

RESOLUTION 2019-33

AUTHORIZING THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY TO EXECUTE A NON-BINDING LETTER OF INTENT WITH CARNEGIE MANAGEMENT AND DEVELOPMENT CORPORATION, AN OHIO CORPORATION, FOR TRANSIT-ORIENTED DEVELOPMENT OF GCRTA PROPERTY LOCATED AT COLUMBUS ROAD AND ABBEY AVENUE, ADJACENT TO THE WEST 25TH STREET RAPID TRANSIT STATION

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") is the owner of record of the land located at the intersection of Abbey Avenue and Columbus Road in the City of Cleveland, Ohio, known as Permanent Parcel Numbers 007-11-021, 007-11-022 and 007-11-025 (the "Property"); and

WHEREAS, the Property was purchased by GCRTA in 1988 from The Cleveland Union Terminal to support and improve the Red Line West Rapid Transit Line and the West 25th Street Rapid Transit Station; and

WHEREAS, the Property has been on GCRTA's list of excess properties with the Federal Transit Administration ("FTA") since 2012; and

WHEREAS, a Transit-Oriented Development Plan was completed in 2013 for the West 25th Street Station that recommended a Transit Oriented Development ("TOD") program for this site; and

WHEREAS, the GCRTA has advertised and marketed the Property for a TOD project through a competitive Request for Qualifications ("RFQ") process in accordance with GCRTA's policies and procedures for joint development adopted by the Board of Trustees in Resolution No. 1991-103 and the TOD policy adopted by the Board in Resolution No. 2007-054; and

WHEREAS, on November 20, 2019, the GCRTA RFQ review process selected Carnegie Management and Development Corporation ("Carnegie"), located at 27500 Detroit Road, Suite 300, Westlake, Ohio 44115, as the highest ranked development firm responding to the RFQ process; and

WHEREAS, Carnegie has successfully developed and managed quality mixed-use commercial real estate projects throughout the United States and intends to develop a mixed-use TOD project on the Property; and

WHEREAS, a mixed-use TOD was determined to be the highest and best use for the Property in accordance with current TOD goals and objectives; and

WHEREAS, with the execution of the non-binding Letter of Intent, GCRTA will advance the RFQ process to a final phase and make a determination whether to enter into a binding Development and Use Agreement with Carnegie or terminate the RFQ process; and

WHEREAS, GCRTA and Carnegie have negotiated additional terms and conditions in the Letter of Intent to advance the RFQ process to its conclusion.

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

Section 1. That the property owned by the Authority and located at the intersection of Abbey Avenue and Columbus Road, Cleveland, Ohio, and known as Permanent Parcel Numbers of 007-11-021, 007-11-022 and 007-11-025 (the "Property") is excess property, as identified in 2012 by GCRTA staff and thus not required for GCRTA operations.

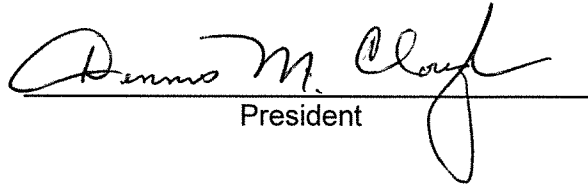
Section 2. That development of the Property for mixed-use is the highest and best use for the Property and the proposed development is consistent with the W.25th Street Station Transit Oriented Development ("TOD") Plan completed by GCRTA in 2013.

Section 3. That the Interim CEO, General Manager/Secretary-Treasurer is hereby authorized to execute a non-binding Letter of Intent with Carnegie Management and Development Corporation ("Carnegie") authorizing Carnegie to have access to the Property to perform real estate due diligence, and is further authorized to execute other documents as required to complete the due diligence.

Section 4. That the term of the non-binding Letter of Intent is nine (9) months from the date of execution thereof.

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

Adopted: March 26, 2019



President

Attest: 

Interim CEO, General Manager/Secretary-Treasurer



TITLE/DESCRIPTION: CONTRACT: NON-BINDING LETTER OF INTENT CONSULTANT: CARNEGIE MANAGEMENT AND DEVELOPMENT CORPORATION PURPOSE: FOR TRANSIT-ORIENTED DEVELOPMENT OF GCRTA PROPERTY LOCATED AT COLUMBUS ROAD AND ABBEY AVENUE, ADJACENT TO THE WEST 25 TH STREET RAPID TRANSIT STATION	Resolution No.: 2019-33
	Date: March 22, 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 execute a non-binding Letter of Intent with Carnegie Management and Development Corporation (“Carnegie”) to perform real estate due diligence on property owned by the Greater Cleveland Regional Transit Authority (“GCRTA”) and located at the intersection of Abbey Avenue and Columbus Roads in Cleveland, OH and known as part of Permanent Parcel Nos. 007-11-021, 007-11-022 and 007-11-025 (the “Property”).

2.0 **DESCRIPTION/JUSTIFICATION:** GCRTA acquired this Property in 1988 by purchase from The Cleveland Union Terminal to support the operation and improvement of the Red Line Rapid Transit System.

The property is vacant land which has been on GCRTA’s list of excess property since 2012 and is no longer required for GCRTA operations. A portion of the site is proposed for a transit oriented development (“TOD”). The Authority engaged in a Request for Qualifications (“RFQ”) process, in accordance with GCRTA’s joint development and TOD policies and procedures. Carnegie’s proposal was selected through the RFQ process as the highest ranking proposal. Carnegie is a highly respected developer, owner and manager of quality mixed-use real estate projects throughout the United States.

In order to perform standard real estate due diligence, Carnegie will require access to the Property. GCRTA and Carnegie need to enter into a non-binding Letter of Intent with a term of nine (9) months. Carnegie will follow all GCRTA procedures related to access of rail-related property. Access will not adversely affect GCRTA rail operations.

A mixed-use TOD was determined to be the highest and best use for the excess property and will promote the TOD and economic development goals of GCRTA. This project will enhance the value of the remaining GCRTA TOD sites throughout the system.

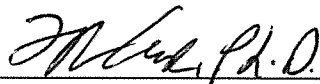
A determination will be made during the nine (9) month due diligence period whether to enter into a Development and Use Agreement or, alternately, terminate the process. If the due diligence period results in the determination to proceed, then a Development and Use Agreement with Carnegie will require approval from the Board of Trustees in accordance to Section 470.08 of the Real Estate Policies, and also concurrence from the FTA.

3.0 **PROCUREMENT BACKGROUND:** Does not apply.

4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Does not apply.

- 5.0 POLICY IMPACT: This RFQ process is in compliance with the TOD guidelines established by GCRTA and is consistent with the Real Estate Policies of GCRTA.
- 6.0 ECONOMIC IMPACT: There is no monetary cost to GCRTA to grant Carnegie access to the Property.
- 7.0 ALTERNATIVES: GCRTA can refuse to execute the non-binding Letter of Intent and terminate the RFQ process.
- 8.0 RECOMMENDATION: On March 5, 2019 the Audit, Safety Compliance and Real Estate Committee reviewed the RFQ process and referred it to the full Board of Trustees for action. Staff recommends the Board of Trustees authorize the execution of the non-binding Letter of Intent with Carnegie Management and Development Corporation to advance the RFQ process for the Columbus Road TOD Project.
- 9.0 ATTACHMENT: A. Draft Letter of Intent

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



Interim CEO, General Manager/Secretary-Treasurer

March ____, 2019

DRAFT

Carnegie Management and Development Corporation, Inc.
27500 Detroit Road, Suite 300
Westlake, OH 44145
Attn: Dr. Rustom R. Khouri

Re: **Letter of Intent** for the Columbus Rd. Development Site, Cleveland, Ohio (the “Project”)

Dear Dr. Khouri:

This Letter of Intent (“LOI”) sets forth a summary of the material terms and conditions under which the Greater Cleveland Regional Transit Authority (“GCRTA”) and Carnegie Management and Development Corporation, or its designated assignee as the ownership “Entity” for the Project as is more specifically set forth in Section 3 below (“Developer”), would be willing to enter into a mutually agreeable binding agreement for developing the above-referenced Project (“Development Agreement”). GCRTA or Developer may hereinafter be referred to as a “Party” or together as “Parties.” The following terms and conditions under consideration include but are not limited to the following:

1. Project Description.

The Project will consist of a multi-story mixed use development along the transit corridor located on approximately 3.2 acres of GCRTA-owned real property, along with all improvements and hereditaments, thereon bounded by Abbey Avenue, Columbus Road, West 25th Street, Lorain Road, and Gehring Street in the City of Cleveland (the “Project Site”), as generally depicted on the site plan attached hereto as **Exhibit A**. Developer submitted the concept forming the basis for this Project on October 11, 2018 in response to the Request for Qualifications (RFQ) issued by GCRTA on August 27, 2018.

The Project will be a Transit-Oriented Development (“TOD”) comprised of a mix of office, retail and residential space which may be structured parking, outdoor public space and a potential renovation of the current W. 25th Street Station to the north and other components, the exact ratio of which has yet to be determined and will vary based on market demand, feasibility analysis, community input, and other variables.

The Project will demonstrate high quality design and architecture; it will include a balanced and thoughtful mix of uses, incorporate economically feasible, sustainable development practices to be in line with the following, commercial design guidelines and TOD principles (“Development Objectives”):

- Leverage presence of W. 25th Street Station and improve connectivity and contextual compatibility with surrounding neighborhoods (Ohio City, Tremont, Flats/Rivergate, and Duck Island);

- Provide physical modifications to the West 25th Street Station to facilitate access from adjacent neighborhoods and support increased transit ridership;
- Enhance the transportation network to better balance accommodations for all travel modes (motorized and non-motorized);
- Support a sustainable, livable, and walkable environment;
- Create a mix of uses that are complementary and symbiotic to establish a synergy of economic stability; and
- Provide an economically feasible TOD that will: (i) support 16-hour activity within the TOD area, (ii) incorporate underutilized and publically-owned land, (iii) provide site-specific Project components, (iv) respond to market demands through design and Project programming, and (v) establish zoning guidelines that are compatible with the Project's needs as a planned development by creating innovative architecture and areas sensitive to the fabric of the community.

2. Project Components.

The following Project Components are required:

- a. **Office and Retail Development.** The Project will include a mix of retail and office users, the square footage total for each use will be determined by feasibility studies and market demands to ensure the Project is a success and incorporated into the final approved Plans.
- b. **Residential Development.** The Project will include residential units that will be (i) reflective of current and anticipated market conditions, (ii) respectful and sensitive to the scale and character of the surrounding neighbors and (iii) responsive to the changing dynamics of housing demand and availability within the City of Cleveland.
- c. **Parking.** The Project will provide the required parking to support the proposed uses in a manner which is convenient yet unobtrusive to facilitate their respective operations. Final parking requirements will be established in connection with the rezoning approval; however, parking should reflect the needs of the users and future anticipated parking demands and changes to community transportation preferences.
- d. **Walkability and Green Space.** The Project will incorporate high-quality, pedestrian-friendly green space. The acreage and location of green space dedicated in the Project will be based on programming needs with input from community stakeholders, including integrating and being compatible with the proposed improvements known as the Redline-Greenway project by the Cleveland Metroparks organization. Developer will have as its goal that green spaces are included in the Project which: (i) complement adjacent users, (ii) offer areas of relaxation and respite, (iii) encourage use of the RTA, (iv) promote simple, walkable connections and outdoor activities throughout the Project, and (v) are in keeping with the green space approach typically included in current comparable TOD sites in similar-sized cities and projects.

- e. **Community Engagement.** Developer and its team will engage the community to ensure that the surrounding neighbors, adjacent landowners, local Development Corporations, advisory committees, and tenants remain informed. Developer may set-up a website to enable members of the community to provide input as the Project progresses, and to which Developer will review and respond. Specifically, Developer will remain open to working with GCRTA, the City of Cleveland, Ohio City Incorporated, Tremont West Development Corporation, Duck Island Block Club, West Side Market Tenants Association, Cleveland Metroparks, and any other adjacent community stakeholders with an interest in the Project, and shall keep the community apprised of milestones and updates on the Project as they become publicly available.

The following Project Components are potential:

- f. **Residential Senior Housing.** In addition to standard market-rate residential units as set forth in Section 2.b, the Project may include age-restrictive residential units to meet anticipated market demand for senior residential units within the City of Cleveland (“Senior Housing”). Developer shall work to include Senior Housing in the Project’s residential development, provided it is economically feasible.
- g. **Hotel/Hospitality.** The Project may include a hotel and/or hospitality user to accommodate and encourage visitors to the Project, and enhanced tourism within the community and the City of Cleveland.
- h. **Community/Institutional Unit.** To the extent economically feasible, the Project may include an educational unit and user dedicated to direct, positive impact in the neighborhood, i.e., employment training and placement. Developer shall work with community stakeholders to determine need and feasibility in meeting this goal.
- i. **Enhance the West 25th Street Station.** Based on economic stimulus funding available for station improvements, the Developer will endeavor to improve the station and integrate it into the TOD to enhance connectivity and pedestrian accessibility.
- j. **Air Rights.** The Project will require acquisition of the air rights currently owned by GCRTA or the City of Cleveland along the transit corridor from the West 25th Street Station south, as necessary to accommodate the proposed TOD by the Developer. Developer, in concert with the GCRTA, will negotiate the acquisition of any air rights that impact development of the Project Site.
- k. **Historical Significance.** GCRTA and Developer acknowledge the historical significance of the Project Site to the City of Cleveland and the surrounding communities that come together at the Project Site, including but not limited to the West Side Market and Ohio City, Tremont, Duck Island and the west bank of the Flats. To the extent economically feasible, Developer shall make an effort to be

sensitive to the architectural character of the area and integrate contextual elements to achieve compatibility of the Project's design with its surroundings and honor the history it represents.

1. Timing Requirements. GCRTA and Developer acknowledge that time is of the essence on this Project; however, the transformative nature of the Project necessitates a deliberate process through which the design is properly vetted for responsiveness to market demands with community input adequately recognized. In this regard the schedule must show a meticulous devotion to allotting the appropriate time for the proper evolution of the design for the Project. GCRTA and Developer shall in good faith diligently pursue negotiations and execution of a Development Agreement by May 1, 2019. Other milestone dates will be used as non-binding benchmarks to be adjusted as the Project progresses:

- Complete due diligence on the Project Site by February 1, 2020.
- Secure air rights necessary for the Project by March 1, 2020.
- Receive final approval for the Project design from the City of Cleveland Planning Commission by June 1, 2020.
- Commence construction on the Project by October 15, 2020.

GCRTA and Developer will work together with other community stakeholders to refine the Project schedule as progress is made.

3. Economic Relationship between GCRTA and Developer and Project Site Acquisition.

a. Entity Formation. Upon Project Site Conveyance, as is more specifically set forth below, Developer shall create a bankruptcy-remote subsidiary entity to function as the owner of the Project, of which Developer will be the Manager (the "Entity"). Developer, as the managing agent for the Entity and the Project, shall be primarily responsible for the development, management and operation of the Project. Developer shall be the majority owner of the Entity; however, GCRTA will maintain a mutually agreed upon percentage of ownership based on the Appraisal (as defined below) but no less than three percent (3%) of the total ownership units, which shall constitute a non-voting and non-managerial interest in the Entity entitled to receive distributions as a shareholder in the Entity. GCRTA and Developer acknowledge that this Entity shall be structured to ensure GCRTA retains a long-term revenue interest in the Project, in addition to the Project's commitment to increase ridership and generate renewed interest in public transit. GCRTA and Developer also acknowledge that the mutually agreed upon ownership percentage of GCRTA in the Entity will never be subject to additional cash call or dilution by an act of the Managing Member.

b. Due Diligence Period. Developer will have a period of nine (9) months following the execution of the Development Agreement, which period may be extended for one additional three-month period (collectively, the "Due Diligence Period"), provided Developer is working in good faith, to conduct any inspections of the

Project Site Developer deems necessary or desirable to confirm the feasibility of the Project and the condition of the Project Site, including without limitation, physical inspections, environmental inspections, tests and surveys, soil borings, geotechnical testing, surveys and title searches. GCRTA will provide Developer with copies of any inspections and reports previously conducted on the Project Site within fourteen (14) days of the execution of the Development Agreement. Prior to the expiration of the Due Diligence Period as may be extended, Developer in its sole discretion may elect to terminate the Development Agreement in writing, for any reason, and upon such termination, Developer will have no further rights, obligations, or liabilities under the Development Agreement except for mutually agreeable provisions of the Development Agreement that expressly survive termination.

- c. **Project Site Conveyance and Conditions to Closing.** If Developer does not elect to terminate the Development Agreement as provided herein, GCRTA will convey fee title to the Project Site to the Entity via limited warranty deed with reversionary rights. In consideration of Developer's commitment to pursue the goal of (i) constructing the Project in a first-class manner in accordance with the Development Objectives and the other provisions set forth in this LOI and (ii) the other economic benefits that are anticipated to be realized by the construction of the Project, GCRTA will convey the Project Site to the Entity for a nominal value as part of GCRTA's investment in the Project ("Purchase Price"). Conveyance of the Project Site to the Entity shall occur upon the following conditions being satisfied or waived: (A) Developer has obtained executed commitment letters from one or more lenders sufficient for financing shell construction of any component of the Project; (B) Developer has obtained a third-party appraisal of the Project as designed with City Approvals (as explained below) setting forth the projected value of the various components of the Project ("Appraisal"); (C) Developer, with assistance and support from GCRTA, has obtained the necessary rezoning and any required lot splits or consolidations contemplated by Section 4.a. below; (D) GCRTA, through its Board or other governing bodies that bind it, have approved the Project and the conveyance; (E) City Approvals on the plans and specifications for the Project as contemplated by Section 4(b) below have been obtained and the required air rights from the City of Cleveland to complete the approved project design; (F) Developer and GCRTA have agreed on GCRTA's ownership percentage based on the Appraisal and have executed the appropriate Entity formation documents evidencing same; and (G) such other customary closing conditions such as review and acceptance of satisfactory title and ALTA Survey, to be more particularly described in the Development Agreement. If the foregoing conditions to transfer the Project Site are not satisfied within twelve (12) months after the expiration of the Due Diligence Period, either Party shall have the option of terminating the Development Agreement, and upon such termination, the Parties will have no further rights or obligations under the Development Agreement except for provisions of the Development Agreement that expressly survive termination; provided, that Developer shall have the right to extend such period so long as Developer is diligently pursuing satisfaction of any remaining conditions.

- d. **Additional Conditions to Closing.** Developer acknowledges that approval of the Development Agreement is required from the GCRTA Board of Trustees and concurrence from the Federal Transit Administration (“FTA”) is also required prior to any conveyance of title for the Project Site.
 - e. **Appointment of Escrow Agent and Title Company.** Providence Title Agency, Inc., Melrose Office Park, 27540 Detroit Road, Suite 106, Westlake, Ohio 44145 Attn: Jeanne Inman, is hereby designated and appointed by the Parties hereto as the “Escrow Agent” to handle the funds and documents to be called for in the Development Agreement. The Escrow Agent shall also be the “Title Company” responsible for issuing the Commitment and Title Policy in partnership with a local First American Insurance Company agent acceptable to the Title Company as required pursuant to the Development Agreement.
 - f. **GCRTA Reversionary Right.** GCRTA shall retain a reversionary right to the Project Site in the event the Developer fails to demonstrate (to GCRTA’s reasonable satisfaction, not to be unreasonably withheld) that it has fulfilled the following conditions: (1) within twenty-four (24) months after conveyance of the Project Site, Developer has obtained executed commitment letters from one or more lenders sufficient for financing the construction of Phase 1 of the Project, together with confirmation from such lender(s) that they are prepared to close the financing; (2) by April 1, 2022, Developer shall have commenced construction of the Project as evidenced by commencing the pouring of the foundations of the Project (collectively referred to as the “Reversionary Conditions”). In the event of a failure to fulfill any of the Reversionary Conditions, the Entity shall convey fee ownership of the Project Site to GCRTA in a manner mutually acceptable to the parties.
4. **Design and Construction Guidelines.** Developer will in good faith diligently pursue the goal of constructing the Project in accordance with the Development Objectives, and the provisions contained in this LOI. In addition, the Project will be constructed in accordance with the plans and specifications approved by the City of Cleveland. The Project will reflect a design that is aesthetically pleasing and compatible with the neighborhood while meeting the economic requirements for constructing it. The Project will seamlessly integrate with the design, massing and materials of adjacent development and existing buildings in the surrounding neighborhood.

In addition, the Parties acknowledge that integral to the Project design scheme is coordination with the adjacent property to be developed known as the Harbor Bay Advisor’s Market Square Project. This coordination is vital to the evolution of this Project’s design and success. Developer will prepare and submit to the City for approval its plans for the exterior configuration, appearance, orientation and permitted uses of the Project. GCRTA will cooperate with Developer as is necessary in obtaining all such approvals.

- a. **Rezoning/Lot Split and Consolidation.** In connection with the Project, the Project Site will need to be rezoned using Site-Specific Zoning, as more particularly described in Chapter 334 of the Cleveland Zoning Code. The Parties will work together to commence the rezoning process as soon as possible after execution of the Development Agreement. In light of Developer obtaining a survey of the Project Site in connection with its due diligence, Developer also shall engage such surveyor to undertake a lot consolidation and any lot splits required by Developer for the development of the Project.
 - b. **City Approvals.** The plans and specifications for the Project will be subject to review and approval by the various governing committees and advisory boards for the City of Cleveland, including without limitation, the City Council, the City Planning Commission, the local community development corporations, the Design Review Advisory Committee for the Downtown and Near West Design Review Districts, any review as necessary by the Board of Zoning and the Northeast Ohio Regional Sewer District.
 - c. **Sustainability.** In addition to meeting the Development Objectives relating to sustainability; Developer in good faith will explore design options for the Project that prioritize renewable energy, alternative transportation and green infrastructure, which may include, to the extent economically feasible, the following elements:
 - i. On-site renewable energy (examples may include installation of solar panels and/or geothermal energy systems) and/or a smart grid system with advanced energy metering; and
 - ii. A bicycle share program, ample bicycle facilities, including dedicated, secure storage areas, electric vehicle charging stations, or other alternative transportation options.
5. **Maintenance and Programming.** Developer will maintain the Project in a first class manner, consistent with the operations and maintenance plans for other high-quality mixed use developments in Northeast Ohio, including necessary landscaping.
 6. **Use Restrictions.** The Project will be subject to usual and customary use restrictions, established by the Developer and described in detail in the Development Agreement, including prohibitions against noxious uses, as set forth on an exhibit that will be attached to the Development Agreement.
 7. **Financing.** Except as otherwise expressly provided herein, Developer will be responsible for funding development of the Project, whether through equity, conventional financing, institutional financing or otherwise, and may seek alternative sources to facilitate its financing efforts including government grants, port authority bonds, tax increment financing, tax abatement programs, city, state or other federal funding programs. The Developer will require the assistance of the GCRTA in its efforts to identify and apply for additional available county, state and federal funding for the Project and will consider

providing additional incentives related to securing long-term financing for improving the economic viability of the Project.

8. **Residual Ownership.** The Parties agree that GCRTA will have the right to remain in a permanent ownership position should the Developer elect to sell the Project to an unrelated entity at any time in the future. GCRTA shall also retain the option to sell its ownership position for full market value if the Developer elects to sell to an unrelated entity or refinance the project. Any proceeds from a sale or refinance of the Project will be distributed on a *pari passu* basis to owners.
9. **Bonds.** Developer, by and through its general contractor(s), will provide payment and performance bonds as may be required by its lender and GCRTA, sufficient to ensure the completion of the Project in form and substance customary for developments similar to the Project.
10. **DBE Goals.** Developer will use commercially reasonable efforts to meet the DBE goals mutually agreed upon by GCRTA and Developer and included in the Development and Use Agreement.
11. **Building Trades.** Developer recognizes the value of including building trades in the Project and will make good faith efforts to work with the building trades in connection with the Project.
12. **Miscellaneous.**
 - a. Notwithstanding anything contained in this LOI to the contrary, the Parties acknowledge and agree that the scope, components and tenant mix of the Project as currently contemplated may need to be modified as a result of the investigations pursued by the Developer during the Due Diligence Period and throughout the course of the Project until its completion. The Project scope, components and tenant mix may be adjusted following the execution of this LOI based upon market demands, feasibility analysis, leasing efforts, underwriting requirements, economic climate and overall status of the local and national economies.
 - b. Each Party shall be responsible for their respective legal fees, due diligence costs, the costs for any studies or reports ordered by either Party and to the extent ordered or required by the Project, the Developer shall be responsible for any permit or approval fees required in connection with the Project. Except as set forth herein or in the Development Agreement, the sharing of costs associated with the Project shall require the mutual agreement of the Parties. Where costs incurred are a result of GCRTA's failure to perform its obligations, or the covenants and representations herein have not been met, as will be more fully set forth in the Development Agreement, and the Project is either delayed or cancelled, in which event Developer shall be reimbursed for its out-of-pocket costs and directly related costs of pursuing the Project, funding and funds in connection with same, incurred during the due diligence period.

- c. Developer will require that its general contractor and all subcontractors make all required local income tax payments due in connection with the construction of the Project.

13. Non-Binding Agreement

Both Parties acknowledge and agree that this letter is not a legally binding instrument and that additional material terms must be negotiated before a legally binding agreement is reached. The potential transaction reflected by this LOI is specifically conditioned upon (i) the preparation, negotiation and execution of a mutually acceptable Development Agreement, and (ii) the approval by the GCRTA Board of Trustees of the Development Agreement. Neither party hereto will have any obligation or liability to the other whatsoever at law or in equity (including any claims for detrimental reliance, partial performance, good faith or promissory estoppel or other similar types of claims) unless and until such time as both Parties will have executed and delivered a formal Development Agreement. Notwithstanding anything herein to the contrary, this paragraph supersedes all other conflicting verbal understandings or agreements or language set forth herein. The Parties acknowledge a desire to complete negotiation of a mutually acceptable Development Agreement within 75 days after execution of this letter.

We look forward to advancing this process efficiently toward the execution of a Development Agreement.

Sincerely yours,

Floun'say R. Caver, PH.D., Interim CEO
General Manager/Secretary-Treasurer
Greater Cleveland Regional Transit Authority

AGREED AND ACCEPTED:

Carnegie Management and Development Corporation

By: _____
Dr. Rustom R. Khouri
President and Chief Executive Officer