

RESOLUTION NO. 2021-97

AUTHORIZING THE GREATER CLEVELAND REGIONAL TRANSIT
AUTHORITY TO EXECUTE A DEVELOPMENT AND USE AGREEMENT WITH
AJAPPJR, LLC, AN OHIO LIMITED LIABILITY COMPANY, TO ADVANCE THE
COLUMBUS ROAD TRANSIT-ORIENTED DEVELOPMENT PROJECT

WHEREAS, on May 25, 2021, the Board of Trustees adopted Resolution 2021-57 to enter into a non-binding Letter of Intent with AJAPPJR, LLC, an Ohio limited liability company, for the transit-oriented development ("TOD") of the Greater Cleveland Regional Transit Authority ("GCRTA") property located at the intersection of Columbus Road and Abbey Avenue in the City of Cleveland, Ohio (the "Property"), adjacent to the West 25th Street Rapid Transit Station; and

WHEREAS, on May 26, 2021, the GCRTA and AJAPPJR executed a non-binding Letter of Intent, outlining terms and conditions for the TOD project; and

WHEREAS, the GCRTA has determined it is in GCRTA's best interest to enter into a Development and Use Agreement ("DUA") with AJAPPJR for the purpose of developing the TOD project on the Property; and

WHEREAS, AJAPPJR has successfully developed and managed high quality mixed-use commercial real estate projects throughout the Cleveland area and intends to do so on this Property; and

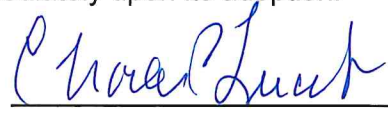
WHEREAS, entering into the DUA with AJAPPJR is in full compliance with the stated real estate goals and objectives of the GCRTA and FTA.

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

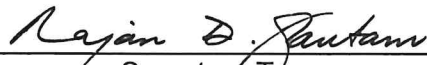
Section 1. That the General Manager, Chief Executive Officer is hereby authorized to execute a Development and Use Agreement with AJAPPJR, LLC authorizing AJAPPJR to advance the planning, design, construction and operation of the transit-oriented development project located at Columbus Road and Abbey Avenue, in Cleveland, Ohio, adjacent to the West 25th Street Rapid Transit Station.

Section 2. That this resolution shall take effect immediately upon its adoption.

Adopted: October 26, 2021



President

Attested: 

Secretary-Treasurer



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

<p>TITLE/DESCRIPTION: CONTRACT: A DEVELOPMENT AND USE AGREEMENT WITH AJAPPJR, LLC TO ADVANCE THE COLUMBUS ROAD TRANSIT-ORIENTED DEVELOPMENT (“TOD”) PROJECT</p> <p>DEVELOPER: AJAPPJR, LLC, AN OHIO LIMITED LIABILITY COMPANY</p> <p>VALUABLE CONSIDERATION: PURCHASE OF THE DEVELOPMENT SITE, DEVELOPMENT OF A MIXED-USE TOD AND LONG-TERM REVENUE FROM THE TOD PROJECT</p>	<p>Resolution No.: 2021-97</p>
	<p>Date: October 21, 2021</p>
	<p>Initiator: Programming & Planning</p>
<p>ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____</p>	

1.0 **PURPOSE/SCOPE:** This resolution seeks GCRTA Board of Trustees’ approval for the General Manager, Chief Executive Officer to execute a Development and Use Agreement (“DUA”) with AJAPPJR, LLC (“Developer”) to plan, finance, develop and operate a mixed-use transit-oriented development (“TOD”) on property owned by the Greater Cleveland Regional Transit Authority (“GCRTA”) located at the intersection of Columbus Road and Abbey Avenue in Cleveland, Ohio and known as part of Permanent Parcel Numbers 007-11-021, 007-11-022 and 007-11-025, in addition to certain development air rights (the “Property”).

2.0 **DESCRIPTION/JUSTIFICATION:** AJAPPJR was selected by a “Request for Qualifications” process to develop the Property and is now prepared to perform due diligence, design, finance, construct and operate the TOD project (the “Project”). On May 25, 2021, the Board of Trustees adopted Resolution 2021-57 authorizing GCRTA to enter into a non-binding Letter of Intent with AJAPPJR for the Project. GCRTA and AJAPPJR executed a non-binding Letter of Intent for the TOD on May 26, 2021. This TOD will enhance the West 25th Street Rapid Transit Station and promote increased use of the Red Line.

A mixed-use TOD was determined to be the highest and best use for this excess Property, as it will promote the TOD, economic development and real estate goals of the GCRTA. AJAPPJR is a highly respected local developer, owner and manager of quality mixed-use real estate projects. GCRTA will retain an ownership position in the single-asset entity that will own the TOD along with AJAPPJR. The conveyance of the Property from GCRTA to that single-asset entity will take place after Project design and approval, and after appraisals of the Property and Project, and will be subject to the Board’s authorization of the conveyance. After the sale and conveyance of the Property, the non-recourse, non-dilutable ownership position will provide GCRTA with long-term revenue for the life of the TOD. This joint development strategy is in compliance with the public-private partnership goals established by the FTA and described in FTA Circular 7050.1B.

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

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

- 5.0 POLICY IMPACT: The DUA and Project are in compliance with the TOD guidelines established by the GCRTA and FTA and fully comply with the Real Estate Policies and guidelines of the GCRTA.
- 6.0 ECONOMIC IMPACT: The Project will provide GCRTA with significant revenue including the fair market, appraised value of the Property and at least a four percent (4%) non-recourse, non-dilutable ownership position in the legal entity that owns the Project for the life of the Project.
- 7.0 ALTERNATIVES: The GCRTA can refuse to execute the DUA and terminate the TOD process.
- 8.0 RECOMMENDATION: On October 12, 2021 the Audit, Safety Compliance and Real Estate Committee reviewed the DUA and Project and referred it to the full Board of Trustees for action. Staff recommends the Board of Trustees authorize the execution of the Development and Use Agreement with AJAPPJR, LLC to advance the Columbus Road TOD Project through planning and design.
- 9.0 ATTACHMENTS: Attachment A – Draft Development and Use Agreement.

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



General Manager, Chief Executive Officer

DEVELOPMENT AND USE AGREEMENT

THIS DEVELOPMENT AND USE AGREEMENT (this “*Agreement*”) is entered into as of _____, 2021 (the “*Effective Date*”), by and between GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, a political subdivision of the State of Ohio, organized and duly authorized pursuant to Ohio Revised Code (“*ORC*”) Section 306.30 et seq. (“*GCRTA*”) and AJAPPJR, LLC, an Ohio limited liability company, and/or its successors and/or assigns (the “*Developer*”), and jointly referred to as “*The Parties*.”

RECITALS

A. GCRTA is the owner of certain real property totaling approximately 3.2 acres along a transit corridor contained within Cuyahoga County, Ohio and known as Permanent Parcel Numbers 007-11-021, 007-11-022, and 007-11-025, with all improvements and hereditaments, thereon bounded by Abbey Avenue, Columbus Road, West 25th Street and Gehring Street in the City of Cleveland (the “*City*”), within which a site of approximately 1.7843 acres along Columbus Road is available for development as depicted as Parcel 3 on Exhibit A attached hereto and incorporated herein (the “*Site*”).

B. GCRTA has determined that the development of the Site is in the best interest of GCRTA and the City in that it promotes the health, safety and welfare of the City’s residents and is necessary for the purpose of enhancing GCRTA’s mission, as well as the creation of jobs and employment opportunities in the City and to improve the economic welfare of City residents.

C. After extensive analysis, deliberation and review, GCRTA formulated a strategy to pursue development of the Site in a manner that embodies GCRTA’s compelling vision for the future of Transit-Oriented Development (“*TOD*”) in the City.

D. GCRTA, by the authority of its Board of Trustees, executed a non-binding Letter of Intent (“*LOI*”) dated May 25, 2021 with the Developer, setting forth the basic terms and conditions provided herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements, and considerations set forth herein and for other good and valuable consideration, GCRTA and Developer hereby covenant and agree as follows:

ARTICLE I DESCRIPTION OF THE PROJECT

Developer shall construct, or cause to be constructed, a new multi-story, mixed-use development on the Site that comprises some combination of office, retail and residential development to be known as [Project Name TBD], as more fully described in this Article I (the “*Project*”). The Project shall be generally consistent with the site plan that will be attached hereto as Exhibit B (the “*Site Plan*”), prior to the expiration of the Inspection Period which generally depicts the Project’s utilization and incorporation of some or all of the following components, as reasonably determined in Developer’s business judgment:

Section 1.1 Office and Retail Components. The Project will include a minimum of 50,000 square feet, combined, of office and retail space (the “**Minimum Combined Commercial Component**”). The Minimum Combined Commercial Component shall reflect a mix of uses that is responsive to community and market demand, in keeping with TOD principles.

Section 1.2 Residential Component. The Project will include a minimum of the lesser of (a) 125 residential units and (b) 125,000 square feet of residential space (the “**Minimum Residential Component**”). Developer shall use commercially reasonable efforts to include “for sale” units in the Minimum Residential Component. The Project’s residential units shall be reflective of current and anticipated market conditions, respectful and sensitive to the scale and character of surrounding neighbors, and responsive to the changing dynamics of housing demand and availability within the City. The Parties acknowledge and agree that the final mix of residential unit type, size and quantity will be subject to Developer’s discretion, based upon its’ reasonable business judgment.

Section 1.3 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 or City Planning Commission approval(s); however, parking should reflect the needs of the users and future anticipated parking demands and changes to community transportation preferences. Parking may be provided on-site or off-site, within reasonable proximity to the Site, based upon Developer’s reasonable business judgment.

Section 1.4 Walkability and Green Space. The Project will incorporate 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 Red Line Greenway trail of the Cleveland Metroparks. Developer will have as its goal that green spaces are included in the Project which: (i) complement adjacent users and use of the RTA, and (ii) is generally consistent with the green space use within current comparable TOD sites in similar-sized cities and projects.

Section 1.5 Community Engagement. GCRTA and Developer will engage the community to ensure that the surrounding neighbors, adjacent landowners, local Development Corporations, advisory committees, and tenants remain informed. Developer will set-up a website to enable members of the community to provide input as the Project progresses. Specifically, Developer will remain open to working with GCRTA, the City, 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.

Section 1.6 Potential Components. Developer may further consider additional components to the Project, based on Developer’s reasonable judgment as to the highest and best use of space within the Project, which additional components may include:

Section 1.7 Residential Senior Housing. In addition to, or as a part of, the Minimum Residential Component set forth in Section 1.2, the Project may include age-restrictive residential units to meet anticipated market demand for senior residential units within the City (“**Senior Housing**”).

Section 1.8 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.

Section 1.9 Community/Institutional Unit. The Project may include an educational unit and user dedicated to direct, positive impact in the neighborhood, e.g., employment training and placement.

Section 1.10 Air Rights. The Project may require acquisition of the air rights currently owned by GCRTA along the transit corridor from the West 25th Street Station south, as necessary to accommodate the TOD and open space requirements proposed by the Developer. GCRTA covenants to work closely with Developer and convey such rights for fair market value, as applicable, as a means to further enhance and support the Project.

Section 1.11 GCRTA W. 25th Street Station. Developer will ensure the Project enhances the station and integrates it into the Project pursuant to TOD principles that enhance connectivity and pedestrian accessibility.

Section 1.12 General Project Objectives. The Project will be a TOD that will include a balanced and thoughtful mix of uses and incorporate economically feasible, sustainable development practices in line with the following commercial design guidelines and TOD principles (“**Development Objectives**”):

- (a) Leverage presence of W. 25th Street Station and improve connectivity and contextual compatibility with surrounding neighborhoods;
- (b) Provide physical modifications to the West 25th Street Station to facilitate access from adjacent neighborhoods and support potential increases in transit ridership;
- (c) Enhance transportation network to better balance accommodations for all travel modes (motorized and non-motorized);
- (d) Support a sustainable, livable and walkable environment;
- (e) 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.

(f) Create a mix of uses that are complementary and symbiotic to establish a Project that has economic stability.

ARTICLE II
CONVEYANCE OF THE SITE

Section 2.1 Inspection Period; Indemnification.

(a) Developer shall have from the Effective Date of this Agreement until December 31, 2022 (the “*Inspection Period*”) to conduct, at Developer’s sole cost and expense, any inspections of the Site that Developer deems necessary or desirable to confirm the feasibility of the Project and the condition of the Site, in Developer’s sole discretion, including, without limitation, physical inspections, environmental inspections, tests and surveys, soil borings, geotechnical testing, surveys and title searches, and marketing studies. For any such inspection operations that require access to the Site, Developer shall coordinate with and secure approval from GCRTA well in advance of the time of site access as certain safety parameters or procedures may be required since the Red Line Rapid adjacent to the site will remain an operating rail transit system. The parties will enter into a Temporary Right of Entry Agreement allowing Developer and its consultants authorized access to the Site.

(b) Within fourteen (14) days of the Effective Date, GCRTA will provide Developer with copies of any inspections and reports previously conducted on the Site. Developer will provide GCRTA, upon request, at no additional cost to the GCRTA or Developer, copies of all inspections or reports obtained by Developer in connection with its inspection of the Site, without representation or warranty regarding the content thereof or explanation of the suitability of the results for the Project. GCRTA and Developer agree to maintain the confidentiality of said inspections and reports from third parties, except as to disclosures required by law. Developer will have the right, at any time prior to the expiration of the Inspection Period, to terminate this Agreement, on written notice to the GCRTA, for any reason or for no reason. Upon such termination, the Parties’ obligations and liabilities under this Agreement will terminate, except for those obligations or liabilities that expressly survive the termination of this Agreement. Developer may identify and notify GCRTA of any unsatisfactory Site condition and provide GCRTA an opportunity to correct such condition, provided that Developer thereupon may reserve all rights to terminate this Agreement, for any reason or no reason thereafter, through and until the expiration of the Inspection Period. Any conditions disclosed during the Inspection Period as a result of any test, examination, inspection or survey and not objected to by Developer during the Inspection Period or that are accepted by Developer will be deemed approved by Developer for purposes of this Agreement.

(c) Developer hereby indemnifies and agrees to defend and hold harmless GCRTA from and against all liability, loss, damage and expense (including attorney’s fees) arising from any damage to persons or property caused

by the inspection of the Site by Developer or its agents or consultants. Developer will maintain commercial general liability insurance with a reputable insurer licensed in the State of Ohio, with a Best's rating of A10 or better, providing minimum limits of liability of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate, with an umbrella excess liability policy in minimum amount of Five Million Dollars (\$5,000,000) per occurrence bodily injury/property and Five Million Dollars (\$5,000,000) aggregate damage/occurrence, naming GCRTA as an additional insured, and will furnish to GCRTA a certificate of insurance in form satisfactory to GCRTA (ACORD or similar form). The indemnities contained in this Section 2.1 shall survive for a period of six (6) months after Closing or termination.

Section 2.2 Condition of the Site.

(a) GCRTA represents to Developer that, to the best of GCRTA's knowledge, without duty of further inquiry: (i) the Site is not subject to any unrecorded easements, options to purchase, rights of first purchase or refusal, or any other agreement or contract to use, lease, or purchase the Site to which GCRTA is not a party, in each case, which shall survive the Closing; (ii) except as noted and described in the any inspections and reports previously conducted on the Site, no hazardous substances have been stored or used on the Site and there are presently no hazardous substances in, on, or under the Site in violation of any law or regulation; and (iii) there are not any special assessments of any nature pending, planned, proposed or threatened with respect to the Site, except as noted in the public records. GCRTA shall fully disclose to Developer promptly following GCRTA's notice thereof, upon any occurrence, change in facts, assumptions or circumstances of which GCRTA becomes aware prior to the Closing Date which may affect the representations set forth above. If any facts arise or are otherwise discovered or determined by Developer to be contrary to or inconsistent with the representations of GCRTA herein, , then Closing shall only proceed upon mutual agreement of the Parties.

(b) Developer acknowledges and agrees that except as expressly provided herein, (i) except as provided above, GCRTA has made no representation or warranty as to the condition, quantity or quality of the Site, or any portion thereof, and (ii) subject to the provisions contained herein, Developer agrees the Site and all portions thereof shall be transferred, as contemplated herein, in "AS IS" condition "where is" and "with all faults" as of Closing, without any representation or warranty whatsoever as to its condition. Developer acknowledges that Developer be conveyed the Site based solely on and subject to Developer's own independent investigations and findings and not in reliance on any information provided by GCRTA or GCRTA's agents or representatives.

Section 2.3 Closing; Purchase Price.

(a) The closing of the transactions contemplated by this Article II (the "**Closing**") will take place in escrow on a date mutually agreeable to GCRTA and

Developer and not later than July 31, 2023 (the “**Target Closing Date**”), provided that Developer shall have the right to extend the Closing to October 31, 2023 (the “**Outside Closing Date**”), with written notice to GCRTA, so long as Developer is diligently pursuing satisfaction of conditions to Closing set forth in Section 2.4. The date of Closing, as the same may be so adjusted or extended, is herein referred to as the “**Closing Date**” GCRTA and Developer hereby appoint Northern Title Agency, Inc., 19545 Center Ridge Road, Rocky River, Ohio 44116 Attn: Deborah S. Furry, President (the “**Escrow Agent**”) to act as escrow agent for the Closing of this transaction. A signed counterpart of this Agreement shall serve as the escrow instructions to the Escrow Agent.

(b) On the Closing Date, and provided that the Parties performed their respective obligations under this Article II, GCRTA will deliver to Escrow Agent: (i) all ownership formation documents properly executed between the Parties for the LLC Entity as specified in Section 2.4 (a)(i); (ii) a limited warranty deed (the “**Deed**”), conveying fee title to the Site to the LLC entity or its nominee(s) (to the extent permitted by this Agreement) in a form satisfactory to the Developer, subject to the following exceptions: (A) real estate taxes and assessments, if any, which are a lien but not yet due and payable, (B) building and zoning ordinances and regulations, (C) any easements, restrictions and other conditions set forth in the title commitment issued by Escrow Agent for the issuance of an ALTA Owner’s Policy of Title Insurance (2006 Form) (the “**Title Policy**”) that are not objected to in writing by Developer during the Inspection Period, and (D) the Restrictive Covenant (collectively, the “**Permitted Exceptions**”); and (iii) any affidavit reasonably required by the Escrow Agent to cause the Escrow Agent to delete the so-called “standard exceptions” from the Title Policy.

(c) The purchase price for the property will be determined by a fair market value MAI appraisal of the Project Site by an appraiser mutually agreed to by GCRTA and the Developer (the “**Purchase Price**”). If GCRTA and Developer are unable to mutually agree on such appraiser each party shall select their own appraiser and those two appraisers shall together select a third appraiser who shall be responsible for preparing such fair market value MAI appraisal of the Project Site. Developer will pay GCRTA the Purchase Price in two parts: fifty percent (50%) in cash at Closing and fifty percent (50%) as GCRTA’s equity in the LLC Entity. GCRTA’s final membership in the LLC Entity will be determined based on the residual value of the Project Site after Developer’s payment of fifty percent (50%) of the Purchase Price at Closing, relative to the anticipated value of the Project following completion, as determined through the third-party Project Appraisal described in Section 2.4(a)(v), but in no case shall GCRTA’s interest in the LLC Entity be less than four percent (4%) of the membership units.

(d) On the Closing Date, provided that GCRTA simultaneously performs its obligations under this Article II, Developer shall deliver to Escrow Agent: (i) Fifty Percent (50%) of the Purchase Price; and (ii) a real property conveyance fee statement.

(e) On the Closing Date, Escrow Agent will complete the transaction described in this Article II by (i) causing the Deed and Restrictive Covenant to be filed for record with the Cuyahoga County Recorder; (ii) issuing the Title Policy to Developer; and (iii) disbursing the Purchase Price to GCRTA, after deducting any sums, charges and prorations as required hereunder.

(f) On the Closing Date, GCRTA will cause to be paid any real estate taxes and assessments, both general and special (“*Taxes*”) relating to the Site which are then due and payable. Taxes relating to the period prior to the Closing Date which are not due and payable until after the Closing Date shall be finally prorated between the Parties by the Escrow Agent as of the Closing Date, based upon the latest available tax bill; any taxes paid in advance for any period following the Closing Date shall also be prorated by the Escrow Agent based upon actual Taxes paid.

(g) Developer and GCRTA will each pay one-half (1/2) of any fees charged by the Escrow Agent in connection with the consummation of the Closing at the time of the Closing. GCRTA will pay all local or state real estate transfer taxes, revenue or documentary stamps and Developer will pay for the recording fees for recording the Deed. Developer and GCRTA will each pay one-half (1/2) of the owner’s title policy premium, and Developer shall pay the cost of any endorsements and any loan policy premiums. All other costs and expenses of closing the sale of the Site to Developer will be borne in accordance with local custom. Each party will bear its own legal expenses incurred in connection with the negotiation, documentation and Closing of the sale of the Site.

Section 2.4 GCRTA Conditions to Closing.

(a) The obligations of GCRTA under this Article II to sell the Site and consummate the transaction contemplated hereby shall be subject to the satisfaction of the following conditions on or before the Closing Date, except to the extent that GCRTA waives any of such conditions in writing at or prior to Closing:

(i) Developer has created a bankruptcy-remote single purpose entity as an Ohio limited liability company (the “*LLC Entity*”) to function as the owner of the Project, of which Developer will be the Managing Member. Based upon the Project Appraisal provided for in Section 2.4(a)(v), Developer or its designated nominee shall own up to ninety-six percent (96%) of the issued and outstanding membership units of the LLC Entity, and GCRTA or its designated nominee shall own no less than four percent (4%) of the issued and outstanding membership units (collectively, the “*Membership Interests*”). GCRTA’s portion of the Membership Interest shall be a non-voting and non-managerial interest in the LLC Entity that is entitled to receive distributions as a member in the LLC Entity. GCRTA and Developer acknowledge that the mutually agreed upon ownership percentage held by GCRTA in the Entity will never be subject to additional cash calls or dilution by an act of the Managing Member.

GCRTA and Developer further acknowledge that the Entity's operating agreement will provide for the rights and obligations of the Members in the event of future transfer of ownership (such as tag-along and drag-along provisions for transfer of 100% of Entity assets or membership interests), which will include providing a residual right to GCRTA to charge a commercially reasonable access fee to future owners for their use of access ways which directly connect Project components with GCRTA's West 25th Street Station.

(ii) Developer has obtained executed commitment letters from one or more lenders sufficient for financing the construction of at least the components set forth in Sections 1.1 and 1.2, collectively, the "**Initial Project**" and such lender(s) have confirmed that they are prepared to close the financing on the Closing Date;

(iii) Developer, with assistance and support from GCRTA, has obtained the necessary rezoning and any required lot splits or consolidations contemplated by Section 4.1 below;

(iv) The City's Planning Commission, Department of Building and Housing, and any other requisite advisory or review boards have approved the Plans and Specifications, which are (or will subsequently be) attached in **Exhibit C** and incorporated herein, for the Initial Project as contemplated by Section 4.2 below;

(v) Developer has obtained a third-party appraisal of the Project as designed and approved, setting forth the projected value of various components of the Project ("**Appraisal**");

(vi) Developer confirms in writing that the representations and warranties set forth in Section 3.1 continue to be true and correct as of the Closing Date in all material respects;

(vii) Developer shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed and complied with by Developer on or before the Closing Date;

(viii) GCRTA shall have received each of the items to be delivered to it or for its benefit under this Agreement prior to the Closing Date;

(ix) Between the Effective Date and the Closing Date, no written order shall have been entered and be in effect by any court of competent jurisdiction, and no law shall have been promulgated or enacted and be in effect, that restrains, enjoins or invalidates the transactions contemplated hereby; and,

(x) The Project as designed will not interfere with the operation and maintenance of the Red Line Rapid Transit train which runs adjacent to and through the Site.

(b) If the conditions to transfer of the Site set forth in Section 2.4(a) are not satisfied by the Targeted Closing Date, the Closing Date shall automatically be extended to no later than the Outside Closing Date, provided that Developer is diligently pursuing satisfaction of any remaining conditions to Closing.

(c) GCRTA agrees to act in good faith and use commercially reasonable efforts to assist the Developer to cause each of the conditions set forth in this Section 2.4 to be satisfied (to the extent within the control of GCRTA) and may not rely on the failure of any condition set forth in this Section 2.4 to be satisfied to terminate this Agreement pursuant to Section 2.4(b) if such failure was caused by GCRTA's noncompliance with the foregoing covenant.

Section 2.5 Developer Conditions to Closing.

(a) The obligations of the Developer under this Article II to acquire the Site and consummate the transaction contemplated hereby shall be subject to the satisfaction of the following conditions on or before the Closing Date, except to the extent that Developer waives any of such conditions in writing at or prior to Closing:

(i) GCRTA has completed any site preparation work on the Site, as specified in the Plans and Specifications, although no site work is contemplated or anticipated other than to secure and ensure the continuous operation of the Red Line Rapid Transit train which runs adjacent to and through the Site;

(ii) Developer, with assistance and support from GCRTA, has obtained the necessary rezoning and any required lot splits or consolidations and approvals of all plans and specifications have been obtained and contemplated by Section 4.1 below;

(iii) Design Review Committee and the City's Planning Commission have approved the Plans and Specifications for the Initial Project as contemplated in Section 4.2 below;

(iv) GCRTA confirms in writing that all representations and warranties set forth in this Agreement, as applicable, continue to be true and correct as of the Closing Date in all material respects;

(v) GCRTA shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed and complied with by the GCRTA on or before the Closing Date, including without limitation correcting, to Developer's reasonable satisfaction, to the extent so requested, any of the unsatisfactory conditions

that GCRTA was notified of by the Developer during the Inspection Period and for which GCRTA agreed to correct prior to the Closing Date;

(vi) Developer shall have formed the LLC Entity, as defined in Section 2.4(a)(i) that is to own the Project and GCRTA has executed all applicable formation documents including any operating agreement governing the LLC Entity and received each of the items to be delivered to it or for its benefit under this Agreement prior to the Closing Date; and,

(vii) Between the Effective Date and the Closing Date, no written order shall have been entered and be in effect by any court of competent jurisdiction, and no law shall have been promulgated or enacted and be in effect, that restrains, enjoins or invalidates the transactions contemplated hereby.

(b) If the conditions to transfer of the Site set forth in Section 2.5(a) are not satisfied by the Outside Closing Date, Developer shall have the option of terminating this Agreement; provided, that Developer may agree, in its reasonable discretion, to extend such Outside Closing Date. Upon termination pursuant to this Section 2.5, the Parties will have no further rights or obligations under this Agreement except for provisions of this Agreement that expressly survive termination. In the event that Developer terminates this Agreement pursuant to this Section 2.5(b) due to a failure of a condition set forth in Section 2.5(a)(i), (iv), (v); and/or, due to a failure in the condition set forth in Section 2.5(a)(vi), but only to the extent the completed LLC Entity documents reflect the material terms and conditions contemplated in this Agreement but GCRTA fails or refuses to execute same, and/or due to a failure in the condition set forth in Section 2.5(a)(vii), but only to the extent GCRTA causes, or does not undertake reasonable and necessary steps to prevent or avoid, the imposition of such orders or laws which restrain, enjoin or invalidate the transactions contemplated, then GCRTA shall reimburse Developer for all documented out-of-pocket expenses incurred through the termination date by Developer in connection with this Agreement, not to exceed Fifty Thousand and 00/100 Dollars (\$50,000.00) as provided in Section 7.1.

(c) Developer agrees to act in good faith and use commercially reasonable efforts to assist GCRTA to cause each of the conditions set forth in Section 2.5 to be satisfied (to the extent within the control of Developer) and may not rely on the failure of any condition set forth in this Section 2.5 to be satisfied to terminate this Agreement pursuant to Section 2.5(b) if such failure was caused by Developer's noncompliance with this covenant.

Section 2.6 Sale of the Project. Subsequent to Closing, any sale of Membership Interest or assets of the LLC Entity will be conducted in accordance with an Operating Agreement governing the LLC Entity described in Section 2.4(a)(i). Any proceeds that may be available from a refinance of the Project and which are not otherwise directly, indirectly, or contemplated to be reinvested in the Project, will be distributed based on each Parties share of the Membership Interests after all applicable expenses and reimbursements

have been made, provided however, GCRTA shall only be eligible and entitled to receipt of such proceeds to the extent Developer likewise elects to receive a distribution at such time.

Section 2.7 Approvals Required. The real estate transaction contemplated in this Agreement will require approval from the GCRTA Board of Trustees, in accordance with GCRTA's Codified Rules and Regulations, after the Purchase Price has been determined pursuant to Section 2.3(c) of this Agreement, and may require concurrence from the Federal Transit Administration, prior to conveyance of title to the Site.

Section 2.8 LLC Entity Rights and Obligations. It is the intent of the Parties that, except as otherwise specified herein, the rights and obligations of the Developer set forth in the Agreement shall merge with the rights and obligations of the LLC Entity upon formation of the LLC Entity and admission of GCRTA as a member thereof.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Section 3.1 Developer Representations and Warranties. Developer represents and warrants to GCRTA as follows as of the Effective Date:

(a) Developer is a limited liability company duly organized and validly existing and in good standing under the laws of Ohio. Developer has the necessary power and authority to enter into this Agreement, and this Agreement constitutes the valid and binding obligation of Developer in accordance with its terms. This Agreement and the transactions contemplated hereby have been approved by the Members of the Developer;

(b) Developer is in compliance with Ohio Revised Code Section 2921.42, to the extent applicable; and

(c) Developer has no knowledge of any finding having been issued against it by the Auditor of the State of Ohio that is "unresolved."

Section 3.2 GCRTA Representations and Warranties. GCRTA hereby represents and warrants to Developer as follows as of the Effective Date:

(a) GCRTA has the necessary power and authority pursuant to the authorization from the GCRTA Board of Trustees to enter into this Agreement, and this Agreement constitutes the valid and binding obligation of GCRTA in accordance with its terms.

(b) The execution and delivery of this Agreement by GCRTA, and the consummation of the transactions contemplated hereby and the performance by GCRTA of its obligations hereunder, have been duly authorized and will not violate any provision of any state or federal law, statutory or otherwise, to which GCRTA or the Site may be subject.

(c) There is no litigation, proceeding or action pending or, to the best knowledge of GCRTA's General Manager/CEO, Real Estate Manager, General Counsel and Board of Trustees, threatened against or relating to the Site at law or in equity, before any federal, state or local court or regulatory agency, or other governmental authority, which could reasonably be expected to have a materially adverse effect on the Site or upon GCRTA's right, ability and authority to convey any interest therein, and no notice of any of the above has been received by GCRTA. There are no condemnation actions threatened or pending regarding the Site and no notice of any has been received by GCRTA.

(d) GCRTA has not entered into any purchase contracts, rights of refusal, options or other agreements of any kind whereby any person or entity other than GCRTA has acquired any right, title or interest in, or right to possession, use, enjoyment or proceeds of all or any portion of the Site.

ARTICLE IV

REZONING; LOT SPLIT AND CONSOLIDATION; APPROVAL OF PLANS

Section 4.1 Rezoning; Lot Split and Consolidation. In connection with the Project, the Site may need to be rezoned using "***Planned Unit Development Overlay***" zoning, as more particularly described in Chapter 334 of the City's Code of Ordinances. The Parties will work together to commence the rezoning process as soon as possible after the Effective Date. Developer shall engage a surveyor to obtain a survey and to undertake any lot consolidation and/or lot splits required for the development of the Project. If the rezoning process is delayed due to reasons outside of Developer's reasonable control, GCRTA will agree to an extension of the Closing Date sufficient to allow for the completion of the rezoning process. All costs of rezoning and any lot splits or consolidations shall be borne by the LLC Entity.

Section 4.2 Approval of Plans and Specifications. Plans and specifications of the Project, as necessary to comply with Design Review Committee requirements (the "***Plans and Specifications***") shall be prepared by a registered civil engineer, registered architect and registered landscape architects/land planner, as applicable, in accordance with this Agreement and all applicable State and local laws and regulations, and shall be submitted to the City's Planning Commission and the Design Review Committee and/or such additional City departments or commissions as may be required to comply with all applicable City laws, rules and/or regulations (collectively, the "***City Review Bodies***") for approval. Developer will also submit the Plans and Specifications for the Project to the Design Review Advisory Committee for the Downtown and Near West Design Review District for feedback. The Plans and Specifications shall reflect a commitment to high quality design and construction. Such Plans and Specifications shall be reviewed, and if acceptable, approved by the applicable City Review Bodies according to all applicable City laws, rules and/or regulations, except as may be specifically modified by this Agreement. Developer shall undertake all reasonable efforts to submit the Plans to the City for review and approval no later than October 31, 2022, provided that so long as Developer has undertaken such reasonable efforts to submit the Plans within the stated time period, Developer shall automatically have thirty (30) days to cure any failure to submit said Plans

by the date provided above. Upon approval, the Plans and Specifications shall be used as the basis upon which construction documents will be prepared for obtaining building permits from the City for the Project. The cost of obtaining all required approvals from the City Review Bodies shall be borne by Developer.

Section 4.3 Other Information; Responsibility for Costs. Developer shall promptly submit all other legally required documentation necessary to develop the Project in accordance with the Plans and Specifications to the applicable City Review Bodies. Developer shall be solely responsible for obtaining and paying for all requisite City approvals and permits and complying with all City laws, rules and/or regulations in connection with the construction of the Project. GCRTA's execution of this Agreement does not indicate or imply that any such approvals have been or must be approved by the City Review Bodies. Notwithstanding anything contained in this Section 4.3 to the contrary, GCRTA will cooperate with Developer in obtaining all approvals required pursuant to this Article IV.

ARTICLE V CONSTRUCTION AND MANAGEMENT OF THE PROJECT

Section 5.1 Construction of the Project. The various components of the Project will be constructed in accordance with the Development Objectives, as set forth in Section 1.8 and **Exhibit D**, and the approved Plans and Specifications and all applicable City approvals and permits.

Section 5.2 Timing Requirements. The anticipated timeline and master schedule for the Project is attached hereto and incorporated herein as **Exhibit E** (the "**Master Schedule**"), and Developer shall use commercially reasonable efforts to cause the Project to be constructed in accordance with such Master Schedule. The Master Schedule may be amended from time to time by Developer as development of the Project progresses, with prior written notice to GCRTA, but not its prior written approval, except where the outside commencement date or outside completion dates set forth therein or in this Section 5.2 are modified for more than sixty days for reasons other than Unavoidable Delays (as defined in Section 5.5), in which event the Developer shall seek the prior written approval of GCRTA, which approval shall not be unreasonably withheld, conditioned or delayed. Developer anticipates commencing construction of one or more components of the Project no later than three (3) months after the Closing Date and anticipates completing construction of the entire Project not later than sixty (60) months after the Closing Date, subject to Unavoidable Delays, as defined in Section 5.5. Notwithstanding the foregoing, and subject to Unavoidable Delays, Developer shall endeavor to substantially complete construction pursuant to the Master Schedule, as evidenced by a certificate of substantial completion executed by Developer's architect that evidences the applicable component of the Initial Project and evidence that each component of the Project is eligible to receive all applicable City approvals necessary to obtain a certificate of occupancy upon completion of any tenant-specific work ("**Substantial Completion**").

Section 5.3 Compliance with Plan and Specifications. All work with respect to the construction of improvements and site development of the Project, if applicable, shall

be in conformity in all material respects with this Agreement and the final approved Plans and Specifications, including any changes thereto.

Section 5.4 Project Funding. Except as otherwise set forth in this Agreement, Developer, acting through the LLC Entity, is solely responsible for coordinating and obtaining funding for the Project, whether through equity, conventional financing, or otherwise. GCRTA will cooperate and use all reasonable efforts to assist Developer in its efforts to identify and apply for additional available city, county, state, federal and transit-oriented funding for the Project and will consider providing, without being obligated to provide, additional incentives related to improving the economic viability of the Project.

Section 5.5 Unavoidable Delays. Except as otherwise provided herein, Developer shall not be considered in default of its obligations to be performed under this Agreement if delay in the performance of such obligations is due to acts of God, acts of public enemies, orders or restraints of the government of the United States of America or of the State of Ohio or any of their departments, agencies, or officials, or any civil or military authority, riots, landslides, earthquakes, hurricanes, tornados, floods, pandemics, epidemics, the failure of the City and the City Review Bodies to timely review and approve the Project, including but not limited to the rezoning, the Plans and Specifications, or other cause similar in nature to the foregoing if beyond Developer's control and without its fault or negligence ("*Unavoidable Delays*"). In the event of the occurrence of Unavoidable Delays, the time or times for performance of such obligations may be extended for the period of the enforced delay up to a maximum period of 180 days; provided, however, that Developer covenants to promptly notify GCRTA in writing, within a reasonable time after the beginning of any such Unavoidable Delays, of the cause and duration thereof. In addition, the term Unavoidable Delays shall include delays in the issuance of any permits necessary to construct the Project, unless such delay is due to Developer's failure to deliver documentation or information necessary to issue such permit. Notwithstanding the foregoing, if Developer's failure to perform its obligations under this Agreement are delayed due to such an Unavoidable Delay for a period in excess of 180 days, and thereafter GCRTA elects to deem Developer's failure to perform a breach or default of this Agreement, and declares Developer to be a "Non-Performing Party" pursuant to Section 7.1, in such event, GCRTA will not be entitled to collect or otherwise receive the Reimbursement Costs (defined below) otherwise available to a Performing Party pursuant to said Section 7.1.

Section 5.6 Quality of Work; Minimization of Interference. Developer will use commercially reasonable efforts to ensure that all work done in connection with the construction of the Project or any renovation, rehabilitation, restoration or repair thereto performed by or on behalf of Developer, acting through the LLC Entity shall be done in a good and workmanlike manner, reasonably free from faults and defects and in compliance with the applicable building and zoning laws, and will comply with all laws, ordinances, order and requirements of all governmental authorities. Prior to commencing construction, Developer, with input from GCRTA, shall develop a plan to minimize the impact of construction activities on adjacent residents, including addressing contractor parking, truck circulation, permitted construction hours and construction phasing.

Section 5.7 Bonds. Developer shall cause to be delivered to GCRTA, prior to commencing construction on any portion of the Project, copies of bid, payment and/or performance bonds for labor and material as may be and only then to the extent so required to be furnished by Developer's lender(s) or Mortgagee(s) providing financing for the construction of any portion of the Project which shall be issued to Developer's general (or prime) contractor(s) from a surety company licensed to do business in the State of Ohio.

Section 5.8 Insurance. From the Effective Date through and until completion of the construction of the Project, Developer and/or the LLC Entity shall obtain and/or cause its contractors to maintain all policies of insurance as required by this Section 5.8:

(a) *Builders Risk Insurance*. During construction of the Project, Developer shall procure and maintain, and/or cause its contractors or agents to procure and maintain all builders' risk and fire insurance with extended coverage upon the Project improvements then to be constructed in the amount of one hundred percent (100%) of the replacement cost thereof.

(b) *Public Liability Insurance*. During construction and until completion of the construction of the Project improvements, Developer shall insure against all claims for personal injury or death or property damage occurring in or about the Site, with a reputable insurer licensed in the State of Ohio, with a Best's rating of A10 or better, with minimum limits of liability of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate, with an umbrella excess liability policy in minimum amount of Five Million Dollars (\$5,000,000) per occurrence bodily injury/property and Five Million Dollars (\$5,000,000) aggregate damage/occurrence. Developer will deliver to GCRTA a certificate of insurance at least one (1) week prior to the commencement of construction and certificates for replacement policies will be delivered at least fifteen (15) days prior to the expiration of the policy.

(c) *Railroad Protective Liability Insurance*. During construction of the Project, Developer will procure and maintain, or cause its contractors or agents to procure and maintain railroad protective liability insurance naming GCRTA as an insured and having limits of no less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate to cover bodily injury liability, property damage liability and physical damage to property.

(d) *Certificates of Insurance*. Work shall not commence until the insurance policies in Section 5.8 have been obtained, and an appropriate certificate(s) of insurance, or similar evidence of available and effective insurance coverage has been provided to GCRTA in a form satisfactory to GCRTA.

Section 5.9 Sustainability.

(a) The Project must achieve a minimum of LEED Silver certification from the U.S. Green Building Council.

(b) 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.

In the event that the aforementioned design options require additional studies, approvals or permits, Developer and GCRTA agree to share additional costs to the extent associated with the modification or redesign of the West 25th Street Rapid Transit Station. GCRTA agrees to work in good faith to help identify and pursue funding for such additional expenses.

Section 5.10 Use Restrictions. The Project will be subject to usual and customary use restrictions, incorporated into the Deed as a restrictive covenant, including but not limited to prohibitions against any use that interferes with public transit, noxious uses, and the uses specifically set forth in **Exhibit F** attached hereto and incorporated herein.

Section 5.11 Maintenance. Developer will maintain the Project in a first-class manner, consistent with other high-quality mixed-use developments in Northeast Ohio, including but not limited to landscaping, and will comply with an operations and maintenance plan for the Project (the “*O & M Plan*”), to be mutually agreed upon by GCRTA and Developer.

ARTICLE VI FINANCING; MORTGAGEE PROTECTIONS

Section 6.1 Financing. Developer covenants to close on financing sufficient for the construction of the Initial Project within one hundred and fifty (150) day after the Closing Date. Such financing may consist of debt, equity, government incentives or such other sources as Developer deems necessary or convenient for the construction of the Initial Project. Developer will provide GCRTA with copies of any performance or completion guarantees entered into in connection with such financing.

Section 6.2 Mortgagee Protections. Except as expressly set forth herein, GCRTA acknowledges and agrees that this Agreement neither prevents nor limits the Developer from encumbering all or any portion of the Site or improvement thereon by any mortgage or other security device securing financing with respect to the Project and the Site. GCRTA acknowledges that the lender(s) providing such financing may require certain Agreement interpretations or execution of financing documents and agrees upon request, time being of the essence, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation and execution of any

documents reasonably required by lender to evidence the same. Notwithstanding anything herein to the contrary, in the event of a default by Developer where lender cures on Developer's behalf, all mortgagees of any mortgage encumbering all or any portion of the Site or improvement thereon ("*Mortgagees*") shall be obligated to abide by the terms and conditions of this Agreement to ensure the Project is completed as contemplated herein. In addition, in furtherance of the parties intent and expectation of achieving completion of the Project, the parties shall cooperate and work diligently and in good faith to include the following terms and conditions in applicable financing documents, subject in all respects to acceptance and approval of same by Mortgagee and/or other sources of funding for the Project, provided however the Parties acknowledge and agree that in all events and with respect to any and all such financing documents, the following terms and provisions are preferred and desired to be included therein:

(a) Except as expressly set forth herein, neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Site or any portion thereof or any improvement thereon made in good faith and for value;

(b) A Mortgagee that has submitted a request in writing to GCRTA in the manner specified herein for giving notices is entitled to receive written notification from GCTRA of any default by Developer within ten (10) days of sending notice of such default to Developer;

(c) Upon a Mortgagee's receipt of notice of Developer's default from GCRTA, such Mortgagee shall have the right to cure the default during any cure period remaining under this Agreement, in lieu of Developer in the event that Developer is not diligently pursuing the same. As to a default requiring title or possession of all or any portion of the Site or improvement thereon to effectuate a cure, if the Mortgagee timely cures all defaults which do not require possession to effectuate a cure and commences and diligently prosecutes foreclosure proceedings to acquire title to all or any portion of the Site or improvement thereon within 90 days after receipt from GCRTA of the written notice of default, the Mortgagee shall be entitled to cure such default after obtaining title or possession provided that such Mortgagee does so promptly and diligently after obtaining title or possession; and

(d) Any Mortgagee who comes into possession of all or any portion of the Site or improvement thereon pursuant to foreclosure of the mortgage or deed in lieu of foreclosure takes possession subject to the terms of this Agreement; provided, however, that the restrictions on assignments in Section 11.1 and transfers set forth in Section 11.2 shall not apply to any Mortgagee or its successors and/or assigns who take possession of the Site, whether by foreclosure, deed in lieu of foreclosure or otherwise, provided that any such assignee or transferee nonetheless also takes possession subject to the terms of this Agreement.

ARTICLE VII
DEFAULT; REMEDIES; REVERSIONARY RIGHTS

Section 7.1 In General. Except as otherwise provided in this Agreement, including but not limited to the provisions of Section 5.5, above, in the event of any default in or breach of this Agreement by either party hereto (the “*Non-Performing Party*”), such Non-Performing Party (or its successor) shall, upon written notice from the other party (the “*Performing Party*”), proceed immediately to cure or remedy such default or breach, within 30 days after receipt of such notice, or in the event the default or breach cannot be cured within 30 days, such longer period of time as may be reasonable, but in no event longer than 180 days after receipt of the notice (subject to extension due to Unavoidable Delays). If such action is not taken or not diligently pursued, the Performing Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Non-Performing Party. In the event the Project is either delayed or cancelled, and provided that the Performing Party has reasonably fulfilled its obligations, the Non-Performing Party will reimburse the Performing Party for its out-of-pocket costs and directly related costs incurred in connection with this Agreement (the “*Reimbursement Costs*”), not to exceed Fifty Thousand and 00/100 Dollars (\$50,000.00). This right to reimbursement also applies to Sections 7.2 and 7.3 below. The Non-Performing Party’s obligation to reimburse the costs of the Performing Party is capped at a total of Fifty Thousand Dollars whether the obligation arises under Article VII or Article II or both.

Section 7.2 Failure to Close Financing. Without limiting the generality of this Article VII or any other remedies GCRTA may have in connection with Developer’s default or breach of this Agreement, if Developer fails to obtain and close sufficient financing for the construction of the Initial Project within twenty-four (24) months after the Closing Date as set forth in Section 6.1, GCRTA shall have the reversionary right (but not the obligation) to repurchase the Site for an amount equal to no more than Ten Dollars (\$10.00). Within ninety (90) days after written notice of GCRTA’s intent to exercise such option, Developer shall re-convey the Site to GCRTA by limited warranty deed, free and clear of all liens and encumbrances other than those liens and encumbrances that were in effect immediately prior to the Closing Date, unless Developer cures such default within such ninety (90) day period.

Section 7.3 Failure to Begin and Pursue Construction of the Project. GCRTA will retain a reversionary right to the Site in the event the Developer fails its obligations, subject in all respects to the rights and interests of any Mortgagee: (i) to commence construction of the Initial Project (as evidenced by the pouring of foundations of any portion of the Initial Project within twenty-four (24) months of Closing and conveyance of the Site); or, (ii) to diligently pursue Substantial Completion of construction of the Initial Project (collectively referred to as the “*Reversionary Conditions*”). In the event GCRTA reasonably believes that the Developer has failed to fulfill any Reversionary Condition, GCRTA shall notify the Developer in writing setting forth with specificity the basis of its belief that the Developer has failed to fulfill the Reversionary Condition. Developer shall have the opportunity to cure such failure and so long as Developer continues to diligently pursue the cure of said failure, GCRTA may not exercise its reversionary right. Any failure

by Developer to fulfill the Reversionary Conditions after being given an opportunity to cure shall entitle GCRTA to exercise its reversionary right to repurchase the Site for an amount equal to no more than Ten Dollars (\$10.00), and within ninety (90) days after written notice of its intent to exercise such option, Developer shall re-convey the Site to GCRTA by limited warranty deed, free and clear of all liens and encumbrances, other than those liens and encumbrances and that were in effect immediately prior to the Closing Date.

Section 7.4 Reports and Materials. If this Agreement is terminated pursuant to this Article VII, within five (5) Business Days (as defined in Section 12.15) after such termination, Developer shall deliver to GCRTA a complete set of all surveys, title reports, environmental reports, soil studies and all other written materials, records or other documents related to the Project that are in Developer's possession or under its control, including any conceptual site plans and Project design concept plans completed to date.

ARTICLE VIII COMMUNITY ENGAGEMENT AND REPORTING

Section 8.1 Community Engagement. Developer acknowledges that community engagement is a critical component of the Project and will cooperate with GCRTA as part of the planning and approval process to gather and consider input from the community and will specifically engage with property and business owners and organizations in the neighborhoods surrounding the Site.

Section 8.2 Reporting. Developer and GCRTA will agree to a mutually acceptable schedule of status updates and meetings throughout the design and construction of the Project as well as a communication plan that has been incorporated into the Master Schedule.

ARTICLE IX DBE GOALS; BUILDING TRADES

Section 9.1 DBE Goals. Developer will use commercially reasonable efforts to utilize Disadvantaged Business Enterprises ("**DBE**") during construction of the Project. GCRTA will advise the Developer of the DBE goals after the Project Concept Design Plan and Budget have been completed.

Section 9.2 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.

ARTICLE X INDEMNIFICATION

Developer agrees to indemnify and hold GCRTA harmless from and against any and all liabilities, claims, obligations, expenses, losses, damages, judgments or other injuries (including, but not limited to, reasonable attorneys' fees, costs and expenses of litigation and appeals) (collectively, "**Damages**") which GCRTA may incur or suffer in connection with: (i) any intentional or negligent acts or omissions of Developer or its agents, consultants, contractors,

employees, or representatives, and/or any other actions taken outside of the scope of authority provided to Developer hereunder; and/or (ii) any damage to property or persons caused by Developer or its agents, consultants, contractors, employees, or representatives in its performance of their duties under this Agreement; and /or (iii) any third party claims arising out of Developer's performance of its obligations under this Agreement, except to the extent any damage to GCRTA arising in connection with any or all of the foregoing acts, are the result of the negligent act or omission to act of GCRTA.

GCRTA acknowledges that it is responsible for its own negligence and will hold Developer harmless from any liability arising from GCRTA's direct negligence, including without limitation, GCRTA's direct negligence with results in any damage to property or persons.

ARTICLE XI RESTRICTIONS ON ASSIGNMENT OR TRANSFER

Section 11.1 Assignment by Developer. Developer may not assign this Agreement or any of the Developer's rights thereunder, during the first three (3) years after issuance of the Certificate of Occupancy, without the prior written consent of GCRTA, which consent shall not be unreasonably withheld, conditioned or delayed. Thereafter, Developer may assign all or a portion of its rights and obligations under this Agreement and its right and interest in and to the Project and the Site without GCRTA's prior written consent, so long as such assignee acknowledges in writing its obligations under this Agreement for the benefit of GCRTA prior to undertaking any work contemplated herein, a copy of which shall be delivered to GCRTA concurrently with such assignment.

Section 11.2 Transfer of Membership Interests in the Developer. Developer acknowledges that the identity of the persons who have ownership of the interests in and control of Developer are important considerations to GCRTA in entering into this Agreement with Developer. Developer represents and agrees for itself and its Members, and for any successor in interest to itself and its Members, that it will not convey or otherwise transfer Control of the LLC Entity or the Project to an unaffiliated third party for a period of three (3) years after issuance of the Certificate of Occupancy without GCRTA's written approval, which approval will not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, the restrictions set forth in this Section 11.2 include voluntary transfers of ownership interests in Developer to unaffiliated third parties that would result in a change of control of Developer. Involuntary transfers (whether due to death, disability, divorce, incapacity or otherwise) and transfers to Affiliates, other current direct and indirect equity holders of Developer or to trusts for the benefit of current direct and indirect equity holders of Developer and/or their immediate family members and descendants shall not be subject to this Section 11.2. For the purposes hereof, "**Control**" means possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management policies of Developer, whether through the ownership of voting securities, as a general partner, as a manager of a manager-managed limited liability company, as the member of a member-managed limited liability company, by contract, or otherwise. A person or entity shall not be deemed to exercise Control of another person or

entity solely because such person or entity has the direct or indirect right to consent to major decisions.

ARTICLE XII
MISCELLANEOUS

Section 12.1 Notices. Any notice or communication between the Parties required or permitted to be given under this Agreement shall be deemed sufficiently given if delivered personally, if mailed by U.S. registered or certified mail or if by Federal Express or other overnight courier service, and addressed as follows:

If to GCRTA: Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331
Attn: James Rusnov, Real Estate Manager
jrusnov@gcrtta.org

With a copy to: Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331
Attn: Sheryl King Benford, General Counsel
sbenford@gcrtta.org

If to the Developer: AJAPPJR, LLC
629 Euclid Avenue, 11th Floor
Cleveland, OH 44114
Attn: Jori Maron, Manager

With a copy to: AJAPPJR, LLC
629 Euclid Avenue, 11th Floor
Cleveland, OH 44114
Attn: Geoffrey Goss, General Counsel
ggoss@mrnltd.com

Any notices and other communications to be delivered by either party to the other pursuant to this Agreement shall be in writing and shall be deemed delivered as follows, except as otherwise specifically provided in this Agreement: (a) when hand delivered; (b) one (1) Business Day after mailing by Federal Express or other overnight courier service; or (c) three (3) Business Days after deposit in the United States mail by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to be charged with notice at the above-recited address or such other address as either party from time to time may designate by notice delivered to the other; provided, however, that no notice of change of address shall be deemed given until received by the party to be notified. Notwithstanding anything contained herein to the contrary, a notice given by either party's attorney shall be deemed to be properly delivered under the provisions of this Section 12.1

Section 12.2 Estoppel Certificates. Each party to this Agreement (a “**Responding Party**”) will, from time to time, within fifteen (15) Business Days after written request by another party hereto (a “**Requesting Party**”), execute and deliver to the Requesting Party and/or any third party designated by the Requesting Party, a statement in writing certifying (a) that (except as may be otherwise specified by the Responding Party) (i) this Agreement is in full force and effect and unmodified, (ii) the Responding Party is not in default in the performance or observance of its obligations under this Agreement, and (iii) to the Responding Party’s actual knowledge, the Requesting Party is not in default in the performance or observance of the Requesting Party’s obligations under this Agreement, and (b) as to any other factual matters as the Requesting Party may reasonably request about this Agreement, the status of any matter relevant to this Agreement.

Section 12.3 Project Costs. GCRTA and Developer shall be responsible for their respective legal fees and due diligence costs, except as otherwise specified herein. The sharing of costs associated with the Project will require the mutual agreement of the Parties.

Section 12.4 Entire Agreement. This Agreement and the exhibits referred to herein, all of which are attached hereto and made a part hereof, embody and constitute the entire understanding between the Parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, by and between GCRTA and the Developer, are superseded and merged into this instrument, and shall be null, void and of no further force and effect from and after the Effective Date.

Section 12.5 Modification/Amendment. None of the provisions hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument.

Section 12.6 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Ohio and the state courts of Cuyahoga County, Ohio.

Section 12.7 Time. Time is of the essence in the performance of each and every term, condition and covenant contained in this Agreement.

Section 12.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and both of which together shall form a single instrument.

Section 12.9 Construction. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that GCRTA and Developer have each contributed substantially and materially to the preparation of this Agreement.

Section 12.10 Severability. If any one or more of the provisions hereof shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this

Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 12.11 Further Assurances. Subject to the express terms and conditions of this Agreement, each party shall take such actions and provide to the other such assurances as may be reasonably requested to consummate the transactions contemplated hereby, including providing such further documents or instruments reasonably requested by the other party as may be reasonably necessary to effect the purpose of this Agreement and carry out its provisions. The provisions of this Section shall not operate to expand or enlarge the specific obligations of either GCRTA or Developer expressly set forth in this Agreement.

Section 12.12 Limitation of Liability. No member, official or employee of GCRTA shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by GCRTA or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement. GCRTA shall look solely to Developer's interest in the Project in connection with the enforcement of Developer's obligations hereunder.

Section 12.13 Agreement Runs with the Land. All of the provisions, rights, terms covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees.

Section 12.14 Provisions Not Merged With Deed. None of the provisions of the Agreement are intended to or shall be merged by reason of any deed transferring title from GCRTA to the Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 12.15 Interpretation. All Section headings and other titles and captions herein are for convenience only, do not form a substantive part of this Agreement and shall not restrict or enlarge any substantive provisions hereof or thereof. In the event of a conflict between the terms and conditions of this Agreement and the operating Agreement of the LLC Entity, the Operating Agreement of the LLC Entity should prevail and govern. The term "including," when used in this Agreement, means "including, without limitation," and shall be construed as a term of illustration, and not a term of limitation. Whenever reference is made to a number of "days" in the computation of time hereunder, such reference shall mean "calendar days" unless otherwise indicated. Wherever any period of time is specified herein for the taking of any action or the giving of any notice, the period shall be computed by excluding the day upon which the period is specified to commence and including the last day of the period specified. Whenever the time for performance of an obligation occurs or expires on a day other than a Business Day, the time for performance thereof shall be extended to the next Business Day. For the purposes hereof, the term "**Business Day**" means all days, excluding (a) Saturday and Sunday, and (b) any day that is a national holiday in the United States or a state holiday in the State of Ohio.

Section 12.16 Incorporation of Exhibits. All Exhibits attached hereto are incorporated into this Agreement and are made a part hereof by this reference.

[Signature pages to follow]

DRAFT

This Agreement is entered into as of the Effective Date.

**GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY:**

By: _____
India L. Birdsong
General Manager, Chief Executive Officer

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, the General Manager and CEO of the GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY.

Notary Public

The legal form and correctness of this instrument is hereby approved:

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

Developer:

AJAPPJR, LLC

By: _____

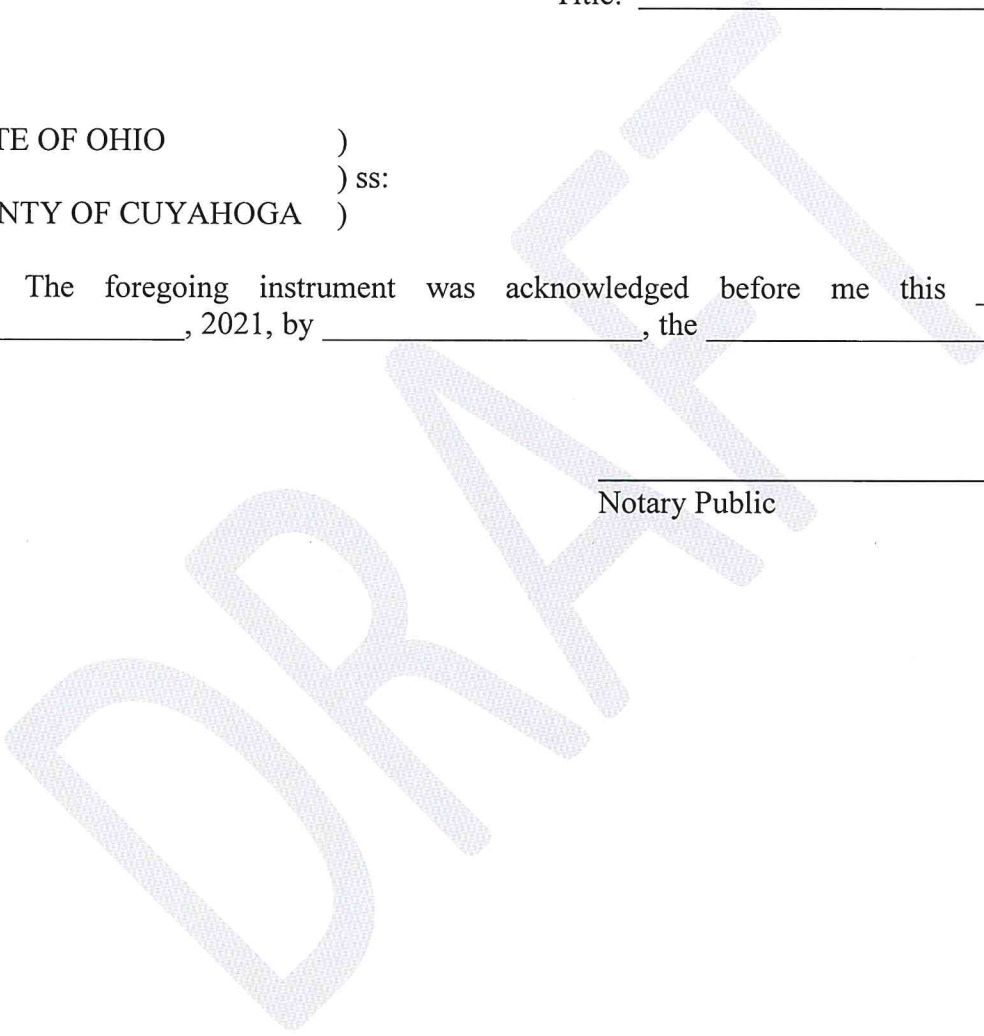
Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, the _____ of AJAPPJR, LLC.

Notary Public



List of Exhibits

Exhibit A – Description of the Site

Exhibit B – Site Plan

Exhibit C – Plans and Specifications

Exhibit D – Development Objectives

Exhibit E – Master Schedule

Exhibit F – Use Restrictions

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Exhibit A

Description of the Site

The Site includes approximately 1.7843 acres along the west side of Columbus Road, running south from Abbey Avenue. It is shown as "Parcel 3" on the Plat of Partition & Consolidation prepared for Greater Cleveland Regional Transit Authority by KS Associates, Inc., attached hereto (Sheet 1 of 1, Job No. 17295).

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Exhibit B

Site Plan

[Note: The Developer will provide a site plan, reflecting final proposed layout and massing by category. This will be prepared during the Inspection Period and attached as a supplement prior to the expiration of the Inspection Period.]

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Exhibit C

Plans and Specifications

[Note: The Plans and Specifications will be prepared by Developer during the Inspection Period, and submitted to the City Review Bodies and attached hereto as a supplement prior to the expiration of the Inspection Period. The Plans and Specifications as subsequently approved by the City Review Bodies will also be attached as supplements.]

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Exhibit D

Development Objectives

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

- (a) Leverage presence of W. 25th Street Station and improve connectivity and contextual compatibility with surrounding neighborhoods;
- (b) Provide physical modifications to the West 25th Street Station to facilitate access from adjacent neighborhoods and support potential increases in transit ridership;
- (c) Enhance transportation network to better balance accommodations for all travel modes (motorized and non-motorized);
- (d) Support a sustainable, livable and walkable environment;
- (e) 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; and,
- (f) Create a mix of uses that are complementary and symbiotic to establish a Project that has economic stability.

EXHIBIT E

Master Schedule

[Note: This is a preliminary schedule, and it will be supplemented and updated by the Developer during the Inspection Period and throughout the Project.]

11/01/2021:	Execute Agreement	
11/1/2021 -- 12/31/2022:	Inspection Period	Includes: site inspections; marketing studies; community engagement process; project design; rezoning & lot split or consolidation process
10/31/2022:	Submittals to City	Plans and Specifications submitted to City Planning Commission and Design Review Committee
12/31/2022:	Project Approval	Anticipated date for approvals from City
Early 2023:	Closing Preparations	Includes: Appraisals of Site, Project as designed, and Air Rights (if applicable); formation of LLC Entity; obtaining construction funding
07/31/2023:	Closing Date	Convey land from GCRTA to LLC Entity
10/31/2023:	Construction Start	Initial phase of construction to start within 3 months from Closing
07/31/2028:	Completion	Project to be complete no later than 60 months from Closing

Exhibit F

Use Restrictions

- (a) An adult or pornographic bookshop, video store or movie theater (materials shall be considered “adult” or “pornographic” if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality);
- (b) A strip club, massage parlor, “head shop” or other store selling drug paraphernalia, tattoo parlor, bingo hall, or off-track betting parlor; provided, however, the prohibition against massage parlors shall not be deemed to prohibit massage services by a doctor, chiropractor or by a nurse or massage services offered by a licensed massage therapist in connection with the operation of a nail salon, hair salon, day spa, barber shop, health club or health spa;
- (c) A check-cashing or pawn shop;
- (d) A State liquor or packaged beverage store, except incidental to a supermarket, restaurant, prepared food shop, or cafe; provided, however, a high-end wine store that includes ancillary liquor sales shall be permitted;
- (e) A funeral parlor;
- (f) A business or use involving the sale of firearms;
- (g) A business or use that creates strong, unusual or offensive odors, fumes, dust or vapors, except for restaurants with adequate venting and odor-control facilities, or creates unusual fire, explosives or other hazards;
- (h) Off track betting club, internet sweepstakes cafes;
- (i) Fast food restaurants;
- (j) Manufacturing operation, factory, lumberyard, Industrial usage, except for use incidental to a retail operation, i.e., producing a small product on the premises for sale or to provide services on the premises to patrons of the location on the premises only, such as, but not limited to, eyeglasses, dry cleaning and tailoring operations, provided such use does not cause noise or odors materially detectable outside the premises and is otherwise in compliance with the City’s zoning code.
- (k) Warehouse, processing or rendering plant;
- (l) Establishment selling cars (new or used) in a traditional, “car lot” manner, and/or trailers, mobile homes, motorcycles, motor vehicles, boats;
- (m) Gas station, car wash or car repair;

- (n) Night club or adult entertainment as a primary use;
- (o) “Vape” shops;
- (p) Any use that materially interferes with public transit.

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