

RESOLUTION NO. 2010-58

RATIFYING A LEASE AGREEMENT WITH FAIRVIEW HOSPITAL FOR A PORTION OF THE PARKING LOT AT THE BROOKPARK RAPID TRANSIT STATION FOR A TERM OF NINE MONTHS WITH THE OPTION OF A ONE MONTH EXTENSION

WHEREAS, the Greater Cleveland Regional Transit Authority owns property at 18010 Brookpark Road in Brook Park, Ohio commonly known as the Brookpark Rapid Transit Station; and

WHEREAS, the Authority currently has excess parking available at this station; and

WHEREAS, Fairview Hospital requires temporary parking for its employees during a construction project at the hospital's main campus; and

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

WHEREAS, Fairview Hospital and the Authority entered into a lease agreement on July 30, 2010 to give Fairview Hospital the legal right to use this land.

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 Fairview Hospital for 400 parking spaces in the eastern-most parking lots at the Brookpark Rapid Transit Station and to exercise an option for a renewal term as permitted by the lease agreement.

Section 2: That the lease term shall be nine (9) months with an option for one (1) additional renewal term of one (1) month.

Section 3: That the monthly rent for this lease shall be Seven Thousand Dollars (\$7,000.00).

Section 4. That Fairview Hospital will be responsible for its share of any real property taxes as described in the lease terms.

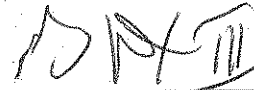
Section 5. That Fairview Hospital is responsible for keeping the space clean and providing security as well as all repairs or maintenance that are required, including lighting and snow removal and salting as described in the lease terms.

Section 6: That the General Manager/Secretary-Treasurer be, and is hereby authorized to enter into the Lease Agreement and to exercise renewal options with Fairview Hospital 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: August 17, 2010



President

Attest:



CEO, General Manager/Secretary-Treasurer

LEASE AGREEMENT
Between
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY
And
Fairview Hospital

THIS Lease AGREEMENT (the "Lease") is made and entered into at Cleveland, Ohio, as of the 30th day of July, 2010, by and between the Greater Cleveland Regional Transit Authority, a political subdivision of the State of Ohio ("Lessor"), and Fairview Hospital ("Lessee"), an Ohio non-profit corporation.

WHEREAS, Lessor is the owner of certain realty, designated as Parcel Nos. 344-30-014 and 344-30-001 and located to the east of Lessor's Brookpark Rapid Transit Station at 18010 Brookpark Road in Brook Park, Ohio; and

WHEREAS, Lessee desires to lease a portion of such realty from Lessor, and Lessor desires to lease a portion 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, the two (2) parking lots furthest east at the Brookpark Rapid Transit Station as designated on Exhibit "A" attached hereto and made a part hereof ("Leased Property"). Lessee shall mark and have exclusive use of the 400 parking spaces selected by the parties and striped by Lessee within the Leased Property during the Parking Period (as hereinafter defined) for the term of this Lease.

II. TERM

A. Lease Term

The term of this Lease is nine (9) months. The term begins on the 2nd day of August 2010, (the "Commencement Date") and ends on the 1st day of May 2011. A one (1) month extension may be granted to Lessee by Lessor if Lessee provides written notice to Lessor no later than ten (10) days prior to the expiration of the Term that it needs the extension. Lessor's Board of Trustees must approve any additional extensions beyond this one-month extension.

B. Early Termination

Lessee may terminate this Lease at any time with forty-five (45) days advance written notice to Lessor, with no further obligations hereunder except for those obligations accruing prior to such termination, and this Lease shall automatically terminate upon the conclusion of such forty-five (45) day period.

III. RENT

A. Base Rent

The Base Rent will be Seven Thousand Dollars (\$7,000.00) per month. First payment is due at the time the Lease is executed by both parties. 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 Base 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 Leased Premises is not presently subject to real estate taxes, but if it becomes subject to such taxes solely as the result of the lease and use of the property by Lessee. 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 as provided for in this Lease.

C. Late Payment

If Lessee fails to pay any Base Rent or Additional Rent within five (5) days of its due date, such unpaid amounts will be subject to a late payment charge equal to five (5) percent (5%) 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

IV.
USE; NON-ASSIGNABILITY

The Leased Property may be used by Lessee as a parking lot for approximately 400 vehicles operated by Lessee's invitees and/or persons working at Fairview Hospital, from approximately 5:30am to 8:30pm Monday through Friday and at no other times (the "Parking Period") 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 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 Lease which would result in the immediate termination of this Lease. The indemnification and insurance requirements contained in Section VI. Indemnification and Insurance shall apply to all sublessees and assignees. Any sublessees or assignees shall be required by Lessee to acknowledge their agreement to Section VI prior to approval by Lessor of sublease or assignment.

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; provided, however, prior to the Commencement Date, Lessor shall remove the three (3) dead trees and trim the tree that is blocking the operational lights on the eastern most portion of the Leased Premises.

Lessee agrees to maintain the Leased Property in good repair at all times, and will operate it in compliance with all applicable laws. Lessee shall be responsible for plowing, salting, patching pot holes, striping, repair of any overhead lighting, picking up litter, and other general maintenance of the Leased Premises. Lessee shall be permitted to place a trailer or trailers on the Leased Premises of such size as in Lessee's reasonable discretion will accommodate its needs to use as a waiting environment at a location or locations mutually agreed upon by Lessee and Lessor. Said trailer shall be permitted to utilize separately metered electricity and Lessee shall pay the utility company directly for any charges incurred for the use of such utilities. Lessee shall also be permitted to erect such signage as is necessary to direct its employees and invitees to the Leased Premises. All such signage shall comply with all applicable municipal laws, and regulations of the Lessor and the Federal Transit Administration. Electric and striping work on the Leased Property shall be coordinated with Lessor's Property Manager.

Lessee shall provide security at the Leased Premises during the Parking Period and shall use all reasonable efforts to cause its employees to park their cars only in the area depicted on Exhibit A. Lessor shall use reasonable efforts to assist Lessee to cause parties other than Lessee's employees to park in spaces other than those Lessee marks for its employees' use, but Lessor shall have no responsibility to prevent such parking by others.

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 Leased 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 Leased Premises, damages for the loss or restriction on use of any part of the realty, and reasonable attorneys' fees, 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, including lighting, 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. The provisions of this Section V shall survive the early termination or expiration of this lease.

VI. INDEMNIFICATION AND INSURANCE

A. Indemnification

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, is attributable to, the use by Lessee or its invitees of the Leased Premises or any damage or loss to any of their vehicles, 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 Commencement Date until the date of expiration the following minimum insurance coverages:

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 may be written on a claims made basis provided that upon the expiration of the Term, any renewal policies shall cover prior acts liability or Lessee shall purchase a tail policy for a period of not less than three (3) years.

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 Lease and under the control of the Lessee. 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 Lessor 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 under this Lease.
 - Contain a waiver of subrogation in favor of the Lessor.
 - Specific reference to the Lease.
 - Specific reference to all deductibles & Self Insured Retentions (SIR)

As respects any claims or liabilities of the Lessee arising out of Paragraph VI. A. Indemnification, the above insurance will 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; provided, however, Lessee may provide the general liability and automobile liability coverages through a program of self-insurance or from an affiliated carrier which provides coverages to or for Lessee. Any deductible or SIR is for the account of the Lessee.

- d. It is to be understood that the Lessor 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 shall provide proof of insurance to Lessor and Lessor's Risk Manager has approved such certificates of insurance.

VII. GOVERNING LAW; NOTICES

This Lease 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 or by overnight delivery if sent to the respective address of each party set forth below.

VII. LIMITATION OF LIABILITY

Notwithstanding anything contained herein to the contrary, neither party shall be liable to the other for consequential, special or indirect damages arising out of this Lease.

IX. ENTIRE AGREEMENT; MODIFICATION

This Lease 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 Lease 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

Lessee: FAIRVIEW HOSPITAL
9500 Euclid Avenue
Cleveland, Ohio 44195

WITNESSES:

Edmund J. [Signature]

Gail Anderson

By: *Peter C. Volas*
Peter Volas
Title: Senior Director of Real Estate

Date: July 30, 2010

APPROVED AS TO FORM
CCF - LAW DEPT.

DATE: *7/30/10* CMSI #: _____
BY: *[Signature]*

Notice to: Cleveland Clinic Foundation
Attn: Peter Volas
Senior Director of Real Estate
9500 Euclid Avenue
Cleveland, Ohio 44195

STATE OF OHIO)
) ss.
CUYAHOGA COUNTY)

Michael York, Acting ^{ES/B}

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 *2nd* day of *August*, 2010.

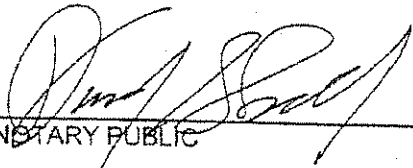
Gizella D. Gregoire
NOTARY PUBLIC

GIZELLA D. GREGOIRE
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires *7/22/12*

STATE OF OHIO)
) ss.
CUYAHOGA COUNTY)

BEFORE ME, a notary public in and for said County and State, came Fairview Hospital , an Ohio non-profit corporation, by Peter Volas, its Senior Director of Real Estate, 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 20th day of July, 2010.

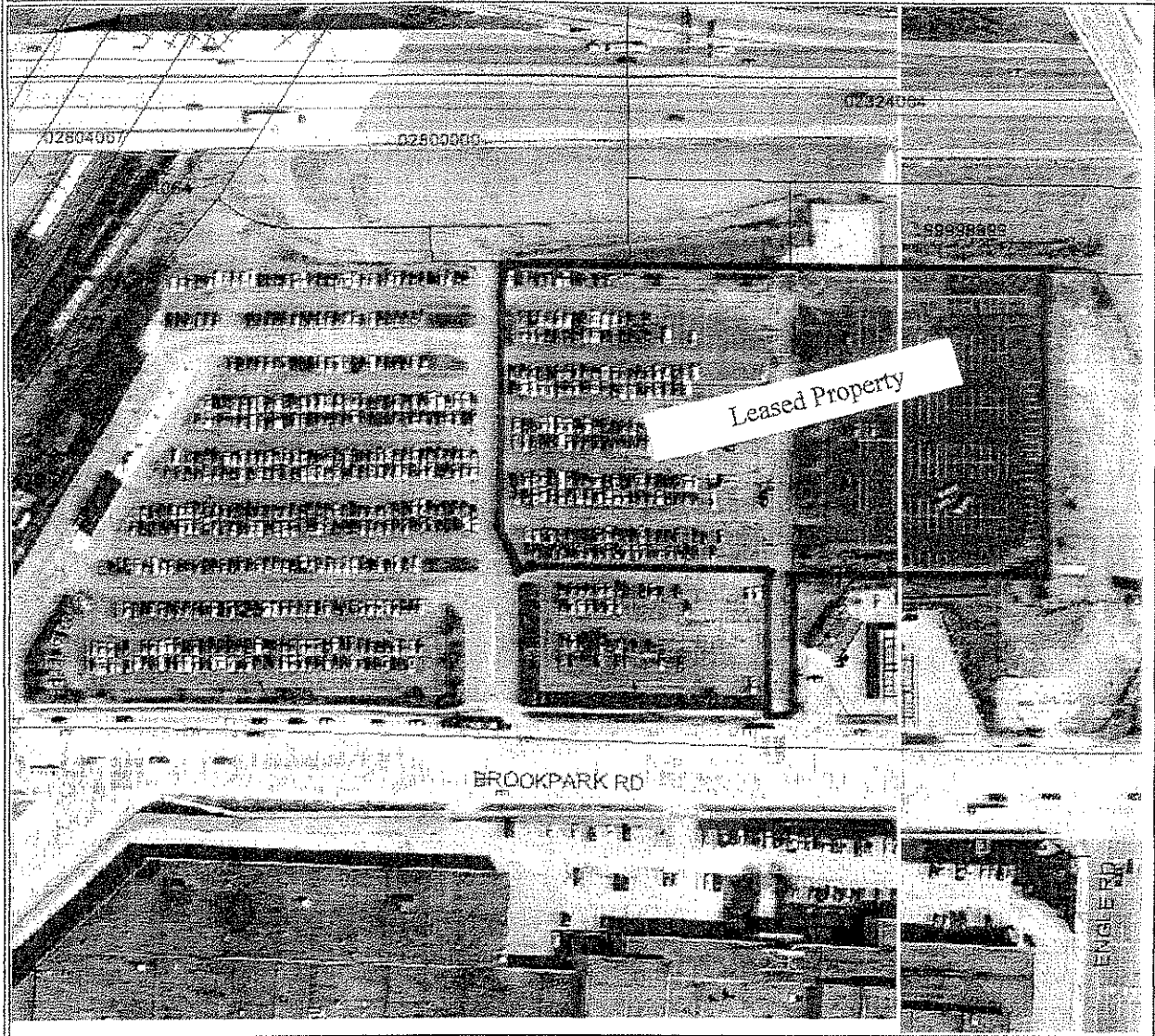






NOTARY PUBLIC

DAVID J. SHERRIFF, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 R. C.

EXHIBIT A

Cleveland GIS Map



-  Parcel
-  Pavement
-  Railroad
-  Street

- LEGEND**
-  Lake/Rivers
 -  Aerial



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City Planning Commission
08/06/10



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: CONTRACT: BROOKPARK RAPID TRANSIT STATION PARKING LEASE VENDOR: FAIRVIEW HOSPITAL AMOUNT: \$7,000/MONTH	Resolution No.: 2010-58
	Date: August 12, 2010
	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 wishes to lease 400 parking spaces at the Brookpark Rapid Transit Station to Fairview Hospital for temporary employee parking.
- 2.0 **DESCRIPTION/JUSTIFICATION:** Fairview Hospital is undertaking a construction project at its main campus which will displace employee parking for a nine-month period. They wish to utilize excess parking spaces at GCRTA's Brookpark station during the construction project.
- 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 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:** Disapprove this lease.
- 8.0 **RECOMMENDATION:** Staff recommends that the Board of Trustees approve the resolution to authorize leasing this property to Fairview Hospital.
- 9.0 **ATTACHMENTS:** None.

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

CEO, General Manager/Secretary-Treasurer