

RESOLUTION 2013-92

AUTHORIZING THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY TO ENTER INTO A ONE YEAR LICENSE AGREEMENT WITH MEGABUS NORTHEAST, LLC, MEGABUS USA, LLC AND/OR LAKEFRONT LINES, INC. ("MEGABUS") FOR SERVICE AT THE STEPHANIE TUBBS JONES TRANSIT CENTER ("TRANSIT CENTER")

WHEREAS, the Greater Cleveland Regional Transit Authority owns and operates the Transit Center and has a bus lane available to offer for use; and

WHEREAS, Megabus operates an inter-city bus service and has expressed an interest in moving its downtown Cleveland stop to the Transit Center in order to provide a waiting area for its passengers; and

WHEREAS, the Greater Cleveland Regional Transit Authority and Megabus entered into a 60-day license agreement as a pilot program pursuant to Resolution No. 2001-110; and

WHEREAS, the Greater Cleveland Regional Transit Authority has advertised and marketed the Transit Center through a fair and open process with Ostendorf-Morris Company since June 2013; and

WHEREAS, Megabus is willing to compensate the Greater Cleveland Regional Transit Authority for the use of the Transit Center at a fair and reasonable market rental.

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 a one year license agreement with Megabus for use of the Transit Center.

Section 2. That the license agreement will be subject to Federal Transit Administration ("FTA") approval.

Section 3. That the Greater Cleveland Regional Transit Authority will charge a fair and reasonable market rental that covers any additional costs incurred as a result of Megabus service at the Transit Center.

Section 4. That the Greater Cleveland Regional Transit Authority will use the revenues received from the license agreement to support its public transit system.

Section 5. That this resolution shall become effective immediately upon its adoption

Adopted: September 17, 2013



President

Attest: 

CEO, General Manager/Secretary-Treasurer



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: APPROVING A ONE YEAR LICENSE AGREEMENT WITH MEGABUS FOR SERVICE AT THE STEPHANIE TUBBS JONES TRANSIT CENTER VENDOR: MEGABUS	Resolution No.: 2013- 92
	Date: September 12, 2013
	Initiator: Executive
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: This resolution is to authorize the Authority to enter into a one year lease agreement with Megabus. This transaction is subject to Federal Transit Administration (FTA) concurrence.
- 2.0 DESCRIPTION/JUSTIFICATION: RTA owns and operates the Stephanie Tubbs Jones Transit Center ("Transit Center"). Megabus desires to use a lane at the Transit Center for its downtown Cleveland stop for its inter-city bus service. This will maximize the use of the Transit Center without any negative impact on RTA's operations.
- 3.0 PROCUREMENT BACKGROUND: RTA has advertised and marketed the Stephanie Tubbs Jones Transit Center through a fair and open process with Ostendorf-Morris Company since June 2013.
- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Not applicable.
- 5.0 POLICY IMPACT: This transaction is compliant with RTA Real Estate Policies of the GCRTA.
- 6.0 ECONOMIC IMPACT: Megabus will compensate the Authority for the use of the facility at a fair and reasonable rental rate. RTA operates several bus routes from the Transit Center which could result in increased fare revenue.
- 7.0 ALTERNATIVES: To reject the license with Megabus to operate service from the Stephanie Tubbs Jones Transit Center.
- 8.0 RECOMMENDATION: Approve the License Agreement allowing Megabus to operate service from the Stephanie Tubbs Jones Transit Center.
- 9.0 ATTACHMENTS: Draft License Agreement (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

LICENSE AGREEMENT

between

The GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

and

MEGABUS NORTHEAST, LLC /MEGABUS USA, LLC/LAKEFRONT LINES, INC.

THIS LICENSE AGREEMENT (this "**Agreement**"), made and entered into this ____ day of September, 2013, by and between **GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY ("GCRTA")**, a political subdivision of the State of Ohio with its principal office at 1240 W. 6th Street, Cleveland, Ohio 44113, and **MEGABUS NORTHEAST, LLC/MEGABUS USA, LLC/LAKEFRONT LINES, INC. ("Megabus")**, a Delaware limited liability company with its principal office at 349 First St., Elizabeth, NJ 07206.

Section I Premises

GCRTA hereby grants a non-exclusive license to Megabus and Megabus hereby accepts a non-exclusive license from GCRTA, for one bus bay and the adjacent passenger boarding and waiting area ("the Premises") at the Stephanie Tubbs Jones East Side Transit Center ("the Center") located at the southeast corner of Prospect Avenue and East 21st Street in Cleveland, Ohio. GCRTA shall designate the Premises and reserves the right to change the Premises to any other comparable bus bay and the adjacent passenger boarding and waiting area at the Stephanie Tubbs Jones East Side Transit Center ("Center") upon giving a three days prior written notice to Megabus. The terms, covenants and conditions hereof shall apply to the new location.

Section II Use of Premises and Method of Operation

A. Megabus covenants and agrees that it will enter upon and use the Premises solely for the purpose of embarking and disembarking of passengers of the bus transportation service operated by Megabus, and for such other activities as may be incidentally related to the provision of such service, and for no other use. Megabus acknowledges and agrees that neither it, nor its agents, employees nor affiliates nor its vehicles are or shall be permitted to enter upon and/or use any other portion of the Center, including, but not limited to, any interior portion of structures constituting a portion of the Center, unless such entry and use is specifically set forth herein or except as the same may be used by the general public during hours that it is open to the general public. Megabus further agrees that the entry upon and use of the Premises as contemplated herein shall occur no more frequently than fourteen (14) times per day for a duration of not more

than twenty (20) minutes per entry upon the Premises, at the times set forth on the schedule attached as **Exhibit A** and made a part hereof, which schedule may be changed from time-to-time upon the mutual agreement of the parties. In the event Megabus shall desire to change the schedule, it shall not do so without having first obtained the written consent of GCRTA to such increased or decreased use, which consent shall not be unreasonably withheld or delayed. Megabus shall have no right or authority to and shall make no alterations, additions or improvements in or to the Premises.

B. Megabus shall, at its own cost and expense, promptly observe and comply with all applicable laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county, or city governments and of all applicable governmental authorities, including, without limitation, all rules and regulations of GCRTA or any other agency concerning the operation and use of the Center or affecting Megabus' entry upon and conduct of its business upon the Premises, whether the same are in force at the commencement of the term of this Agreement or may be in the future passed, enacted or directed.

C. Megabus covenants and agrees that it is fully aware that the Center is a public facility and as such, is used by the general public; and that GCRTA shall retain absolute general management and supervisory control over the Center. Megabus will not discriminate against any employee or applicant, customer or invitee of employment because of race, creed, color, sex, disability or national origin. The Center was developed using federal funds and consequently the federal interest must be preserved. "Federal Interest" for the purposes of this Agreement, means the Federal Transit Administration of the United States Department of Transportation (FTA) rights to the federally-funded asset or proceeds from the disposition of the federally-funded asset as provided by Federal law, regulations and FTA Grants Management Requirements outlined in FTA Circular 5010. FTA retains a Federal interest in any project property financed with Federal assistance until, and (except) to the extent that, FTA relinquishes its Federal interest in that project property.

D. In the performance of its obligations and in the conduct of its business, Megabus shall:

1. Provide personnel to be present at the Center for all Megabus arrivals and departures, including those operated by Lakefront Lines, Inc., 24 hours/day.

2. Provide methods and hours of operation, standards of management and employees, standards of quality, service, maintenance and repairs to GCRTA for prior written approval which consent shall not be unreasonably withheld or delayed.

3. Upon reasonable objection from GCRTA or its representative concerning the conduct, demeanor or appearance of any officer, employee, agent, representative or contractor of Megabus, immediately take all reasonable remedial steps necessary to overcome the objection.

4. Cooperate with GCRTA in all matters relating to the security, as well as the safe and efficient operation of the Center by GCRTA and shall require its employees to do so. Megabus shall adhere to the Security Protocol attached hereto as Exhibit B.

5. Agree that all advertising from, at, or relating to the Center is under the direct control of GCRTA, except Megabus may indicate on its website in connection with the publication of its schedules that Megabus provides service from and to the Center. GCRTA retains all rights as to placement of signs, architectural embellishments, public relations efforts and any other advertising effort in any way related to the Center and its intended use.

Section III

Term

The term of this License is one (1) year, beginning **October 1, 2013** ("Commencement Date") and running through and including **September 30, 2014**.

Section IV

Rent

The rent is the sum of **Twenty Four Thousand Dollars (\$24,000.00)** which sum is payable in equal monthly installments of \$2,000.00, in advance, on the first day of each month during the term of the License. Megabus shall deliver the monthly installments to Greater Cleveland Regional Transit Authority, Director of Accounting, 1240 West Sixth Street, Cleveland, Ohio 44113, beginning on **September 1, 2013**. Any installment of rent accruing under the provisions of this License not paid when due shall bear interest at the rate of **twelve percent (12%) per annum** from the date when the rent was payable by the terms of this License, until the rent shall be paid by Megabus. As additional consideration, Megabus will use reasonable commercial efforts to encourage its passengers and invitees to use GCRTA's public transportation services that serve the Premises.

Megabus has no right of offset or counterclaim for any of the amounts due GCRTA under this Agreement. Furthermore, Megabus shall not be entitled to any reimbursement of or credit for amounts paid in advance to GCRTA hereunder for rights of entrance upon the Premises which are not actually utilized by Megabus.

Section V
Prohibition Against Waste, Nuisance, or Unlawful Use

Megabus, its employees, agents and representatives shall not commit, or allow to be committed, any waste on the Premises, create or allow any nuisance to exist on the Premises or on the surrounding public streets, or use or allow the Premises to be used for any unlawful purpose. Megabus, its employees, agents, representatives, passengers and invitees shall not use or allow the Premises, or any part thereof, to be used or occupied in any manner that would impede or interfere with GCRTA's title, possession, or operation, or its invitees' use, of the Center. In particular, Megabus, its employees, agents, representatives, passengers and invitees shall not block GCRTA's access to the bus bays other than the one designated as the Premises. Megabus, its employees, agents, representatives, passengers and invitees shall not use or allow the Premises, or any part thereof, to be used or occupied for an unlawful or non-transportation purpose or in violation of the Rules and Regulations of GCRTA, the Ground Sublease Agreement Between Euclid Avenue Housing Corporation, Sublessor and Greater Cleveland Regional Transit Authority, Sublessee Dated July 28, 2009 ("Ground Sublease") or any certificate of occupancy affecting the Premises. Megabus, its employees, agents, representatives, passengers and invitees shall not use or allow the Premises, or any part thereof, to be used or occupied or in any manner which may make void or voidable any insurance then in force with respect thereto, or for any purpose or any manner which would cause a default under this Agreement.

Section VI
Repairs and Maintenance

GCRTA shall maintain and keep the Center in good repair. Notwithstanding the foregoing, Megabus shall, at its sole expense, bear the cost of repairing any damage to the Center, the Premises, the buildings and/or any appurtenances thereto caused by Megabus, its employees, agents or invitees, reasonable wear and tear excepted. Megabus shall indemnify, defend and hold harmless GCRTA against the cost of any such repairs. Megabus shall immediately notify GCRTA of any damage caused to the Premises by Megabus or Megabus' employees, agents, representative, passengers or invitees. Megabus shall not be entitled to any partial or total abatement of rent for periods during which repairs are required to be made, whether such repairs are the responsibility of GCRTA or Megabus. GCRTA shall use reasonable commercial efforts to relocate Megabus during the pendency of any repairs in order to minimize the impact of such repairs on Megabus' operations.

Section VII
Delivery, Acceptance, and Surrender of Premises

GCRTA represents that the Premises are in a good state of repair and in fit condition for the intended use. Megabus agrees to surrender the Premises to GCRTA at the end of the License term, if the License is not renewed, in the same condition as when Megabus took possession, allowing for reasonable use and wear, and damage by acts of God, including fire and storms.

Megabus shall, upon the termination of this Agreement, by lapse of time or otherwise, cease its entry upon and use of the Premises and shall return the Premises to GCRTA in as good condition as it was on the Commencement Date, loss by fire or other unavoidable casualty and reasonable wear and tear excepted. It is understood and agreed that the exception made as to "loss by fire or other unavoidable casualty" does not include damages, fires or casualties caused or contributed to by the act or neglect of Megabus, its servants, agents, employees, invitees or licensees and not compensated for by insurance.

Except for cessation upon the expiration or earlier termination of the term of this Agreement, no cessation of Megabus' entry upon and use of the Premises shall be valid or effective unless agreed to and accepted in writing by GCRTA. The provisions of this section shall survive the termination or expiration of this Agreement.

Section VIII
Access to the Licensed Premises

Megabus agrees that GCRTA shall have such rights to enter upon the Premises, including rights of ingress and egress, as shall be necessary or desirable to enable GCRTA to exercise its powers, rights, duties and obligations as are set forth in this Agreement or as GCRTA may otherwise deem appropriate. GCRTA shall further have the right to enter and grant licensees the right to enter the Premises for any purpose which GCRTA may deem necessary or desirable, including, without limitation, to make structural repairs to the Center or the Premises or any other repairs for which GCRTA is responsible, or for exhibiting the Premises to prospective purchasers, mortgagees, governmental representatives or tenants, and to inspect the Premises to determine whether Megabus' use of the Premises is in conformance with Megabus' covenants. This right of inspection shall include but not be limited to the right, on reasonable notice and during normal hours of operation, to conduct interviews of Megabus' personnel, if any. Notwithstanding the foregoing, GCRTA shall not unreasonably interfere with Megabus occupancy and use of the Premises.

Section IX
Posting of Signs, Awnings, or Marquees by Megabus

Except as set forth herein, Megabus will not construct or place, or permit to be constructed or placed, signs, displays, advertisements, decorations, awnings, marquees, or structures on the Premises. GCRTA will place one sign at the proper stop on the Premises. The sign must be supplied by Megabus.

Section X
Insurance

As between GCRTA and Megabus, Megabus shall be liable for all damages to persons (including employees of Megabus) or property of any type, arising out of Megabus' use of the Premises under this Agreement, that may occur as a result of any negligent or grossly negligent act or omission by Megabus, its sublicensees, or its sub-sublicensees, their respective agents or anyone directly employed by any of them or anyone for whose acts any of them may be liable. Nothing contained herein shall require Megabus to be liable for damages caused solely, directly or indirectly, by GCRTA, its employees or agents.

Megabus shall purchase and maintain from the Commencement Date until the termination of this Agreement the following minimum insurance coverages. Such insurance shall protect Megabus from claims which may arise out of or result from the Megabus' operations under this Agreement and for which Megabus may be legally liable.

Megabus shall also be responsible for assuring that each of its sublicensees and anyone employed directly or indirectly by Megabus or sublicensee provide adequate insurance for the work performed or products supplied by it.

A. Commercial General Liability ("CGL") Insurance in the amount of \$20,000,000 combined single limit each occurrence for bodily injury and/or property damage with a \$20,000,000 annual aggregate, and including the following provisions:

- Premises / Operations coverage
- Personal Injury coverage
- Liability for independent licensees
- Contractual liability coverage applicable to the hold harmless / indemnification provision contained in this Agreement
- Sudden and Accidental Pollution Coverage including spills resulting from vehicle operation

Said policy shall be written on an “occurrence” basis.

B. Automobile Liability Insurance in the amount of \$20,000,000 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 used in connection with this agreement.

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

C. 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 Megabus. Employers’ Liability coverage in the amount of \$1 million per accident / \$1 million per employee 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 WC, or a copy of the Certificate of Employer’s Right to Pay Compensation Directly.

D. General Requirements: Megabus shall not commence its operations or use of the Premises until it has obtained the required insurance and has received written approval of such insurance by GCRTA. It 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 GCRTA 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 GCRTA, care of the Director of Engineering and Project Development.
- Name GCRTA, Cleveland State University and the Euclid Avenue Housing Corporation as additional insureds for coverages required under A. and B. above, for claims arising out of operations in conjunction with the contract
- Contain a waiver of subrogation in favor of GCRTA.
- Specific reference to the subject contract
- Specific reference to all deductibles & Self Insured Retentions (SIR)
- Shall be primary and non-contributing to any insurance possessed or procured by owner and any self-insurance program maintained by owner

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 GCRTA. GCRTA shall be entitled to receive a full copy of the insurance policy(ies) upon request and reserves the right to review financial statements and approve any deductibles or self-insured retention (SIR). Any deductible or SIR is for the account of Megabus.

E. Approval by GCRTA: Approval of the insurance by GCRTA shall not relieve or decrease the liability of Megabus hereunder. It is to be understood that GCRTA does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect Megabus' interests or liabilities.

F. In the event Megabus neglects, refuses or fails to provide the insurance required under this document, or if such insurance is canceled for any reason, GCRTA shall have the right to cancel arrivals and departures to/from the Center until such insurance is provided.

Megabus hereby waives any and every claim for recovery from GCRTA for any and all loss of or damage to any vehicle owned, used or maintained by Megabus or those in privity with Megabus (unless such loss or damage is shown to have been caused solely by GCRTA). Megabus further waives any claim for recovery from GCRTA for any and all loss of or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectible physical damage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies. Inasmuch as this waiver will preclude the assignment of any such claim or subrogation or otherwise, Megabus agrees to give to each insurance company which has issued, or in the future may issue, to its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver. Megabus shall require each sublicensee or assignee to include similar waivers of subrogation in favor of GCRTA in the sublicenses or assignments entered into with such sublicensees or assignees.

The net proceeds of any casualty insurance required by this Section shall be payable jointly to Megabus and GCRTA and applied toward extinguishment or satisfaction of the liability with respect to which such insurance is written, in accordance with the provisions of this Agreement.

Section XI Indemnification

A. Licensee's Liability. Megabus shall be liable for all damages to persons (including employees of Megabus) or property of any type, arising out of any operations or use of the Center under this Agreement, as a result of any negligent or grossly negligent act or omission by Megabus, its sublessees, or its sub-sublessee, their respective agents or anyone directly employed by any of them or anyone for whose acts any of them may be liable.

B. Subrogation. Megabus, its agents and its sublicensees hereby waive and relinquish any right of subrogation or claim against GCRTA, its Board of Trustees, agents, representatives, and employees arising out of the use of the Center (including any equipment) by any party in performance of this Agreement.

C. Indemnification. Megabus agrees to be liable for any and all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to attorney's fees and worker's compensation benefits that may arise out of or result from its use, occupancy and operation of the Center. Megabus shall, at its sole cost and expense indemnify, defend and hold harmless GCRTA and its Board of Trustees, agents, representatives, and employees from and against all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses of every kind, including but not limited to attorney's fees and worker's compensation benefits by or to any person or entity that may arise out of or result from its use, occupancy and operation of the Center, and means of ingress and egress therefor, including, but not limited to, bodily injury, sickness, disease or death, as well as injury to or destruction of tangible property including the loss of use resulting therefrom. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation which would otherwise exist as to any party or person described in this paragraph. Nothing contained herein shall be construed to require Megabus to be liable for any claim, action, judgment, cost, penalty, liabilities damages, losses or expenses arising out of the sole negligence or intentional misconduct of GCRTA.

In claims against any person or entity indemnified under this section, by an employee or Megabus, sublicensee or sub-sublicensee or anyone directly or indirectly employed by any of them, the indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Megabus, sublicensee, or sub-sublicensee under worker's compensation acts, disability benefit acts or other employee benefit acts.

If any action is instituted by any third party against Megabus arising out of or resulting from the acts of Megabus in performing work under this Agreement, Megabus shall promptly notify GCRTA of such suit.

Section XII
Assignment or Sublicense

Megabus agrees not to assign or sublease the Premises, any part of the Premises, or any right or privilege connected with it, or allow any other person, except Megabus' agents, employees and passengers to occupy the Premises or any part of the Premises, without first obtaining GCRTA's prior written consent. In the event of GCRTA's consent to assignment of this Agreement, all of the terms, provisions and conditions of the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representative. One consent by GCRTA shall not be consent to a subsequent assignment, sublease, or occupation by other persons. Megabus' unauthorized assignment, sublicense, or license to occupy shall be void, and shall terminate this Agreement at GCRTA's option. Megabus' interest in this License is not assignable by operation of law, nor is any assignment of Megabus' interest, without GCRTA's written consent.

Section XIII
Effect of GCRTA's Failure to Insist on Strict Performance

The failure of GCRTA to insist, in any one or more instances, upon a strict performance of any covenant, term, provision or agreement of this Agreement shall not be construed as a waiver or relinquishment thereof, but the same shall continue and remain in full force and effect, notwithstanding any law, usage or custom to the contrary. The receipt by GCRTA of rent with knowledge of the breach of any covenant or agreement hereunder shall not be deemed a waiver of the rights of GCRTA with respect to such breach, and no waiver by GCRTA of any provision hereof shall be deemed to have been made unless expressed in writing and signed by GCRTA. GCRTA's waiver of breach of one covenant or condition of this License is not a waiver of breach of others, or of subsequent breach of the one waived.

Section XIV
GCRTA's Remedies on Default

If Megabus defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions of this Agreement, GCRTA shall give Megabus notice of such default. If Megabus does not cure any rent or additional rent default, or any other default within 10 days after the giving of such notice, then GCRTA may terminate this Agreement on not less than 15 days notice to Megabus. On the date specified in the notice the term of this Agreement shall terminate and Megabus shall then quit and surrender the Premises to GCRTA, but Megabus shall remain liable as provided in all other provisions of this Agreement.

Section XV
Termination

A. Notwithstanding any other provision contained herein, GCRTA may terminate this Agreement if any one or more of the following events occur:

1. GCRTA determines in its sole discretion that GCRTA's increased operations and/or capacity demands require GCRTA's use of the Premises, following thirty (30) days advance written notice; or
2. GCRTA determines in its sole discretion that Megabus or its employees, agents, representatives, passengers and invitees have used or occupied the Premises, or any part thereof, in a manner that impedes or interferes with GCRTA's title, possession, or operation, or its invitees' use, of the Center, following no less than ten (10) days advance written notice and opportunity to cure within ten (10) days. If a cure satisfactory to GCRTA does not occur within those 10 days, GCRTA may terminate the Agreement immediately and Megabus will have 15 days to vacate the Premises; or
3. Megabus shall become insolvent, or shall seek the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or answer seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee; or liquidator of all or substantially all of its property; or
4. By order or decree of a court, Megabus shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof, unless any such order or decree shall be vacated within sixty (60) days of entry thereof; or
5. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Megabus and is not dismissed within sixty (60) days after the filing thereof; or

6. The interest of Megabus under this Agreement, except as otherwise provided herein, shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other corporation, or any person or firm; or
7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Megabus, and such possession or control shall continue in effect for a period of thirty (30) days; or
8. Any lien shall be filed against the Center for any improvements at the Center because of any act or omission of Megabus and is not removed, contested or bonded within fifteen (15) days.

B. Notwithstanding anything to the contrary contained herein, either party may terminate this Agreement at any time upon sixty (60) days prior written notice to the other party hereto.

Section XVI Environmental Matters

A. **Compliance with Environmental Laws.** Megabus covenants that the Premises shall be kept free of Hazardous Materials, and neither Megabus, nor any occupant of the Premises, shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Premises, except in compliance with all applicable federal, state and local laws, ordinances, rules and regulations. Megabus shall comply and ensure compliance by all occupants of the Premises, with all applicable federal, state and local laws, ordinances, rules and regulations, and shall keep the Premises free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations as a direct result of any action or inaction on the part of Megabus. In the event that Megabus receives any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or accepting the Premises, Megabus shall immediately notify GCRTA. Megabus shall conduct and complete all investigations, studies, sampling and testing, and all remedial actions necessary to clean up and remove all Hazardous Materials from the Premises placed there as a direct result of any action or inaction on the part of Megabus in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The term "Hazardous Materials", as used in this Agreement, shall include, without limitation, petroleum and petroleum products and derivatives, asbestos, radon, polychlorinated biphenyls ("PCBs"), urea formaldehyde foam insulation, explosives, radioactive materials, laboratory waste and medical waste (including, without limitation, contaminated clothing, body fluids, contaminated medical instruments and equipment, catheters, used bandages, gauze,

needles and other sharps), and any chemicals, materials or substances designed or regulated as hazardous or as toxic substances, materials or waste under any environmental law. Anything contained herein to the contrary notwithstanding, Megabus shall have no liability under this Section XVI for contamination shown to have been present prior to the date hereof.

B. In the event of a release, discharge or spill of any Hazardous Material from a Megabus vehicle at the Center, Megabus shall immediately conduct and complete all remedial actions necessary to prevent any such Hazardous Material from exiting the Premises and particularly from entering any part of the municipal sewer system or any natural body of water. GCRTA shall have the right, but not the obligation, to conduct any remedial action it deems necessary and to bill Megabus for the cost of any such remedial action. Megabus hereby agrees to pay any such reasonable and incurred costs in full. Megabus shall be responsible for any claims, costs, liabilities, damages, fines or penalties as a result of the release, discharge or spill of any Hazardous Material from a Megabus vehicle on or near the Premises. Megabus shall indemnify, defend and hold GCRTA harmless from and against any such claims, costs, liabilities, damages, fines or penalties incurred by GCRTA as a result of the release, discharge or spill of any Hazardous Material from a Megabus vehicle on or near the Premises.

C. **Notices.** Megabus shall immediately notify GCRTA in writing of:

1. Any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened with respect to the Premises or a discharge from a Megabus vehicle at the Center pursuant to any Hazardous Materials laws ;

2. Any claim made or threatened by any person against Megabus or the Premises relating to damage, contribution, cost, recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials actually handled by Megabus in or on the Premises or discharged from a Megabus vehicle at the Center;

3. Any reports made to any environmental agency arising out of or in connection with any Hazardous Materials actually handled by Megabus on the Premises; and

4. Any reports made to any environmental agency arising out of or in connection with any Hazardous Materials actually handled by Megabus in, on or removed from the Premises, including any complaints, notices, warnings, reports or asserted violations in connection therewith. Megabus shall also supply to GCRTA as promptly as possible, and in any event within five (5) business days after Megabus first received or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to Hazardous Materials actually handled by Megabus at the Center, or Megabus' use thereof.

Megabus shall promptly deliver to GCRTA copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Center by Megabus or by any entity acting on behalf of Megabus.

The obligations and liabilities of Megabus under this Article shall survive the expiration or earlier termination of this Agreement.

**Section XVII
Force Majeure**

This Agreement and obligation of Megabus to pay rent hereunder and to perform all of the other covenants and agreements hereunder on the part of Megabus to be performed shall not be affected, impaired or excused because GCRTA is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make or is delayed in making any repairs, additions or alterations if GCRTA is prevented or delayed from so doing by reason of a strike or labor trouble, or governmental preemption in connection with a national emergency or in connection with any rule, order or regulation of any department or subdivision thereof or of any governmental agency, or by reason of the condition of supply and demand which have been or are affected by war or other emergency or by any other condition beyond the control of GCRTA.

**Section XVIII
Personal Immunity**

No member, director, officer, agent or employee of GCRTA shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment thereto, or because of any breach, actual, alleged or attempted, thereof.

**Section XIX
Miscellaneous**

A. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by all parties.

B. FEDERAL, STATE, COUNTY AND LOCAL LAW; GCRTA RULES AND REGULATIONS

Megabus shall comply at its own cost and expense with all federal, state, county and local laws, ordinances, rules or regulations now or hereinafter in force which may be applicable to Megabus' entry upon and use of the Center, including obtaining and paying for all licenses and permits necessary for the operation thereon and payment of all fees and charges assessed insofar as they are applicable thereto. Megabus agrees to follow the rules and regulations promulgated by GCRTA as the same may be amended or changed from time to time. GCRTA rules and regulations shall be deemed incorporated herein by reference and made a part hereof.

C. GOVERNING LAW

This Agreement shall be deemed to have been made in, and be construed in accordance with, the laws of the State of Ohio. Any action of law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, respecting its alleged breach, shall be instituted only in the Cuyahoga County Court of Common Pleas, Cuyahoga County, Ohio.

D. NON-DISCRIMINATION

Megabus agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability in accordance with the following Federal Statutes and regulations, and any other implementing regulations issued pursuant to the: Civil Rights Act as amended, Titles VI (42 U.S.C. 2000d) and VII (42 U.S.C. 2000e); Age Discrimination Act of 1975, as amended (42 U.S.C. 6102); Age Discrimination in Employment Act of 1967 as amended, (29 U.S.C. 623); Americans with Disabilities Act of 1990, as amended, (42 U.S.C. 12132 and 42 U.S.C. Sec. 12112) and implementing regulations (29 C.F.R. Part 1630), Federal transit law (49 U.S.C. 5332); Executive Order 11246, as amended by Executive Order 11375 (42 U.S.C. 2000e note) and implementing regulations (41 C.F.R. Parts 60 et seq.). The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

E. SEVERABILITY

If any clause or provision of this Agreement is declared to be invalid by any court of competent jurisdiction, then and in that event, the remaining provisions hereof shall remain in force. In lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there shall be added as a part of this Agreement, a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

Section XX
Notices

Notices given pursuant to the provisions of this Agreement, or necessary to carry out its provisions, shall be in writing, and delivered personally to or mailed postage prepaid, to:

Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113
216-566-5160 Office
Attention: Maribeth Feke, Director, Programming and Planning
mfeke@gcrta.org

Megabus USA, LLC
160 S. Route 17
Paramus, NJ 07652
201-225-7588 Offices
201-225-7588 Fax
Attention; John Emberson
Senior Vice President
John.Emberson@coachusa.com

MEGABUS USA, LLC

By: _____

Printed name: _____

Title: _____

Date: _____

STATE OF _____
COUNTY OF _____, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2013.

Notary Public

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

1240 West 6th Street

Cleveland, Ohio 44113-1331

By: _____

Joseph A. Calabrese

CEO, General Manager and Secretary-Treasurer

Date: _____

STATE OF _____

COUNTY OF _____, SS:

The foregoing instrument was acknowledged before me this ___ day of _____, 2013.

Notary Public

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

Deputy General Manager-Legal Affairs