

RESOLUTION NO. 2021-57

AUTHORIZING THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY TO EXECUTE A NON-BINDING LETTER OF INTENT WITH AJAPPJR, LLC, AN OHIO LIMITED LIABILITY COMPANY, FOR TRANSIT-ORIENTED DEVELOPMENT OF GCRTA PROPERTY LOCATED AT COLUMBUS ROAD AND ABBEY AVENUE, ADJACENT TO THE WEST 25<sup>TH</sup> 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 Terminals Company to support and improve the Red Line West Rapid Transit Line and West 25<sup>th</sup> 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 25<sup>th</sup> Street Station that recommended a transit-oriented development (TOD) program for this site; and

WHEREAS, 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 the proposal from Carnegie Management and Development Corporation ("Carnegie"), located at 27500 Detroit Road, Suite 300, Westlake, Ohio 44115, as the highest ranked response to the RFQ process and the proposal from MRN Ltd./AJAPPJR, LLC, located at 629 Euclid Avenue, 2<sup>nd</sup> Floor, Cleveland, Ohio 44114, as the second highest ranked response to the RFQ process; and

WHEREAS, on March 26, 2019 the Board of Trustees approved the execution of a non-binding letter of intent with Carnegie; and

WHEREAS, following execution of the letter of intent and after engaging in due diligence activities over the ensuing months, on September 1, 2020 Carnegie advised GCRTA that it was withdrawing as a partner for the Columbus Road TOD project, which withdrawal was subsequently acknowledged by GCRTA; and

WHEREAS, GCRTA then confirmed that AJAPPJR, LLC, which had the second ranked development proposal, is presently interested in pursuing the TOD project with GCRTA; and

WHEREAS, AJAPPJR has successfully developed and managed quality mixed-use commercial real estate projects throughout Northeast Ohio 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 needed to make a determination whether to enter into a binding Development and Use Agreement with AJAPPJR or terminate the RFQ process.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, 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 part of Permanent Parcel Numbers 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.

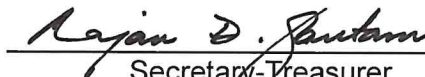
Section 2. That development of the Property for mixed-use is the highest and best use for the Property and the proposed development is consistent with the W. 25<sup>th</sup> Street Station Transit-Oriented Development ("TOD") Plan completed by GCRTA in 2013.

Section 3. That the General Manager, Chief Executive Officer is hereby authorized to execute a non-binding Letter of Intent with AJAPPJR, LLC authorizing AJAPPJR 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 this resolution shall take effect immediately upon its adoption.

Adopted: May 25, 2021

  
\_\_\_\_\_  
President

Attested:   
\_\_\_\_\_  
Secretary-Treasurer



Greater Cleveland Regional Transit Authority  
**STAFF SUMMARY AND COMMENTS**

TITLE/DESCRIPTION: CONTRACT: NON-BINDING LETTER OF INTENT		Resolution No.: 2021-57
DEVELOPMENT PARTNER: AJAPPJR, LLC		Date: May 20, 2021
PURPOSE: FOR TRA NSIT-ORIENTED DEVELOPMENT OF GCRTA PROPERTY LOCATED AT COLUMBUS ROAD AND ABBEY AVENUE, ADJACENT TO THE WEST 25 <sup>TH</sup> STREET RAPID TRANSIT STATION		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: This resolution seeks Board approval to execute a non-binding Letter of Intent with AJAPPJR, LLC (“Developer”) to perform real estate due diligence on property owned by the Greater Cleveland Regional Transit Authority (“GCRTA”) located at the intersection of Abbey Avenue and Columbus Road in Cleveland, Ohio and known as part of Permanent Parcel Numbers 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 Terminals Company to support the operation and improvement of the Red Line Rapid Transit System.

The Property is vacant land that 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”). GCRTA engaged in a Request for Qualifications (“RFQ”) process in accordance with GCRTA’s joint development and TOD policies and procedures. The highest ranked proposal was from Carnegie Management and Development Corporation (“Carnegie”). On March 26, 2019, GCRTA adopted Resolution No. 2019-33 to approve a non-binding letter of intent with Carnegie. On October 25, 2019, GCRTA and Carnegie executed the letter of intent. Carnegie later advised GCRTA that it was withdrawing from the project on September 1, 2020.

The proposal from MRN Ltd./AJAPPJR, LLC was ranked second highest through the RFQ process. Developer is a highly respected local developer, owner and manager of quality mixed-use real estate projects, especially in Northeast Ohio. Following Carnegie’s withdrawal, GCRTA confirmed that Developer remained interested in the project.

In order to perform standard real estate due diligence, Developer will require access to the Property. GCRTA and Developer need to enter into a non-binding Letter of Intent for preliminary due diligence, with the intent to negotiate and execute a Development and Use Agreement by October 1, 2021. Developer will follow all GCRTA procedures related to access to 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 property and economic development goals of GCRTA. This project will enhance the value of GCRTA’s remaining TOD sites throughout the system.

A determination will be made during the initial due diligence whether to enter into the Development and Use Agreement ("DUA"). This DUA will require approval from the Board of Trustees in accordance to Section 470.08 of the Real Estate Policies, as well as concurrence from the FTA.

- 3.0 PROCUREMENT BACKGROUND: N/A
- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: N/A
- 5.0 POLICY IMPACT: This RFQ process complies 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 Developer 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 May 11, 2021 the Audit, Safety Compliance and Real Estate Committee was briefed on the non-binding Letter of Intent. Staff recommends the Board of Trustees authorize the execution of the non-binding Letter of Intent with AJAPPJR, LLC to advance the RFQ process for the Columbus Road TOD project.
- 9.0 ATTACHMENT: Attachment A – Draft Letter of Intent.

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

  
\_\_\_\_\_  
General Manager, Chief Executive Officer



Greater Cleveland  
Regional Transit Authority

May \_\_, 2021

**\*\*DRAFT\*\***

Mr. Ari Maron  
Manager  
AJAPPJR, LLC  
629 Euclid Avenue  
Cleveland, OH 44114

Re: **Letter of Intent** for the Columbus Rd. Transit Oriented Development Project,  
Cleveland, Ohio

Dear Mr. Maron:

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 AJAPPJR, LLC (the "**Developer**" and together with GCRTA being referenced from time to time herein, individually as a "**Party**" and collectively as the "**Parties**"), or its designated assignee as Ownership Entity for the Columbus Road Transit Oriented Development Project (the "**Project**") as more specifically set forth in Section 3 below, would be willing to enter into a mutually agreeable binding agreement for developing the Project ("**Development and Use Agreement**" or "**DUA**"). The 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 acres of GCRTA-owned real property, along with all improvements and hereditaments thereon, bounded by Abbey Avenue, Columbus Road, West 25<sup>th</sup> Street, and Gehring Street in the City of Cleveland (the "**Project Site**"), as generally depicted on the site plan attached hereto as **Exhibit A**. In addition, GCRTA will consider offering development air rights for the Project over additional property currently used for transit operations. The Developer submitted professional qualifications, development team members' qualifications, a concept forming the basis for this Project and financial information 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 some or all of office, retail and residential space and will include structured parking, outdoor public space, other public components and multi-modal transit links. The Project is intended to stimulate a potential renovation with improved access to the current W. 25<sup>th</sup> Street Red Line Rail Station located adjacent to the Site. The exact ratio of the project



components has yet to be determined, but will be subject to Developer's reasonable discretion and expertise, based on market demand, feasibility analysis, community input, and other variables. However, the Parties reasonably anticipate the Project will include a minimum of 125 residential units and Fifty Thousand Square Feet (50,000 sq. ft.) of retail and office space to comply with the minimum Project requirements.

The Project will demonstrate high quality design and architecture. It will include a balanced and thoughtful mix of uses and 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 25<sup>th</sup> 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 will be incorporated into the final approved Plans, but will result in at least a combined total of 50,000 sq. ft. constructed.
- 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. There will be a minimum of 125 residential units constructed.

- c. **Parking.** The Project will be benefitted by sufficient parking necessary to support the proposed uses utilizing portions of the Project area, together with other locations in close (walkable) proximity to the Project, all in a manner that is convenient yet unobtrusive to facilitate their respective operations. Final parking requirements will be established by the City of Cleveland; however, parking should reflect the needs of the users, as well as 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 Red Line Greenway project by the Cleveland Metroparks. 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 similarly 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 setup a website to enable members of the community to provide input as the Project progresses, 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 25<sup>th</sup> Street Station.** Based on economic stimulus funding available for station improvements, the Parties will collaborate to improve the station and Developer will endeavor to integrate the station into the Project to enhance connectivity and pedestrian accessibility.
- j. **Air Rights.** The Project may require acquisition of the air rights currently owned by GCRTA along the transit corridor from the West 25<sup>th</sup> Street Station south, as necessary to accommodate the TOD and open space requirements proposed by the Developer.
- 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.
- l. **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 diligently pursue good faith negotiations and execution of a Development and Use Agreement by October 1, 2021. 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 December 31, 2022.
- Secure air rights as necessary from GCRTA by closing date on conveyance of Project Site.
- Receive final approval for the Project design from the City of Cleveland Planning Commission by December 31, 2022
- Close on conveyance of Project Site to Entity (defined below) and commence construction on the Project by July 1, 2023.

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. Interest in the Project Site.**

- Ownership Interest.*** 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 Managing Member (the “*Entity*”). Developer, as the Managing Member for the Entity and the Project, shall be primarily responsible for the development, management and operation of the Project. Developer shall be the majority member of the Entity; however, GCRTA will maintain a mutually agreed upon percentage of membership based on the Project Appraisal (as defined below) of no less than four percent (4%) of the total membership units, which shall constitute a non-voting and non-managerial interest in the Entity entitled to receive distributions as a shareholder in the Entity, subject to appropriate cash-flow and reserve benchmarks and requirements as the Parties shall agree in the DUA or entity formation documents, as applicable. 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 contributing to increased ridership and renewed interest in public transit. GCRTA and Developer also acknowledge that the mutually agreed upon membership percentage of GCRTA in the Entity will never be subject to additional cash call or dilution by an act of the Managing Member.
- Leasehold Interest.*** Prior to execution of the DUA and in the event GCRTA determines that the membership interest outlined in Section 3.a.i. is not in GCRTA’s best interest, in lieu of GCRTA becoming a



member in the Entity, GCRTA and Developer shall negotiate a mutually agreeable ground lease between the parties designating GCRTA as Landlord and Developer as Tenant for the Project Site.

- b. **Due Diligence Period.** Developer will have a period of fifteen (15) months following the execution of the Development and Use Agreement (the “*Due Diligence Period*”), provided Developer is working in good faith, to conduct any inspections upon the Project Site as 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 and Use Agreement. GCRTA and Developer agree to maintain the confidentiality of said inspections and reports from third parties, except as may be required by law. Prior to the expiration of the Due Diligence Period as may be extended, Developer in its reasonable discretion may elect to terminate the DUA in writing, for any reason that arises during the Due Diligence Period creating or demonstrating considerable challenges to the Project’s viability. Upon such termination, Developer will have no further rights, obligations, or liabilities under the DUA except for mutually agreeable provisions of the DUA that expressly survive termination.
- c. **Project Site Conveyance and Conditions to Closing.** If Developer does not elect to terminate the Development and Use Agreement as provided herein, and the parties proceed as set forth in Section 3.a.i. of this LOI, 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 mutually agreed upon price, which shall be derived from the fair market value of the Project Site (“*Purchase Price*”) as determined by an MAI appraisal. GCRTA will convey fee title upon payment by the Developer of 50% of the Purchase Price and full execution of the documents and creation of the Entity. GCRTA’s final membership in the Entity will be determined based on the residual value of the Project Site after Developer’s payment of 50% of the Purchase Price at conveyance, relative to the anticipated value of the Project following completion, but in no case shall GCRTA’s interest be less than 4% of the membership units. 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 construction of Phase 1 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, and the required air rights, as contemplated by Section 4.b. below have been obtained from the City of Cleveland to complete the approved project design; (F) Developer and GCRTA have agreed on GCRTA’s membership 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 DUA. The Parties acknowledge and agree that the Project may be advanced in one of more Phases, as determined in Developer’s reasonable discretion. So long as the Project proceeds in accordance with the timing requirements provided in Section 2.1. above, the timing and individual components of any Phase and/or all of the Phases shall not delay or otherwise impair the timing and/or conditions of conveyance described above. If the foregoing conditions to transfer the Project Site are not satisfied as of July 1, 2023, pursuant to the timing requirements above, either Party shall have the option of terminating the DUA, and upon such termination, the Parties will have no further rights or obligations under the DUA except for provisions that expressly survive termination; provided, that Developer shall have the right to extend the Closing on conveyance and commencement of construction date provided above by one (1) 90-day extension, so long as Developer is diligently pursuing satisfaction of any remaining conditions.

- d. **Additional Conditions to Closing.** Developer acknowledges that approval of the Development and Use Agreement is required from the GCRTA Board of Trustees and that 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.** Northern Title Agency, Inc., 19545 Center Ridge Road, Rocky River, Ohio 44116 Attn: Deborah S. Furry, President, is hereby designated and appointed by the Parties as the “*Escrow Agent*” to handle the funds and documents to be called for in the Development and Use 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 DUA.

- f. **GCRTA Reversionary Right.** The DUA shall more fully address and contemplate the respective rights of the parties in connection with and relating to GCRTA's retention of 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) within ninety (90) days after conveyance of the Project Site, 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*"), provided further that the exercise of such reversionary rights by GCRTA shall be subject to significant prior notice and full opportunity to reasonably cure and/or complete such 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, provided that any additional consideration due from GCRTA shall not exceed ten dollars (\$10.00), even if its fee ownership is accomplished through a new deed, and Developer shall promptly reimburse GCRTA for its actual third party out of pocket costs and expenses (including attorney's fees) incurred in connection with this transaction, subject to the limitations of Section 12.b., below.
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 as approved by the City of Cleveland. The Project will reflect a design that is aesthetically pleasing from all sides 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 under construction known as the Harbor Bay Advisors' 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 the event the Project Site needs to be rezoned using Planned Unit Development Overlay 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 and Use 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 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 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. The Developer shall be responsible for obtaining all building permits.
  - c. **Sustainability.** As part of meeting the Development Objectives relating to sustainability, the Project will achieve a minimum of LEED Silver certification from the U.S. Green Building Council. Developer in good faith will also 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 and Use

Agreement, including prohibitions against noxious uses, as set forth on an exhibit that will be attached to the DUA.

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 DUA shall more fully address and contemplate the respective rights of the parties in connection with and relating to GCRTA rights, on a going-forward basis as to ownership and/or access to all or any portion of the Project and/or the Project Site, in the event Developer elects to sell the Project to an unrelated entity at any time in the future, inclusive of GCRTA rights to separately sell its ownership position if the Developer elects to sell to an unrelated entity or refinance the project. Any proceeds from a sale or refinancing of the Project, to the extent not utilized to pay existing debt on the property and not otherwise re-invested (either on a direct or reserve basis), will upon mutual agreement of the Parties, be distributed on a *pari passu* basis to members, subject to any retention of ownership (but not access) rights in or to the Project or Project Site, following a sale.
9. **Bonds.** Developer, by and through its general contractor(s), will provide payment and performance bonds, or completion guaranties, to the extent required by its lender(s) and/or 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 Disadvantaged Business Enterprise goals mutually agreed upon by GCRTA and Developer and included in the DUA.
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 and Use Agreement, the sharing of costs associated with the Project shall require the mutual agreement of the Parties. Where costs incurred are a result of any one Party's failure to perform its obligations (the "*Non-Performing Party*"), or the covenants and representations herein have not been met, as will be more fully set forth in the DUA, and the Project is either delayed or cancelled, provided the other party (the "*Performing Party*") has then reasonably fulfilled its obligations, covenants and representations, the Performing Party shall be reimbursed for such Performing Party's actual and reasonable 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, not to exceed Fifty Thousand and 00/100 Dollars (\$50,000.00).
- 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 DUA, and (ii) the approval by the GCRTA Board of Trustees of the DUA. 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 and Use Agreement. Notwithstanding anything herein to the contrary, this paragraph supersedes all other conflicting verbal understandings or agreements or language set forth herein. The Parties



Greater Cleveland  
Regional Transit Authority

acknowledge a desire to complete negotiation of a mutually acceptable Development and Use Agreement no later than October 1, 2021.

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

Sincerely yours,

Approved as to Legal Form

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India L. Birdsong  
General Manager, Chief Executive Officer  
Greater Cleveland Regional Transit Authority

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Sheryl King Benford. General Counsel  
Deputy General Manager for Legal Affairs

**AGREED AND ACCEPTED:**

AJAPPJR, LLC

By: \_\_\_\_\_  
Ari Maron  
Manager





# Parcel Phase I: 1.895 acres



Date Created: 8/3/2020

### Legend

- Municipalities
- Right Of Way
- Platted Centerline
- Parcel

## Exhibit A



1:2,400



This map is a user-generated static output from an internet mapping site and is for reference only. Data layers that appear on this map may not be accurate, current, or otherwise reliable.

**THIS MAP IS NOT TO BE USED FOR NAVIGATION**