

RESOLUTION NO. 2024-13

AUTHORIZING THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY TO ENTER INTO AN OPTION AGREEMENT WITH FLAHERTY & COLLINS DEVELOPMENT, LLC FOR THE PROPOSED SALE OF PROPERTY ADJACENT TO THE WEST PARK RAPID TRANSIT STATION, KNOWN AS A PART OF CUYAHOGA COUNTY PERMANENT PARCEL NUMBER 024-33-01 ON LORAIN AVENUE, CLEVELAND, OHIO

WHEREAS, the Greater Cleveland Regional Transit Authority ("Authority") is the owner of record of land on Lorain Road, Cleveland, Ohio, which has a Permanent Parcel Number of 024-33-001 ("Property"); and

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

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

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

WHEREAS, the Authority 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 the Authority, and is consistent with the Real Estate Policies of the Authority; 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, the Authority intends to cooperate with FC to plan and develop the TOD by offering an option agreement, assisting with entitlement, supporting the efforts of FC to finance the TOD project, and offering other appropriate TOD services; and

WHEREAS, FC will pay the Authority the sum of Five Thousand Dollars (\$5,000.00) for the initial option period and, if FC chooses to extend the option period, FC will pay the Authority an additional Five Thousand Dollars (\$5,000.00) by the end of the initial option period; and

WHEREAS, the option agreement will initiate the development process, thereby allowing FC to apply for tax credit financing from the State of Ohio and will demonstrate control by FC of the 1.35 acre portion of the Property for the project site, as required for FC's financing application submittal during the term of the option agreement.

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

Section 1. That an approximately 1.35 acre portion of the real property owned by the Authority and known as Cuyahoga County Permanent Parcel Number 024-33-001 on Lorain Avenue in Cleveland, Ohio, adjacent to the West Park Rapid Transit Station is hereby declared excess property.

Section 2. That the General Manager, Chief Executive Officer is hereby authorized to execute an Option Agreement for that excess property with Flaherty & Collins Development, LLC for the purpose of pursuing a residential multi-family Transit Oriented Development, with an initial option period of one year and one extended option period of one year, and to execute other documents required to administer or effectuate the Option Agreement.

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 represent the current value of option prices for agreements of this type, size and nature as verified by survey of similar agreements.

Section 4. That this resolution shall become effective immediately upon its adoption.

Adopted: January 23, 2024



President

Attest:



Secretary-Treasurer



<p>TITLE/DESCRIPTION:</p> <p>AGREEMENT: OPTION TO PURCHASE A PART OF CUYAHOGA COUNTY PERMANENT PARCEL NUMBER 024-33-001 ON LORAIN AVENUE, CLEVELAND, OH 44111</p> <p>BUYER: FLAHERTY & COLLINS DEVELOPMENT, LLC</p> <p>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</p>	<p>Resolution No.: 2024-13</p> <hr/> <p>Date: January 18, 2024</p> <hr/> <p>Initiator: Programming and Planning</p>
<p>ACTION REQUEST:</p> <p><input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____</p>	

1.0 **PURPOSE/SCOPE:** The resolution seeks board approval of an Option Agreement with Flaherty & Collins Development, LLC (“FC”) for the proposed purchase of a portion of Cuyahoga County Permanent Parcel Number 024-33-001 on Lorain Avenue in Cleveland, Ohio, adjacent to the West Park Rapid Transit Station. This Option Agreement will allow FC to make an application to the State of Ohio for project financing and initiate a development process for a residential transit-oriented development (“TOD”) project. Sale of this property, if effectuated by the parties, will remove excess real property from the real property inventory of the Greater Cleveland Regional Transit Authority (“Authority”), as required by applicable federal regulations, and promote TOD on vacant land.

2.0 **DESCRIPTION/JUSTIFICATION:** The Authority 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 Authority. The site offered for sale is vacant land and has been listed on the Authority’s Excess Real Property Inventory and Utilization Plan since 2016. The 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 Authority. The TOD project will enhance the value of the existing real estate assets at the West Park Rapid Transit Station.

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. FC intends to develop a 60-to-70-unit affordable housing project on this 1.35-acre site.

The Authority 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 the Authority will satisfy this financing application requirement.

This resolution only authorizes an agreement for the option to purchase the specified land. If FC elects to purchase the property within the option period, then a subsequent resolution will be required to authorize execution of an agreement 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 Authority.
- 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 has been determined by Programming and Planning 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 Authority can refuse to enter into an option agreement with FC for a part of Permanent Parcel Number 024-33-001 and can instead continue to maintain the property and market the property for TOD.
- 8.0 RECOMMENDATION: Staff recommends the Board approve 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 - PPN 02433001 - TOD Area 1.35 acres



Date Created: 12/28/2023

Legend

- Municipalities
- Right Of Way
- Platted Centerline
- Parcel



1:2,400



Projection:
WGS_1984_Web_Mercator_Auxiliary_Sphere

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

ATTACHMENT B

OPTION AGREEMENT

This Option Agreement ("Option Agreement") is entered into as of _____, 2024 ("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. 2024-___ adopted January 23, 2024, a copy of which is attached to and incorporated into this Agreement as Exhibit A.

Recitals

WHEREAS, Seller owns an approximately 9.324 acre parcel of real estate (Permanent Parcel No. 024-33-001) located adjacent to the West Park Rapid Transit Station at 14510 Lorain (Rear) Avenue, Cleveland, Ohio 44111, which includes a smaller portion of approximately 1.35 acres that is the subject of this Option Agreement, as more particularly depicted 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 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.
 - Property boundary. Since only part of PPN 024-33-001 is subject to this Option Agreement, a lot split is required prior to sale. The Buyer will be responsible for any surveys and costs needed to prepare a plat for the proposed lot split. The Seller has the right to approve or reject the proposed lot boundaries.
- 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.

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) (the "Extension Payment") 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 or Extension Payment, if applicable, to Buyer unless a refund is required as set forth in Section 5b; provided, however, in the event the Purchase Option is exercised and the FTA (as defined herein) and the Seller's Board of Trustees approve the sale the Property, the Option Price and the Extension Payment, if applicable, shall be applied to the Purchase Price.
- 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 notice of each entry specifying the nature and purpose of the inspection and the duration of the entry. Buyer shall provide Seller copies of any and all reports of inspections and tests requested by Seller; provided, however, in no way does Buyer represent or warrant the accuracy thereof, nor will such reports or inspections be certified to 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. For the sake of clarification, Buyer shall not be responsible under the Option Agreement for any existing environmental conditions on the Property. 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 and the Extension Payment, if applicable.
- 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 First American Title Insurance Company (the "Title Company").

7. **Purchase Agreement.** At such time when tax credits are awarded, 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:
First American Title Insurance Company
211 N. Pennsylvania St., Suite 1250
Indianapolis, IN 46204

Attn: Monica Chavez

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 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.

19. **Recording.** On the date of this Option Agreement, Buyer and Seller shall execute a memorandum of this Option Agreement and shall cause such memorandum to be

recorded in the public records of Cuyahoga County, Ohio.

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: 024-33-001



Owner GREATER CLEVELAND RTA
Address 14510 LORAIN (REAR) AVE
 CLEVELAND, OH. 44111
Land Use () E -
Description 12 EST 140FF 02433002
Neighborhood Code 73107

SKETCH

Building 1

If this is a residential property the sketch is unavailable.

Commercial building sketches are not available at this time.

Please contact us at EMcGoldrick@cuyahogacounty.us or call (216) 443-4663 for a copy of the building card.

MAP VIEW



BUILDING INFORMATION

Building ID	1	Construction Class	CLASS C	Basement Type	SLAB
Total Story Height	1	Usable Area	5,240	Condition	AVERAGE
Date Built	1958	Date Remodeled	1983	Exterior Walls	CNC BLK
Framing	FIRE RESISTANT	Roof Type	FLAT	Roof Covering	COMPOSITION
Office Area		Mezzanine Area		Mezzanine Finish	
Wall Height	10	Heat Type	FORCED-AIR	Air Conditioning	NONE
Office Finish		Retail Area		Retail Finish	

LAND

Code	Frontage	Depth	Acreage	Sq Ft
PRM	140		9.32	406,164

VALUATION

2023 Values	Taxable Market Value	Exempt Market Value	Abated Market Value	Assessed Taxable Value
Land Value	\$0	\$466,200	\$0	\$0
Building Value	\$0	\$704,200	\$0	\$0
Total Value	\$0	\$1,170,400	\$0	\$0
Land Use		6422		EXEMPT TRANSIT AUTHORITY RAIL

PERMITS

Tax Year	Reason	Tax Change	Exempt Change	Percent Complete	Reinspect	Notes
2009	30 - New Construction	\$	\$	100%	No	RENOVATION - EXPANSION 100% COMPLETE NO VALUE CHANGE 1-1-2009

IMPROVEMENTS

Type	Description	Size	Height Depth
060	CANOPY	3,512 SQUARE FEET	
060	CANOPY	1,420 SQUARE FEET	
200	PAVING	350,000 SQUARE FEET	
060	CANOPY	2,400 SQUARE FEET	

SALES

Date	Buyer	Seller	Price
1/1/1988	Greater Cleveland Rta		\$0

Taxes

2023 Taxes	Charges	Payments	Balance Due
Tax Balance Summary	\$0.00	\$0.00	\$0.00