

RESOLUTION NO. 2006-17

A RESOLUTION SUPPLEMENTING RESOLUTION NO; 2006-XX AND AUTHORIZING FURTHER ACTIONS BY AND ON BEHALF OF THE PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY WITH RESPECT TO THE PROJECT IDENTIFIED IN THAT RESOLUTION, INCLUDING AUTHORIZING ACCEPTANCE OF TITLE TO A SITE FROM THE CITY OF CINCINNATI AND EXECUTION AND DELIVERY OF A GROUND LEASE WITH NEYER PROPERTIES, INCORPORATED WITH RESPECT TO A PORTION OF THE SITE.

WHEREAS, at the request of Neyer Properties, Incorporated ("Developer") and the City of Cincinnati ("City") and pursuant to the laws of the State of Ohio ("State"), particularly Revised Code Sections 4582.21 through 4582.59 and the authorities therein mentioned, including Ohio Constitution Article VIII, Section 13 (collectively, "Act"), this Board adopted Resolution No. 2006._ on October 5, 2006 ("Original Resolution") pertaining to and authorizing preliminary actions of the Port of Greater Cincinnati Development Authority ("Port Authority") with respect to the proposed issuance of port authority revenue bonds or notes that may be issued in anticipation of such port authority revenue bonds (collectively, "Bonds") in order to finance costs of a project comprised of certain public improvements, including a public parking garage comprising "port authority facilities" as defined in the Act ("Project"), to be undertaken by the Port Authority in cooperation with the City in support of proposed urban redevelopment by the City and the Developer within the Evanston neighborhood of the City("Redevelopment"); and

WHEREAS, in order to proceed with and support and induce the Redevelopment, including the development on a portion of the Site of a three-phase commercial office development to be known as Keystone Park ("Private Development"), the City is expected to acquire title to an approximately 11.7-acre site generally located at the intersection of Realistic and Oesper Avenues near the 1-71 Interchange at Dana Avenue ("Site") and by one or more ordinances (collectively, "TIF Ordinance"), declare improvements to the Site to be a public purpose, exempt from real estate taxes pursuant to Revised Code Section 5709.41 and other applicable provisions of Revised Code Chapter 5709 (collectively, "TIF Act"); and

WHEREAS, consistent with the preliminary project revenue bond agreement ("Preliminary Agreement") authorized by the Original Resolution, the City is expected to convey title to the Site, by quitclaim deed or deeds, to the Port Authority so that the Port Authority can construct the first phase of the Project on a portion of the Site ("Project Site") and deliver the balance of the Site ("Development Site") to the Developer for construction of the Private Development; and

WHEREAS, so long as the Port Authority has title to the Development Site, in order to permit the Developer to proceed with the Private Development it will be necessary for the Port Authority to lease the Development Site to the Developer and this Board has determined, upon acquisition of title to the Site, to lease the Development Site to the Developer for a term of not less than 50 years, with purchase option rights to the Development Site as set forth in the form of Ground Lease now on file with the Secretary of this Board, and with the ground rent and other consideration for the lease of the Development Site to the Developer as set forth in that form of Ground Lease; and

WHEREAS, in order to meet certain time constraints imposed on the Developer with respect to the Private Development, the Developer has requested that this Board authorize, at this time, the acceptance of title to the Site and the execution and delivery of a ground lease with the Developer with respect to the Development Site, and this Board has determined to adopt this resolution to supplement the authority granted under the Original Resolution and to authorize a ground lease with the Developer to set forth the terms on which the Port Authority is willing to lease the Development Site to the Developer;

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

Section 1. This Board hereby finds and determines, or hereby confirms its previous determinations that, based upon the representations of the Developer: (i) the Project will constitute "port authority facilities" within the meaning of the Act, and is in furtherance of authorized purposes of the Port Authority, including transportation, governmental operations and economic development purposes as those terms are used or defined in Revised Code Section 4582.21, (ii) the Project and the Development are consistent with the purposes of Section 13 of Article VIII, Ohio Constitution, and will create or preserve jobs and employment opportunities and improve the economic welfare of the people of the State, (iii) subject to (A) the determination by the City (Council or Mayor) that the Project will be for the restoration and redevelopment of property within the City and County affected or perceived to be affected by environmental contamination, the redevelopment of which is discouraged thereby or (B) the approval of the participation of the Port Authority in the Project by the Board of County Commissioners of the County (in addition to the Council of the City), the Port Authority is authorized to implement the Project in the manner contemplated by the Original Resolution, the Construction Agency Agreement referred to therein and the Preliminary Agreement, all of which is in furtherance of the aforementioned Article VIII, Section 13, of the Ohio Constitution and will enhance, foster, aid, provide and promote economic development within the jurisdiction of the Port Authority and will require that the Port Authority acquire the Project Site, and (iv) the Port Authority is authorized to and shall accept title to the Site from the City and, in order to implement the Redevelopment, including the Private Development to be owned exclusively by the Developer, lease the Development Site to the Developer on substantially the terms and conditions, and for the consideration set forth in, the Ground Lease authorized hereby ("Ground Lease").

Section 2. Based on information furnished to it by the City and the Developer, and pursuant to the intended cooperative arrangements with the City, this Board has determined to (i) accept title to the Site from the City by quitclaim deed or deeds in form satisfactory to any of the officials authorized to execute the Ground Lease authorized hereby and (ii) authorize the lease of the Development Site to the Developer on the terms and conditions, and with the appurtenant rights and purchase options, and for the consideration set forth in the form of Ground Lease on file with the Secretary of this Board. This Board, taking into account the terms and conditions, including the consideration paid, of the transfer of title to the Site from the

Developer to the City, and from the City to the Port Authority, and of the public purposes to be served by the Redevelopment, including the Private Development, hereby specifically approves the consideration for the lease of the Development Site to the Developer under the Ground Lease, as set forth in that form of Ground Lease, and approves the purchase options granted therein to the Developer, it being hereby determined that, based on the benefits to be derived by the Port Authority from the implementation of the Private Development and the Project, that it is in the best interests of the Port Authority to, and the Port Authority shall, so long as the Developer fulfills all of its obligations under the Preliminary Agreement and the Financing Agreements referred to therein, charge nominal ground rent under the Ground Lease, which ground rent may be paid in advance, for the entire term of the Ground Lease. Subject to the foregoing, and with any pecuniary obligations of the Port Authority thereunder payable only from "revenues", as defined in Revised Code Section 4582.21(G), and expressly conditioned on the issuance of the Bonds, this Board hereby authorizes and approves the execution and delivery by the Port Authority of the Ground Lease by and between the Port Authority and the Developer, in substantially the form on file with the Secretary of this Board. The Chairperson, the Vice Chairperson and the President (including anyone acting in any such capacity on an interim or temporary basis), alone or together with the Secretary or an Assistant Secretary of this Board, are hereby authorized and directed to execute and deliver the Ground Lease, in substantially such form, but with such changes as are not adverse to the Port Authority and as are approved by the officer executing the Ground Lease as being necessary or desirable and in the best interest of the Port Authority, such execution being conclusive evidence of approval of any such changes as being necessary or desirable and in the best interest of the Port Authority, that they are not adverse to the Port Authority and that the form of deed conveying title to the Port Authority is satisfactory. In addition, such officials are authorized to execute on behalf of the Port Authority a memorandum of the Ground Lease, or other short form instrument suitable for recording purposes, and to authorize the recording thereof in the real estate records of Hamilton County, Ohio.

Section 3. The Original Resolution and the findings, determinations, declarations and authorizations therein are, as supplemented hereby, ratified and confirmed.

Section 4. 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 5. This resolution shall take effect and be in force immediately upon its adoption.

Adopted: November 21, 2006

Yeas: 8

Nays: 0

Chairperson

Attest: _____
Secretary