the vote thereon resulted as follows:

Ayes: 6

Nays: 0



CHAIR

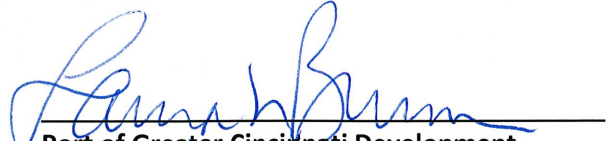
Attest: 

Secretary

CERTIFICATE

The undersigned, President of the Port of Greater Cincinnati Development Authority, hereby certifies that the foregoing is a true and complete copy of Resolution 2012- ___ passed on the 13th day of June, 2012, and has not been amended or rescinded as of this date.

June 13, 2012



**Port of Greater Cincinnati Development
Authority**

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