

**RESOLUTION NO. 2013-07**

**A RESOLUTION AUTHORIZING THE ISSUANCE OF UP TO \$21,000,000 IN COMBINED PRINCIPAL AMOUNT OF PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY FACILITIES REVENUE AND IMPROVEMENT BONDS, SERIES 2013B-1 (FIFTH AND RACE GARAGE PROJECT) AND TAXABLE FACILITIES REVENUE AND IMPROVEMENT BONDS SERIES 2013B-2 (FIFTH AND RACE GARAGE PROJECT), IN ORDER TO ASSIST FIFTH AND RACE, LLC IN FINANCING IN PART THE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A NEW MULTI-LEVEL PARKING GARAGE IN DOWNTOWN CINCINNATI; PROVIDING FOR THE ASSIGNMENT OF REVENUES FOR THE PAYMENT OF THE SERIES 2013B-1 BONDS AND SERIES 2013B-2 BONDS; AUTHORIZING A LOAN AGREEMENT WITH RESPECT THERETO; AND AUTHORIZING A TRUST INDENTURE APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND FURTHER TO SECURE THE PAYMENT OF THE SERIES 2013B-1 AND SERIES 2013B-2 BONDS; AND AUTHORIZING A BOND PURCHASE AGREEMENT, A TAX REGULATORY AGREEMENT AND SUCH OTHER INSTRUMENTS AS ARE NECESSARY WITH RESPECT THERETO.**

**WHEREAS**, THE PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY (hereinafter called the "Issuer"), a port authority existing under the State of Ohio (the "State"), is by virtue of the laws of State, including Section 13 of Article VIII of the Ohio Constitution and Chapter 4582 and other authorities mentioned therein, authorized and empowered, among other things, (a) to issue revenue bonds in order to assist in the financing of a new multi-level parking garage in downtown Cincinnati (the "Project") (b) to enter into an agreement with Fifth and Race, LLC (the "Obligor") as lessee and operator of the Project 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 a trust agreement or 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 Purchase Agreement as hereinafter identified, upon the terms and conditions provided therein; and

**WHEREAS**, the Obligor has requested the Issuer to issue revenue bonds in two Series as designated herein (Series 2013B-1 and Series 2013B-2) in an aggregate principal amount of up to \$21,000,000; and

**WHEREAS**, the Series 2013B-1 bonds will be issued as tax-exempt bonds in a total principal amount of up to \$14,000,000, as finally set forth in the Certificate of Award (as hereinafter defined); and

**WHEREAS**, the Series 2013B-2 Bonds will be issued as taxable bonds in the total principal amount set forth in the Certificate of Award; provided, however, that such amount will not exceed \$21,000,000 when added to the amount set forth in the Certificate of Award for the Series 2013B-1 Bonds; and

**WHEREAS**, based solely on the representations of the Obligor, the Issuer hereby finds and determines that the payment of a portion of the costs of the Project, requires the issuance (in two Series), sale and delivery of revenue bonds in the aggregate principal amount of \$21,000,000.

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.

“Additional Payments” means the amounts required to be paid by the Obligor pursuant to the provisions of Section 4.2 of the Loan Agreement.

“Agreement” or “Loan Agreement” means the Loan Agreement provided for in Section 11 hereof between the Issuer and the Obligor, dated as of date set specified in the Certificate of Award, as amended or supplemented from time to time.

“Bankruptcy Code” means Title 11 of the United States Code, as it is amended from time to time.

“Bond Counsel” means Keating Muething & Klekamp PLL 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 Facilities Revenue and Improvement Bonds, Series 2013B-1 (Fifth and Race Garage Project) and Taxable Facilities Revenue and Improvement Bonds, Series 2013B-2 (Fifth and Race Garage Project) of the Issuer authorized in Section 3 of this Bond Legislation and Section 2.01 of the Indenture.

“Bond Fund” means the Bond Fund created by Section 6 hereof and Section 4.01 of the Indenture.

“Bond Legislation” means this legislation providing for the issuance of the Bonds and approving the Agreement, the Indenture and related matters.

“Bond Service Charges” means, for any period or payable at any time, the principal of, premium, if any, and interest due on the Bonds for that period or payable at that time whether due at maturity or upon acceleration or redemption or otherwise.

“Business Day” means any day of the year other than (i) a Saturday or Sunday, (ii) any day on which banks located in either Cincinnati, Ohio, or the city in which the principal corporate trust office of the Trustee is located are required or authorized by law to remain closed, or (iii) any day on which the New York Stock Exchange is closed.

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



“Debt Service Reserve Fund” means the Debt Service Reserve Fund created by Section 9 hereof and Section 4.01 of the Indenture.

“Determination of Taxability” means, with respect to the Series 2013B-1 Bonds, (i) a change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance which has the effect of causing interest paid or payable on the Series 2013B-1 Bonds to become includable, in whole or in part, in the gross income of the Bondholders thereof for federal income tax purposes, (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable on the Series 2013B-1 Bonds to become includable, in whole or in part, in the gross income of the Bondholders thereof for federal income tax purposes or (iii) the receipt by the Trustee of a written opinion of Bond Counsel to the effect that interest on the Series 2013B-1 Bonds must be included in the gross income of the Bondholders thereof for federal income tax purposes.

“Event of Default” means any of the events specified in Section 9.01 of the Indenture to be an Event of Default. “Default” means any event which with the giving of notice or the lapse of time or both would constitute an Event of Default.

“Executive” means the President of the Issuer.

“Fiscal Officer” means the Secretary of the Issuer or his or her 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 Trust Indenture, provided for in Section 11 hereof, between the Issuer and the Trustee, dated as the date specified in the Certificate of Award, as amended or supplemented from time to time.

“Interest Payment Date” means the same as that term is defined in the Indenture.

“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 Payments” means the payments of principal, interest and premium on the Loan, and the Additional Payments.

“Notes” means, collectively, the Series 2013B-1 Note and the Series 2013B-2 Note.

“Obligor” means Fifth and Race, LLC, an Ohio non-profit limited liability company, and its lawful successors and assigns.

“Outstanding Bonds” in connection with Bonds means, as of the time in question, all Bonds authenticated and delivered under the Indenture, except:

- A. Bonds theretofore canceled or required to be canceled under Section 2.11 of the Indenture;
- B. Bonds which are deemed to have been paid in accordance with Article XIV of the Indenture; and
- C. Bonds in substitution for which other Bonds have been authenticated and delivered pursuant to Article II of the Indenture.

In determining whether the owners of a requisite aggregate principal amount of Bonds Outstanding have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of the Indenture, Bonds which are held by or on behalf of the Obligor (unless all of the outstanding Bonds are then owned by the Obligor) shall be disregarded for the purpose of any such determination. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee established to the satisfaction of the Bond Registrar the pledgee’s right so to act with respect to such Bonds and that the pledgee is not the Obligor (unless all of the outstanding Bonds are then owned by the Obligor).

“Paying Agent” or “Co-Paying Agent” means the Trustee and any national banking association, bank and trust company or trust company appointed by the Obligor, approved by the Issuer and meeting the qualifications of, and subject to the obligations of, the Trustee in the Indenture.

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

“Project” means the acquisition, construction and equipping of a multi-level parking garage at Fifth and Race Streets in Cincinnati, Ohio.

“Purchase Agreement” means that certain Bond Purchase Agreement by and among the Issuer, the Obligor and PNC Bank, National Association, Fifth Third Bank, and First Financial Bank, National Association dated the date specified in the Certificate of Award.

“Register” means the books kept and maintained by the Registrar for registration and transfer of Bonds pursuant to Section 2.02 of the Indenture.

“Regular Record Date” means, with respect to any Interest Period, the close of business on the last Business Day of such Interest Period.

“Resolution” means this Resolution No. 2013-07.

“Revenues” means (a) the Loan Payments, including the Additional Payments and Premium Payments, (b) all moneys and investments in the Debt Service Reserve Fund, the Project Fund, and the Bond Fund (except for the Defeasance Account), (c) all other moneys received or to be received by the Issuer or the Trustee and intended to be used for Bond Service Charges, and (d) all income and profit from the investment of the foregoing moneys. The term “Revenues” does not include any moneys



or investments in the Rebate Fund or the Defeasance Account, the Issuer having no interest therein or in any moneys or investments therein.

“Series 2013 B-1 Note” means the non-negotiable promissory note of the Obligor, dated as of even date with the Series 2013B-1 Bonds, in the form attached to the Loan Agreement as Exhibit A-1 and in the principal amount of the Series 2013B-1 Bonds evidencing the obligation of the Obligor to make Loan Payments with respect to the portion of the Loan attributable to the Series 2013B-1 Bonds.

“Series 2013 B-2 Note” means the non-negotiable promissory note of the Obligor, dated as of even date with the Series 2013B-2 Bonds, in the form attached to the Loan Agreement as Exhibit A-2 and in the principal amount of the Series 2013B-2 Bonds evidencing the obligation of the Obligor to make Loan Payments with respect to the portion of the Loan attributable to the Series 2013B-2 Bonds.

“Servicer” means the same as that term is defined in the Indenture.

“State” means the State of Ohio.

“Tax-Exempt Variable Rate” means the same as that term is defined infra.

“Taxable Variable Rate” means the same as that term is defined infra.

“Tax Regulatory Agreement” means the Tax Regulatory Agreement dated as the date specified in the Certificate of Award, among the Issuer, the Obligor, the Servicer and the Trustee, as amended or supplemented from time to time.

“Trustee” means the Trustee at the time acting as such under the Indenture, originally The Huntington National Bank, 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 limited liability company, 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.** Based solely on the information provided by the Obligor, the Issuing Authority hereby determines:



- (a) the Project is a “facility” as that term is defined in Section 4582.21 of the Ohio Revised Code, 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 commercial, distribution, industrial and economic development of the Issuer and the State; and
- (b) the Project Site is within the geographic jurisdiction of the Issuer.

**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 Project, including paying for costs of issuance related to the Bonds and funding the Debt Service Reserve Fund created under Section 9 of this Resolution, the issuance of the Bonds of the Issuer in the aggregate principal amount of up to \$21,000,000 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 \$21,000,000 aggregate principal amount of its Bonds for the purpose of assisting the Obligor in the financing of the Project. Said Bonds shall be issued in two Series to appropriately segregate the tax-exempt and taxable portions of the Project financing. The tax-exempt portion of the Bonds shall be designated “Facilities Revenue and Improvement Bonds, Series 2013B-1” whereas the taxable portion of the Bonds shall be designated “Taxable Facilities Revenue and Improvement Bonds, Series 2013B-2” and both shall bear the final modifier “(Fifth and Race Garage Project)”. The total principal amount of Series 2013B-1 Bonds issued shall be set forth in the Certificate of Award, provided that such total principal amount shall not exceed \$14,000,000. The total principal amount of the Series 2013B-2 Bonds issued shall be set forth in the Certificate of Award; provided, however, that such total principal amount, when added to the total principal amount of the Series 2013B-1 Bonds set forth in the Certificate of Award, shall not exceed \$21,000,000.

The Bonds shall be issued in fully registered form, initially in book-entry form, and shall be exchangeable for fully registered Bonds of other denominations in the manner and on the terms provided in the Indenture. The Bonds shall be numbered from R-1 upwards in each series.

The Bonds are issuable only as fully registered bonds in the denominations of \$100,000 and any larger denomination and: (i) shall initially be registered in the name of the purchasers thereof under the Purchase Agreement, and (ii) the Bonds shall not be transferable or exchangeable without further action by the Issuer.

**Interest Rate.** The interest rate of the Series 2013B-1 Bonds will be as determined by the Fiscal Officer in the Certificate of Award, not to exceed eighteen percent (18%) per annum (such rate, as determined in the Certificate of Award, being the “Tax-Exempt Variable Rate”). The interest rate on the Series 2013B-2 Bonds will be as determined by the Fiscal Officer in the Certificate of Award not to exceed eighteen percent (18%) per annum (such rate, as determined in the Certificate of Award, being the “Taxable Variable Rate”).

(1) **Maturity.** The Bonds shall mature, and principal on the Bonds will be paid, in each case as provided in the Certificate of Award; provided, however, that the Bonds shall mature no later than July 1, 2020.



(2) Redemption Provisions. The Bonds are subject to redemption prior to stated maturity as follows:

(a) Mandatory Redemption Upon a Determination of Taxability. Upon the occurrence of a Determination of Taxability related to the Series 2013B-1 Bonds, and at the direction of 100% of the Bondholders thereof, the Series 2013B-1 Bonds shall be called for redemption. If such Bondholders do not so direct the foregoing redemption within 90 days of the Determination of Taxability, then the Series 2013B-1 Bonds will remain outstanding but will bear interest at the Taxable Variable Rate, as set forth in the Certificate of Award. The redemption price of the Series 2013B-1 Bonds if redeemed in accordance with this paragraph (a) shall be equal to (i) 100% of the principal amount of such Bonds outstanding, plus (ii) accrued interest to the redemption date, plus (iii) an amount of money equal to the Additional Payments relating to such Bonds accrued and to accrue until actual final payment and redemption of such Bonds, that amount or applicable portions thereof to be paid to the Trustee or to the Persons to whom those Additional Payments are or will be due. The requirement of (iii) above with respect to Additional Payments to accrue may be met if provisions satisfactory to the Trustee and the Issuer are made for paying those amounts as they accrue.

(b) Optional Redemption. The Bonds are subject to redemption in whole or in part by the Issuer, at the Obligor's option, at a redemption price equal to (i) 100% of the principal amount to be redeemed, (ii) plus accrued interest to the redemption date, (iii) but without penalty or premium, except as may be provided in the Certificate of Award, plus (iv) an amount of money equal to the Additional Payments relating to the Bonds to be redeemed accrued and to accrue until actual final payment and redemption of such Bonds, that amount or applicable portions thereof to be paid to the Trustee or to the Persons to whom those Additional Payments are or will be due. The requirement of (iv) above with respect to Additional Payments to accrue may be met if provisions satisfactory to the Trustee and the Issuer are made for paying those amounts as they accrue.

(c) Extraordinary Optional Redemption. The Bonds are subject to extraordinary optional redemption as set forth in Section 7.01(c) and 7.01(d) of the Indenture.

(d) Mandatory Optional Redemption. The Bonds are subject to mandatory optional redemption as set forth in Section 7.01(e) of the Indenture.

(4) Redemption Notice. When required to redeem Bonds, or when directed to do so by the Issuer or the Obligor on behalf of the Issuer, the Trustee shall cause notice of the redemption to be given by first class mail, postage prepaid, to all registered owners of Bonds to be redeemed at their registered addresses not more than 60 and not fewer than 30 days prior to the redemption date. Any defect in any required notice of redemption shall not affect the validity of the notice. Failure to give any required notice of redemption as to any particular Bonds will not affect the validity of the redemption of any Bonds in respect of which no such failure has occurred. Any notice mailed as provided herein will be conclusively presumed to have been given whether or not actually received by any Bondholder. Any such notice shall be given in the name of the Obligor, shall identify the Bonds to be redeemed (and, in the case of partial redemption of any Bonds, the respective principal amounts



thereof to be redeemed), shall specify the redemption date and the redemption price and when any interest accrued to the redemption date will be payable, and shall state that on the redemption date the redemption price of the Bonds called for redemption will be payable at the designated office of the Trustee and/or of one or more Paying Agents and from that date interest will cease to accrue. The Trustee shall at all reasonable times make available to any interested party complete information as to Bonds which have been redeemed or called for redemption.

If at the time of mailing of notice of any optional redemption (except for redemptions effected pursuant to a mandatory optional redemption under Section 7.01(e) of the Indenture) in connection with a refunding of the Bonds the Obligor shall not have deposited with the Trustee moneys sufficient to redeem all the Bonds called for redemption, such notice shall state that it is conditional in that it is subject to the deposit of the proceeds of refunding bonds with the Trustee not later than the redemption date, and such notice and such optional redemption shall be of no effect unless such moneys are so deposited.

**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.

Bond Service Charges on the Bonds shall be payable without deduction for services of the Paying Agent.

All Bonds shall be executed in the manner provided herein, in the Indenture 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 Legislative 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.

Notice of call for redemption of all Bonds shall be given in the manner provided in Section 3. If Bonds or portions thereof are duly called for redemption and if on such redemption date moneys available for the redemption of all the Bonds to be redeemed, together with accrued interest to the redemption date, shall be held by the Trustee so as to be available therefor, then from and after such redemption date such Bonds or portions thereof shall cease to bear interest.

**Section 5. Sale of Bonds and Allocation of Purchase Price.** Both the Series 2013B-1 and the Series 2013B-2 Bonds will be sold and awarded pursuant to the Purchase Agreement 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 purchasers of the Bonds under the Purchase Agreement 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 Agreement, Loan Payments sufficient in time and amount to pay the Bond Service Charges as they come due, are to be paid by the Obligor to the Trustee for the account of the Issuer and deposited in the Bond Fund. Under the provisions of the Agreement, payments with respect to the Notes received by the Trustee from the Obligor shall be deposited into the Bond Fund for the account of the Issuer and shall constitute Loan Payments.

The "Fifth and Race Project Bond Fund" shall be, and hereby is ordered to be, created and it shall have such accounts and sub-accounts contained therein and shall be invested all 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.

Notwithstanding anything to the contrary in this Resolution, the Bonds are special obligations of the Issuer and do not represent or constitute a debt or pledge of the faith and credit of the Issuer, the State of Ohio, or any political subdivision thereof, and will not be secured by an obligation or pledge of any moneys raised by taxation. The Bond Service Charges on the Bonds will be payable solely from the Revenues pledged and assigned to secure payment thereof and by the Indenture. Each Bond shall contain a statement to that effect.

**Section 7. Rebate Fund.** There is hereby ordered to be created pursuant to the Indenture as a separate deposit account a fund to be designated "Fifth and Race Garage Rebate Fund", to be used only for the Series 2013B-1 Bonds which shall be free and clear of the lien of the Indenture and invested as provided in the Indenture and the Tax Regulatory Agreement.

**Section 8. Project Fund.** There is hereby ordered to be created pursuant to the Indenture as a separate deposit account a fund to be designated "Fifth and Race Garage Project Fund". The Project Fund 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 Project Fund. Such moneys shall be invested and disbursed as provided in the Indenture.

**Section 9. Debt Service Reserve Fund.** There is hereby ordered to be created pursuant to the Indenture as a separate deposit account a fund to be designated "Fifth and Race Garage Debt Service Reserve Fund". The Debt Service Reserve Fund 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 Debt Service Reserve Fund. Such moneys shall be invested and disbursed as provided in the Indenture.

**Section 10. 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, solely from the Revenues, pay or cause to be paid the Bond Service Charges on each and all Bonds on the dates, at the places and in the manner provided herein and in the Bonds.

(b) **Performance of Covenants, Authority and Actions.** To the extent the Issuer is responsible under the terms of such documents, The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bond Legislation, the Indenture, the Agreement, the 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 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 Agreement, the Indenture, the Tax Regulatory Agreement, and the 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 Agreement, the Indenture, the Tax Regulatory Agreement, and the 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 the Bond Legislation, Agreement, Bonds, Indenture, the Tax Regulatory Agreement, and the 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.** Except as otherwise provided in this Bond Legislation, the Agreement, and the Indenture, the Issuer will not create or suffer to be created any debt, lien or charge thereon, or make any pledge or assignment of or create any debt, lien or charge thereon, or make any pledge or assignment of or create any lien or encumbrance upon the Revenues other than the pledge and assignment thereof under this Bond Legislation, the Indenture, and the Agreement.

(d) **Recordings and Filings.** The Issuer will cause (to the extent required by the laws of the State to perfect such instruments and/or the lien created thereby) all necessary financing statements, amendments thereto, continuation statements and instruments of similar character relating to the pledges and assignments made by it to secure the Bonds, to be recorded and filed in such manner and in such places and to the extent required by law in order to fully preserve and protect the security of the holder and the rights of the Trustee under the Indenture.

(e) **Inspection of Project Books.** All books and documents in the Issuer's possession relating to the Project or the Revenues shall at all times be open to inspection by the Trustee or its agents during regular business hours and subject to reasonable written notice to be provided on a Business Day at least forty-eight (48) hours prior to such inspection.



(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 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 Agreement.** The Issuer shall do all things and take all reasonable actions on its part necessary to comply with the obligations, duties and responsibilities on the part of the Issuer under the Agreement, and will take all reasonable actions within its authority to maintain the 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 Series 2013B-1 Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Series 2013B-1 Bonds are initially delivered under the Purchase Agreement, 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 Series 2013B-1 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 Series 2013B-1 Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 and regulations thereunder.

(i) **List of Bondholders.** The Trustee will keep on file at its corporate trust office a list of names and addresses of holders of each Bond, together with the principal amount owned by such holder and identifying such Bonds by series designation, letters, numbers, or other distinguishing marks. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the Obligor, or by the holders (or a designated representative thereof) of twenty-five percent or more in principal amount of each of the Series 2013B-1 or Series 2013B-2 Bonds (as applicable) then outstanding, such holding and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

**Section 11. Agreement, Indenture, Tax Regulatory Agreement, and Purchase Agreement.** The Executive or Fiscal Officer is hereby authorized and directed to execute, acknowledge and deliver the Agreement, the Indenture, the Tax Regulatory Agreement, the Purchase Agreement, and assignments in substantially the forms submitted to the Issuer, and such other documents, certificates and agreements related to the issuance of the 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 Agreement, the Indenture, the Tax Regulatory Agreement, the Purchase Agreement, and assignments, and such other instruments respectively, by such officials.

**Section 12. 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, the Agreement, the Purchase Agreement, and the Tax Regulatory Agreement. The Executive, and/or the Fiscal Officer are further authorized to file any information statement with respect to the Bonds which may be requested or required by the Code.

**Section 13. Trustee, Bond Registrar, Paying Agent.** The Huntington National Bank, Cincinnati, Ohio is hereby designated Trustee, Bond Registrar and Paying Agent for the Bonds under the Trust Indenture.

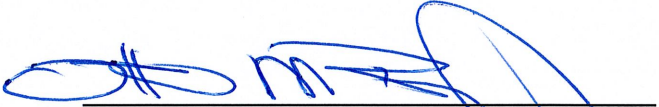

**Section 14. Compliance with Section 121.22, Ohio Revised Code.** It is hereby found and determined that all formal actions of this Legislative Authority concerning and relating to the passage of this Bond Legislation were taken in an open meeting of this Legislative Authority and that all deliberations 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 15. Effective Date.** This Bond Legislation shall take effect and be in force immediately upon its passage.

A roll call being had upon the question of the passage of the foregoing resolution, the vote thereon resulted as follows:

Ayes: 5

Nays: 0

  
\_\_\_\_\_  
CHAIRPERSON  
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 No.2013-07 passed on the 10<sup>th</sup> day of April, 2013, and has not been amended or rescinded as of this date.

**Port of Greater Cincinnati Development  
Authority**

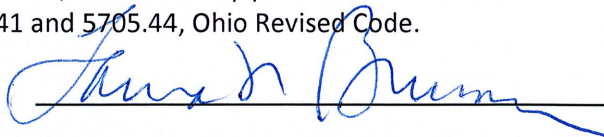
April 10, 2013

Laura H. Burns



**FISCAL OFFICER CERTIFICATE**

The undersigned, fiscal officer of the Issuer, hereby certifies that the moneys required to meet the obligations of the Issuer during the year 2013 under the foregoing resolution have been lawfully appropriated by the Issuer for such purposes and are in the treasury of the Issuer or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.



A handwritten signature in blue ink, appearing to read "David Brown", is written over a solid black horizontal line.

Dated: April 10, 2013