

RESOLUTION NO. 2022-97

AUTHORIZING THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY TO ENTER INTO AN OPTION AGREEMENT WITH FLAHERTY & COLLINS DEVELOPMENT, LLC, AN INDIANA LIMITED LIABILITY COMPANY, FOR THE PROPOSED SALE OF PROPERTY ADJACENT TO THE WEST BOULEVARD-CUDELL RAPID TRANSIT STATION, KNOWN AS CUYAHOGA COUNTY PERMANENT PARCEL NUMBER 001-32-012 ON DETROIT AVENUE, CLEVELAND, OHIO

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") is the owner of record of land on Detroit Avenue, Cleveland, Ohio, which has a Permanent Parcel Number of 001-32-012 (the "Property"); and

WHEREAS, the Property was acquired by GCRTA in 1975 resulting from the Mass Transit System Transfer Agreement of 1975 with the City of Cleveland which transferred the assets of the Cleveland Transit System to the GCRTA; and

WHEREAS, the Property is vacant land and is not currently used to support the West Boulevard-Cudell Rapid Transit Station; and

WHEREAS, the Property has been on the GCRTA list of excess property with the Federal Transit Administration ("FTA") since 2016; and

WHEREAS, the GCRTA has advertised and marketed the property for sale through a fair and open process since 2018; and

WHEREAS, it was determined that a residential multi-family Transit Oriented Development ("TOD") project is an appropriate use for the Property, compatible with the TOD and economic development goals of GCRTA and is consistent with the Real Estate Policies of the GCRTA; and

WHEREAS, Flaherty & Collins Development, LLC ("FC") has successfully developed residential TOD projects nationally and in northeast Ohio and intends to develop a TOD project on the Property; and

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

WHEREAS, GCRTA intends to cooperate with FC to plan and develop the TOD by offering the Option Agreement, assisting with entitlement, supporting the efforts of FC to finance the TOD project, and offering other appropriate TOD services; and

WHEREAS, the Option Agreement will initiate the development process, allowing FC to apply for tax credit financing from the State of Ohio and will demonstrate site control of the Property by FC necessary for the financing application submittal during the term of the agreement.

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

Section 1. That the General Manager, Chief Executive Officer is hereby authorized to enter into an Option Agreement with FC for the exclusive right and option for FC to purchase the 1.37-acre parcel of property owned by GCRTA on Detroit Avenue in the City of Cleveland, adjacent to the West Boulevard-Cudell Rapid Transit Station and identified as Cuyahoga County Permanent Parcel Number 001-32-012 (the "Property").

Section 2. That the option period will commence on the effective date of the Option Agreement for an initial option period of one year and allowing one extended option period of one additional year.

Section 3. That the option price of Five Thousand Dollars (\$5,000.00) for the initial option period and an additional Five Thousand Dollars (\$5,000.00) for the extended option period represents the current value of option prices for agreements of this type, size and nature as verified by survey of similar agreements.

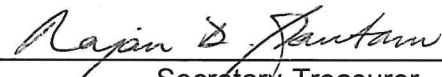
Section 4. That, if FC exercises the option, GCRTA will require approval from its Board of Trustees authorizing the General Manager, Chief Executive Officer to enter into a Purchase Agreement for the sale of said Property to FC.

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

Adopted: October 25, 2022



President

Attest: 

Secretary-Treasurer



TITLE/DESCRIPTION: OPTION AGREEMENT: AN OPTION TO PURCHASE CUYAHOGA COUNTY PERMANENT PARCEL NUMBER 001-32-012 ON DETROIT AVENUE, CLEVELAND, OH 44102		Resolution No.: 2022-97
BUYER: FLAHERTY & COLLINS DEVELOPMENT, LLC		Date: October 20, 2022
OPTION PRICE: \$5,000.00 FOR THE INITIAL OPTION PERIOD OF ONE YEAR AND \$5,000.00 FOR A SINGLE ADDITIONAL EXTENDED OPTION PERIOD OF ONE YEAR		Initiator: Programming and Planning
ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____		

1.0 PURPOSE/SCOPE: The resolution seeks board approval of an Option Agreement with Flaherty & Collins Development, LLC ("FC") for the proposed purchase of Cuyahoga County Permanent Parcel Number 001-32-012 on Detroit Avenue, Cleveland, OH, located adjacent to the West Boulevard-Cudell Red Line Rapid Transit Station. This Option Agreement will allow the developer to make application to the State of Ohio for project financing and initiate a development process for a residential transit-oriented development ("TOD") project. This option to purchase and the proposed sale will remove excess real property from GCRTA's real property inventory and promote TOD on vacant land.

2.0 DESCRIPTION/JUSTIFICATION: GCRTA acquired this property from the City of Cleveland in 1975 via the Mass Transit System Transfer Agreement of 1975 which transferred the assets of the Cleveland Transit System to the GCRTA. The site offered for sale is vacant land and has been listed on GCRTA's Excess Real Property Inventory and Utilization Plan since 2016. Sale of this property will not adversely affect rail operations and will promote a TOD project immediately adjacent to a busy rail station.

A residential TOD was determined to be the highest and best use for this excess property and will promote the TOD and economic development goals of the GCRTA. The TOD project will enhance the value of the existing real estate assets at the West Boulevard-Cudell Rapid Transit Station.

FC intends to develop a 60-to-80-unit affordable housing project on this 1.37-acre site.

GCRTA set the option price after a review of current option fee market pricing for this type of transaction, size of the parcel, and the proposed option term. During the initial option period, FC will prepare and apply for project financing to the State of Ohio to secure tax credit financing to develop the TOD project. As a requirement for the financing submittal, FC will need to demonstrate site control of the parcel. An option agreement with GCRTA will satisfy this financing application requirement.

This proposed option agreement will not inhibit the operation of the West Boulevard-Cudell Rapid Transit Station and will promote the TOD and economic development goals of the GCRTA.

FC is a nationally known developer of multi-family housing projects based in Indianapolis, Indiana with both experience and current development activity in northeast Ohio.

This resolution only seeks to authorize an option to purchase agreement with FC. Additional Board authorization will be required to authorize execution of a Purchase and Sale Agreement, if it is determined to be in the best interest of GCRTA for the sale of the parcel to proceed.

- 3.0 PROCUREMENT BACKGROUND: Does not apply.
- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Does not apply.
- 5.0 POLICY IMPACT: The proposed Option Agreement is consistent with the Real Estate and TOD Policies of the GCRTA.
- 6.0 ECONOMIC IMPACT: The option price of \$5,000.00 for the initial option period of one year with one extended option period of one year for an additional \$5,000.00 is determined to be fair and reasonable pricing for this type of transaction. The price is based upon a current survey of option pricing for similar transactions.
- 7.0 ALTERNATIVES: The GCRTA can refuse to enter into an option agreement with FC for Permanent Parcel Number 001-32-012 and would continue to maintain the property and market the property for TOD.
- 8.0 RECOMMENDATION: Staff recommends the proposed Option Agreement with FC to support the initiation of a TOD project on the subject parcel.
- 9.0 ATTACHMENTS:
 - A. Location Map
 - B. Option Agreement Draft
 - C. County Property Summary Report

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



General Manager, Chief Executive Officer

ATTACHMENT A

ATTACHMENT A

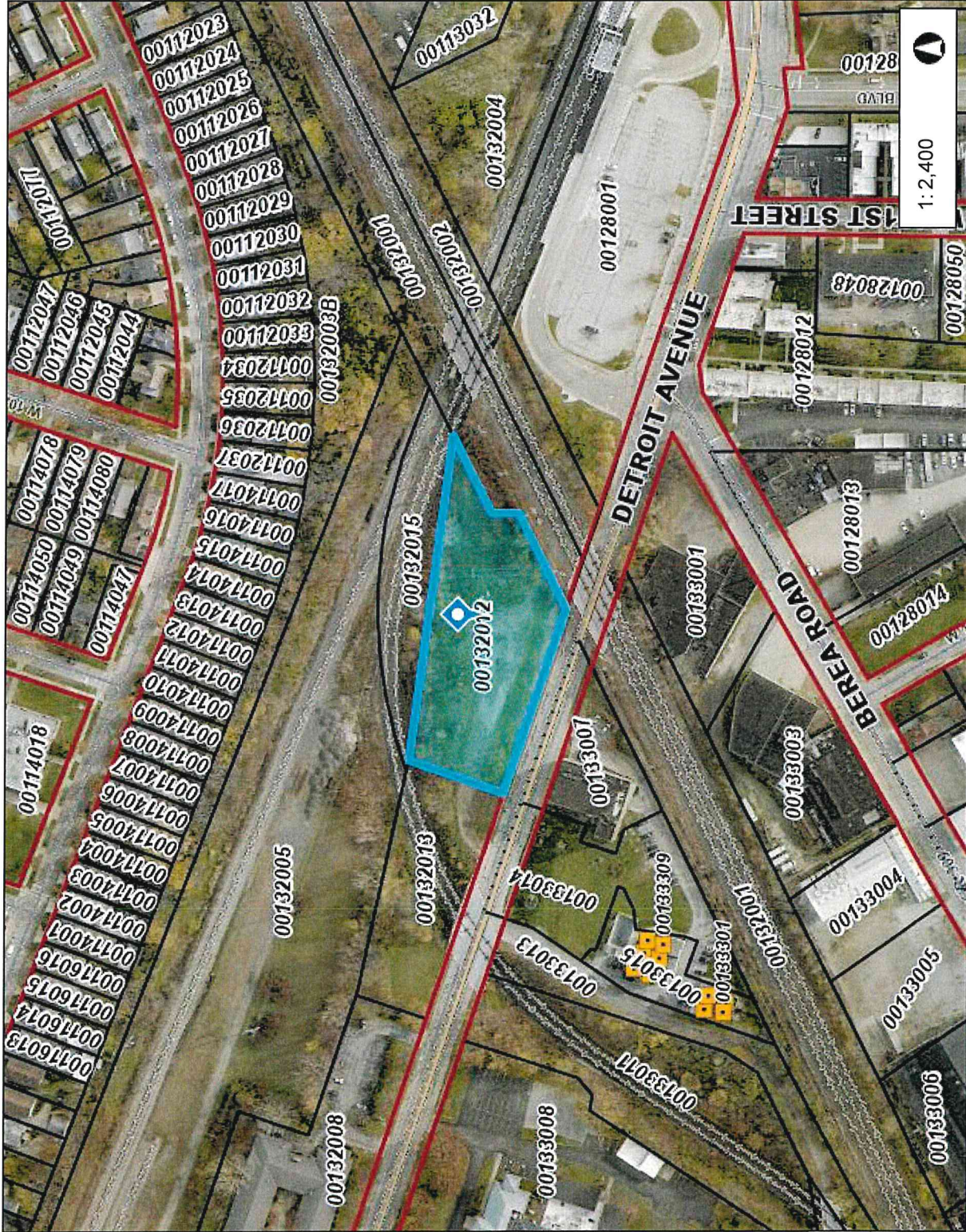
PPN 001-32-012



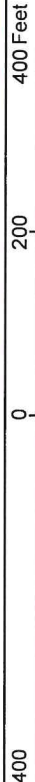
Date Created: 10/17/2022

Legend

- Municipalities
- Right Of Way
- Platted Centerline
- Parcel



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 or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Cuyahoga County
Enterprise GIS
 PUTTING CUYAHOGA COUNTY ON THE MAP

ATTACHMENT A

ATTACHMENT B

**DRAFT
OPTION AGREEMENT**

This Option Agreement ("Option Agreement") is entered into as of _____, 2022 ("Effective Date") by and between the Greater Cleveland Regional Transit Authority, a political subdivision of the State of Ohio, 1240 West 6th Street, Cleveland, Ohio 44113 ("Seller"), and Flaherty & Collins Development, LLC, an Indiana limited liability company (together with its permitted successors, assigns, and/or designees, "Buyer") (collectively, "the Parties"), entered into under the authority of Seller's Resolution No. _____ adopted _____ a copy of which is attached to and incorporated into this Agreement as Exhibit A.

Recitals

WHEREAS, Seller owns an approximate 1.37 acre parcel of real estate (Parcel No. 001-32-012) located adjacent to the West Boulevard-Cudell Rapid Transit Station on Detroit Avenue, Cleveland, Ohio 44102 and more particularly described on Exhibit B attached hereto and made a part hereof (the "Property"); and

WHEREAS, Seller and Buyer desire to set forth the terms under which Buyer has the option to acquire the Property.

NOW, THEREFORE, for good and valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Basic Transaction**

- a) Purchase Terms. The Seller wishes to sell and the Buyer wishes to purchase the Property (as hereinafter defined) in its "As Is" condition. The Parties shall negotiate an agreement for purchase of the Property ("Purchase Agreement") that shall contain the basic terms contained in this Option Agreement and other terms and conditions to be negotiated between the Parties.
- b) Purchase Price. The Buyer shall pay the purchase price as determined by an appraisal and appraisal review prior to the closing of the property.
- c) Air Rights. Air Rights will be acquired separately from the City of Cleveland, as the City retained the air rights to all of the real estate (including this Property) transferred as part of the Mass Transit System Transfer Agreement, dated September 5, 1975, which transferred the assets of the Cleveland Transit System to the Greater Cleveland Regional Transit Authority. The Seller will make its best efforts to support Buyer in obtaining the Air Rights. Seller's previous experiences with obtaining such Air Rights from the City have been positive.

2. **Option**

- a) Grant of Option. Seller hereby grants to Buyer and Buyer hereby accepts from Seller, the exclusive, irrevocable right and option to purchase the

Property, together with the improvements located thereon and all rights, privileges, easements and appurtenances thereto, on the terms and conditions set forth herein (the "Purchase Option").

- b) Option Period. The Seller shall grant Buyer the Purchase Option for an initial period of twelve (12) months commencing on the Effective Date (the "Initial Option Period"); provided however, Buyer shall have one (1) option to extend the Initial Option Period for an additional twelve (12) months (the "Extended Option Period" and together with the Initial Option Period, collectively, the "Option Period").
- c) Option Price. Buyer shall pay to Seller the sum of Five Thousand Dollars (\$5,000.00) for the Purchase Option (the "Option Price"). The Buyer shall pay the Option Price to Seller within ten (10) days of Buyer's receipt of a fully executed original of this Option Agreement authorized by Seller's Board of Trustees. In the event Buyer elects to extend the Initial Option Period, Buyer shall provide Seller written notice of its election to extend and Buyer shall remit to Seller the additional sum of Five Thousand Dollars (\$5,000.00) no later than the expiration date of the Initial Option Period.
- d) Effect of Option Price on Purchase. The Seller shall not refund the Option Price to Buyer unless a refund is required as set forth in Section 5b.
- e) Notice of Exercise; Purchase Agreement. In the event Buyer desires to exercise the Purchase Option, Buyer shall give written notice of such exercise to Seller and the Parties shall thereupon proceed to execute and deliver the Purchase Agreement and to consummate the transaction in accordance with the terms and conditions contained therein. Closing of such transaction shall occur in accordance with the terms of the Purchase Agreement.
- f) Notice to Buyer that Approval of Sale by FTA and Seller's Board of Trustees is Required. Buyer expressly acknowledges that the Federal Transit Administration (FTA) and Seller's Board of Trustees must approve the sale of the Property. Seller and Buyer are entering into this Option Agreement with the understanding that, even if Buyer exercises the Purchase Option, the Seller may be unable to complete the sale if FTA and/or Seller's Board of Trustees do not approve the sale.

3. **Inspections.** During the Option Period, provided Seller has received and acknowledged receipt of the Option Price and received Buyer's evidence of insurance required by Section 14 herein, Seller shall provide Buyer and/or Buyer's agents and representatives access to enter upon the Property for the purpose of making such inspections of the Property as Buyer, in Buyer's sole discretion, deems necessary and/or desirable. Said inspections may include, without limitation, such environmental tests, audits and inspections and such soil borings, samples and tests and surveying and engineering studies, and other inspections of the Property as Buyer, in Buyer's sole discretion, deems necessary. Buyer shall coordinate with and secure approval from

Seller in advance of entering the Property as certain safety parameters or procedures may be required since the Red Line Rapid adjacent to the Property is an operating rail transit system. The Parties may enter into a temporary right of entry agreement to allow Buyer and its consultants access to the Property. Buyer shall give Seller reasonable advance written notice of each entry specifying the nature and purpose of the inspection and the duration of the entry. Buyer shall immediately provide Seller copies of any and all reports of inspections and tests requested by Seller. Buyer shall restore or repair the Property as nearly as practicable to essentially the same condition as it was in prior to its inspections upon completion of Buyer's inspection, including but not limited to the land, underground utilities, fixtures, or other structures. Buyer shall provide evidence at the time of signing this Option Agreement that Buyer has adequate insurance coverage for this obligation as outlined in Section 14 herein.

4. Title and Survey

a) Title Insurance

(1) Buyer shall obtain a preliminary title commitment or "binder" in respect of the Property (with special tax and lien search) (the "Title Commitment") issued by the Title Company (as hereinafter defined).

Buyer shall either:

(i) approve the form and substance of the Title Commitment, or

(ii) reject it.

(2) Buyer may, at Buyer's option:

(i) accept such title as Seller furnishes upon the Closing Date and any encumbrances on the Premises, shall be "Permitted Exceptions;" or

(ii) terminate this Option Agreement.

(3) Upon termination of this Option Agreement pursuant to this subsection, neither party hereto shall thereafter be under any further liability or obligation to the other party hereunder except as otherwise provided herein.

b) Survey

(1) Buyer, at Buyer expense, may obtain a metes and bounds survey of the Property (the "Survey"). The Survey shall be in a form and substance satisfactory to Buyer, the Title Company and any lender of Buyer. The Survey shall also contain a certificate, in a form and substance acceptable to Buyer, certifying to Buyer, the Title Company, any lender of Buyer, and others designated by Buyer, that the Survey is an accurate representation of the Property made in accordance with the "Minimum Standard Detail Requirements for Land Title Surveys" adopted by the ALTA/ACSM and shall include the location of all structures and improvements on the Property and the identification of all easements and rights-of-way, either of record or visible on the ground, which either benefit or burden the Property.

- (2) Buyer shall either:
 - (i) notify Seller in writing of Buyer's approval of the Survey; or
 - (ii) notify Seller in writing of any matters shown (or not shown) on the Survey that are objectionable to Buyer (said matters, together, herein called the "Survey Defects").

- (3) In the event that Buyer so notifies Seller of any such Survey Defects, Seller shall have a period of ten (10) days after receipt of such notice to cure or remove all such Survey Defects, but Seller shall not be obligated to cure or remove such Survey Defects. If Seller has not cured or removed all such Survey Defects to Buyer's satisfaction within said ten (10) day period, then Buyer may:
 - (i) accept title to the Property notwithstanding the existence of any such Survey Defects upon the Closing Date in which case the Survey Defects shall be deemed to be Permitted Exceptions;
 - (ii) grant Seller, at Seller's request, additional time in which to cure any such Survey Defects; or
 - (iii) terminate this Option Agreement. Upon termination of this Option Agreement pursuant to this subsection, neither party hereto shall thereafter be under any further liability or obligation to the other party hereunder except as otherwise provided herein.

- (4) If Buyer fails to deliver written notice of its election under subsection (3), above, prior to the expiration of the Survey Cure Period, then Buyer shall be deemed to have elected item (i) above.

5. Closing Date and Possession.

- a) Closing Date. The closing of the acquisition of the Property (the "Closing Date") shall occur within thirty (30) days after the later of:
 - (1) the Parties' execution of the Purchase Agreement;
 - (2) Seller's Board of Trustees approval of the sale; or
 - (3) the Federal Transit Administration (if it then has any interest in the Property) concurrence with the sale.

- b) Effect of Disapproval. In the event that the Seller's Board of Trustees does not approve the sale and/or the Federal Transit Administration does not approve the sale, then Buyer shall immediately receive the return of the Option Price.

- c) Possession. The Buyer may possess the Property on the Closing Date. The above notwithstanding, the Parties may agree in writing upon another date.

6. Title Commitment and Escrow Agent. The title company and escrow agent for the transaction contemplated in the Purchase Agreement shall be Northern Title Agency, Inc. (the "Title Company").

7. **Purchase Agreement.** During the Option Period, the Parties shall begin negotiating in good faith to reach a written Purchase Agreement containing comprehensive representations, warranties, disclosures, indemnities, conditions and agreements.

8. **Exclusive Dealing.** During the Option Period, Seller shall not negotiate with any other person or entity relating to the acquisition or lease of the Property, in whole or in part.

9. **Notices.** Any notice which may be or is required to be given pursuant to the provisions of this Option Agreement shall be personally delivered, sent by certified or registered mail, postage prepaid, return receipt requested, or by overnight delivery service and addressed as follows.

If to Buyer: Flaherty & Collins Development, LLC
One Indiana Square, Suite 3000
Indianapolis, IN 46204
Attn: Julie Collier

Copy to: Flaherty & Collins Properties
One Indiana Square, Suite 3000
Indianapolis, IN 46204
Attn: Corporate Counsel

If to Seller: Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, OH 44113
Attn: Property Manager

Copy to: Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, OH 44113
Attn: General Counsel

If to Escrow Agent:
Northern Title Agency, Inc.
19545 Center Ridge Road
Rocky River, OH 44116
Attn: Deborah S. Furry

The Parties may change the contact information within this Section by written communication in lieu of Amendment to this Agreement.

10. **Agreement for Further Execution.** Prior to, at and after the Closing Date (as defined in the Purchase Agreement), the Parties shall also each execute and deliver to the other such other instruments of conveyance, sale, assignment or transfer and shall take or cause to be taken such other or further action as the Parties shall reasonably request at any time or from time to time in order to:

- (a) vest, confirm or evidence in Buyer title to all or part of the Property; or
- (b) effectuate, in any other manner, the terms and conditions of this Option Agreement.

11. **Authority.** Each person and entity signing on behalf of a party to this Option Agreement individually warrants his or her and its authority so to do and individually warrants that all necessary actions have been taken to authorize the execution of this Option Agreement by such party.

12. **Real Estate Brokers' Commissions.** In the Purchase Agreement, Seller and Buyer will represent and warrant to each other that such Parties have had no dealings with any real estate broker to any commission in connection with the sale of the Property to Buyer.

13. **Expenses.** The Parties shall pay the expenses of such party's own accountants, attorneys and others engaged in such party's behalf in connection with this Option Agreement, the transactions contemplated hereby, and the Purchase Agreement to be entered into between the Parties.

14. **Insurance.** Buyer shall indemnify Seller for any injury or harm directly or indirectly resulting from Buyer's inspections conducted on the Property pursuant to this Option Agreement. Buyer shall provide upon execution of this Option Agreement evidence of commercial liability insurance covering Buyer's operation with minimum coverage of \$1,000,000 per occurrence. Said insurance shall include contractual liability. Seller shall be made an additional insured on said insurance policy. The foregoing indemnity shall not include damage incurred by Seller as a result of Buyer's discovery of environmental or other conditions upon the Property which predate this Option Agreement.

15. **Survival.** Sections 2, 12 and 14 shall survive termination or expiration of this Option Agreement and they shall take precedence over all other terms of this Option Agreement to the extent of conflict. No expiration or earlier termination provision in this Option Agreement shall have any effect on the survival of these sections or on any terms stated to or intended to survive termination of this Option Agreement.

18. **Construction.** Each Party hereto acknowledges that it was represented by counsel and participated equally in the drafting and negotiation of this Option Agreement and that, accordingly, no court construing this Option Agreement shall construe it more stringently against one Party than against the other.

IN WITNESS WHEREOF, the Parties hereto have executed this Option Agreement as of the date first above written.

Seller:

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

By:

India L. Birdsong Terry
General Manager / Chief Executive Officer

Approved as to legal form & correctness:

Janet E. Burney, General Counsel
Deputy General Manager for Legal Affairs

Buyer:

FLAHERTY & COLLINS DEVELOPMENT, LLC

By: _____
David M. Flaherty, President

ATTACHMENT C



Cuyahoga County, Ohio - Property Summary Report
Parcel: 001-32-012



Owner CLEVELAND R T A
Address DETROIT AVE
 CLEVELAND, OH. 44102
Land Use () E -
Legal Description 12 NEXT W OF NYC RR
Neighborhood Code 75179

SKETCH

Building 0

Sketchs not available for this parcel.
 Please contact us at EMcGoldrick@cuyahogacounty.us
 or call (216) 443-4663 for a copy of the building card.

MAP VIEW



BUILDING INFORMATION

LAND

Code	Frontage	Depth	Acreage	Sq Ft
UND	272		1.37	59,740

VALUATION

2021 Values	Taxable Market Value	Exempt Market Value	Abated Market Value	Assessed Taxable Value
Land Value	\$0	\$83,700	\$0	\$0
Building Value	\$0	\$0	\$0	\$0
Total Value	\$0	\$83,700	\$0	\$0
Land Use		6422		EXEMPT TRANSIT AUTHORITY RAIL

PERMITS

Tax Year	Reason	Tax Change	Exempt Change	Percent Complete	Reinspect	Notes
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IMPROVEMENTS

Type	Description	Size	Height Depth
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SALES

Date	Buyer	Seller	Price
9/6/1975	Cleveland R T A	Cleveland Rta	\$0
9/5/1975	Cleveland Rta	Cleveland City Of	\$0
1/1/1975	Cleveland City Of		\$0

Taxes

2021 Taxes	Charges	Payments	Balance Due
Tax Balance Summary	\$0.00	\$0.00	\$0.00