

## RESOLUTION NO. 2004-2

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE DEVELOPER PERTAINING TO THE FINANCING OF CERTAIN PUBLIC IMPROVEMENTS TO BE UNDERTAKEN BY THE PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY, INCLUDING THE ACQUISITION AND ENVIRONMENTAL REMEDIATION OF A SITE, AND THE CONSTRUCTION, IMPROVING AND EQUIPPING THEREON OF PUBLIC PARKING FACILITIES AND OTHER PUBLIC IMPROVEMENTS THAT WILL BENEFIT THE MILLWORKS DEVELOPMENT PROJECT CONCURRENTLY UNDERTAKEN BY VISION LAND DEVELOPMENT, LLC (OR AN AFFILIATED ENTITY) ON A PORTION OF THE FACTORY POWER SITE LOCATED IN HAMILTON COUNTY WITHIN THE CITY OF CINCINNATI.**

WHEREAS, the Port of Greater Cincinnati Development Authority (“Authority”), by virtue of 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 take, in cooperation with the City of Cincinnati, Ohio (“City”), the necessary preliminary actions for the issuance of special assessment backed tax increment financing revenue bonds of the Authority (the “Bonds”), in order to finance certain public improvements, including, primarily the acquisition of a site, or of an interest therein, the environmental remediation thereof and the construction, improving, equipping and developing of public parking facilities and other public improvements thereon (the “Project”), which Project is to be undertaken concurrently with and will benefit the construction of the proposed “Millworks” mixed-use office, retail and entertainment complex (the “Development”) to be located on a portion (“Development Site”) of an approximately 60-acre portion (“Site”) of the Factory Power site located in Hamilton County, within the geographic limits of the City, which development is being undertaken by Vision Land Development, LLC and its affiliated entities (collectively, the “Developer”); and

WHEREAS, United States Treasury Regulations Section 1.150-2 (the “Reimbursement Regulations”) prescribes conditions under which proceeds of bonds, notes or other obligations used to reimburse advances made for certain expenditures paid before the issuance of such obligations will be deemed to be expended (or properly allocated to expenditures) for purposes of Sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”) so that, upon such reimbursement, the proceeds so used will not further be subject to requirements or restrictions under those sections of the Internal Revenue Code, and certain provisions of the Reimbursement Regulations require that there be a Declaration of Official Intent not later than 60 days following payment of the expenditure expected to be reimbursed from proceeds of such obligations, and that the reimbursement occur within prescribed time periods after the expenditure is paid or after the property is placed in service; and

WHEREAS, the Authority wishes to take steps to comply with those Regulations in connection with the Project, to confirm its intentions with respect to the acquisition of a portion of the Site (“Project Site”), or of an interest therein, and the implementation of the Project, to enter into the Agreement referred to herein, and to take other preliminary actions necessary or desirable in connection with the authorization of the Bonds;

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

Section 1. This Board does hereby find and determine, based upon the representations of the Developer, that (i) the Project will be a “port authority facility” in furtherance of the purposes set forth in the Act, including transportation, governmental operations and economic development purposes, as those terms are defined or used 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, and (iii) the Project will be for the restoration and redevelopment of property within Hamilton County affected or perceived to be affected by environmental contamination.

Section 2. In order to finance costs of the Project, this Board hereby agrees to exercise its best efforts to authorize and issue the Bonds, in the estimated maximum aggregate face amount of \$32,000,000 pursuant to the Act, subject to satisfaction of the conditions and pursuant to the provisions contained in the form of Agreement to Issue Bonds by and between the Authority and Vision Land Development, LLC, attached hereto as Exhibit I (the “Agreement”), which is hereby approved. The Chairperson, the Vice Chairperson or the President is hereby authorized and directed to execute the Agreement substantially in such form with such changes as are not 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 they are not adverse to the Authority. The Bonds are expected to be paid from payments in lieu of taxes (and associated rollback payments) to be generated by improvements to the Development Site and from special assessments to be levied (and to the extent necessary, collected) by the City on the parcels included in the Development Site pursuant to one or more petitions submitted by the Developer (as the owner of 100% of the lots and lands specially benefited by, and to be assessed for the costs of, the Project) and, as necessary, from payments under an irrevocable bank letter of credit procured by the Developer or other guaranty acceptable to the Authority.

Section 3. 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 \$32,000,000. This resolution constitutes a Declaration of Official Intent under the Reimbursement Regulations.

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, and 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. 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, except to the extent if any expressly agreed to by the Authority, shall be paid by the Developer pursuant to the provision in the Agreement obligating the Developer to indemnify the Authority against any and all loss, cost, expense, claims or actions arising out of or connected with the issuance or sale of the Bonds.

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: January 8, 2004

Yeas: 12

Nays: 0

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Chairperson

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