

RESOLUTION NO. 2003-26

**A RESOLUTION AUTHORIZING THE ACQUISITION, CONSTRUCTION, DEVELOPMENT AND FINANCING OF REAL AND PERSONAL PROPERTY COMPRISING PORT AUTHORITY FACILITIES TO BE UNDERTAKEN BY THE PORT AUTHORITY, INCLUDING THE ACQUISITION OF AN INTEREST OR INTERESTS IN AND IMPROVEMENT OF A SITE AND THE CONSTRUCTION AND EQUIPPING OF AN OFFICE BUILDING THEREON AND OF PARKING FACILITIES THAT WILL BENEFIT THAT OFFICE DEVELOPMENT PROJECT, ALL TO BE LOCATED AT OR NEAR THE INTERSECTION OF BROADWAY AND THIRD STREETS IN THE PROPOSED QUEEN CITY SQUARE DEVELOPMENT IN THE CINCINNATI CENTRAL RIVERFRONT AREA; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT WITH THE DEVELOPER AND OTHERS PERTAINING TO THE ISSUANCE OF REVENUE BONDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND DEVELOPMENT OF THOSE PORT AUTHORITY FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE AND A CONSTRUCTION AGENCY AGREEMENT PERTAINING TO THOSE PORT AUTHORITY FACILITIES; AND AUTHORIZING AND APPROVING RELATED MATTERS.**

WHEREAS, the Port of Greater Cincinnati Development Authority (“Authority”), pursuant to the laws of the State of Ohio, particularly Sections 4582.21 through 4582.59, Ohio Revised Code (the “Act”), and the authorities therein mentioned, wishes to authorize or take preliminary actions in connection with the proposed issuance of revenue bonds of the Authority (“Bonds”) to finance the acquisition, construction and development of real and personal property comprising “port authority facilities” as defined in the Act (“Project”) including, without limitation, some or all of the following: (1) lease-backed revenue bonds of the Authority (“Lease Bonds”) to be issued to finance the acquisition of an interest or interests in a site, directly or indirectly from The Western and Southern Life Insurance Company, Inc. (“WSLIC”), and the construction of an office building thereon, to be located at or near the intersection of Broadway and Third Streets in the proposed Queen City Square development in the Cincinnati Central Riverfront area (“Office Building Project”) and to be leased by the Authority to Eagle Realty Investments, Inc. or its designee (“Lessee”) pursuant to a triple-net capital lease (the “Lease”); (2) special obligation tax increment financing revenue bonds (“TIF Bonds”) of the Authority, to be issued in cooperation with the City of Cincinnati, Ohio (“City”), in order to assist in the financing of certain improvements, including primarily the acquisition of any necessary interest or interests in and improvement of a site and the construction and equipping of parking facilities thereon (“Parking Garage Project”), which Parking Garage Project is to be undertaken concurrently with and will benefit the development of the Office Building Project to be undertaken by Eagle Realty Group, LLC and its affiliated entities (collectively, the “Developer”) for and on behalf of the Authority; and (3) a revenue bond or note of the Authority, secured by lease revenues from the Lessee, and issued to evidence the obligation of the Authority to repay a loan to be made to the Authority, under Chapter 166 of the Revised Code, by the State of Ohio acting by and through the Director of Development (“Director”), the proceeds of which will be used to finance additional costs of the Project (“State Loan Note”); and

WHEREAS, the Authority and the Developer anticipate that the City will assist in the implementation of the development of the Project, including (1) the provision of new streetscape improvements adjacent to the site (the “Site”) of the Project (approximately 350 linear feet along Broadway and Third Streets), all to be undertaken by the Developer on behalf of the City pursuant to a development agreement between the Developer and the City, (2) taking any steps

precedent to and passing an ordinance designating improvements to the Site as a public improvement under and pursuant to applicable Revised Code Sections and exempting those improvements from real property taxation for a period of up to 30 years, and (3) entering into a cooperative agreement with the Authority, pursuant to Revised Code Section 4582.43 and 4582.431, to transfer payments in lieu of taxes (and, if applicable, any special assessments) to the Port Authority to provide revenues for payments with respect to the TIF Bonds; and

WHEREAS, this Board wishes to take steps to confirm its intentions with respect to the financing of the Project, to authorize and take preliminary actions in connection with the issuance of the Bonds, to authorize the execution and delivery of an agreement setting forth those intentions (the "Agreement"), the negotiation of a cooperative agreement with the City and the Developer pertaining to the Project (the "Cooperative Agreement"), and the execution and delivery of a Ground Lease between WSLIC, as lessor, and the Authority, as lessee, pertaining to the Site (the "Ground Lease") and a Construction Agency Agreement (the "Construction Agency Agreement") between the Authority and the Developer, as "Construction Agent," all for the purposes set forth in Section 1 of this Resolution;

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

Section 1. This Board hereby finds and determines, based upon information provided by the Developer, WSLIC and the Lessee, that (i) the Office Building Project and the Parking Garage Project will each be a "port authority facility", in furtherance of the purposes set forth in the Act, including transportation and economic development purposes, as those terms are used or defined in Section 4582.21, Ohio Revised Code, (ii) the Project is consistent with the purposes of Section 13 of Article VIII, Ohio Constitution, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio, (iii) the Project will further the proposed Queen City Square development and thereby further the redevelopment of the Cincinnati Central Riverfront area, in accordance with the City's Central Riverfront Urban Design Master Plan, as currently in effect, and (iv) it is in the best interests of the Authority to, and the Authority shall: (a) use its best efforts to issue the Bonds and shall enter into the Agreement with the Developer, WSLIC and the Lessee, setting forth its preliminary understandings with respect thereto, (b) use its best efforts to negotiate the terms of the Cooperative Agreement with the City, together with the Developer and any other parties necessary or desirable to the purposes thereof and of the Lease with the Lessee, (c) lease the Site from WSLIC pursuant to the Ground Lease, commence the implementation of the Project and enter into the Construction Agency Agreement with the Developer, as agent of the Authority, to construct, equip and otherwise develop the Project on behalf of the Authority; provided that, in no such event shall the general resources of the Authority be committed or the general credit of the Authority pledged, directly or indirectly, to the payment of any obligation incurred by the Construction Agent with respect to the Project, but any such obligations shall be paid only from proceeds of the Bonds when, as and if issued and revenues derived from the Project, under the Cooperative Agreement, the Lease or otherwise.

Section 2. In order to assist in the financing of the Project, this Board hereby agrees to exercise its best efforts to authorize and issue the Bonds, comprised of any or all of the Lease Bonds, the TIF Bonds and the State Loan Note, in such respective principal amounts, if any, as are authorized by this Board on behalf of the Authority, and in the estimated maximum aggregate face amount of \$50,000,000, all to be authorized and issued pursuant to the Act, subject to satisfaction of the conditions and pursuant to the provisions contained in the Agreement, which shall be in substantially the form on file with the Secretary of this Board; which is hereby approved. The Chairperson, the Vice Chairperson or the President is hereby authorized and directed to execute and deliver the Agreement substantially in such form, with such changes as are not substantially adverse to the Authority as the officer executing the Agreement may

approve, such execution being conclusive evidence of approval of any such changes and that such changes are not substantially adverse to the Authority.

The Bonds are expected to be paid from any one or more of the following sources (and those sources may not all be used and the sources may be different for different portions of the Bonds): (i) rental payments made by the Lessee to the Authority pursuant to the Lease between the Authority, as lessor, and the Lessee, (ii) payments in lieu of taxes to be generated by improvements to the site and transferred by the City to the Authority pursuant to the Cooperative Agreement, (iii) special assessments levied (and, to the extent necessary, collected) by the City on parcels included in the Site, and (iv) other security in form satisfactory to the Authority. This Board hereby authorizes and directs the executive officers of the Authority to negotiate the terms of the Cooperative Agreement with the City, and with the other parties thereto, and to negotiate the terms of the Lease, all in order to implement the Project and the purposes of this Resolution. This Board hereby declares that the Authority reasonably expects that capital and other expenditures relating to the Project made by the Authority, the Developer and others will be reimbursed from the proceeds of "bonds" (as defined in Section 150 of the Internal Revenue Code) and that the maximum principal amount of bonds expected to be issued for the Project is \$50,000,000. This resolution constitutes a Declaration of Official Intent under the United States Treasury Regulations Section 1.150-2.

Section 3. In order to commence preliminary steps necessary to the implementation of the Project, the Authority shall (1) lease the Site from WSLIC pursuant to the Ground Lease, which shall be in substantially the form on file with the Secretary of this Board, and which is hereby approved, and (2) enter into the Construction Agency Agreement with the Construction Agent, which shall be in substantially the form on file with the Secretary of this Board, and which is hereby approved. Any one or more of the Chairperson, the Vice Chairperson and the President is hereby authorized and directed, upon execution and delivery of the Agreement by the other parties thereto and the receipt of the application fee required thereby, to execute and deliver the Ground Lease and the Construction Agency Agreement, in substantially the forms thereof on file with the Secretary, with such changes therein as are not substantially adverse to the Authority and as the officer or officers executing the same may approve, such execution being conclusive evidence of approval of any such changes and that such changes are not substantially adverse to the Authority. Contracts for the construction and development of the Project shall be made in the manner provided in the Construction Agency Agreement, and this Board finds and determines that the manner therein authorized best carries out the public purposes of the Project, including the creation and preservation of jobs and employment opportunities pursuant to Article VIII, Section 13, of the Ohio Constitution, and is in the best interest of the Authority. The Chairperson, the Vice Chairperson and the President are hereby authorized and directed to take all such actions under the Ground Lease and the Construction Agency Agreement as may be necessary and appropriate to carry out the transactions contemplated thereby.

Section 4. The President of the Authority is hereby authorized to designate a Prevailing Wage Coordinator for the Project pursuant to the requirements of Section 4115.032, Ohio Revised Code, to perform the duties therein specified.

Section 5. The Authority retains the law firms of Squire, Sanders & Dempsey L.L.P. ("Squire Sanders"), as bond counsel, and Gonzalez, Saggio & Harlan, L.L.P. ("Gonzalez Saggio"), as counsel to the Authority, in each case to provide legal services in connection with the authorization, sale, issuance and delivery of the Bonds and the implementation of the transactions contemplated by the Agreement through the date of issuance and delivery of the Bonds. In providing those legal services, as independent contractors in an attorney-client relationship, Squire Sanders and Gonzalez Saggio shall not exercise any administrative discretion on behalf of this Board in the formulation of public policy, expenditure of public

funds, enforcement of laws, rules and regulations of the State or any political subdivision, or the execution of public trusts. The fees and expenses of Squire Sanders and Gonzalez Saggio for those legal services shall be paid by the Developer or the Lessee pursuant to and as required by the provisions in the Agreement obligating the Developer and the Lessee to indemnify the Authority in connection with that issuance and sale of the Bonds and that implementation.

Section 6. This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this resolution were taken in an open meeting of this Board and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 7. This resolution shall take effect and be in force immediately upon its adoption.

Adopted: November 25, 2003

Yeas: 12

Nays: 0

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Chairperson

Attest: \_\_\_\_\_  
Secretary