

# County Council of Cuyahoga County, Ohio

## Resolution No. R2013-0224

Sponsored by: **County Executive FitzGerald/Department of Development**

**A Resolution** authorizing the issuance and sale of County of Cuyahoga, Ohio Taxable Economic Development Revenue Bonds, Series 2013B (Westin Cleveland Hotel Project) in an aggregate principal amount not-to-exceed \$6,000,000.00 for the purpose of providing moneys to pay costs of a "Project" within the meaning of Ohio Revised Code Chapter 165; authorizing the preparation and use of a preliminary official statement; authorizing the preparation, execution and use of an official statement; approving and authorizing the execution of a cooperative agreement, a bond purchase agreement, a bond registrar agreement and a continuing disclosure agreement; authorizing other actions related to the issuance of the bonds; and declaring the necessity that this Resolution become immediately effective.

**WHEREAS**, the County of Cuyahoga, Ohio (the "County"), a county and political subdivision of the State of Ohio (the "State"), is authorized and empowered, by virtue of the laws of the State of Ohio, including, without limitation, Article VIII, Section 13 of the Ohio Constitution and Ohio Revised Code Chapter 165 (the "Act"), among other things, to issue its revenue bonds for the purpose of financing "projects" as defined in the Act, that create or preserve jobs and employment opportunities and improve the economic welfare of the people of the County and of the State; and

**WHEREAS**, the County has determined that it is necessary and desirable to issue its Taxable Economic Development Revenue Bonds, Series 2013B (Westin Cleveland Hotel Project) (the "Bonds") to create and preserve jobs and employment opportunities and improve the economic welfare of the people of the County and the State, by providing funding for Optima 777, LLC to finance a project as defined in the Act consisting of the renovation and improvement of a 484-room hotel, adjacent parking and other necessary appurtenances (the "Project"), fund a reserve account and pay certain costs of issuance in connection with such Bonds; and

**WHEREAS**, the Cuyahoga County Community Improvement Corporation (the "CIC") has certified to the County that the Project is in accordance with the plan for the industrial, commercial, distribution and research development of the County heretofore confirmed by the County pursuant to Ohio Revised Code Section 1724.10;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1. DEFINITIONS AND INTERPRETATION.** In addition to the words and terms elsewhere in this Resolution, unless the context or use clearly indicates another or different meaning or intent:

"*Act*" means Ohio Revised Code Chapter 165.

"*Authorized Denominations*" means the denomination of \$5,000 or any integral multiple thereof.

"*Bond Counsel*" means Benesch, Friedlander, Coplan & Aronoff, LLP.

"*Bond proceedings*" means, collectively, this Resolution, the Final Terms Certificate, the Bond Purchase Agreement, the Bond Registrar Agreement, the Continuing Disclosure Agreement and such other proceedings of the County, including the Bonds, that provide collectively for, among other things, the rights of registered owners of the Bonds.

"*Bond Purchase Agreement*" means the Bond Purchase Agreement between the County and the Original Purchaser authorized by this Resolution.

"*Bond Register*" means all the books and records necessary for the registration, exchange and transfer of the Bonds as provided in this Resolution and the Bond Registrar Agreement.

"*Bond Registrar*" means a bank or trust company authorized to do business in the State and designated by the Fiscal Officer in the Final Terms Certificate as the initial authenticating agent, bond registrar, transfer agent and paying agent until a successor Bond Registrar shall have become such pursuant to the provisions of this Resolution and the Bond Registrar Agreement and, thereafter, "*Bond Registrar*" shall mean the successor Bond Registrar.

"*Bond Registrar Agreement*" means the Bond Registrar Agreement between the County and the Bond Registrar as authorized by this Resolution.

"*Bond Service Charges*" means the principal (at stated maturity or by redemption), premium (if any) and interest required to be paid by the County on the Bonds.

“*Bond Service Fund*” means the Westin Cleveland Hotel Bond Service Fund, and the Bond Service Account and the Bond Reserve Account therein, authorized and established by this Resolution and any additional accounts created therein.

“*Bonds*” means the Taxable Economic Development Revenue Bonds, Series 2013B (Westin Cleveland Hotel Project) authorized by this Resolution.

“*Book entry form*” or “*book entry system*” means a form or system under which (a) the ownership of beneficial interests in Bonds and the Bond Service Charges on the Bonds may be transferred only through a book entry, and (b) physical Bond certificates in fully registered form are issued by the County only to a Depository or its nominee as registered owner, with the Bonds “immobilized” in the custody of the Depository. The book entry maintained by an entity other than the County is the record that identifies the owners of beneficial interests in those Bonds and that principal and interest.

“*Brownfield Bonds*” means, collectively, the County’s Taxable Economic Development Revenue Refunding Bonds, Series 2004C (Brownfield Redevelopment Project) and Taxable Economic Development Revenue Bonds, Series 2010A (Brownfield Redevelopment Project), all issued pursuant to the Brownfield Indenture.

“*Brownfield Indenture*” means the Trust Indenture dated as of October 1, 1988, as amended by the First Supplemental Trust Indenture dated as of February 1, 2004 and the Second Supplemental Trust Indenture dated as of September 1, 2010, each between the County and the Brownfield Trustee.

“*Brownfield Revenues*” means the Project Revenues as defined in the Brownfield Indenture.

“*Brownfield Trustee*” means The Huntington National Bank, as trustee under the Brownfield Indenture, and its successors and assigns.

“*Charter*” means the Charter of the County.

“*City*” means the City of Cleveland, Ohio.

“*City Payments*” means the payments to be made by the City to the County pursuant to the Cooperative Agreement.

“*Clerk*” means the Clerk of the Council.

“*Closing Date*” means the date of physical delivery of, and payment of the purchase price for, the Bonds.

“*Code*” means the Internal Revenue Code of 1986, the regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings,

announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

*“Commercial Redevelopment Bonds”* means the County’s Taxable Economic Development Revenue Bonds, Series 2010B (Commercial Redevelopment Fund Project), issued pursuant to the Commercial Redevelopment Indenture.

*“Commercial Redevelopment Indenture”* means the Trust Indenture dated as of September 1, 2010 between the County and the Commercial Redevelopment Trustee.

*“Commercial Redevelopment Revenues”* means the Project Revenues as defined in the Commercial Redevelopment Indenture.

*“Commercial Redevelopment Trustee”* means The Huntington National Bank, as trustee under the Commercial Redevelopment Indenture, and its successors and assigns.

*“Continuing Disclosure Agreement”* means, the Continuing Disclosure Agreement authorized by this Resolution.

*“Cooperative Agreement”* means the Cooperative Agreement by and among the County, the City and the Developer authorized by this Resolution.

*“Council”* means the County Council of the County.

*“County”* means the County of Cuyahoga, Ohio.

*“County Executive”* means the County Executive of the County; provided, for purposes of the signing of documents, certificates and other instruments other than the Bonds and the Official Statement, County Executive includes the County Executive’s Chief of Staff as the County Executive’s designee pursuant to Executive Order No. 02011-0002.

*“Coverage Computation Period”* means the three most recent calendar years preceding the date of the certification required by Section 9(b).

*“Coverage Ratio”* means 150%.

*“Depository”* means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in Bonds or the principal and interest, and to effect transfers of Bonds, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“*Developer*” means Optima 777, LLC, a Delaware limited liability company.

“*Director of Law*” means the Director of Law of the County.

“*Fiduciary Fund*” means the Westin Cleveland Hotel Fiduciary Fund authorized and established by this Resolution.

“*Final Terms Certificate*” means the Final Terms Certificate authorized by this Resolution to be signed by the Fiscal Officer.

“*Fiscal Officer*” means the Fiscal Officer of the County, including an interim or acting Fiscal Officer.

“*Funds*” means, collectively, the Treasurer Account and the Bond Service Fund.

“*Gateway Bonds*” means, collectively, the County’s Taxable Economic Development Revenue Bonds, Series 1992A (Gateway Arena Project), Taxable Economic Development Revenue Refunding Bonds, Series 2004A (Gateway Arena Project) and Taxable Economic Development Revenue Refunding Bonds, Series 2010C (Gateway Arena Project), all issued pursuant to the Gateway Indenture.

“*Gateway Indenture*” means the Master Indenture dated as of September 15, 1992, as amended and supplemented by the First Supplemental Trust Indenture dated as of September 15, 1992, the Second Supplemental Trust Indenture dated as of September 15, 1992, the Third Supplemental Trust Indenture dated as of February 1, 1994, the Fourth Supplemental Trust Indenture dated as of February 1, 2004 and the Fifth Supplemental Trust Indenture dated as of September 1, 2010, each between the County and the Gateway Trustee.

“*Gateway Revenues*” means the Revenues as defined in the Gateway Indenture.

“*Gateway Trustee*” means The Bank of New York Mellon Trust Company, N.A., as trustee under the Gateway Indenture, and its successors and assigns.

“*Interest Payment Dates*” means June 1 and December 1 of each year that the Bonds are outstanding, commencing December 1, 2013 unless otherwise determined by the Fiscal Officer in the Final Terms Certificate.

“*Mandatory Redemption*” means the obligation to redeem Term Bonds as provided in Section 4(e)(i) and the Final Terms Certificate.

“*Medical Mart/Convention Center Bonds*” means, collectively, the County’s Recovery Zone Economic Development Revenue Bonds, Series 2010E (Medical Mart/Convention Center Project), Recovery Zone Facility Economic Development Revenue Bonds, Series 2010F (Medical Mart/Convention Center Project) and Taxable Economic Development Revenue Bonds, Series 2010G (Medical Mart/Convention Center Project), all issued pursuant to the Medical Mart/Convention Center Indenture.

*“Medical Mart/Convention Center Indenture”* means the Trust Indenture dated as of December 1, 2010 between the County and the Medical Mart/Convention Center Trustee.

*“Medical Mart/Convention Center Revenues”* means the Project Revenues as defined in the Medical Mart/Convention Center Indenture.

*“Medical Mart/Convention Center Trustee”* means U.S. Bank National Association as trustee under the Medical Mart/Convention Center Indenture, and its successors and assigns.

*“Nontax Revenues”* means all moneys of the County that are not raised by taxation, to the extent available for payment of Bond Service Charges on the Bonds, including, but not limited to the following: (a) charges for services and payments received in reimbursement for services; (b) payments in lieu of taxes now or hereafter authorized by State statute; (c) fines and forfeitures; (d) fees from properly imposed licenses and permits; (e) investment earnings on any funds of the County that are credited to the County’s General Fund; (f) proceeds from the sale of assets; (g) rental income; (h) grants from the United States of America and the State; (i) gifts and donations; and (j) Project Revenues; provided that Nontax Revenues do not include the Brownfield Revenues, the Commercial Redevelopment Revenues, the Gateway Revenues or Medical Mart/Convention Center Revenues.

*“Official Statement”* means, as appropriate, the preliminary official statement or the final official statement authorized by this Resolution.

*“Original Purchaser”* means Stifel, Nicolaus & Company, Incorporated.

*“Parity Obligations”* means, collectively, the Brownfield Bonds, the Commercial Redevelopment Bonds, the Gateway Bonds and the Medical Mart/Convention Center Bonds, and any bonds, notes or other obligations of or guaranties by the County secured by a pledge of the Nontax Revenues on a parity with or prior to the Bonds, except that such Parity Obligations shall not be secured by the Project Revenues.

*“Participant”* means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

*“Principal Payment Dates”* means the Principal Payment Dates determined by the Fiscal Officer in the Final Terms Certificate.

*“Payment Dates”* means the Interest Payment Dates and the Principal Payment Dates.

*“Project”* means the renovation and improvement of a 484-room full service hotel, adjacent parking and other necessary appurtenances located at 777 St. Clair Avenue in the City of Cleveland.

“*Project Revenues*” means any money and investments on deposit in the Funds and all income and profit from the investment thereof.

“*Prosecuting Attorney*” means the Prosecuting Attorney of the County.

“*Register*” means all books and records necessary for the registration, exchange and transfer of Bonds as provided by this Resolution.

“*Rule*” means Rule 15c2-12 promulgated by the SEC pursuant to the Securities Exchange Act of 1934.

“*SEC*” means the Securities and Exchange Commission.

“*Serial Bonds*” means those Bonds, if any, designated as such and maturing on the Principal Payment Dates set forth in the Final Terms Certificate.

“*State*” means the State of Ohio.

“*Term Bonds*” means those Bonds designated as such and maturing on the Principal Payment Dates set forth in the Final Terms Certificate.

“*Treasurer Account*” means the Westin Cleveland Hotel Treasurer Account authorized and established by this Resolution.

**SECTION 2. DETERMINATIONS BY COUNCIL.** This Council finds and determines that the Project (i) based on the certification of the CIC, is a “project” as defined in the Act and is consistent with the purposes of Article VIII, Section 13 of the Ohio Constitution and (ii) will benefit the people of the County and of the State by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the County and the State.

**SECTION 3. AUTHORIZED PRINCIPAL AMOUNT AND PURPOSE; APPLICATION OF PROCEEDS.** It is necessary and determined to be in the County’s best interest to issue the Bonds in an aggregate principal amount not to exceed \$6,000,000 to pay costs of the Project, fund a reserve account and pay costs of the issuance of the Bonds. The aggregate principal amount of the Bonds to be issued to provide sufficient funds for those purposes (not to exceed \$6,000,000) shall be determined by the Fiscal Officer in the Final Terms Certificate. The Bonds shall be issued pursuant to this Resolution, the Final Terms Certificate, Article VIII, Section 13 of the Ohio Constitution and the Act. The proceeds from the sale of the Bonds received by the County shall be deposited into the Treasurer Account and shall be used as provided in the Cooperative Agreement. The proceeds of the sale of the Bonds are appropriated for such purpose.

**SECTION 4. DENOMINATIONS; DATING; PRINCIPAL AND INTEREST PAYMENT AND REDEMPTION PROVISIONS.**

The Bonds shall be issued in one lot and only as fully registered bonds, in Authorized Denominations, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as of the Closing Date.

(a) Interest Rates and Payment Dates. The Bonds shall bear interest at the rate or rates (computed on a twelve 30-day months/360-day year basis), as shall be determined by the Fiscal Officer in the Final Terms Certificate, subject to subsection (c) of this Section. Interest on the Bonds shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for in full. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

(b) Principal Payment Schedule. The Bonds shall mature on the Principal Payment Dates determined by the Fiscal Officer in the Final Terms Certificate.

Consistent with the foregoing and in accordance with his determination of the best interest of and financial advantages to the County, the Fiscal Officer shall specify in the Final Terms Certificate (i) the aggregate principal amount of Bonds, to be issued as Serial Bonds, the Principal Payment Date or Dates on which those Serial Bonds, if any, shall be stated to mature and the principal amount thereof that shall be stated to mature on each such Principal Payment Date and (ii) the aggregate principal amount of the Bonds, to be issued as Term Bonds, if any, the Principal Payment Date or Dates on which those Term Bonds shall be stated to mature and the dates and amounts of Mandatory Redemption applicable to those Term Bonds.

(c) Condition for Establishment of Interest Rates. The net interest rate for the Bonds determined by taking into account the Principal Payment Dates and the principal amounts due on the Bonds (at stated maturity or by Mandatory Redemption) shall not exceed 9% per year.

(d) Payment of Bond Service Charges. The principal of and interest on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal of the Bonds shall be payable when due upon presentation and surrender of the Bonds at the designated office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date. Notwithstanding the foregoing, if and so long as the Bonds are issued in a book entry system, principal of and interest and any premium on the Bonds shall be payable in the manner provided in any agreement entered into by the Fiscal Officer or the County Executive, in the name and on behalf of the County, in connection with the book entry system.



(e) Redemption Provisions. The Bonds shall be subject to redemption prior to stated maturity as follows:

(i) *Mandatory Redemption.* If any of the Bonds are issued as Term Bonds, the Term Bonds shall be subject to and redeemed pursuant to mandatory redemption on the Principal Payment Dates set forth in the Final Terms Certificate at a price equal to 100% of the principal amount of the Term Bonds to be redeemed.

The County shall have the option to deliver to the Bond Registrar for cancellation Term Bonds in any aggregate principal amount and to receive a credit against the then current or any subsequent Mandatory Redemption for the Term Bonds so delivered. That option shall be exercised by the County on or before the 15th day preceding any Mandatory Redemption with respect to which the County wishes to obtain a credit, by furnishing the Bond Registrar a certificate, signed by the Fiscal Officer, setting forth the extent of the credit to be applied with respect to the current or any subsequent Mandatory Redemption for the Term Bonds. If the certificate is not timely furnished to the Bond Registrar, the current Mandatory Redemption shall not be reduced. A credit against the then current or any subsequent Mandatory Redemption also shall be received by the County for any Term Bonds which prior thereto have been redeemed (other than by Mandatory Redemption) or purchased for cancellation and canceled by the Bond Registrar, to the extent not applied theretofore as a credit against any Mandatory Redemption for the Term Bonds so redeemed or purchased and canceled.

Each Term Bond so delivered, or previously redeemed, or purchased and canceled, shall be credited by the Bond Registrar at 100% of the principal amount thereof against the then current or subsequent Mandatory Redemption for the Term Bonds so delivered, redeemed or purchased and canceled.

(ii) *Optional Redemption.* Certain maturities of Bonds may be subject to redemption by and at the sole option of the County, in whole or in part, on the dates, in the years and at the redemption prices (expressed as a percentage of the principal amount to be redeemed), plus accrued interest to the redemption date, all to be determined by the Fiscal Officer in the Final Terms Certificate.

Certain maturities of the Bonds may be subject to redemption by and at the sole option of the County, in whole or in part, on the dates, in the years and at a redemption price that will make the owner of such Bonds whole for the early redemption, all to be determined by the Fiscal Officer in the Final Terms Certificate.

If optional redemption of Term Bonds is to take place as of the date of any Mandatory Redemption applicable to those Term Bonds, the Term Bonds, or portions thereof, to be redeemed optionally shall be selected by lot prior to the

selection by lot of the Term Bonds of the same maturity to be redeemed by operation of the Mandatory Redemption on that date. The Bonds to be redeemed pursuant to this paragraph shall be redeemed only upon written notice from the Fiscal Officer to the Bond Registrar, given upon the direction of this Board by adoption of a resolution. That notice shall specify the redemption date and the principal amount of each maturity of Bonds to be redeemed, and shall be given at least 45 days prior to the redemption date or such shorter period as shall be acceptable to the Bond Registrar.

There shall be deposited with the Bond Registrar on or prior to the redemption date, money that, in addition to any other money available therefore and held by the Bond Registrar, will be sufficient to redeem the Bonds for which notice of redemption has been given.

(iii) *Partial Redemption.* If fewer than all of the Bonds are called for optional redemption at one time, they shall be called as selected by, and in a manner determined by the County. If fewer than all Bonds of a single maturity are to be redeemed, the selection of the Bonds to be redeemed, or portions thereof in Authorized Denominations, shall be made by the Bond Registrar by lot in a manner determined by the Bond Registrar. In the case of partial redemption of Bonds by lot when Bonds in denominations greater than \$5,000 are then outstanding, each \$5,000 unit of principal shall be treated as if it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all, of the \$5,000 units of principal amount represented by a Bond are to be called for redemption, then upon notice of a redemption of a \$5,000 unit or units, the registered owner of that Bond shall surrender the Bond to the Bond Registrar (i) for payment of the redemption price of the \$5,000 unit or units called for redemption (including accrued interest to the redemption date), and (ii) issuance, without charge to the registered owner, of a new Bond or Bonds of any Authorized Denomination in an aggregate principal amount equal to the unmatured and unredeemed portion, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

(iv) *Notice of Redemption.* The notice of the call for redemption of Bonds shall identify (A) by designation, letters, numbers or other distinguishing marks, the Bonds or portions thereof to be redeemed, (B) the redemption price to be paid, (C) the date fixed for redemption, and (D) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Bond Registrar on behalf of the County by mailing a copy of the redemption notice by first class mail, postage prepaid, at least 30 days prior to the date fixed for redemption, to the registered owner of each Bond subject to redemption in whole or in part at the registered owner's address shown on the Bond Register at the close of business on the fifteenth day preceding that mailing. Failure to receive notice by mail or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any Bond.

(v) *Payment of Redeemed Bonds.* Notice having been mailed in the manner provided in the preceding paragraph hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and, upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, plus interest accrued to the redemption date. If money for the redemption of all of the Bonds and portions thereof to be redeemed, together with interest accrued thereon to the redemption date, is held by the Bond Registrar on the redemption date, so as to be available therefore on that date and, if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If that money shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption. All money held by the Bond Registrar for the redemption of particular Bonds shall be held in trust for the account of the registered owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

**SECTION 5. SIGNING AND AUTHENTICATION OF BONDS; APPOINTMENT AND DUTIES OF BOND REGISTRAR.** The Bonds shall be signed by the Fiscal Officer and the County Executive, in the name of the County and in their official capacities, provided that any or all of those signatures may be a facsimile. The Bonds shall be issued in the Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Fiscal Officer, shall be numbered as determined by the Fiscal Officer, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Resolution.

The Bond Registrar Agreement now on file with the Clerk is approved. The Fiscal Officer and the County Executive are hereby authorized to sign and deliver, in the name and on behalf of the County, the Bond Registrar Agreement with any changes or amendments that are not inconsistent with this Resolution, are not materially adverse to the County, and are approved by the Fiscal Officer and the County Executive, all of which shall be conclusively evidenced by the signing of the Bond Purchase Agreement by the Fiscal Officer and the County Executive.

No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Fiscal

Officer on behalf of the County. The same person need not sign the certificate of authentication on all of the Bonds.

**SECTION 6. REGISTRATION; TRANSFER AND EXCHANGE; BOOK ENTRY SYSTEM.**

(a) Register. So long as any of the Bonds remain outstanding, the County will cause the Bond Registrar to maintain and keep at its designated corporate trust office, the Register. Except for purposes of the Continuing Disclosure Agreement, the person in whose name a Bond is registered on the Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond proceedings. Payment of the Bond Service Charges on any Bond shall be made only to or upon the order of that person; neither the County nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section. All such payments shall be valid and effectual to satisfy and discharge the County's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

(b) Transfer and Exchange. Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at that office of the Bond Registrar, together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the County are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the County. In all cases of Bonds exchanged or transferred, the County shall provide for the signing and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond proceedings. The exchange or transfer shall be without charge to the owner, except that the County and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The County or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the County, evidencing the same debt, and entitled to the same security and benefit under the Bond proceedings, as the Bonds surrendered upon that exchange or transfer. Neither the County nor the Bond Registrar shall be required to make any exchange or transfer of (i) Bonds then subject to call for redemption between the 15<sup>th</sup> day preceding the mailing of notice by the Bond Registrar of Bonds to be redeemed

and the date of that mailing, or (ii) any Bond selected for redemption, in whole or in part.

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

If any Depository determines not to continue to act as a Depository for the Bonds for use in a book entry system, the Fiscal Officer and the Bond Registrar may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Fiscal Officer and the Bond Registrar do not or are unable to do so, the Fiscal Officer and the Bond Registrar, after making provision for notification of the book entry interest owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Bonds from the Depository, and shall cause bond certificates in registered form and Authorized Denominations to be authenticated by the Bond Registrar and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of County action or inaction, of those persons requesting such issuance.

The Fiscal Officer and the Bond Registrar are hereby authorized and directed, to the extent necessary or required, to enter into any agreements, in the name and on behalf of the County, that the Fiscal Officer determines to be necessary in connection with a book entry system for the Bonds, after determining that the signing thereof will not endanger the funds or securities of the County.

**SECTION 7. SALE OF THE BONDS.** The Fiscal Officer is hereby authorized to sell the Bonds at a private sale to the Original Purchaser for a purchase price of not less than 95% of the aggregate principal amount of the Bonds, and with and upon such other terms as are required or authorized by this Resolution to be specified in the Final Terms Certificate, in accordance with law, the provisions of this Resolution and the Bond Purchase Agreement.

The Bond Purchase Agreement in the form now on file with the Clerk is approved. The Fiscal Officer and County Executive are hereby authorized to sign and deliver, in the name and on behalf of the County, the Bond Purchase Agreement with any changes or amendments that are not inconsistent with this Resolution, are not materially adverse to the County, and are approved by the Fiscal Officer and the

County Executive, all of which shall be conclusively evidenced by the signing of the Bond Purchase Agreement by the Fiscal Officer and the County Executive.

The Fiscal Officer shall sign and deliver the Final Terms Certificate and shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price. Any member of this Council, the County Executive, the Clerk, the Fiscal Officer, the Prosecuting Attorney, the Director of Law and other County officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Resolution.

**SECTION 8. OFFICIAL STATEMENT, RATING, BOND INSURANCE AND CONTINUING DISCLOSURE.**

(a) Official Statement. The County Executive, the Fiscal Officer and other officials of the County are authorized, on behalf of the County and in their official capacities, to prepare or cause to be prepared a preliminary official statement in connection with the original issuance of the Bonds, and to determine and certify or otherwise represent when that preliminary official statement is to be "deemed final" (except for permitted omissions) for purposes of paragraph (b)(i) of the Rule and authorize the use and distribution of the preliminary official statement. Those officials are further authorized to modify and change the preliminary official statement in order for it to be a final official statement for purposes of paragraphs (b)(3) and (4) of the Rule and to certify or represent such, use and distribute the final official statement and modify, change or supplement the final official statement as necessary or desirable. The County Executive and the Fiscal Officer are further authorized to sign, on behalf of the County and in their official capacities, the final official statement.

(b) Application for Rating, Credit Enhancement or Bond Insurance. If, in the judgment of the Fiscal Officer, the filing of an application for (i) a rating on the Bonds by one or more nationally recognized rating agencies, or (ii) a policy of insurance or other credit enhancement facility from a company or companies to better assure the payment of the Bond Service Charges on the Bonds, is in the best interest of and financially advantageous to the County, the Fiscal Officer is authorized to prepare and submit those applications, to provide to each such agency or company such information as may be required for that purpose, to determine whether to obtain such rating or policy, and to provide for the payment of the cost of obtaining each such rating or policy, except to the extent paid by the Original Purchaser in accordance with the Bond Purchase Agreement, from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose. To the extent the Fiscal Officer has taken such actions, those actions are hereby ratified and confirmed.

(c) Continuing Disclosure Agreement. For the benefit of the owners and beneficial owners from time to time of the Bonds, the County agrees, as the only obligated person with respect to the Bonds under the Rule, to provide or cause to be provided such financial information and operating data, audited financial statements and notices, in such manner, as may be required for purposes of the Rule.

The Continuing Disclosure Agreement in the form now on file with the Clerk is approved. The Fiscal Officer is authorized and directed to complete, sign and deliver, in the name and on behalf of the County, the Continuing Disclosure Agreement with such changes that are not inconsistent with this Resolution, are not materially adverse to the County, and are approved by the Fiscal Officer, all of which shall be conclusively evidenced by the signing of the Continuing Disclosure Agreement by the Fiscal Officer.

The Fiscal Officer is further authorized and directed to establish procedures in order to ensure compliance by the County with its Continuing Disclosure Agreement, including timely provision of information and notices as described above. Prior to making any filing in accordance with the Continuing Disclosure Agreement or providing notice of the occurrence of any other events pursuant to the Continuing Disclosure Agreement, the Fiscal Officer shall consult with and obtain legal advice from, as appropriate, the Prosecuting Attorney, the Director of Law and bond or other qualified independent special counsel selected by the County. The Fiscal Officer, acting in the name and on behalf of the County, shall be entitled to rely upon any such legal advice in determining whether a filing should be made.

The performance by the County of its obligations pursuant to the Continuing Disclosure Agreement shall be subject to the appropriation of funds necessary for such performance.

**SECTION 9. SECURITY FOR THE BONDS; COVENANTS AND REPRESENTATIONS; COOPERATIVE AGREEMENT.**

(a) Special Obligations. The Bonds are special obligations of the County, and the Bond Service Charges are payable solely from the Nontax Revenues, and such payment is secured by a pledge of the Nontax Revenues. The County hereby covenants and agrees that it shall appropriate in its appropriation measure for each year the Bonds are outstanding Nontax Revenues in an amount sufficient to pay all Bond Service Charges due and payable in that year. The County further covenants and agrees that it shall deposit from time to time Nontax Revenues into the Bond Service Fund sufficient, together with amounts then on deposit in the Bond Service Fund, to pay the Bond Service Charges when due.

The payments due hereunder and under the Bonds are payable solely from Nontax Revenues, which Nontax Revenues are determined by this Council as money that is not raised by taxation. The Bonds are not secured by an obligation or pledge of any money raised by taxation. The Bonds do not and shall not represent or constitute a

debt or pledge of the faith or credit or taxing power of the County, and the owners of the Bonds have no right to have taxes levied by the County for the payment of the Bond Service Charges.

Nothing herein shall be construed as requiring the County to use or apply to the payment of principal and interest on the Bonds any funds or revenues from any source other than Nontax Revenues. Nothing herein, however, shall be deemed to prohibit the County, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Resolution or of the Bonds.

(b) Covenant Regarding Parity Obligations. The County covenants that, so long as any of the Bonds are outstanding, it shall not issue any Parity Obligations unless prior to the enactment of legislation authorizing such Parity Obligations the Fiscal Officer shall have certified to this Council that the average Nontax Revenues during the Coverage Computation Period, adjusted to reflect, if appropriate or necessary, changes in the rates or charges resulting in the Nontax Revenues, will aggregate in amount not less than the Coverage Ratio of the highest amount due in any succeeding year of (i) Bond Service Charges and (ii) required payments on the proposed Parity Obligations and all outstanding Parity Obligations.

(c) Cooperative Agreement. The Cooperative Agreement on file with this Council is approved. The Fiscal Officer and the County Executive are authorized to sign and deliver, in the name and on behalf of the County, the Cooperative Agreement with any changes that are not inconsistent with this Resolution, are not materially adverse to the County and are approved by the Fiscal Officer and the County Executive, all of which shall be conclusively evidenced by the signing of the Cooperative Agreement by the Fiscal Officer and the County Executive. There is hereby created the Fiduciary Fund, the Treasurer Account and the Bond Service Fund, including the Bond Service Account and the Bond Reserve Account therein, in the custody of the Fiscal Officer. All Assigned Service Payments (as defined in the Cooperative Agreement) received by the County from the City shall be deposited into the Bond Service Fund and used as provided in the Cooperative Agreement. Those Assigned Service Payments are appropriated and shall be used for such purpose. The performance by the County of any of its other obligations pursuant to the Cooperative Agreement shall be subject to the appropriation of funds necessary for such performance. The Fiscal Officer is authorized to create such accounts or subaccounts in the Fiduciary Fund, the Treasurer Account and the Bond Service Fund as the Fiscal Officer deems appropriate.

(d) Other Covenants. The County will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions to be performed on its part under this Resolution, the Continuing Disclosure Agreement, the Cooperative Agreement and the Bonds and under all proceedings of this Council pertaining thereto. The County represents that (i) it is, and upon delivery of the Bonds covenants that it 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 provide the security for payment of the Bond Service Charges in the manner and to the extent set forth herein and in the Bonds; (ii) all actions on its part for the issuance of the Bonds have been or will be taken duly and effectively; and (iii) the Bonds will be valid and enforceable special obligations of the County according to their terms. Each obligation of the County required to be undertaken pursuant to this Resolution and the Bonds is binding upon the County, and upon each officer or employee of the County as may from time to time have the authority under law to take any action on behalf of the County as may be necessary to perform all or any part of such obligation, as a duty of the County and of each of those officers and employee resulting from an office, trust or station within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

All books and documents in the County's possession relating to the Nontax Revenues shall be open at all times during the County's regular business hours to inspection by such accountants or other agents of the owners of the Bonds as the owners may from time to time designate.

The Clerk, or another appropriate officer of the County, shall furnish to the Original Purchaser a true transcript of proceedings, certified by that officer, of all proceedings had with reference to the issuance of the Bonds along with such information from the records as is necessary to determine the regularity and validity of the issuance of the Bonds.

**SECTION 10. BOND COUNSEL.** This Council hereby retains Bond Counsel in connection with the authorization, sale, issuance and delivery of the Bonds. Payment for the services of Bond Counsel shall be a cost of the issuance of the Bonds to be paid from the proceeds from the sale of the Bonds. In providing its services, as an independent contractor and in an attorney-client relationship, Bond Counsel shall not exercise any administrative discretion on behalf of the County in the formation of public policy, expenditure of funds, enforcement of laws, rules and regulations of the State or the County, or of any other political subdivision of the State, or the execution of public trusts.

**SECTION 11. OTHER DETERMINATIONS.** This Council determines that all acts and conditions necessary to be done or performed by the County or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding special obligations of the County have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law.

**SECTION 12. EFFECTIVE DATE.** It is necessary that this Resolution become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Resolution receives the affirmative vote of at least eight members of Council, it shall take effect and be in

force immediately upon the earliest occurrence of any of the following: (i) its approval by the County Executive through signature, (ii) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Charter, or (iii) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

**SECTION 13. COMPLIANCE WITH OPEN MEETING REQUIREMENTS.** This Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of Council, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

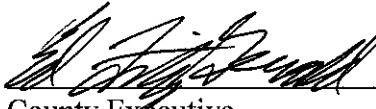
On a motion by Mr. Schron, seconded by Ms. Conwell, the foregoing Resolution was duly adopted.

Yeas: Greenspan, Miller, Brady, Germana, Gallagher, Schron, Conwell, Jones, Simon and Connally

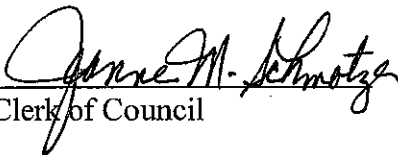
Nays: None

  
County Council President

12-10-13  
Date

  
County Executive

12/17/13  
Date

  
Clerk of Council

12/10/2013  
Date

First Reading/Referred to Committee: October 8, 2013

Committee(s) Assigned: Economic Development & Planning

Committee Report/Second Reading: October 22, 2013

Journal CC012

December 10, 2013