

RESOLUTION NO. 2009 - 10

A RESOLUTION AUTHORIZING THE ISSUANCE OF UP TO \$16,000,000 OF PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY BANK QUALIFIED FACILITIES REVENUE REFUNDING BONDS, SERIES 2009A (FOUNTAIN SQUARE PROJECT) AND \$1,000,000 TAXABLE FACILITIES REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 2009B (FOUNTAIN SQUARE PROJECT), IN ORDER TO ASSIST FOUNTAIN SQUARE, LLC IN REFUNDING ITS ADJUSTABLE RATE TAXABLE SECURITIES SERIES 2006 (THE “SERIES 2006 BONDS”) THAT WERE USED TO DEVELOP FOUNTAIN SQUARE IN DOWNTOWN CINCINNATI AND ALSO ALLOW FOUNTAIN SQUARE, LLC TO UNDERTAKE TO MAKE CAPITAL IMPROVEMENTS THERETO; PROVIDING FOR THE ASSIGNMENT OF REVENUES FOR THE PAYMENT OF THE SERIES 2009A BONDS AND SERIES 2009B 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 2009A AND SERIES 2009B BONDS; AND AUTHORIZING A BOND PURCHASE AGREEMENT, A TAX REGULATORY AGREEMENT AND SUCH OTHER INSTRUMENTS 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 refunding of the Series 2006 Bonds, and to provide for future expenses associated with capital improvements on the facilities originally funded by the Series 2006 Bonds (the “Project”) (b) to enter into an agreement with Fountain Square, LLC (the “Obligor”) as owner 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 here (Series 2009A and Series 2009B) in an aggregate principal amount of up to \$17,000,000; and

WHEREAS, the Series 2009A bonds will be issued as tax-exempt bonds in a total principal amount of up to \$16,000,000 and the proceeds of such issuance are to be used to refund the Series 2006 Bonds; and

WHEREAS, the Series 2009B Bonds will be issued as taxable bonds in a total principal amount of up to \$1,000,000 and the proceeds of such issuance are to be used to pay for the additional costs associated with the refunding of the Series 2006 Bonds (specifically, the

payment of an interest rate hedge termination payment) as well as to finance additional capital improvements to the Project (as hereinafter defined); and

WHEREAS, the Issuer hereby finds and determines that the refunding of the Series 2006 Bonds, including payment of an interest rate hedge termination payment and providing for future costs of the Project, requires the issuance (in two Series), sale and delivery of revenue bonds in the aggregate principal amount of \$17,000,000.

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.

“Agreement” or “Loan Agreement” means the Loan Agreement provided for in Section 11 hereof between the Issuer and the Obligor, dated as of August 1, 2009, as amended or supplemented 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.

“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 Bank Qualified Facilities Revenue Refunding Bonds, Series 2009A (Fountain Square Project) and Taxable Facilities Revenue Refunding and Improvement Bonds, Series 2009B (Fountain Square Project) of the Issuer authorized in Section 3 of this Bond Legislation and Section 2.02 of the Indenture.

“Bond Fund” means the Bond Fund created by Section 6 hereof and Section 5.01 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, 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.

“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 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.

“Designated Representative” means the person at the time designated pursuant to the Agreement to act on behalf of the Obligor by written certificate furnished to the Trustee, containing the specimen signature of that person and signed on behalf of the Obligor by a duly designated representative thereof.

“Determination of Taxability” means, with respect to the Series 2009A Bonds, (i) the enactment of legislation or the adoption of final regulations or a final decision, ruling or technical advice by any federal judicial or administrative authority which has the effect of requiring interest on the Bonds to be included in the gross income of the Bondholders for federal income tax purposes or (ii) the receipt by the Trustee of a written opinion of Bond Counsel to the effect that interest on the Bonds must be included in the gross income of the Bondholders for federal income tax purposes; provided that no decision by any court or decision, ruling or technical advice by any administrative authority shall be considered final (a) unless the Bondholder involved in the proceeding or action giving rise to such decision, ruling or technical advice (1) gives the Obligor and the Trustee prompt notice of the commencement thereof and (2) offers the Obligor the opportunity to control the contest thereof, provided the Obligor shall have agreed to bear all expenses in connection therewith and to indemnify that Bondholder against all liabilities in connection therewith, and (b) until the expiration of all periods for judicial review or appeal.

“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 or Assistant Secretary of the Issuer or his 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 of August 1, 2009, as amended or supplemented from time to time.

“Interest Payment Date” means the first business day of each month. In any case, the final Interest Payment Date shall be August 1, 2034.

“Issuer’s Counsel” means Bricker & Eckler LLP.

“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 amounts required to be paid by the Obligor in repayment of the Loan pursuant to the provisions of the Note and Section 4.1 of the Agreement.

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

“Obligor” means Fountain Square, LLC, an Ohio 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.

“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 and meeting the qualifications of, and subject to the obligations of, the Trustee in Article X of the Indenture. “Principal Office” of any Paying Agent shall mean the office thereof designated in writing to the Trustee.

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

“Project” means the development and redevelopment of Fountain Square in Cincinnati, Ohio undertaken by the Obligor and originally funded, in part, by the Series 2006 Bonds.

“Project Purposes” means construction, improvement, remodeling, enlarging, installing, equipping, improving or refinancing real and personal property comprising “port authority facilities” as defined under Ohio Revised Code 4582.21, or any other use which may be permitted by the Act and the Agreement.

“Purchase Agreement” means the Purchase Agreement among the Bank, the Issuer and the Obligor.

“Rate Period” means any period during which a single interest rate is in effect for a Bond.

“Register” means the books kept and maintained by the Registrar for registration and transfer of Bonds pursuant to Section 2.03 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.

“Revenues” means (a) the Loan Payments, (b) all amounts payable to the Trustee with respect to the principal or redemption price of, or interest on, the Bonds (i) by the Obligor as required under the Agreement, and (ii) upon deposit in the Bond Fund from the proceeds of the Bonds, and (c) investment income with respect to any moneys held by the Trustee in the Bond Fund. The term “Revenues” does not include any moneys or investments in the Rebate Fund.

“Series 2006 Bonds” means the Adjustable Rate Taxable Securities, Series 2006 issued by the Obligor.

“State” means the State of Ohio.

“Tax Regulatory Agreement” means the Tax Regulatory Agreement dated as of August 1, 2009, among the Issuer, the Obligor 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 Bank of New York Mellon Trust Company, N.A., 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 Series 2006 Bonds are to be refunded and the Project is to be permanently financed, additional capital improvements may be made thereto, and an interest rate hedge termination payment shall be paid, all 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;
- (b) 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
- (c) the refunding of the Series 2006 Bonds, as well as the additional capital improvements to be made on the Project, and the payment of the additional cost of refunding the Series 2006 Bonds in the form of an interest rate hedge termination payment, 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 Project Site is 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 Project, the issuance of the Bonds of the Issuer in the aggregate principal amount of up to \$17,000,000 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 \$17,000,000 aggregate principal amount of its Bonds for the purpose of assisting the Obligor in the financing and refinancing 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 “Bank Qualified Facilities Revenue Refunding Bonds, Series 2009A” whereas the taxable portion of the Bonds shall be designated “Taxable Facilities Revenue Refunding and Improvement Bonds, Series 2009B” and both shall bear the final modifier “(Fountain Square Project)”.

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) the Bonds shall be registered in the name of the Bank, as Bondholder; (ii) unless otherwise requested by the Bank, there shall be a single Bond certificate with maturities specified therein (one for each the Series 2009A and Series 2009B Bonds for a total of two certificates); and (iii) the Bonds shall be transferable or exchangeable without further action by the Issuer.

(1) Interest Rate. The interest rate of the Series 2009A Bonds will be 3.97% beginning with the initial date of issuance of such Series 2009A Bonds, and then, from the 5th anniversary of such issuance until maturity, will be determined by the Certificate of Award, not to exceed twelve percent (12%) per annum. The interest rate on the Series 2009B Bonds will be as determined by the Fiscal Officer in the Certificate of Award not to exceed fifteen percent (15%) per annum.

(2) Maturity. Principal on the Bonds will be paid as provided in the Certificate of Award, and the Bonds shall mature on August 1, 2034. The Series 2009 B Bonds may mature prior to the series 2009A as provided in the Certificate of Award.

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

- (a) Mandatory Redemption Upon a Determination of Taxability. In regard to Series 2009A Bonds, upon the occurrence of a Determination of

Taxability, the Bonds will either (i) be called for redemption, or if so determined by the Obligor, (ii) will remain outstanding but will bear interest at the Market Rate (as defined in the Trust Indenture). The Bonds will be so redeemed only with the consent of 100% of the Holders of the Bonds, otherwise the Bonds will remain outstanding. The redemption price in any such event shall be 100% of the principal amount of the Bonds outstanding plus accrued interest to the redemption date. Any such redemption shall be made not more than 120 days following the effective date of such constitutional amendment, legislation, administrative action or decree, judgment order, or following the Date of Determination of Taxability subject to redemption in whole by the Issuer at a redemption price equal to one hundred percent (100%) of the outstanding principal amount thereof, plus interest accrued to the redemption date, at the earliest practicable date selected by the Trustee, after consultation with the Obligor, but in no event later than 90 days following the Trustee's being notified of or otherwise becoming aware of a Determination of Taxability.

(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 100% of the principal amount to be redeemed, plus accrued interest to the redemption date, but without penalty or premium, except as may be provided in the Certificate of Award.

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

(4) Redemption Notice. Any notice of redemption, identifying the Bonds or portions thereof to be redeemed, shall be given by first class mail to the registered owner of each Bond to be redeemed in whole or in part at the address shown on the Bond Register of the Bond Registrar not more than 60 days and not fewer than 30 days prior to the redemption date. Such notice periods may be waived in writing by any Bondholder. If the source of funds for optional redemption is to be derived from the proceeds of refunding bonds, optional redemption may be conditioned upon the deposit of proceeds of such refunding bonds with the Trustee before the date fixed for redemption and such optional redemption and notice thereof shall be of no effect unless such moneys are so deposited. All Bonds so called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption and any accrued interest payable on the redemption date are on deposit at the principal place of payment at that time.

Except as otherwise provided herein, if less than all the Bonds are to be redeemed, the particular Bonds to be called for redemption shall be selected by any method determined by the Trustee to be fair and reasonable; provided, however, that in connection with any redemption of Bonds the Trustee shall first select for redemption any Bonds held by the Obligor or held by or pledged to the Bank pursuant to the Indenture.

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 in the 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.

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 2009A and the Series 2009B 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 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. Under the provisions of the Agreement, payments with respect to the Note received by the Trustee shall be deposited into the Bond Fund for the account of the Issuer and shall constitute Loan Payments.

There is hereby created by the Issuer and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust account to be designated “Fountain Square Bond Fund” (herein called 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. Rebate Fund. There is hereby created by the Issuer and ordered maintained by the Trustee as a separate deposit account a fund to be designated “Fountain Square Rebate Fund”, to be used only for the Series 2009A 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 created by the Issuer and ordered maintained by the Trustee as a separate deposit account a fund to be designated “Fountain Square 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 created by the Issuer and ordered maintained by the Trustee as a separate deposit account a fund to be designated “Fountain Square Debt Service Fund”. The Debt Service 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 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, in the applicable Bond Legislation and in the Bonds.

(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 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 the Bond Legislation, Agreement, and 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, including the moneys in the Bond Fund, other than the pledge and assignment thereof under the Bond Legislation, Indenture, and 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 of at least twenty-four (24) hours.

(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 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 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 2009A 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 2009A 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 Series 2009A 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 2009A 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 2009A or Series 2009B 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 an Agreement, Indenture, Tax Regulatory Agreement, 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, Indenture, Tax Regulatory Agreement, 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, Agreement, 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 which may be requested or required by the Code.

Section 13. Temporary Bonds. Pending the preparation of definitive Bonds, the Issuer may execute and the Trustee shall authenticate and deliver temporary Bonds in printed

or typewritten form. Temporary Bonds shall be issuable in fully registered form of any denomination, and substantially in the form of the definitive Bonds but with such omissions, insertions and variations as may be appropriate for temporary Bonds, all as may be determined by the officials executing the same, such execution of any such temporary Bonds to be conclusive evidence of the determinations as aforesaid. Every temporary Bond shall be executed on behalf of the Issuer, and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Bonds. If one or more temporary Bonds are issued, then without unnecessary delay the Issuer shall execute and furnish definitive Bonds and thereupon temporary Bonds may be surrendered to the Trustee in exchange therefor without charge, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds. Until so exchanged the temporary Bonds shall be entitled to the same benefits under the Indenture as definitive Bonds.

Section 14. Trustee, Bond Registrar, Paying Agent. The Bank of New York Mellon Trust Company, N.A., Cincinnati, Ohio is hereby designated Trustee, Bond Registrar and Paying Agent for the Bonds under the Trust Indenture.

Section 15. Bank Qualified Bonds. Series 2009A Bonds are designated qualified tax-exempt obligations for the purposes set forth in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended by Section 1502 of the America Recovery and Reinvestment Act of 2009.

Section 16. Prevailing Wage. All wages paid to laborers and mechanics employed on the Project shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates; provided that the requirements of this section do not apply where the federal government or any of its agencies furnished by loan or grant all or any part of the funds used in connection with such project and prescribes predetermined minimum wages to be paid to such laborers and mechanics; and provided further that if the Obligor undertakes, as part of the Project, construction to be performed by its regular bargaining unit employees who are covered under a collective bargaining agreement which was in existence prior to the date of an inducement agreement, then, in that event, the rate of pay provided under the applicable collective bargaining agreement may be paid to such employees.

Section 17. 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 18. 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: 7

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 No. 2009 - 10 passed on the 13th day of July, 2009, and has not been amended or rescinded as of this date.

July 13, 2009

**Port of Greater Cincinnati Development
Authority**