

RESOLUTION 2019-9

AUTHORIZING THE INTERIM CEO, GENERAL MANAGER/SECRETARY-TREASURER TO GRANT TO THE BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT ("METROPARKS") A PROJECT DEVELOPMENT AGREEMENT AND PERPETUAL SHARED AND NON-SHARED TRAIL EASEMENTS FOR THE PURPOSES OF ACCESS, INGRESS AND EGRESS AND FOR CONSTRUCTING, INSTALLING, MAINTAINING, OPERATING, AND REPLACING OR REMOVING A MULTI-PURPOSE TRAIL KNOWN AS THE RED LINE GREENWAY ACROSS CERTAIN PORTIONS OF GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY ("GCRTA") PROPERTY

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") is the Owner of record of the property known as Cuyahoga County Permanent Parcel Numbers 007-02-011, 007-02-013, 007-11-020, 007-11-025, 007-13-003, 007-14-006, 007-15-001, 007-15-004, 006-20-046, 006-20-087, 006-20-088, 003-23-023, 003-23-076 located along the GCRTA Red Line Transit Line from a point on the Cuyahoga Viaduct transit bridge to the Michael Zone Recreation Center located at 6301 Lorain Avenue, Cleveland, Ohio 44102 (the "Property"); and

WHEREAS, the Board of Park Commissioners of the Cleveland Metropolitan Park District ("Metroparks") wishes to construct, operate, maintain and patrol a multi-use pathway known as the Red Line Greenway (the "RLG") on certain portions of the Property; and

WHEREAS, the Metroparks will require entrance to the Property for construction, operation, maintenance and patrol of the RLG by way of a perpetual Development Agreement and Shared and Non-Shared Right of Way and Trail Easements Agreement (the "Agreement"); and

WHEREAS, the project development agreement and perpetual right of way and trail easements cover 6.33 acres or 275,735 square feet of the Property as described in Exhibits A-1, A-2, A-3, B-1, B-2, B-3 to the Agreement; and

WHEREAS, the project development agreement and the perpetual right of way and trail easements will not interfere with GCRTA's present or future use of the Property nor create any safety hazards; and

WHEREAS, the fair market value of the development rights, perpetual right of way and trail easements has been determined by mutual agreement between GCRTA and Metroparks, and GCRTA staff recommends that GCRTA donate the land to Metroparks and receive the benefit of the investment by Metroparks in the Property as fair compensation for the value and benefit of GCRTA, its customers and the community.

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

Section 1. That the Interim CEO, General Manager/Secretary-Treasurer is hereby authorized to execute a project development agreement and perpetual right of way and shared and non-shared trail easements to the Metroparks on portions of Permanent Parcel Numbers 007-02-011, 007-02-013, 007-11-020, 007-11-021, 007-11-025, 007-13-003, 007-14-006, 007-15-001, 007-15-004, 006-20-046, 006-20-087, 006-20-088, 003-23-023, 003-23-076 located along the GCRTA Red Line Transit Line from a point on the Cuyahoga Viaduct transit bridge

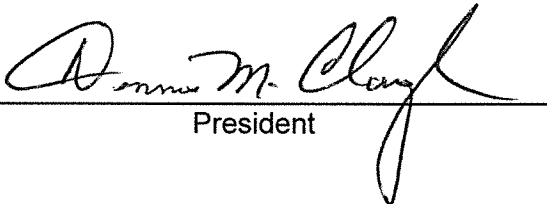
south to the Michael Zone Recreation Center located at 6301 Lorain Avenue, Cleveland, Ohio 44102 (the "Property") for the consideration of the mutual covenants and other valuable consideration.

Section 2. That the Board authorizes the donation of GCRTA property to Metroparks and acknowledges that other valuable consideration was received for granting the project development agreement and perpetual right of way and trail easements.

Section 3. That the Interim CEO, General Manager/Secretary-Treasurer is hereby authorized to execute all documents required to grant the project development agreement and perpetual right of way and trail easements to Metroparks and allow access to the Property.

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

Adopted: January 15, 2019



President

Attest: 

Interim CEO, General Manager/Secretary-Treasurer



TITLE/DESCRIPTION: EASEMENT: GRANT OF A PROJECT DEVELOPMENT AGREEMENT AND TRAIL EASEMENTS ON VARIOUS PERMANENT PARCELS IN CLEVELAND, OH FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A MULTI-USE TRAIL KNOWN AS THE RED LINE GREENWAY. GRANTEE: THE BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAIN PARK DISTRICT COMPENSATION: NONE	Resolution No.: 2019-9
	Date: January 10, 2019
	Initiator: Programming & 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:** The resolution seeks Board approval to grant a project development agreement and a perpetual right of way and trail easement to the Board of Commissioners of the Cleveland Metropolitan Park District ("Metroparks") for the purpose of constructing, maintaining, access to and management of a new multi-purpose recreational trail known as the Red Line Greenway ("RLG") located on portions of PPNs 007-02-011, 007-02-013, 007-11-020, 007-11-021, 007-11-025, 007-13-003, 007-14-006, 007-15-001, 007-15-004, 006-20-046, 006-20-087, 006-20-088, 003-23-023, 003-23-076 located along the GCRTA Red Line Transit line between the Cuyahoga Viaduct bridge south to the Michael Zone Recreation Center at 6301 Lorain Ave., Cleveland, OH 44102.

- 2.0 **DESCRIPTION/JUSTIFICATION:** The project development agreement and surface trail easements for this RLG project consists of 6.33 acres or 275,735 square feet at a width ranging from 15 feet to 200 feet and a total length of 2.3 miles. The RLG will connect with the Cleveland Foundation Centennial Lake Link Trail and the Towpath Trail. The majority of the RLG will be constructed on GCRTA property but will also utilize donated property from the City of Cleveland, the Ohio Department of Transportation and a private property owner, as well. The RLG will be a controlled access, multi-use trail with fencing to segregate the trail from GCRTA property used for transit purposes. The project development agreement and the trail easement will not interfere with the present or future use of the GCRTA property.

- 3.0 **PROCUREMENT BACKGROUND:** Does Not Apply.

- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Does Not Apply.

- 5.0 **POLICY IMPACT:** The project development agreement and perpetual right of way and trail easements on this property are consistent with the Real Estate Policies of the GCRTA that specify the Board of Trustees must approve any permanent easement with a value equal to or in excess of \$2,500.00. The perpetual trail easement described herein is a permanent easement under Chapter 470 of GCRTA's Code of Rules and Regulations.

- 6.0 **ECONOMIC IMPACT:** The value of the trail easement was determined by negotiations between GCRTA and Metroparks. Metroparks secured funds in excess of \$16,500,000 to design, construct, maintain, manage and repair the Reconnecting Cleveland Project which includes the RLG. In consideration of this grant of development rights and trail easements, the GCRTA will donate the land to Metroparks and receive the benefit of the RLG for the benefit of GCRTA, its customers and the community.
- 7.0 **ALTERNATIVES:** The GCRTA can refuse to grant the easement.
- 8.0 **RECOMMENDATION:** This was presented to the Audit, Safety Compliance and Real Estate Committee on January 8, 2019 and referred to the full Board of Trustees for action. Staff recommends the Board of Trustees approve the resolution to authorize granting the Project Development, Non-Shared and Shared Trail Easement Agreement for the Red Line Greenway Project to the Board of Park Commissioners of the Cleveland Metropolitan Park District.
- 9.0 **ATTACHMENTS:** A. Draft Agreement
B. Easement Location Map

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



Interim CEO, General Manager/Secretary-Treasurer

PROJECT DEVELOPMENT, NON-SHARED TRAIL EASEMENT, SHARED TRAIL EASEMENT, AND NON-SHARED TRAIL EASEMENT SOUTH OF ABBEY ROAD AGREEMENT FOR RED LINE GREENWAY PROJECT

THIS PROJECT DEVELOPMENT and TRAIL EASEMENT AGREEMENT (this "Agreement") is made as of the _____ day of _____, 2018, by and between GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY ("RTA"), a political subdivision of the State of Ohio, with a business address of 1240 West 6th Street, Cleveland, Ohio 44113, and THE BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT ("Cleveland Metroparks"), a political subdivision of the State of Ohio, with a business address of 4101 Fulton Parkway, Cleveland, Ohio 44114 (collectively "the Parties").

Recitals

WHEREAS, Cleveland Metroparks, RTA, and the Rotary Club of Cleveland, Ohio, U.S.A. ("Rotary") entered into that certain Memorandum of Understanding for the Red Line Greenway Project Feasibility Study on October 30, 2014 ("MOU");

WHEREAS, the MOU outlined the fact that Rotary had maintained the RTA West 25th Street Rapid Station Site for 37 years on a volunteer basis and in 2009 developed the idea for a multi-purpose greenway along the RTA Red Line Transit Rail Line ("Red Line Greenway" or "RLG");

WHEREAS, the Parties and Rotary, through the MOU, agreed to secure a more detailed study on the feasibility of the Red Line Greenway along the RTA Red Line from the southern end of the Cuyahoga Viaduct transit track bridge (at an overlook point over Merwin Avenue) to the Michael Zone Recreation Center located at 6301 Lorain Avenue, Cleveland, Ohio, 44102 ("Feasibility Study");

WHEREAS, a majority of the Red Line Greenway will be on RTA land; however, a short section will be on Ohio Department of Transportation ("ODOT") property bordering RTA property along the north side of Interstate 90 from West 41st Street to West 53rd Street;

WHEREAS, the MOU acknowledged that wherever possible, RTA seeks to maintain its own railroad maintenance access road ("Access Road") between the tracks and the Red Line Greenway, separated by a six-foot fence, but some areas of the Red Line Greenway will need to be shared with the Access Road;

WHEREAS, Cleveland Metroparks, through the MOU, agreed to accept a conveyance of requisite property interest(s) for all of the RTA property needed to maintain and patrol the Red Line Greenway, according to the terms determined by RTA and Cleveland Metroparks in a separate agreement;

WHEREAS, Cleveland Metroparks recently applied for and was awarded a Transportation Investment Generating Economic Recovery (TIGER) Grant through the U.S. Department of Transportation and a Congestion Mitigation and Air Quality Improvement Program (“CMAQ”) Grant through the Federal Highway Administration to nearly fully fund the design and construction of the Red Line Greenway;

WHEREAS, the Parties would now like to formalize the property interests necessary for Cleveland Metroparks to construct, operate, maintain, and patrol the Red Line Greenway;

WHEREAS, Cleveland Metroparks is authorized to acquire and/or lease land for the conservation of the natural resources of the State and to develop, improve, protect, and promote the use of parks pursuant and subject to the provisions of Chapter 1545 of the Ohio Revised Code;

WHEREAS, Cleveland Metroparks owns, operates, and maintains Rivergate Park as part of its Lakefront Reservation in Cleveland, Ohio near the Red Line Greenway;

WHEREAS, RTA owns Permanent Parcel Nos. 007-02-011, 007-02-013, 007-11-020, 007-11-021, 007-11-025, 007-13-003, 007-14-006, 007-15-001, 007-15-004, 006-20-046, 006-20-087, 006-20-088, 003-23-023, 003-23-076 of land adjacent to RTA’s Red Line in the City of Cleveland, County of Cuyahoga, Ohio (the “RTA Property”); and

WHEREAS, Cleveland Metroparks has requested, and RTA has agreed to grant and convey an area ranging in width from fifteen (15) feet to two-hundred (200) feet on RTA Property for purposes of access, ingress, and egress and for constructing, installing, maintaining, operating, and replacing or removing, from time to time, a paved bikeway or multi-purpose trail and appurtenances, and for undertaking habitat management activities, as hereinbelow described, an easement and right-of-way in, on, over, under, and across certain portions of the RTA’s Property, as hereinbelow described, for the Red Line Greenway.

Agreement

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

1. Grant of Non-Shared Trail Easement. On the terms and conditions hereinafter set forth, RTA grants and conveys to Cleveland Metroparks, its successors and assigns, and Cleveland Metroparks accepts, for its use and for use by its officers, employees, lessees, sublessees, licensees, contractors, agents, customers, guests, invitees, governmental officials and representatives, and such other entities or individuals as may be required or as Cleveland Metroparks may deem advisable, with all necessary vehicles, machinery, equipment, and labor, a perpetual, exclusive easement and right-of-way (the “Non-Shared Trail Easement”) appurtenant to Rivergate Park, as Rivergate Park may be operated or otherwise exist from time to time, in, on, over, under, and across a certain portion of the RTA Property, as shown on Exhibit A-1 and as more particularly described in Exhibit B-1, both Exhibits being attached hereto and made a part hereof (the “Non-Shared Trail Easement Premises”), and the construction, installation, operation, maintenance, repair, and replacement or removal, from

time to time, at Cleveland Metroparks' sole cost and expense, of a paved bikeway or multi-purpose trail in, on, over, under, and across the Non-Shared Trail Easement Premises, for hiking, jogging, bicycling, or other Cleveland Metroparks activities, suitable for use by emergency and/or maintenance vehicles, bicycles, and pedestrians, and appurtenances such as, by way of illustration and not limitation, signs, railings, fences (including a fence to separate the remainder of the RTA Property from the Non-Shared Trail Easement Premises), lighting, benches, landscaping, drainage, grading, placing of fill material, utilities, and other structures related to erosion control (such bikeway or trail and appurtenances being sometimes referred to collectively hereinafter as the "Improvements" and Improvements will not be constructed until the construction drawings are approved by RTA, whose approval shall not be unreasonably withheld), which Improvements Cleveland Metroparks shall maintain, at Cleveland Metroparks' sole cost and expense, in good condition consistent with standards for other Cleveland Metroparks park properties, and, if Cleveland Metroparks so elects, at any time or from time to time, the undertaking of habitat management activities to preserve and protect the conservation, including scenic, natural, aesthetic, and educational, values of the Non-Shared Trail Easement Premises, and Rivergate Park.

2. Grant of Shared Trail Easement. On the terms and conditions hereinafter set forth, RTA grants and conveys to Cleveland Metroparks, its successors and assigns, and Cleveland Metroparks accepts, for its use and for use by its officers, employees, lessees, sublessees, licensees, contractors, agents, customers, guests, invitees, governmental officials and representatives, and such other entities or individuals as may be required or as Cleveland Metroparks may deem advisable, with all necessary vehicles, machinery, equipment, and labor, a perpetual, exclusive easement and right-of-way (the "Shared Trail Easement") appurtenant to Rivergate Park, as Rivergate Park may be operated or otherwise exist from time to time, in, on, over, under, and across a certain portion of the RTA Property, as shown on Exhibit A-2 and as more particularly described in Exhibit B-2, both Exhibits being attached hereto and made a part hereof (the "Shared Trail Easement Premises"), and the construction, installation, operation, maintenance, repair, and replacement or removal, from time to time, at Cleveland Metroparks' sole cost and expense, of the Improvements (as previously defined), which Improvements Cleveland Metroparks shall maintain, at Cleveland Metroparks' sole cost and expense, in good condition consistent with standards for other Cleveland Metroparks park properties, and, if Cleveland Metroparks so elects, at any time or from time to time, the undertaking of habitat management activities to preserve and protect the conservation, including scenic, natural, aesthetic, and educational, values of the Shared Trail Easement Premises, and Rivergate Park.

- a. Access Road within Shared Trail Easement Premises. The Shared Trail Easement Premises includes RTA's Access Road. RTA retains the authority to temporarily close portions of the Red Line Greenway within the Shared Trail Easement Premises for any necessary rail line maintenance or construction. RTA shall notify Cleveland Metroparks 72 hours in advance of any closure of the Shared Trail Easement Premises for rail line maintenance or construction and shall make reasonable efforts to keep the trail closures limited to winter months. The Shared Trail Easement Premises and Non-Shared Trail Easement Premises will be separated by gates, which can be closed during the above-mentioned rail line maintenance or construction. Notwithstanding the above, RTA retains the authority to temporarily close portions of the Red Line Greenway

within the Shared Trail Easement Premises for emergency situations, but shall notify Cleveland Metroparks as quickly as practical of such emergency situations.

3. Grant of Non-Shared Trail Easement South of Abbey Road. On the terms and conditions hereinafter set forth, RTA grants and conveys to Cleveland Metroparks, its successors and assigns, and Cleveland Metroparks accepts, for its use and for use by its officers, employees, lessees, sublessees, licensees, contractors, agents, customers, guests, invitees, governmental officials and representatives, and such other entities or individuals as may be required or as Cleveland Metroparks may deem advisable, with all necessary vehicles, machinery, equipment, and labor, a perpetual, exclusive easement and right-of-way (the “Non-Shared Trail Easement South of Abbey Road”) appurtenant to Rivergate Park, as Rivergate Park may be operated or otherwise exist from time to time, in, on, over, under, and across a certain portion of the RTA Property, as shown on Exhibit A-3 and as more particularly described in Exhibit B-3, both Exhibits being attached hereto and made a part hereof (the “Non-Shared Trail Easement South of Abbey Road Premises”), and the construction, installation, operation, maintenance, repair, and replacement or removal, from time to time, at Cleveland Metroparks’ sole cost and expense, of the Improvements (as previously defined), which Improvements Cleveland Metroparks shall maintain, at Cleveland Metroparks’ sole cost and expense, in good condition consistent with standards for other Cleveland Metroparks park properties, and, if Cleveland Metroparks so elects, at any time or from time to time, the undertaking of habitat management activities to preserve and protect the conservation, including scenic, natural, aesthetic, and educational, values of the Non-Shared Trail Easement South of Abby Road Premises, and Rivergate Park. Collectively, the rights granted by RTA to Cleveland Metroparks in the Non-Shared Trail Easement, Shared Trail Easement, and Non-Shared Easement South of Abbey Road can be referred to as the “Easement” or “Easement Rights.”
 - a. RTA Development within area between Abbey Road and West 25th Street.
 - i. Air Rights over Non-Shared Trail Easement South of Abbey Road Premises. Cleveland Metroparks understands that RTA is planning a mixed-use development for a portion of RTA Property south of Abbey Road and north of West 25th on RTA’s Property (“RTA Development”). As such, due to the fact that the RTA Development may include a bridge cap over the Non-Shared Trail Easement Premises South of Abbey Road, RTA is only granting Cleveland Metroparks, as part of the Non-Shared Trail Easement South of Abbey Road, sixteen (16) feet above the current surface level along the Non-Shared Trail Easement South of Abbey Road Premises for the Red Line Greenway. The area above sixteen (16) feet will likely be used for the RTA Development.
 - ii. Use of Joint Driveway Connecting Non-Shared Trail Easement South of Abbey Premises to Columbus Road. Cleveland Metroparks understands residents, occupants, or users of the RTA Development, as well as RTA and Cleveland Metroparks staff and contractors, will need vehicular access to the driveway off Columbus Road. The Parties intend to create a trail (of at least 10 feet) separated from the driveway to allow both pedestrian/bicycle access along with vehicular access for the RTA Development, RTA staff and contractors, and Cleveland Metroparks staff and contractors. The Parties will mutually agree on the location and design of the driveway later but agree now that it will have a separated entrance for pedestrians/bicycles and vehicles.

- iii. Access to RTA Development through Non-Shared Trail Easement South of Abbey Premises for Construction and Maintenance of RTA Development. RTA retains the right to access the Abbey Road Bridge to do maintenance and it also retains the right to grant access rights to the RTA Development bridge cap for maintenance and repair, so long as said maintenance and repair does not unreasonably restrict access to the Red Line Greenway.
4. Term of Easement Rights. The Easement and the rights hereunder with respect thereto shall be perpetual unless terminated in writing by Cleveland Metroparks, its successors or assigns, with respect to all or any portion of the Non-Shared Trail Easement Premises, Shared Trail Easement Premises, or the Non-Shared Trail Easement South of Abbey Road Premises (collectively referred to as the "Easement Premises"), whereupon the parties shall be released from all liabilities otherwise thereafter accruing hereunder with respect thereto; provided, however, that each party agrees to execute all documents and take all other actions reasonably requested by the other party in connection therewith to evidence, whether of record or otherwise, such termination.
5. Conditions of Use within Easement Premises. All users of the Easement Premises will be subject to the Cleveland Metropolitan Park District Regulations, as may be amended from time-to-time. Cleveland Metroparks Rangers shall be permitted to patrol (and shall patrol as the Cleveland Metroparks Rangers do with other similar property under Cleveland Metroparks' dominion and control) the Easement Premises to insure compliance with Cleveland Metropolitan Park District Regulations. Should RTA desire to grant additional easements or interests over, under, or through the Easement Premises, Cleveland Metroparks will reasonably work with RTA grant such easements or interests, so long as the requested easements or interests do not negatively impact the Red Line Greenway.
6. Maintenance of Easement Premises. Cleveland Metroparks, at its sole cost and expense, shall maintain the Easement Premises consistent with the standards of other properties maintained by Cleveland Metroparks.
 - a. Maintenance of Easement Premises during and after RTA construction, repair, maintenance, emergency work, or other similar work. To the extent any portion of the Easement Premises are used by RTA for any construction, repair, maintenance, emergency work, or other similar work, after such work is complete, RTA will restore any major capital damage to the Improvements located within the Easement Premises to their original condition immediately before the commencement of such work. Major capital damage refers to substantial damage to the Improvements that would require substantial work to repair or replace. However, minor everyday wear and tear to the Easement Premises caused by RTA will be acceptable and Cleveland Metroparks will remedy such minor everyday wear and tear to the Easement Premises caused by RTA. Notwithstanding the foregoing, RTA will take all reasonable precautions to protect the Improvements during RTA construction, repair, maintenance, emergency work, or similar work.

7. Noninterference. Any use of the Non-Shared Trail Easement Premises and/or Non-Shared Trail Easement South of Abbey Road Premises by RTA, or its successors or assigns, or in the case of the Non-Shared Trail Easement South of Abbey Road, the RTA Development, shall not interfere with, or restrict the use by, Cleveland Metroparks, or its successors or assigns, contemplated by this Agreement; provided, however, that RTA acknowledges that RTA possesses no right, title, or interest in or to the Improvements. Without limiting the generality of the foregoing, RTA agrees not to construct, erect, or maintain, or cause or permit to be constructed, erected, or maintained, any building or other structure, barrier, fence, or obstruction, including without limitation trees or other vegetative cover, whether permanent or temporary, that would impede or interfere with the free flow of emergency and/or maintenance vehicles, bicycle, or pedestrian passage, travel, or traffic in, on, over, under, and across, or the construction, installation, operation, maintenance, repair, or replacement or removal of the Improvements, or the undertaking of habitat management activities, as hereinabove described, or other use of any portion of the Non-Shared Trail Easement Premises, Non-Shared Trail Easement South of Abbey Road Premises or Improvements or the exercise of any rights hereunder with respect thereto. Notwithstanding the above, RTA retains the authority to temporarily close portions of the Red Line Greenway within the Non-Shared Trail Easement Premises and/or Non-Shared Trail Easement South of Abbey Road Premises for emergency situations but shall notify Cleveland Metroparks as quickly as practical of such emergency situations.

a. Noninterference with Shared Trail Easement Premises. As described above in Section 2(a), the Shared Trail Easement Premises includes RTA's Access Road. RTA retains the authority to temporarily close portions of the Red Line Greenway within the Shared Trail Easement Premises for any necessary rail line maintenance or construction. RTA shall notify Cleveland Metroparks 72 hours in advance of any closure of the Shared Trail Easement Premises for rail line maintenance or construction and shall make reasonable efforts to keep the trail closures limited to winter months. RTA retains the authority to temporarily close portions of the Red Line Greenway within the Shared Trail Easement Premises for emergency situations but shall notify Cleveland Metroparks as quickly as practical of such emergency situations. However, when not performing necessary rail line maintenance, construction, or during any emergency situation, any use of the Shared Trail Easement Premises by RTA, or its successors or assigns, shall not interfere with, or restrict the use by, Cleveland Metroparks, or its successors or assigns, contemplated by this Agreement. Without limiting the generality of the foregoing, RTA agrees not to construct, erect, or maintain, or cause or permit to be constructed, erected, or maintained, any building or other structure, barrier, fence, or obstruction, including without limitation trees or other vegetative cover, whether permanent or temporary, that would impede or interfere with the free flow of emergency and/or maintenance vehicles, bicycle, or pedestrian passage, travel, or traffic in, on, over, under, and across, or the construction, installation, operation, maintenance, repair, or replacement or removal of the Improvements, or the undertaking of habitat management activities, as hereinabove described, or other use of any portion of the Shared Trail Easement Premises.

8. Additions to Dominant Estate. The Easement and the rights hereunder with respect thereto shall benefit and be appurtenant to all or any portion of Rivergate Park and any parcel of land that hereafter may come into common ownership with Rivergate Park and be contiguous with Rivergate Park. An area physically separated from Rivergate Park but having access thereto by means of public ways or private easements, rights-of-way, or licenses shall be deemed to be contiguous with Rivergate Park for purposes of this paragraph.
9. Division of Dominant Estate. If Rivergate Park hereafter shall be divided into two or more parts by separation of ownership or by lease, all parts shall enjoy the benefits of the Easement.
10. Use of the Easement Premises. Use of the Easement Premises shall not be limited over the years by any change or changes in circumstances whatsoever, including without limitation changes with respect to use of Rivergate Park, improvements thereon, or means of transportation thereto or therefrom, or changes in technology that affect Rivergate Park, or use of the Easement Premises.
11. Covenants Running With the Land. The Easement and the rights hereunder with respect thereto are intended to be, and shall be construed as, covenants (and not conditions) running with the land if declared herein for the benefit of Rivergate Park, binding upon RTA, and its successors and assigns, and inuring to the benefit of, and enforceable in law and at equity by, Cleveland Metroparks, and its successors and assigns.
12. Quiet Enjoyment. Upon observing and keeping all covenants, agreements, and conditions of this Agreement on its part to be observed or kept, Cleveland Metroparks shall quietly have and enjoy the Easement, the Easement Premises, and the rights hereunder with respect thereto during the term thereof, without hindrance, interference, or molestation of any sort by anyone whomsoever.
13. Notice. All notices, requests, demands, and other communications in connection with this Agreement shall be made in writing and shall be deemed to have been given when hand delivered or upon deposit at any general or branch United States Post Office by registered mail, postage prepaid, addressed:

a. If to RTA, to:

General Manager/Chief Operating Officer
Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113

b. With a copy to:

General Counsel
Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113

c. If to Cleveland Metroparks, to:

Chief Executive Officer
Cleveland Metropolitan Park District
4101 Fulton Parkway
Cleveland, Ohio 44144

d. With a copy to:

Chief Legal & Ethics Officer
Cleveland Metropolitan Park District
4101 Fulton Parkway
Cleveland, Ohio 44144

or such other address as may be set forth by either party in a written notice delivered in accordance herewith.

14. Entire Agreement. This Agreement constitutes the entire agreement between RTA and Cleveland Metroparks with respect to the subject matter hereof and supersedes any and all prior or contemporaneous negotiations, understandings, or agreements, written or oral, with respect thereto.
15. Modification; Waiver. No modification of this Agreement, and no waiver of any provision hereof, shall be effective or binding upon RTA or Cleveland Metroparks unless set forth in writing authorized and executed by RTA and Cleveland Metroparks, or their successors or assigns, with the same formality as this Agreement and recorded in the Cuyahoga County, Ohio, Records.
16. Severability. If any provision of this Agreement shall be or become invalid or unenforceable by judgment, court order, legislative mandate, or otherwise, then this Agreement shall be divisible as to such provision, and all other provisions hereof shall remain in full force and effect as though such provision were not included herein.
17. Further Assurances. RTA and Cleveland Metroparks respectively agree that each will execute and deliver to the other from time to time any and all documents that either party reasonably may request in order to effectuate the provisions of this Agreement.
18. Governing Law. This Agreement shall be governed by the laws of the State of Ohio.
19. Insurance. Cleveland Metroparks shall maintain and pay for, or cause to be maintained and paid for, commercial liability insurance. Such insurance shall insure against claims for bodily injury (including death) and property damage, with each policy having a combined single limit of not less than \$1,000,000 per occurrence, and shall name RTA as an additional insured. Certificates that evidence the above-mentioned coverage shall be furnished to RTA effective as of the recordation of this Agreement and, from time to time, within thirty (30) days after RTA's request. Cleveland Metroparks shall at all times cause its contractors and any subcontractors (together, the "Contractors") granted access to the Easement Premises by Cleveland Metroparks to maintain commercial general liability insurance in commercially reasonable amounts and with commercially reasonable deductibles naming Cleveland Metroparks and

RTA as additional insureds with respect to claims arising under this Agreement. Upon the request of RTA, Cleveland Metroparks shall cause such Contractors to deliver to Grantor a certificate of insurance evidencing that such coverage is in full force and effect.

20. Liens. In no event shall Cleveland Metroparks (or its permittees) be permitted to cause any lien upon RTA Property, and if any such lien is filed against RTA Property as a result of the acts or omission of Cleveland Metroparks (and/or of any of its permittees), Cleveland Metroparks shall, at its sole cost and expense, cause such lien to be discharged within sixty (60) days after written notice thereof from RTA.
21. Real Estate Taxes. The Easement Premises are presently exempt from real estate taxes, and RTA and Cleveland Metroparks agree to cooperate in any tax exemption initiative, application or undertaking that may in the future be necessary to preserve and/or restore such exemption.
22. Third-Party Rights. Nothing herein expressed or implied is intended or shall be construed to confer upon any other entity, other than as herein set forth, any rights or remedies under, or by reason of, this Agreement.
23. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which when taken together shall constitute one and the same instrument.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

**GRANTOR: GREATER CLEVELAND REGIONAL
TRANSIT AGENCY**

By: _____

Name:

Title:

Date: _____

Approved as to legal form and
Correctness:

General Counsel

TATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Before me a Notary Public in and for said County and State, personally appeared the GREATER CLEVELAND REGIONAL TRANSIT AGENCY, a political subdivision of the State of Ohio, by _____, its _____, who acknowledged that he did sign the foregoing Agreement, and that the same is his free act and deed personally and as said officer of said Agency.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this _____ day of _____, 2018.

Notary Public

My commission expires: _____

**GRANTEE: BOARD OF PARK COMMISSIONERS OF
THE CLEVELAND METROPOLITAN PARK DISTRICT**

By: _____
Brian M. Zimmerman
Chief Executive Officer

Date: _____

Approved as to legal form by Rosalina M.
Fini, Chief Legal & Ethics Officer,
Cleveland Metroparks.

Kyle G. Baker, Senior Assistant Legal Counsel

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Before me a Notary Public in and for said County and State, personally appeared the BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT, a political subdivision of the State of Ohio, by Brian M. Zimmerman, its Chief Executive Officer, who acknowledged that he did sign the foregoing Agreement, and that the same is his free act and deed personally and as said officer, and the free act and deed of said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this _____ day of _____, 2018.

Notary Public

My commission expires: _____

This instrument was prepared by,
and should be returned to:
Cleveland Metroparks
Administrative Offices
4101 Fulton Parkway
Cleveland, Ohio 44144

EXHIBIT A-1
Depiction of Non-Shared Trail Easement Premises

EXHIBIT A-2
Depiction of Shared Trail Easement Premises

EXHIBIT A-3
Depiction of Non-Shared Trail Easement South of Abbey Road Premises

EXHIBIT B-1
Legal Description of Non-Shared Trail Easement Premises

EXHIBIT B-2
Legal Description of Shared Trail Easement Premises

EXHIBIT B-3
Legal Description of Non-Shared Trail Easement South of Abbey Road Premises

TIGER - Red Line Greenway

