

RESOLUTION NO. 2010-37

AUTHORIZING THE GENERAL MANAGER/SECRETARY-TREASURER TO ENTER INTO A LAND LEASE WITH APOCALYPSE DEVELOPMENT, LTD. FOR 0.33 ACRES OF LAND ON W. 25TH STREET SOUTHEAST OF THE INTERSECTION OF GEHRING AVENUE IN CLEVELAND, OHIO FOR A TERM OF TWENTY (20) YEARS

WHEREAS, the Greater Cleveland Regional Transit Authority ("Authority") owns property on W. 25th Street adjacent to its Red Line rapid transit rail trench in Cleveland, Ohio designated by Cuyahoga County as Parcel No. 007-11-021; and

WHEREAS, Apocalypse Development Ltd. owns adjacent land that is used by Voss Industries, Inc. for customer and employee parking; and

WHEREAS, a portion of the parking lot improved by Apocalypse Development Ltd. and utilized by Voss Industries Inc. is part the Authority's Parcel No. 007-11-021; and

WHEREAS, Apocalypse Development Ltd. and the Authority wish to enter into a lease agreement to give Apocalypse Development Ltd. the legal right to use this land; and

WHEREAS, the Authority wishes to maximize revenue from its real property assets.

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 Apocalypse Development, Ltd. for approximately 0.33 acres of Permanent Parcel No. 007-11-021.

Section 2: That the lease term shall be twenty (20) years.

Section 3: That the annual base rent shall be Two Thousand One Hundred and 00/100 dollars (\$2,100.00) payable in equal monthly payments. Rent shall increase per the terms of the Agreement in year six (6), eleven (11) and sixteen (16).

Section 4: That Apocalypse Development, Ltd. will be responsible for its share of any real property taxes that may result from the lease.


Section 5: That Apocalypse Development, Ltd. is responsible for maintaining the property in good repair and operating it in compliance with all applicable laws.

Section 6: That the General Manager/Secretary-Treasurer be, and is hereby authorized to enter into the Lease Agreement with Apocalypse Development, Ltd. for use of the Greater Cleveland Regional Transit Authority property identified above in the form of Attachment A hereto.

Section 7: That this resolution shall become effective immediately upon its adoption.

Attachment: Lease Agreement

Adopted: May 18, 2010



President

Attest: 

CEO, General Manager/Secretary-Treasurer

LEASE AGREEMENT
Between
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY
And
APOCALYPSE DEVELOPMENT, LTD.

THIS AGREEMENT ("Agreement") is made and entered into at Cleveland, Ohio, as of the _____ day of _____, 2010, by and between the Greater Cleveland Regional Transit Authority, a political subdivision of the State of Ohio ("Lessor"), and Apocalypse Development, Ltd., ("Lessee"), a domestic limited liability company.

WHEREAS, Lessor is the owner of certain realty, designated as Parcel No. 007-11-021 and located adjacent to the Lessee's property designated as Parcel No. 007-11-023 on West 25th Street, Cleveland, Ohio; and

WHEREAS, the parties have recently discovered that a portion of the parking lot improved and utilized by Lessee is actually part of Lessor's property; and

WHEREAS, Lessee desires to lease such realty from Lessor, and Lessor desires to lease such realty to Lessee.

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

I. LEASED REALTY

Lessor leases to Lessee and Lessee leases from Lessor, subject to the terms and conditions of this Agreement, Lessor's property to the East of the intersection at Gehring Avenue and West 25th Street, Cleveland, Ohio, which is approximately 0.33 acres of Permanent Parcel No. 007-11-021 and designated on Exhibit "A" attached hereto and made a part hereof.

II. TERM

The term of this Lease is twenty (20) years. The term begins on the 1st day of September 2008, and ends on the 31st day of August 2028. Notwithstanding the above, Lessor may cancel this Lease upon six (6) months written notice to the Lessee and Lessee may cancel this Lease upon six (6) months written notice to the Lessor.

III. RENT

A. Base Rent

The Base Rent will be One Hundred Seventy-Five Dollars (\$175.00) per month (\$2,100.00 per year). Said rent is to be paid in advance annually. Lessee at the time of lease signing will pay Lessor Three Hundred Fifty Dollars (\$350.00), which constitutes the first and last month's rent as well as past accrued rent since commencement of lease term on September 1, 2008. The monthly Base Rent will be paid in advance at the address specified below for Lessor, without prior demand and without any abatement, deduction or setoff. If the commencement date or expiration date occurs on a day other than the first or last day of a calendar month, then the monthly rent for the fractional

month will be prorated on a daily basis using 365 days as the standard one-year term for the Lease and each subsequent renewal term.

B. Additional Rent

The realty is not presently subject to realty taxes, but if it becomes subject to realty taxes as the result of this Lease, Lessee shall pay such taxes as Additional Rent for the term of this Lease as they become due and payable. "Additional Rent" includes all monetary obligations, other than Base Rent, owed by Lessee and arising out of this Lease, the occupancy of the realty, or the exercise of rights or privileges derived from this Lease.

C. Late Payment

If Lessee fails to pay any Base Rent or Additional Rent on the date it is due and payable, such unpaid amounts will be subject to a late payment charge equal to ten percent (10%) per annum of such amounts compounded daily. This late payment charge is intended to compensate Lessor for its additional administrative costs resulting from Lessee's failure, and has been agreed upon by Lessor and Lessee, after negotiation, as a reasonable estimate of the additional administrative costs which will be incurred by Lessor as a result of Lessee's failure. The actual cost in each instance is extremely difficult, if not impossible, to determine. The late payment charge will constitute liquidated damages and will be paid to Lessor together with such unpaid amounts. The payment of this late payment charge will not constitute a waiver by Lessor of any default by Lessee under this Lease. Lessee will pay legal interest to Lessor on past due amounts from the date on which they are due until the date on which they are paid in full with interest.

D. The rent shall be fixed for five years. Thereafter it may be increased at 15% increments in years 6, 11, and 16.

IV. USE; NON-ASSIGNABILITY

The Leased Property will be used by Lessee as a parking lot for vehicles owned by persons working at or visiting Lessee or Voss Industries, Inc., and will not be used for any other purpose without the written consent of Lessor. Lessee may not assign this Lease or sublet any part of the Leased Property to anyone other than Voss Industries, Inc., without written consent of the Lessor. Any assignment or subletting of the Leased Property without the Lessor's written consent will be considered a breach of the terms of this agreement which would result in the immediate termination of this agreement and damages due to the Lessor.

The indemnification and insurance requirements contained in Section VI. Indemnification and Insurance apply to all approved sublessees. Voss Industries, Inc., indicated its agreement to this requirement by adhering its authorized signature hereto. Any future sublessees will be asked to acknowledge their agreement to Section VI prior to approval by Lessor of sublease.

V. CONDITION AND MAINTENANCE OF REALTY

LESSEE ACCEPTS THE PARKING LOT IN AN "AS IS" CONDITION WITHOUT WARRANTIES BY LESSOR OF ANY KIND OR NATURE, EXPRESS OR IMPLIED.

Lessee agrees to maintain the Leased Property in good repair at all times, and will operate it in compliance with all applicable laws. Lessee will keep and maintain the Leased Property and all improvements made to the site in a clean condition; will not permit any noxious odors or hazards, or toxic or dangerous substances to be placed on the Lease Property. Lessee shall indemnify and save

Lessor harmless from and against any clean-up costs, remedial or restoration work, claims, judgments, damages, penalties, fines, costs, liabilities or losses, including limitation, diminution in value of the realty, damages for the loss or restriction on use of any part of the realty, and attorneys', consultants' and expert's fees, which arise during or after the term of this Lease to the extent caused by any hazardous or toxic substances being generated or disposed of in or on, or brought to, the realty by Lessee or Lessee's agents, officers, employees or invitees. Lessee will return the Leased Property to Lessor at the end of the term in the same condition as when received, except for reasonable wear and tear. Lessee will not make any changes to the Leased Property without the written consent of Lessor. Any changes will at the option of Lessor be removed or remain a part of the Leased Property at the end of the term of this Lease. However, Lessee may install a fence and key card access system without being required to obtain the consent of the Lessor. Also, Lessee shall have the right to remove the fence and security system at any time during or at the expiration of the Lease. The provisions of this Section V shall survive the early termination or expiration of this lease.

VI. INDEMNIFICATION AND INSURANCE

A. Indemnification

To the fullest extent permitted by law, Lessee shall be and remain liable to Lessor, and shall defend, indemnify and hold harmless Lessor and its officers, agents, and employees from all losses, damage, expense, suits, claims, demands, fines, penalties, awards, liabilities and costs, including reasonable attorney's fees (hereinafter individually and collectively referred to as "Liability"), to the extent that the Liability, or the underlying harm causing the Liability, is attributable to, arises out of or is in any way related to the Leased Property, except to the extent that Liability is caused solely by Lessor, its officers, agents, employees or invitees. Lessee shall:

- (1) defend the Lessor at Lessee's own expense;
- (2) pay on behalf of Lessor all fines, penalties, settlements, judgments and other sums related to any Liability; and
- (3) otherwise satisfy and cause to be discharged any judgments that may be obtained against the Lessor, its officers, agents, and employees regarding any Liability.

B. Insurance

The Lessee shall purchase and maintain from the date of commencement of the lease until the date of expiration the following minimum insurance coverages, which shall be sent to Lessor on a yearly basis.

Commercial General Liability Insurance (CGL) in the amount of \$2,000,000 combined single limit each occurrence for bodily injury and/or property damage with a \$2,000,000 annual aggregate. Said policy shall also include:

- Premises / Operations coverage
- Personal Injury coverage
- Contractual liability coverage insuring the "hold harmless" provision set forth in Section VI hereof.

Said policy shall be written on an "occurrence" basis.

Lessor will accept any combination of primary CGL and Excess or Umbrella policies to meet the minimum coverage requirements above.

- a. Automobile Liability Insurance in the amount of \$2,000,000 combined single limit each accident for bodily injury and/or property damage. Said policy shall apply to all owned, leased, hired, and non-owned vehicles.
- b. Statutory Workers' Compensation coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this contract and under the control of the Contractor. Employers' Liability coverage in the amount of \$1,000,000 per accident / \$1,000,000 per employee for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced under a. above. In Ohio: a copy of a certificate of premium payment from the Industrial Commission and Bureau of Workers' Compensation, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.
- c. General Requirements: The Lessee shall furnish evidence of such insurance in the form of a certificate (Acord or similar form). The certificate shall provide the following:
 - In the event the insurance should be changed or cancelled, such change or cancellation shall not be effective until 30 days after the Authority has received written notice of such change or cancellation from the insurance company. Such notice shall be mailed by certified mail, return receipt requested, to the Authority in care of the Director of Procurement.
 - Name the Authority as an additional insured for coverages required under a. and b. above, for claims arising out of the Lease Agreement.
 - Contain a waiver of subrogation in favor of the Authority.
 - Specific reference to the subject Lease Agreement
 - Specific reference to all deductibles & Self Insured Retentions (SIR)
 - Shall be primary and non-contributing to any insurance possessed or procured by Lessor and any self-insurance program maintained by Lessor

An insurance company having less than an A- X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance by the Authority. The Authority shall be entitled to receive a full copy of the insurance policy(ies) upon request and reserves the right to review financial statements & approve any deductibles or self-insured retention (SIR). Any deductible or SIR is for the account of the Contractor.
- d. Approval by the Authority: Approval of the insurance by the Authority shall not relieve or decrease the liability of the Lessee hereunder. It is to be understood that the Authority does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect the Lessee's interests or liabilities.
- e. In the event Lessee neglects, refuses or fails to provide the insurance required under the Lease Agreement, or if such insurance is canceled for any reason, the Lessor shall have the right but not the duty to procure the same, and cost thereof shall be for the account of Lessee.
- f. No usage of the Leased Property shall be permitted until Lessee and Sublessee provide proof of insurance to Lessor and Lessor's Risk Manager has approved such certificates of insurance.

VII. GOVERNING LAW; NOTICES

This Agreement is governed by, construed and enforced in accordance with the laws of the State of Ohio. Any notice concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party set forth below.

VIII. ENTIRE AGREEMENT; MODIFICATION

This Agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind before the date of this Agreement will not be binding upon either party, except to the extent incorporated in this Agreement. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement will be binding only if evidenced in writing, signed by each party.

IN WITNESS WHEREOF, each party to this Agreement has executed it at Cleveland, Ohio, on the dates indicated below.

WITNESSES:

Lessor: **GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY**
1240 West 6th Street
Cleveland, Ohio 44113-1331

By: _____
Joseph A. Calabrese, CEO and
General Manager/Secretary-Treasurer

Date: _____, 2010

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

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

Notice to: Greater Cleveland Regional
Transit Authority
Attn: James DeRosa
Real Estate Manager
1240 West 6th Street
Cleveland, Ohio 44113-1331

WITNESSES:

[Signature]
Barbara Clark

Lessee: **APOCALYPSE DEVELOPMENT LTD.**
2168 West 25th Street
Cleveland, Ohio 44113-4172

By: *[Signature]*

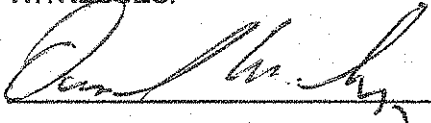
Title: GENERAL PARTNER

Date: April 6, 2010

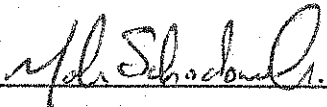
Notice to: Apocalypse Development Ltd.
Attn: DANIEL W. SEDOR
2168 West 25th Street
Cleveland, Ohio 44113-4172

Sublessee: VOSS INDUSTRIES, INC.
2168 West 25th Street
Cleveland, Ohio 44113-4172

WITNESSES:



Barbara Clark

By: 
Title: V. P. OPERATIONS
Date: APRIL 6, 2010

Notice to: Voss Industries, Inc.
Attn: DANIEL W. SEDOR
2168 West 25th Street
Cleveland, Ohio 44113-4172

STATE OF OHIO)
) ss.
CUYAHOGA COUNTY)

BEFORE ME, a notary public in and for said County and State, came the Greater Cleveland Regional Transit Authority, a body politic, by Joseph A. Calabrese, CEO and General Manager/ Secretary-Treasurer, who acknowledged that he did execute the foregoing instrument, on behalf of said Authority; that the same is his free act and deed, individually and as such officer; and the free act and deed of the Authority.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this _____ day of _____, 2010.

NOTARY PUBLIC

STATE OF OHIO)
) ss.
CUYAHOGA COUNTY)

BEFORE ME, a notary public in and for said County and State, came Apocalypse Development Ltd., a domestic limited liability company, by DANIEL W. SEOR, SR., its GENERAL PARTNER, who acknowledged that he/she did execute the foregoing instrument, on behalf of said Corporation or other corporate entity; that the same is his/her free act and deed, individually and as such officer; and the free act and deed of the Corporation or other corporate entity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 6th day of April, 2010.

Barbara Clark

NOTARY PUBLIC

BARBARA CLARK
Notary Public, State of Ohio
My Comm. Expires April 24, 2010

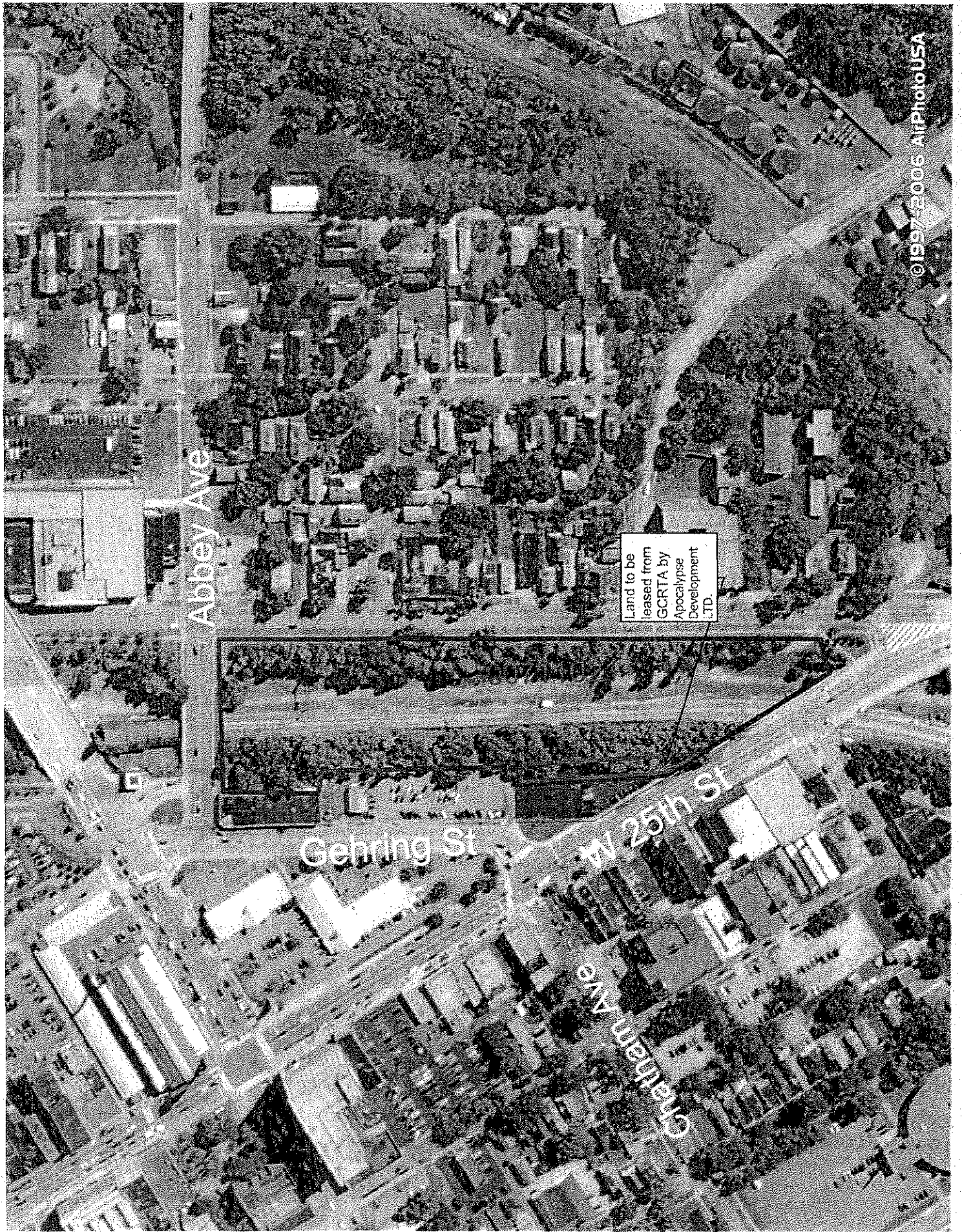
STATE OF OHIO)
) ss.
CUYAHOGA COUNTY)

BEFORE ME, a notary public in and for said County and State, came Voss Industries, Inc., by MARK SCHODOWSKI, its VICE PRESIDENT, who acknowledged that he/she did execute the foregoing instrument, on behalf of said Corporation or other corporate entity; that the same is his/her free act and deed, individually and as such officer; and the free act and deed of the Corporation or other corporate entity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 6th day of April, 2010.

Barbara Clark
NOTARY PUBLIC

BARBARA CLARK
Notary Public, State of Ohio
My Comm. Expires April 24, 2010



Abbey Ave

Land to be leased from GCRTA by Apocalypse Development LTD.

Gehring St

W 25th St

Chatham Ave



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION:		Resolution No.: 2010-37
CONTRACT:	LAND LEASE FOR 0.33 ACRES OF LAND ON W. 25 TH STREET	Date: May 13, 2010
VENDOR:	APOCALYPSE DEVELOPMENT, LTD.	Initiator: Programming and Planning
AMOUNT:	\$2,100/YEAR WITH ESCALATION CLAUSES	
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 wishes to lease 0.33 acres of land adjacent to its rail right of way near the W. 25th Street Rapid Transit Station to Apocalypse Development, Ltd.
- 2.0 **DESCRIPTION/JUSTIFICATION:** Apocalypse Development, Ltd. owns a parking lot on W. 25th Street for use by the employees and customers of Voss Industries. Apocalypse expanded this parking lot onto land owned by GCRTA without knowing that another party owned the land. At the request of Cleveland's Department of Economic Development, GCRTA has agreed to lease the land to Apocalypse so that they have the legal right to improve and occupy this land. GCRTA has the right to cancel lease with 6 month's notice, which preserves GCRTA's right to utilize this land for a higher or better use in future.
- 3.0 **PROCUREMENT BACKGROUND:** This lease was not competitively bid because it is a corrective action that would otherwise require legal action and/or removal of the parking lot improvements that have already been put in place.
- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Not Applicable
- 5.0 **POLICY IMPACT:** This action is compliant with the Board of Trustees Real Estate Procedures that specify the Board of Trustees must approve all leases with total revenue to GCRTA in excess of \$25,000.
- 6.0 **ECONOMIC IMPACT:** Entering into this lease allows GCRTA to gain revenue from underutilized real estate.
- 7.0 **ALTERNATIVES:** Recommend that the land lease not be executed and require Apocalypse Development, Ltd. to vacate the site and remove the improvements.
- 8.0 **RECOMMENDATION:** Staff recommends that the Board of Trustees approve the resolution to authorize leasing this property to Apocalypse Development, Ltd.
- 9.0 **ATTACHMENTS:** None. Lease Agreement is attached to Resolution as 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