

RESOLUTION NO. 2019-10

AUTHORIZING THE AUTHORITY TO ENTER INTO A TRANSIT-ORIENTED DEVELOPMENT FARE AGREEMENT WITH ASPEN PLACE APARTMENTS L.P.

WHEREAS, Aspen Place Apartments L.P. is an Ohio limited partnership whose business address is 6516 Detroit Avenue, Suite 1, Cleveland, Ohio 44102 (hereinafter "Aspen Place") that is developing a new 49,000 square foot apartment building providing forty (40) new units of affordable housing with a mixture of 1- BR, 2- BR and 4-BR units immediately adjacent to the Authority's West 65th St. Rapid Transit Station ("Station"); and

WHEREAS, pursuant to Resolution No. 2017-71, the Authority entered into a purchase and sale agreement on September 6, 2017, to transfer certain real estate adjacent to the Station to Aspen Place, and a parking lease on October 17, 2017 allowing Aspen Place to use 10 of its parking spaces at that location to facilitate this transit-oriented development project ("TOD Project"); and

WHEREAS, as part of the TOD Project, the Authority and Aspen Place ("the parties") agreed that GCRTA would provide one discounted monthly pass per residential unit to the residents of the Aspen Place apartment building, with the discount and other terms to be negotiated between the parties; and

WHEREAS, in its application for low-income housing credits, Aspen Place made a commitment to the Ohio Housing Finance Agency that it would provide transit passes to the residents; and

WHEREAS, after negotiations, the parties agreed to a discount of 60% for the first three years, 50% for years four and five and 25% for the remaining ten (10) years of the fifteen (15) - year term, with the possibility of extending the agreement for a mutually agreed upon term and price.

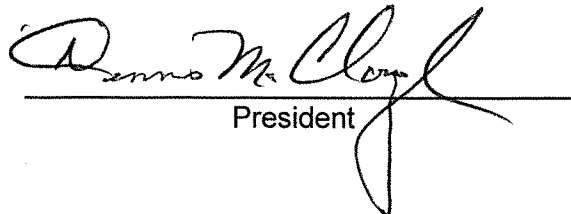
NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That the Interim CEO, General Manager/Secretary-Treasurer is authorized to enter into a Transit-Oriented Development Fare Agreement with Aspen Place Apartments L.P to provide monthly passes to its residents for a term of fifteen (15) years and to negotiate an extension of the agreement for a mutually agreeable term and price.


Section 2. That the Authority will provide 40 passes per month at a discount of 60% for the first three years, 50% for years four and five and 25% for the remaining ten (10) years of the fifteen (15) - year term, for this new transit-oriented development project.

Section 3. That this resolution shall become effective immediately upon its adoption.

Adopted: January 15, 2019



President

Attest: 

Interim CEO, General Manager/Secretary-Treasurer



TITLE/DESCRIPTION: AUTHORIZING TRANSIT-ORIENTED DEVELOPMENT FARE AGREEMENT WITH ASPEN PLACE APARTMENTS L.P.	Resolution No.: 2019-10
	Date: January 10, 2019
	Initiator: Finance & Administration
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 will permit the Authority to enter into a transit-oriented development fare agreement with Aspen Place Apartments L.P. ("Aspen Place") to provide 40 passes per month to its residents at a discount of 60% for the first three years, 50% for years four and five and 25% for the remaining ten (10) years of the fifteen (15) year term, with the possibility of extending the agreement for a mutually agreed upon term and price.
- 2.0 **DESCRIPTION/JUSTIFICATION:** Aspen Place is a 49,000 square foot apartment building providing forty (40) new units of affordable housing with a mixture of 1- BR, 2- BR and 4-BR units immediately adjacent to the Authority's W. 65th Street Rapid Transit Station ("Station") and Lorain Avenue bus stop in the heart of the Detroit Shoreway neighborhood's EcoVillage. Pursuant to Resolution No. 2017-71, the Authority entered into a purchase and sale agreement on September 6, 2017, to transfer certain real estate adjacent to the Station to Aspen Place, and a parking lease on October 17, 2017 allowing Aspen Place to use 10 of its parking spaces at that location to facilitate this transit-oriented development project ("TOD Project"). By entering into this fare agreement with Aspen Place, the Authority is contributing to the success of the TOD Project.
- 3.0 **PROCUREMENT BACKGROUND:** Does not apply.
- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Does not apply.
- 5.0 **POLICY IMPACT:** Aspen Place is a transit-oriented development project. Entering into this Transit Oriented Development Fare Agreement with Aspen Place will support the Authority's policy of encouraging transit-oriented development.
- 6.0 **ECONOMIC IMPACT:** Initially, the discount of 60% is significant, but mitigated by the fact that only 40 monthly passes are being provided. The discounts decrease over time. This agreement is GCRTA's first fare agreement with a TOD Project.
- 7.0 **ALTERNATIVES:** Not adopting this resolution would impact Aspen Place's commitment to the Ohio Housing Finance Agency to provide transit passes to its residents.
- 8.0 **RECOMMENDATION:** It is recommended that this resolution be approved.

9.0 ATTACHMENT: A. Draft Transit-Oriented Development Fare Agreement.

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



Interim CEO, General Manager/Secretary-Treasurer

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TRANSIT ORIENTED DEVELOPMENT FARE AGREEMENT
BETWEEN
THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY
AND
ASPEN PLACE APARTMENTS L.P.

This Agreement is entered into this ____ day of _____, 2019, by and between the GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, a political subdivision of the State of Ohio having an office located at 1240 West 6th Street, Cleveland, Ohio 44113-1331 (hereinafter "GCRTA"), and ASPEN PLACE APARTMENTS L.P., an Ohio limited partnership whose business address is 6516 Detroit Avenue, Suite 1, Cleveland, Ohio 44102 (hereinafter "Aspen Place").

WHEREAS, Aspen Place is the owner of Aspen Place Apartments, a 40-unit apartment building providing affordable housing in Cleveland's EcoVillage neighborhood, adjacent to GCRTA's West 65th St. Rapid Transit station; and

WHEREAS, Aspen Place Apartments is a transit-oriented development, designed to provide housing in proximity to public transportation and other amenities; and

WHEREAS, GCRTA and Aspen Place have agreed in a letter of intent dated January 21, 2016 that GCRTA will provide discounted monthly transit passes for the residents of the Aspen Place Apartments and that Aspen Place will include the cost of such passes in the operating budget for Aspen Place Apartments so that the monthly transit passes can be provided to residents at no additional cost to the residents.

NOW, THEREFORE, in consideration of the mutual promises and the terms and conditions contained herein, Aspen Place and GCRTA agree as follows:

1. Passes. Prior to the first day of each month during the Term of this Agreement, GCRTA will deliver 40 Bus/Rapid/BRT monthly passes ("Passes") to Aspen Place along with a delivery manifest for the total number of Passes. Aspen Place shall acknowledge receipt of the Passes by signing and returning the delivery manifest. Aspen Place will furnish one Pass to each unit of the Aspen Place Apartments in accordance with the procedures outlined in Attachment A hereto, which is incorporated herein by reference, and include the cost of each pass in the operating expense budget for Aspen Place Apartments. Aspen Place shall refer to the Pass as part of the rental term in the lease with each tenant. Notwithstanding the foregoing, as Aspen Place Apartments leases up during the first six (6) months of the term of this Agreement, Aspen Place will return any unused Passes by the 20th of each month, and shall receive a refund for such unused Passes.
2. Payment of Invoices. Aspen Place shall make a lump sum annual payment for one year of Passes prior to the beginning of each year of this Agreement, prior to delivery of the Passes. For the first three years of the Term of this Agreement, GCRTA shall invoice and Aspen Place shall pay an amount that is 40% of the then-current full fare price for 40 Passes per month. For the fourth and fifth years of the Term of this Agreement, GCRTA shall invoice and Aspen Place shall pay an amount that is 50% of the then-current full fare price for 40 Passes per month. For the remaining ten years of the Term of this Agreement, GCRTA shall invoice and Aspen Place shall pay an amount that is 75% of the then-current full fare price for 40 Passes per month. Aspen Place shall

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ATTACHMENT A

remit payment to GCRTA's Accounting Department at 1240 West 6th St., Cleveland, Ohio 44113. Upon receipt of payment, GCRTA will deliver the first shipment of Passes to Aspen Place.

3. Term of Agreement. The term of this Agreement shall commence on February 1, 2019 (the "Commencement Date"), and shall continue through January 31, 2034. If Aspen Place wishes to renew this Agreement, it shall notify GCRTA at least six (6) months prior to the termination and the parties shall enter into good faith negotiations to agree upon the terms of a new agreement. The duration and price are to be negotiated at the time of the renewal.
4. Termination. If Aspen Place fails to observe or perform any of the provisions, terms, or conditions required by this Agreement, then GCRTA may suspend or terminate this Agreement upon ninety (90) days written notice to Aspen Place, during which ninety (90) day period Aspen Place will have the opportunity to cure any default hereunder ("Termination for Cause"). Either party may terminate this Agreement upon ninety (90) days written notice to the other party ("Termination for Convenience"). The parties understand that Aspen Place has made commitments to the Ohio Housing Finance Agency and its investors. If GCRTA's termination of this Agreement for convenience impacts Aspen Place's commitments, the parties will negotiate a mutually agreeable resolution. The expiration or termination, for any reason, of this Agreement, shall be without prejudice to the rights of the parties hereto and shall not relieve either party of its obligations hereunder.
5. Recordkeeping/Audits and Inspections. Aspen Place shall maintain books, records, documents, and other evidence of all of Aspen Place's transactions in connection with the handling of GCRTA's Passes. GCRTA and its authorized representatives shall have the right to audit, to examine and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of Aspen Place, which shall include log books or other documentation of the individuals receiving Passes and copies of leases with the exception of the personal financial information of tenants. Aspen Place shall, at all times during the term of this Agreement and for a period of three (3) years after the completion of this Agreement, maintain such records, together with any supporting or underlying documents and materials. Aspen Place shall at any time requested by GCRTA, whether during or after completion of this Agreement, and at Aspen Place's own expense make such records available to GCRTA for inspection and audit during normal business hours at Aspen Place's office or place of business. If the audit discovers material and substantial findings related to fraud, misrepresentation, or non-performance, GCRTA may recoup the reasonable costs of the audit work from Aspen Place. Any adjustments and/or payments that must be made as a result of any such audit or inspection shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of GCRTA's reasonable findings to Aspen Place.
6. Confidentiality. Subject to the Ohio Public Records Law, GCRTA will maintain the confidentiality of information that it receives pursuant to this Agreement that is identified as confidential.
7. Independent Contractor. At all times during the term of this Agreement, the relationship between GCRTA and Aspen Place shall be that of independent contractors. Aspen Place shall limit its activities related to GCRTA's Passes to the obligations and duties specified in this Agreement. Aspen Place shall have no authority, express or implied, to act on behalf of GCRTA in any capacity whatsoever as an agent. Aspen Place shall have no authority, express or implied,

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ATTACHMENT A

pursuant to this Agreement to bind GCRTA to any obligation whatsoever except as specified in this Agreement for the distribution or sale of Passes.

8. Arbitration. All claims and disputes relating to this Agreement shall be subject to arbitration at the option of Aspen Place or GCRTA, in accordance with the Arbitration Rules of the American Arbitration Association for the public transit industry then in effect. Written notice of demand for arbitration shall be filed with the other party to this Agreement and with the American Arbitration Association within a reasonable time after the dispute has arisen.
9. Assignment. The rights and responsibilities under this Agreement will not be assigned or otherwise transferred by either party without the written consent of the other party.
10. Entire Agreement; Changes; Alterations. This Agreement constitutes the entire agreement of the parties and supersedes any prior written or oral agreements or understandings. No change, alteration, modification, or addition to this Agreement shall be effective unless reduced to written form, signed by both parties, and incorporated herein by amendment.
11. Applicable Law. This Agreement and any disputes relating thereto shall be construed under the laws of the State of Ohio.
12. Contract Terms Exclusive. This Agreement supersedes all previous agreements and understanding with respect to GCRTA providing Passes for the residents of Aspen Place. This Agreement constitutes the entire agreement between the parties hereto and the parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery hereof except as specifically set forth herein and each of the parties hereto acknowledges that it has relied on its own judgment in entering into the same.
13. Other Interests. No person not a party to this Agreement shall have any rights or entitlement of any nature under it.
14. Contract Administrator. GCRTA's contract administrator for this Agreement is Rajan D. Gautam, Deputy General Manager for Finance and Administration. Aspen Place's contract administrator is Anya Kulcsar, Director of Real Estate Development, Detroit Shoreway Community Development Organization. All questions and correspondence relating to the contractual aspects of this Agreement should be directed to Mr. Gautam and Ms. Kulcsar or their designee(s) or successors.
15. Governing and Applicable Law. This Agreement and all future amendments shall be governed by and interpreted pursuant to the laws of the United States and of the State of Ohio, and the Courts of Cuyahoga County, as appropriate, notwithstanding any provisions of such laws relating to jurisdiction. In the performance of this Agreement, the parties shall comply with all applicable federal, state, and municipal laws and regulations.
16. Headings. All headings, subheadings, and titles in this Agreement are for guidance purposes only and shall not be used to interpret or enforce any part of the Agreement.
17. Waiver. A waiver by either party of any breach or default by the other party under this Agreement

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ATTACHMENT A

shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

- 18. Severability. The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.
- 19. Notices. All notices required by this Agreement shall be in writing and delivered to the other party by personal delivery or by registered or certified mail, postage prepaid. Notices sent by delivery service or commercial carrier shall be deemed effective and complete at the time of acceptance by delivery service or posting in accordance herewith. Notice shall be delivered or mailed to the parties at the addresses below or at such other address or addresses each may hereafter designate in writing:

Aspen Place Apartments L.P.
 c/o Detroit Shoreway Community
 Development Organization
 6516 Detroit Road, Suite 1
 Cleveland, OH 44102
 Attn: Director of Real Estate Development

Greater Cleveland Regional Transit Authority
 Attn: Rajan D. Gautam
 Deputy General Manager, Finance &
 Administration
 1240 West 6th Street
 Cleveland, OH 44113

IN WITNESS WHEREOF, the parties have executed this Agreement at Cleveland, Ohio, the day and year first above written.

WITNESS:

ASPEN PLACE APARTMENTS L.P.

By: Aspen Place Apartments, Inc.,
 an Ohio corporation, its General Partner

 Jeffrey M. Ramsey, Assistant Secretary

81-3159342
 Federal Tax ID Number

WITNESS:

GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY

 Floun'say R. Caver, PhD., Interim CEO,
 General Manager/Secretary-Treasurer

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APPROVED AS TO LEGAL FORM:

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

ATTACHMENT A TO TRANSIT ORIENTED DEVELOPMENT FARE AGREEMENT

Process for GCRTA Passes – Aspen Place

- GCRTA will send an annual invoice to Aspen Place Apartments L.P. (the “Partnership”) on or before November 15. The Partnership will make the annual lump sum payment on or before December 20.
- The passes will be delivered to DSCDO Accounting Department by the 25th of each month for the next month. Passes will be numbered or otherwise individually identifiable.
 - Passes will be stored in a secure location within the DSCDO office prior to being distributed to tenants.
- DSCDO will maintain a secure log of each pass and the corresponding household receiving that pass.
 - Tenants will sign an acknowledgement form and/or log when receiving their pass.
 - An addendum will be included within the lease packet which outlines that passes are intended for use by members of the household which are included on the lease, and not to be sold or utilized by non-household members. If permitted by law, a violation of this addendum will be considered a lease violation and cause for termination of the lease. The addendum will be signed by the tenant.
 - Replacement passes are not available if the pass is lost or stolen.
- Households will be eligible to receive their monthly transit pass from the 26th to the 15th of each month at the DSCDO Property Management office. A DSCDO staff member will be on-site at Aspen Place a minimum of one day per month (an evening and/or weekend) to distribute passes to eligible households who are unable to acquire a pass from the DSCDO office during normal work hours.
 - Tenants must provide evidence of rent payment in order to receive their pass. If payment was made at First Federal of Lakewood, tenants must bring their stamped receipt to the property management office to confirm payment has been made.
 - All passes that are unclaimed by the 15th of each month will be logged as unclaimed, and returned to GCRTA. During the initial six (6) month lease-up period, the Partnership will receive a credit for every unused pass. The aggregate credit for such lease-up period will be applied to offset the payment owed for the second year.