

RESOLUTION NO. 2012-66

AUTHORIZING THE GENERAL MANAGER/SECRETARY-TREASURER TO ENTER INTO AN OPTION AGREEMENT WITH DETROIT SHOREWAY COMMUNITY DEVELOPMENT ORGANIZATION GRANTING THE EXCLUSIVE RIGHT AND OPTION TO PURCHASE REAL PROPERTY LOCATED AT WEST 61ST STREET AND LORAIN AVENUE IN CLEVELAND, OHIO

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") owns certain real property adjacent to the West 65th Street Rapid Transit Station; and

WHEREAS, the real property located at West 61st Street and Lorain Avenue in Cleveland, Ohio 44102 was declared excess land no longer needed for transit purposes; and

WHEREAS, Detroit Shoreway Community Development Organization ("DSCDO") wishes to enter into an option agreement for the exclusive right and option to purchase said land from GCRTA, and GCRTA wishes to enter into an option agreement for the exclusive right and option to sell said land to DSCDO; and

WHEREAS, GCRTA and DSCDO have agreed upon a purchase price of Ninety Five Thousand Dollars (\$95,000) for said 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 an option agreement with DSCDO for the exclusive right and option to purchase real property located at West 61st and Lorain Avenue in Cleveland, Ohio 44102 and to accept monies paid for the option.

Section 2. That the option price is One Thousand and 00/100 Dollars (\$1,000.00) and the option period is the date that this resolution is adopted through December 31, 2014.

Section 3. If DSCDO exercises the Option, GCRTA will require approval from its Board of Trustees and the Federal Transit Administration authorizing the General Manager/Secretary-Treasurer to enter into the Purchase Agreement for the sale of said land to DSCDO.

Section 4. That this resolution shall become effective immediately upon its adoption.

Attachment: Option Agreement

Adopted: July 17, 2012



Acting President

Attest: 

CEO, General Manager/Secretary-Treasurer

OPTION AGREEMENT

This Option Agreement ("Option Agreement") is entered into as of July ____, 2012 ("Effective Date") by and between The Greater Cleveland Regional Transit Authority, 1240 West 6th Street, Cleveland, Ohio 44113, a political subdivision of the State of Ohio ("Seller") and Detroit Shoreway Community Development Organization, an Ohio non-profit corporation, 6516 Detroit Avenue, Suite 1, Cleveland, Ohio 44102 ("Buyer") (collectively, "the Parties"), entered into under the authority of Seller's Resolution No. _____ adopted July ____, 2012 a copy of which is attached to and incorporated into this Agreement as Exhibit A.

Recitals

WHEREAS, Seller owns certain real property located the northeast corner of West 61st Street and Lorain Avenue in Cleveland, Ohio 44102 and more particularly described on Exhibit B attached hereto and made a part hereof (the "Property"); and

WHEREAS, Seller and Buyer desire to set forth the terms under which Buyer has the option to acquire the Property.

NOW, THEREFORE, for good and valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Basic Transaction

- a) Purchase Terms. The Seller wishes to sell and the Buyer wishes to purchase the Property (as hereinafter defined) in its "As Is" condition. The Parties shall negotiate an agreement for purchase of the Property ("Purchase Agreement") that shall contain the basic terms contained in this Option Agreement and other terms and conditions to be negotiated between the Parties.
- b) Purchase Price. The Buyer shall pay the purchase price of ninety-five thousand dollars (\$95,000.00) ("Purchase Price") to Seller in the event Seller exercises this option to purchase the Property.

2. Option

- a) Grant of Option. Seller hereby grants to Buyer and Buyer hereby accepts from Seller, the exclusive, irrevocable right and option to purchase, the Property, together with the improvements located thereon and all rights, privileges, easements and appurtenances thereto (the foregoing, collectively, the "Property"), on the terms and conditions set forth herein (the "Purchase Option").
- b) Option Period. The Seller shall grant Buyer the Purchase Option for the period commencing on the Effective Date and expiring December 31, 2014 (the "Option Period").
- c) Option Price. Buyer shall pay to Seller the sum of One Thousand Dollars (\$1,000.00) for the Purchase Option (the "Option Price"). The Buyer shall

pay the Option Price to Seller within ten (10) days of Buyer's receipt of a fully-executed original of this Option Agreement authorized by Seller's Board of Trustees.

- d) Effect of Option Price on Purchase. If Buyer exercises the Purchase Option, the Seller shall apply the Option Price towards the Purchase Price. The Seller shall not refund the Option Price to Buyer unless a refund is required as set forth in Section 5b.
- e) Notice of Exercise; Purchase Agreement. In the event Buyer desires to exercise the Purchase Option, Buyer shall give written notice of such exercise to Seller and the Parties shall thereupon proceed to execute and deliver the Purchase Agreement and to consummate the transaction in accordance with the terms and conditions contained therein. Closing of such transaction shall occur in accordance with the terms of the Purchase Agreement.

3. **Inspections.** During the Option Period, provided Seller has received and acknowledged receipt of the Option Price and received Seller's evidence of insurance required by Section 15 hereof, Seller shall provide Buyer and/or Buyer's agents and representatives complete access to enter upon the Property for the purpose of making such inspections of the Property as Buyer, in Buyer's sole discretion, deems necessary and/or desirable. Said inspections are to include, without limitation, such environmental tests, audits and inspections and such soil borings, samples and tests and surveying and engineering studies, and other inspections of the Property as Buyer, in Buyer's sole discretion, deems necessary. Buyer shall give Seller reasonable advance written notice of each entry specifying the nature and purpose of the inspection and the duration of the entry. Buyer shall immediately provide Seller copies of any and all reports of inspections and tests requested by Seller. Buyer shall restore or repair the Property as nearly as practicable to essentially the same condition as it was in prior to its inspections upon completion of Buyer's inspection, including but not limited to the land, underground utilities, fixtures, or other structures. Buyer shall provide evidence at the time of signing this Option Agreement that Buyer has adequate insurance coverage for this obligation as outlined in Section 15 herein.

4. **Title and Survey**

- a) Title Insurance
 - (1) Buyer shall obtain a preliminary title commitment or "binder" in respect of the Property (with special tax and lien search) (the "Title Commitment") issued by the Title Company (as hereinafter defined). Buyer shall either:
 - (i) approve the form and substance of the Title Commitment, or
 - (ii) reject it.
 - (2) Buyer may, at Buyer's option:
 - (i) accept such title as Seller furnishes upon the Closing Date and any encumbrances on the Premises, shall be "Permitted Exceptions;" or
 - (ii) terminate this Option Agreement.

(3) Upon termination of this Option Agreement pursuant to this subsection, neither party hereto shall thereafter be under any further liability or obligation to the other party hereunder except as otherwise provided herein.

b) Survey

(1) Buyer, at Buyer expense, may obtain a metes and bounds survey of the Property (the "Survey"). The Survey shall be in a form and substance satisfactory to Buyer, the Title Company and any lender of Buyer. The Survey shall also contain a certificate, in a form and substance acceptable to Buyer, certifying to Buyer, the Title Company, any lender of Buyer, and others designated by Buyer, that the Survey is an accurate representation of the Property made in accordance with the "Minimum Standard Detail Requirements for Land Title Surveys" adopted by the ALTA/ACSM and shall include the location of all structures and improvements on the Property and the identification of all easements and right-of-ways, either of record or visible on the ground, which either benefit or burden the Property.

(2) Buyer shall either:

- (i) notify Seller in writing of Buyer's approval of the Survey; or
- (ii) notify Seller in writing of any matters shown (or not shown) on the Survey that are objectionable to Buyer (said matters, together, herein called the "Survey Defects").

(3) In the event that Buyer so notifies Seller of any such Survey Defects, Seller shall have a period of ten (10) days after receipt of such notice to cure or remove all such Survey Defects, but Seller shall not be obligated to cure or remove such Survey Defects. If Seller has not cured or removed all such Survey Defects to Buyer's satisfaction within said ten (10) day period, then Buyer may:

- (i) accept title to the Property notwithstanding the existence of any such Survey Defects upon the Closing Date in which case the Survey Defects shall be deemed to be Permitted Exceptions;
- (ii) grant Seller, at Seller's request, additional time in which to cure any such Survey Defects; or
- (iii) terminate this Option Agreement. Upon termination of this Option Agreement pursuant to this subsection, neither party hereto shall thereafter be under any further liability or obligation to the other party hereunder except as otherwise provided herein.

(4) If Buyer fails to deliver written notice of its election under subsection (3), above, prior to the expiration of the Survey Cure Period, then Buyer shall be deemed to have elected item (i) above.

5. Closing Date and Possession.

a) Closing Date. The closing of the acquisition of the Property (the "Closing Date") shall occur within thirty (30) days after the later of:

- (1) the Parties' execution of the Purchase Agreement;

- (2) Seller's Board of Trustees approval of the sale; or
- (3) the Federal Transit Administration (if it then has any interest in the Property) concurrence with the sale.

- b) Effect of Disapproval. In the event that the Seller's Board of Trustees does not approve the sale and/or the Federal Transit Administration does not approve the sale, then Buyer shall immediately receive the return of the Option Price.
- c) Possession. The Buyer may possess the Property on the Closing Date. The above notwithstanding, the Parties may agree in writing upon another date.

6. **Title Commitment and Escrow Agent**. The title company and escrow agent for the transaction contemplated in the Purchase Agreement shall be Surety Title Agency (the "Title Company").

7. **Purchase Agreement**. During the Option Period, the Parties shall begin negotiating in good faith to reach a written Purchase Agreement containing comprehensive representations, warranties, disclosures, indemnities, conditions and agreements.

8. **Exclusive Dealing**. During the Option Period, Seller shall not negotiate with any other person or entity relating to the acquisition or lease of the Property, in whole or in part.

9. **Notices**. Any notice which may be or is required to be given pursuant to the provisions of this Option Agreement shall be personally delivered, sent by certified or registered mail, postage prepaid, return receipt requested, or by overnight delivery service and addressed as follows.

If to Seller, to:

1240 West 6th Street,
Cleveland, Ohio 44113-1331,
Attn: Property Manager

With a copy to:

1240 West 6th Street,
Cleveland, Ohio 44113-1331
Attn: Senior Counsel – Contracts & Real Estate

If to Buyer, to:

Detroit Shoreway Community Development Organization
6516 Detroit Avenue, Suite 1
Cleveland, Ohio 44102
Attn: Jeffrey Ramsey, Executive Director

With a copy to:

Detroit Shoreway Community Development Organization

6516 Detroit Avenue, Suite 1
Cleveland, Ohio 44102
Attn: Matt Lasko, Assistant Director

The Parties may change the contact information within this Section by written communication in lieu of Amendment to this Agreement.

10. **Agreement for Further Execution.** Prior to, at and after the Closing Date (as defined in the Purchase Agreement), the Parties shall also each execute and deliver to the other such other instruments of conveyance, sale, assignment or transfer and shall take or cause to be taken such other or further action as the Parties shall reasonably request at any time or from time to time in order to:

- (a) vest, confirm or evidence in Buyer title to all or part of the Property; or
- (b) effectuate, in any other manner, the terms and conditions of this Option Agreement.

11. **Authority.** Each person and entity signing on behalf of a party to this Option Agreement individually warrants his and its authority so to do and individually warrants that all necessary actions have been taken to authorize the execution of this Option Agreement by such party.

12. **Real Estate Brokers' Commissions.** In the Purchase Agreement, Seller and Buyer will represent and warrant to each other that such Parties have had no dealings with any real estate broker or agent except Ostendorf-Morris Company (the "Broker") so as to entitle any other broker or agent to any commission in connection with the sale of the Property to Buyer. All commissions, fees and other remuneration of any kind or nature due and/or payable to the Broker shall be the sole obligation and responsibility of Seller.

13. **Expenses.** The Parties shall pay the expenses of such party's own accountants, attorneys and others engaged in such party's behalf in connection with this Option Agreement, the transactions contemplated hereby, and the Purchase Agreement to be entered into between the Parties.

14. **Insurance.** Buyer shall indemnify Seller for any injury or harm directly or indirectly resulting from Buyer's inspections conducted on the Property pursuant to this Option Agreement. Buyer shall provide upon execution of this Option Agreement evidence of commercial liability insurance covering Buyer's operation with minimum coverage of \$1,000,000 per occurrence. Said insurance shall include contractual liability. Seller shall be made an additional insured on said insurance policy.

15. **Use Restrictions.** The deed shall contain deed restrictions prohibiting the use of the Property for parking lots, parking structures or other parking related uses, in order to encourage direct links to and usage of the Seller's transit operations. Parties agree that the Property can be developed to allow for a parking use if the parking spaces are reserved to residents of the structure to be built on the Property or to customers visiting the retail tenant of the structure to be built on the Property.

16. **Confidentiality.** The Parties agree that the terms of this Option Agreement are confidential and to the extent permitted by law, no Party will make any disclosure of the terms of this Option Agreement to any third party without the prior written consent of the other Party.

17. **Survival.** Sections 2, 12, 14, and 16 shall survive termination or expiration of this Option Agreement and they shall take precedence over all other terms of this Option Agreement to the extent of conflict. No expiration or earlier termination provision in this Option Agreement shall have any effect on the survival of these sections or on any terms stated to or intended to survive termination of this Option Agreement.

18. **Construction.** Each Party hereto acknowledges that it was represented by counsel and participated equally in the drafting and negotiation of this Option Agreement and that, accordingly, no court construing this Option Agreement shall construe it more stringently against one Party than against the other.

IN WITNESS WHEREOF, the Parties hereto have executed this Option Agreement as of the date first above written.

DETROIT SHOREWAY COMMUNITY DEVELOPMENT ORGANIZATION

By: _____

(Print name)

Its: _____

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

Joseph A. Calabrese, CEO
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)

) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared Detroit Shoreway Community Development Organization, an Ohio non-profit corporation, by _____, its _____, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of the corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this _____ day of _____, 2012.

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared **GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY**, a political subdivision of the State of Ohio, by Joseph A. Calabrese, its CEO/General Manager/Secretary-Treasurer, who acknowledged that he did sign the foregoing instrument and that the same is 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 _____, 2012.

Notary Public

This Instrument Prepared By:
Anna Hlavacs, Esq.
Greater Cleveland Regional Transit Authority
1240 W. 6th St.
Cleveland, Ohio 44113
(216) 566-5103



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION:	Resolution No.: 2012-66
CONTRACT: OPTION AGREEMENT FOR EXCESS LAND AT WEST 65 TH STREET RAPID TRANSIT STATION	Date: July 12, 2012
VENDOR: DETROIT SHOREWAY COMMUNITY DEVELOPMENT ORGANIZATION	Initiator: Programming and Planning
AMOUNT: \$1,000.00	
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 sell excess real property located at the northeast corner of West 61st Street and Lorain Avenue in Cleveland, Ohio 44102. The property consists of 31,621 square feet of vacant land adjacent to the West 65th Rapid Transit Station. The eastern portion of the property is adjacent to GCRTA's tracks and was acquired pursuant to the Mass Transit System Transfer Agreement. The western portion of the property was purchased prior to the station reconstruction project for use as a construction staging area. GCRTA's real estate broker, Ostendorf-Morris, has advertised this property for sale since 2009. The appraised value of the property is Seventy Six Thousand Six Hundred Sixteen and 00/100 Dollars (\$76,616.00). The property is listed for sale at Ninety Five Thousand and 00/100 Dollars (\$95,000.00).

Detroit Shoreway Community Development Organization ("DSCDO") has requested an option to purchase the property. They have agreed to pay the asking price of Ninety Five Thousand and 00/100 Dollars (\$95,000.00) for the property. DSCDO is planning a transit-oriented development of the EcoVillage property with a 24-unit, 4-story, affordable housing project. In order to give DSCDO time to conduct due diligence of the property and to secure financing, the buyer has requested that the GCRTA enter into an option agreement for the exclusive right and option to purchase the property with an option period through December 31, 2014.

The option price is One Thousand and 00/100 Dollars (\$1,000.00) and shall be applied toward the purchase price upon exercise of the option. The option price is non-refundable unless the Board of Trustees or the Federal Transit Administration does not approve the sale of the property to DSCDO. GCRTA will return to the Board of Trustees for approval of the sale of property if the buyer wishes to exercise its option to purchase the property.

2.0 DESCRIPTION/JUSTIFICATION: DSCDO will execute the option agreement for the exclusive irrevocable right and option to purchase the real property. Action by the Board of Trustees is needed to allow the General Manager/Secretary-Treasurer to enter into the option agreement and to accept monies paid for the option.

3.0 PROCUREMENT BACKGROUND: Does Not Apply

4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Does Not Apply

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 property dispositions.

- 6.0 **ECONOMIC IMPACT:** The option payment shall be deposited into the General Fund after payment of a 6% commission to the real estate broker, Ostendorf-Morris.
- 7.0 **ALTERNATIVES:** Reject the terms of the option agreement and/or wait until a buyer has financing secured for the purchase of the property before seeking Board of Trustees approval.
- 8.0 **RECOMMENDATION:** Staff recommends that the Board of Trustees approve the resolution to authorize the General Manager/Secretary-Treasurer to enter into the option agreement with Detroit Shoreway Community Development Organization.
- 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