

RESOLUTION NO. 2008-44

AUTHORIZING THE GENERAL MANAGER/SECRETARY-TREASURER TO ENTER INTO A LEASE AGREEMENT WITH LITTLE ITALY DEVELOPMENT, LLC FOR THE CONTINUED USE OF THE PLAZA AREA OF THE EAST 120TH STREET RAPID TRANSIT STATION FOR A TERM OF FIVE (5) YEARS WITH TWO (2) OPTIONS OF ONE (1) YEAR EACH FOR A TOTAL OF SEVEN (7) YEARS

WHEREAS, the Little Italy Development, LLC owns property at the southwest corner of Coltman Road and Euclid Avenue in Cleveland, Ohio, which is identified by Cuyahoga County as permanent parcel number 120-31-005; and

WHEREAS, Little Italy Development, LLC purchased this property from Norfolk Southern Railway Company on October 24, 2006; and

WHEREAS, the Greater Cleveland Regional Transit Authority uses 3,947 square feet of this property as the plaza area to the E. 120th Street Rapid Transit Station; and

WHEREAS, GCRTA and its predecessor, the City of Cleveland, leased this land from Norfolk Southern Railway Company since at least July 26, 1972; and

WHEREAS, the Authority wishes to execute a lease with Little Italy Development LLC for the continued use of this property until the E. 120th Street Rapid Transit Station is relocated to Mayfield Road.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1: That the General Manager/Secretary-Treasurer is hereby authorized to enter into the attached lease agreement with Little Italy Development, LLC for the plaza area to the E. 120th Street Rapid Transit Station and to exercise options for renewal terms as permitted by the lease agreement.

Section 2: That the primary term shall be five (5) years with an option for two (2) additional renewal terms of one (1) year each.

Section 3: That the base rent for the first year of this lease is Four Thousand Seven Hundred Forty Dollars (\$4,740.00). The base rent shall be adjusted by two and one half percent (2.5%) interest at the beginning of each year of the lease, as well as at the beginning of each option year. The Rent Schedule will be: Year 1 = \$4,740.00; Year 2 = \$4,858.50; Year 3 = \$4,977.00; Year 4 = \$5,095.50; Year 5 = \$5,214.00. Option Year 1: \$5,332.50; Option Year 2: \$5,451.00. Retroactive rent payments for 2006 and 2007 in the amount of \$5,505.82 shall also be due upon execution of the lease agreement.


Section 4. That the Authority will be responsible for maintenance of the leased premises in accordance with the lease terms.

Section 5: That the General Manager/Secretary-Treasurer be, and is hereby authorized to enter into the Lease Agreement with Little Italy Development, LLC for use of the property identified above in substantially the form of Attachment A hereto.

Section 6: That this resolution shall become effective immediately upon its adoption.

Attachments: Lease Agreement w/ Map

Adopted: March 18, 2008



President

Attest: 

CEO, General Manager/Secretary-Treasurer

AGREEMENT

THIS AGREEMENT is executed as of the ___ day of _____, 2008, by and between Little Italy Development, LLC, an Ohio limited liability company ("Landlord"), and The Greater Cleveland Regional Transit Authority, a political subdivision of the State, created under Chapter 306 of the Ohio Revised Code ("Tenant").

WITNESSETH:

WHEREAS, the following facts are true:

A. Landlord is the owner of a portion of certain real estate located in Cuyahoga County, Ohio, and more commonly known as the former Norfolk Southern Company property in Cleveland, Ohio deeded to Landlord on October 24, 2006 (the "Land").

B. Tenant desires to lease 3,947 square feet of the Land at the southwest corner of Euclid Avenue and Coltman Road, which portion is identified and outlined in black on Exhibit-A (the "Leased Premises") for Tenant and its invitees' use to access property owned by Tenant ("Tenant's Property").

C. Landlord desires to allow Tenant to lease the Leased Premises upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Lease Term and Conditions. Landlord consents to Tenant's use of the Leased Premises for a term commencing retroactively on October 24, 2006 and ending on December 31, 2012 for the sum of Three Hundred Ninety Five Dollars (\$395.00) ("Rent") per month (prorated for any partial month), to be paid on the first day of each month. Tenant shall make payment for retroactive rent payments within forty (40) days of the effective date of the Agreement. The Base Rent shall be adjusted at the beginning of each year of this Lease starting January 1, 2009 using a factor of two and a half percent (2.5%) interest yearly.

The term may be extended for two (2) additional renewal terms of one (1) year each. This Agreement will automatically extend for the one (1) year renewal terms at the conclusion of the initial term unless Tenant has provided Landlord with at least sixty (60) days prior written notice of intent to terminate this Agreement at the conclusion of the then-current term. Tenant may terminate the Agreement when the Leased Premises are no longer needed for its operations with at least sixty (60) days prior written notice to Landlord of intent to terminate this Agreement.

Tenant may not make any alterations or improvements to the Leased Premises without prior written approval of the Landlord. Tenant shall maintain the Leased Premises in a clean and orderly condition throughout the Lease Term.

Tenant shall pay, as and when due, all water, sewer, fireline, power, heat, gas, electricity and all other utility services used or consumed on the Leased Premises during the Lease Term. The Tenant will pay directly its Natural Gas utility, but electrical, water and sewer charges are paid to the Landlord. Water, fireline and sewer charges are allocated on a pro rata basis as to the square footage utilized as a percent of the square footage of actually occupied space in the building. Electric charges are separately metered. Landlord shall not be liable for any permanent

or temporary interruption or termination of utility services nor shall any of Tenant's obligations under this Lease be affected by any such interruption or termination of utility services.

2. Insurance and Indemnification. Tenant shall defend and hold Landlord harmless from any and all liability for any loss of or damage or injury to any person (including death resulting there from) or property, including Tenant's Property, occurring in, on or about the Leased Premises, unless liability is caused solely by Landlord, its officers, agents, and employees. Tenant shall, at Landlord's request, provide a letter of self insurance evidencing that proper insurance as required in the preceding sentence is in full force and effect. Landlord shall have no responsibility whatsoever for Tenant's Property.

3. Hazardous Materials. Tenant shall not store any hazardous, toxic, chemical, combustible, flammable or infectious materials in or about the Leased Premises. If the presence of such materials in the Leased Premises results in contamination of the Leased Premises, any adjacent property, Tenant will defend and hold Landlord harmless from any and all loss or damages caused thereby.

4. Tenant's Acceptance of the Leased Premises "As Is". Tenant has personally inspected the Leased Premises and accepts the same "as is" without representation or warranty by Landlord of any kind and with the understanding that Landlord shall have no responsibility with respect thereto.

5. Default. Failure of Tenant to pay Rent on or before the first day of each month or observe the conditions and obligations of this Agreement, or use of the Leased Premises in a manner not permitted or otherwise contemplated by this Agreement, and continues to fail to comply for a period of thirty (30) days after receiving written notice from Landlord (except to the extent that Tenant is diligently and in good faith working to comply with a condition or obligation of this Agreement, in which event Tenant's period to comply shall be reasonably extended for so long as Tenant is diligently and in good faith working to comply with such condition or obligation) shall constitute an event of default and shall cause this Agreement to terminate immediately upon the election of Landlord. Tenant shall be responsible for any Rent due and owing upon the date of termination, together with interest at the rate of prime plus 4%.

6. Liability. Tenant agrees to remain liable for damages to the Leased Premises incurred during the term of the Agreement and caused by Tenant, its employees, agents or representatives. Tenant additionally agrees to defend and hold Landlord harmless from any and all liability incurred during the term of the Agreement for any loss or damage or injury to any person (including death resulting there from) or property, including Tenant's Property, arising out of or in any way connected with Tenant's use, storage, occupancy or control of the Leased Premises unless liability is caused solely by Landlord, its officers, agents, and employees.

7. Limitation of Landlord's Liability. If Landlord shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Lease and if Tenant shall, as a consequence thereof, recover a money judgment against Landlord, Tenant agrees that it shall look solely to Landlord's right, title and interest in and to the Land for the collection of such judgment; and Tenant further agrees that no other assets of Landlord shall be subject to levy, execution or other process for the satisfaction of Tenant's judgment.

8. Assignment. Tenant shall not be entitled to assign its interest in this Agreement or sublet the Leased Premises.

9. Notice. Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if it is written and delivered in person or by overnight

courier or mailed by certified mail, postage prepaid, to (i) the party who is to receive such notice at the address specified below, and (ii) in the case of a default notice from Tenant to Landlord, any Lender designated by Landlord. When so mailed, the notice shall be deemed to have been given as of the date it was mailed. Either party may change its address by giving written notice thereof to the other party. Notice addresses are as follows:

Landlord: Little Italy Development, LLC
1350 Euclid Avenue, # 300
Cleveland, OH 44115

Tenant: The Greater Cleveland Regional Transit Authority
Main Office
1240 W. 6th Street
Cleveland, Ohio 44113-1331
Attn: Property Manager

Address for rental and other payments as follows:

Little Italy Development, LLC
1350 Euclid Avenue, # 300
Cleveland, OH 44115

10. This section has been intentionally left blank.

11. Miscellaneous. (a) This Agreement constitutes the entire agreement between the parties; (b) no supplement, modification or amendment of this Agreement shall be binding unless executed in writing by Tenant and Landlord; (c) all representations, covenants, and indemnifications herein shall survive the termination of this Agreement.

Executed as of the day and year first written above.

LANDLORD:

Little Italy Development, LLC
an Ohio limited liability company

By: Terence P. Wynn

Printed: Terence P. Wynn

Title: Managing Member

TENANT:

Greater Cleveland Regional Transit Authority
a political subdivision of the State of Ohio

By: _____

Joseph A. Calabrese
CEO and General Manager/Secretary-Treasurer

The legal form and correctness of the within
instrument are hereby approved.

Sheryl King Benford, General Counsel
Deputy General Manager for Legal Affairs

STATE OF Ohio)
)
COUNTY OF Cuyahoga)



ANGELA C. ZIEGLER
Notary Public, State of Ohio
My Commission Expires October 18, 2009

Before me, a Notary Public in and for said County and State, personally appeared Terry Cagne of Little Italy Development, LLC, an Ohio limited liability company, who acknowledged execution of the foregoing "Agreement" on behalf of said company.

WITNESS my hand and Notarial Seal this March 11, day of 2008

Angela C. Ziegler
Notary Public

(Printed Signature)

STATE OF _____)
)
COUNTY OF _____)

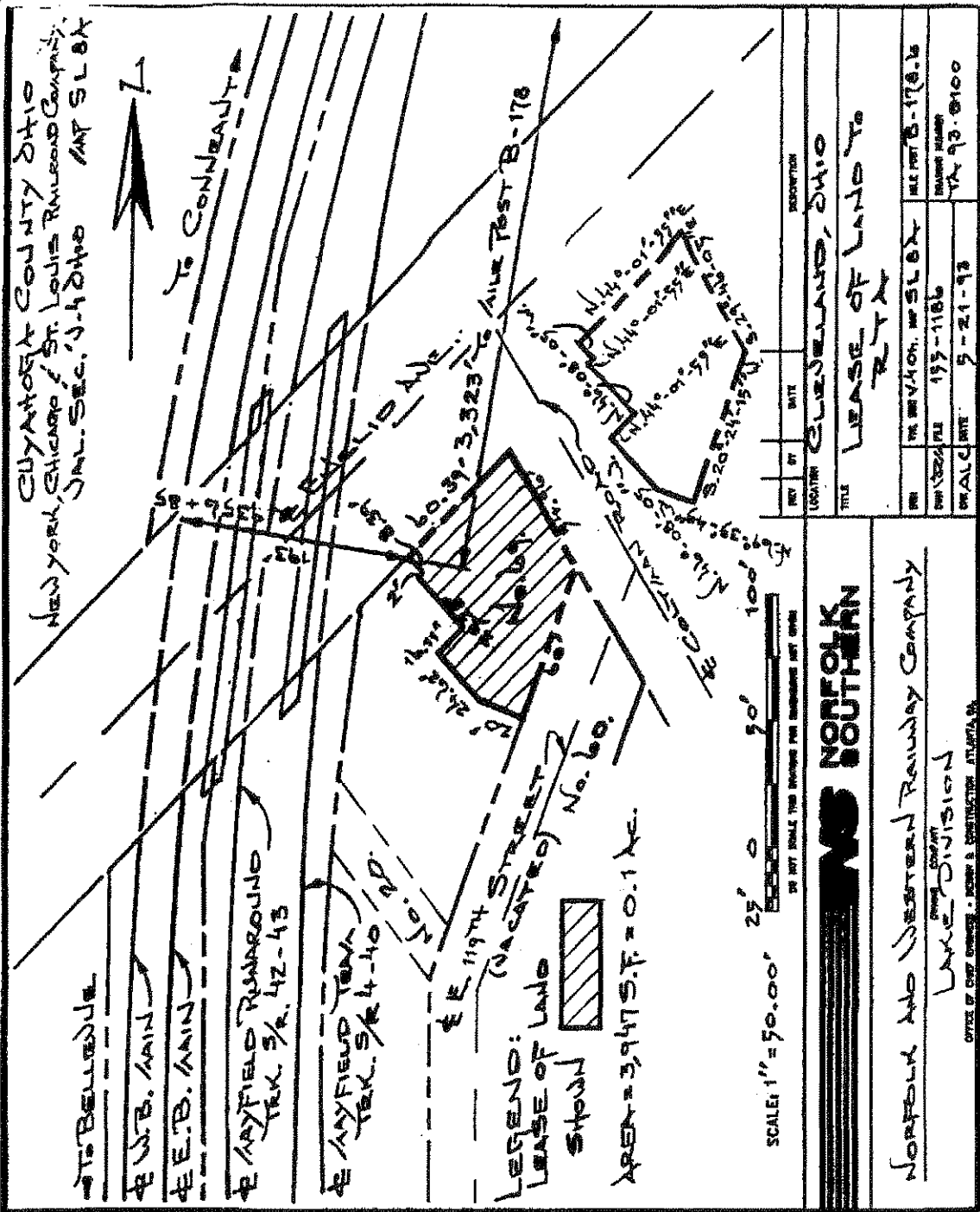
Before me, a Notary Public in and for said County and State, personally appeared Joseph A. Calabrese of **The Greater Cleveland Regional Transit Authority**, a political subdivision of the State, created under Chapter 306 of the Ohio Revised Code, who

acknowledged execution of the foregoing "Agreement" on behalf of said political subdivision of the State of Ohio.

WITNESS my hand and Notarial Seal this _____ day of 2008

Notary Public

(Printed Signature)



CUYAHOGA COUNTY OHIO
 NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY
 J.M. SEC. 1-1-DHNO ANT SLOX

ST. BELLEVIDE

E.W.B. MAIN

E.E.B. MAIN

MAYFIELD RAILROAD
 TRK. 5/2, 42-43

MAYFIELD TANK
 TRK. 5/2, 4-40

E 11974 STREET
 (NACATRO) No. 60

LEGEND:
 LEASE OF LAND
 STATION

AREA = 3,947 S.F. = 0.1 AC.

SCALE: 1" = 50.00'
 25' 0 50' 100'

NORFOLK SOUTHERN

Norfolk and Western Railway Company
 Station Division
 OFFICE OF SURVEYING, DESIGN & CONSTRUCTION, ATLANTA, GA.

REV. BY	DATE	DESCRIPTION
		LOCATION: CLEVELAND, OHIO
TITLE: LEASE OF LAND TO RYAN		
REV.	DATE	DESCRIPTION
1	195-1186	PLAN NO.
2	5-21-78	DATE
3	1978-178.6	FILE NO.
4	1978-1186	PROJECT NO.
5	1978-1186	DATE

DATE FILE
 PLAN NO.



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: AUTHORIZING THE GENERAL MANAGER/SECRETARY-TREASURER TO ENTER INTO A LEASE AGREEMENT WITH LITTLE ITALY DEVELOPMENT, LLC FOR THE CONTINUED USE OF THE PLAZA AREA OF THE EAST 120 TH STREET RAPID TRANSIT STATION FOR A TERM OF FIVE (5) YEARS WITH TWO (2) OPTIONS OF ONE (1) YEAR EACH FOR A TOTAL OF SEVEN (7) YEARS	Resolution No.: 2008-44
	Date: March 13, 2008
	Initiator: Programming and Planning
ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 **PURPOSE/SCOPE:** GCRTA uses 3,947 square feet of land at the southwest corner of Coltman Road and Euclid Avenue for the plaza area to the E. 120th Street Rapid Transit Station. The property has been improved by GCRTA with benches, newspaper boxes, and a bike rack and has been leased from Norfolk Southern Railway Company by GCRTA or its predecessor since at least July 26, 1972. Without notice to GCRTA, Norfolk Southern sold this land to Little Italy Development, LLC on October 24, 2006. Little Italy Development, LLC is willing to continue to lease this land to GCRTA.
- 2.0 **DESCRIPTION/JUSTIFICATION:** GCRTA has plans to relocate the E. 120th Street station to Mayfield Road in approximately five (5) years. Until such time as the station is relocated, it is necessary for the Authority to lease this plaza area so that its riders have access to the station area. Base rent is \$4,740.00 per year with base rent adjustments at the beginning of each lease year as well as each of the two (2) one-year renewal periods.
- 3.0 **PROCUREMENT BACKGROUND:** Not Applicable
- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Not Applicable
- 5.0 **POLICY IMPACT:** This action is compliant with the Board of Trustees Real Estate Policy that specifies the Board of Trustees must approve all agreements in excess of \$25,000.
- 6.0 **ECONOMIC IMPACT:** Lease payments shall be made from the GCRTA Programming & Planning Department budget.
- 7.0 **ALTERNATIVES:** None. Failure to enter into a lease with Little Italy Development, LLC would eliminate access to the E. 120th Street Rapid Transit Station.
- 8.0 **RECOMMENDATION:** Staff recommends that the Board of Trustees approve the resolution to authorize leasing this property from Little Italy Development, LLC.
- 9.0 **ATTACHMENTS:** Lease Agreement with Little Italy Development, LLC (Attachment A).

Recommended and certified as appropriate to the availability of funds, legal form and conformance with the Procurement requirements.

CEO, General Manager/Secretary-Treasurer