

RESOLUTION NO. 2023-94

AUTHORIZING THE GENERAL MANAGER, CHIEF EXECUTIVE OFFICER TO EXECUTE THE FIRST AMENDMENT TO THE DEVELOPMENT AND USE AGREEMENT WITH AJAPPJR, LLC, AN OHIO LIMITED LIABILITY COMPANY

WHEREAS, on October 26, 2021, the Board of Trustees adopted Resolution 2021-97 to execute a binding Development and Use Agreement (“DUA”) with ALAPPJR, LLC, an Ohio limited liability company, for the transit-oriented development 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 (“TOD Project”); and

WHEREAS, on November 10, 2021, the GCRTA and AJAPPJR, LLC executed a binding DUA outlining the terms and conditions for the TOD Project; and

WHEREAS, both GCRTA and AJAPPJR, LLC determined it is in the best interest of both parties to amend the existing DUA to allow the parties to seek public funding in order to proceed with developing the TOD Project; and

WHEREAS, executing the First Amendment to the DUA is in full compliance with the stated real estate goals and objectives of the GCRTA and Federal Transit Administration; and

WHEREAS, the execution of the First Amendment will allow the TOD Project to proceed toward the stated goals and objectives of the DUA.

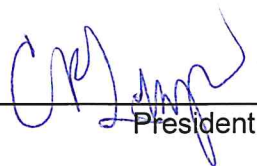
NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

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

Section 2. That the General Manager, Chief Executive Officer is hereby authorized to apply to the United States Department of Transportation, or to another public funding source that meets the terms of the First Amendment, for grant funding for the planning and/or construction of a bridge cap with pedestrian connections to the TOD and the West 25th Street Rapid Transit Station.

Section 3. That this resolution shall become effective immediately upon its adoption.

Adopted: November 28, 2023



President

Attest: 

Secretary-Treasurer



TITLE/DESCRIPTION: CONTRACT: AMENDMENT TO THE DEVELOPMENT AND USE AGREEMENT WITH AJAPPR, LLC FOR THE COLUMBUS ROAD TRANSIT ORIENTED DEVELOPMENT PROJECT	Resolution No.: 2023-94
	Date: November 22, 2023
	Initiator: Programming & Planning
ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

1.0 **PURPOSE/SCOPE:** This resolution seeks approval for the General Manager, Chief Executive Officer to execute the First Amendment to the Development and Use Agreement (“DUA”) with AJAPPJR, LLC (“Developer”). The DUA provides the terms and conditions for the parties to plan, finance, develop and operate a mixed-use transit-oriented development (“TOD Project”) 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 Number 007-11-021 (“Property”).

The resolution authorizes GCRTA to: 1) execute the First Amendment to the DUA, and 2) apply to the U.S. Department of Transportation, or to another public funding source that meets the terms of the First Amendment, for grant funding for the planning and/or construction of a bridge cap with pedestrian connections to the TOD and the West 25th Street Rapid Transit Station.

2.0 **DESCRIPTION/JUSTIFICATION:** Developer was selected by a “Request for Qualifications” process to develop the Property and is now performing due diligence to design, finance, construct and operate the TOD Project. On May 25, 2021, the Board of Trustees adopted Resolution 2021-57 authorizing GCRTA to enter a non-binding Letter of Intent with AJAPPJR for the TOD Project. GCRTA and AJAPPJR executed a non-binding Letter of Intent for the TOD Project on May 26, 2021. The Development and Use Agreement was authorized by Resolution 2021-97 on October 26, 2021 and executed on November 10, 2021. This TOD Project will enhance neighborhood connectivity with the West 25th Street Rapid Transit Station and promote increased use of the Red Line as well as nearby GCRTA bus lines, including the MetroHealth Line (the BRT line now in development).

The Developer’s concept plan includes a bridge cap over GCRTA’s Red Line (and the Red Line Greenway) which is essential to achieve the connectivity that is GCRTA’s overarching objective for the TOD Project. The Developer requests GCRTA’s assistance in seeking public funding for the bridge cap in accordance with section 5.4 of the DUA, which provides that “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.”

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

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

- 5.0 POLICY IMPACT: The First Amendment and the TOD Project are in compliance with the TOD guidelines established by FTA and fully comply with the Real Estate Policies of the GCRTA.
- 6.0 ECONOMIC IMPACT: The TOD Project will provide GCRTA with significant revenue, including fifty percent (50%) of the fair market value of the Property at time of conveyance, followed by continuing revenue for the life of the TOD Project through GCRTA's non-recourse, non-dilutable ownership position in the legal entity that will own the TOD Project. The DUA provides that GCRTA's ownership interest will be at least 4%. The First Amendment will provide for GCRTA's ownership interest to increase to 10% if the grant application is successful. The First Amendment also provides that, if the parties agree it is beneficial for Developer to engage a grant consultant, then GCRTA will contribute 50% of consulting fees for the grant preparation, up to a maximum GCRTA contribution of \$20,000.
- 7.0 ALTERNATIVES: The GCRTA can refuse to execute the First Amendment, which would be likely to terminate the TOD Project.
- 8.0 RECOMMENDATION: On November 14, 2023, the Audit, Safety Compliance and Real Estate Committee was briefed on the First Amendment to DUA and TOD Project status. Staff recommends the Board of Trustees authorize execution of the First Amendment to the DUA.
- 9.0 ATTACHMENTS: Attachment A – Draft of the First Amendment to the 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

FIRST AMENDMENT TO DEVELOPMENT AND USE AGREEMENT
BY AND BETWEEN

THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

AND

AJAPPJR, LLC

THIS FIRST AMENDMENT to the Development and Use Agreement (the "**Amendment**") is made as of this ___ day of _____, 2023 by and between the Greater Cleveland Regional Transit Authority, a political subdivision of the State of Ohio ("**GCRTA**") whose mailing address is 1240 West 6th Street, Cleveland, Ohio 44113, and AJAPPJR, LLC, an Ohio limited liability company whose mailing address is 629 Euclid Avenue, 11th Floor, Cleveland, Ohio 44114 ("**Developer**"), collectively referred to as the "**Parties**".

WHEREAS, on the effective date of November 3, 2021, the Parties entered into a Development and Use Agreement (the "**Original DUA**" and together with this Amendment being the "**DUA**") for construction of a Transit-Oriented Development ("**TOD**") on 1.7843 acres along Columbus Road (the "**Site**") which is part of certain real property in the City of Cleveland owned by GCRTA known as Cuyahoga County Permanent Parcel Numbers 007-11-021, 007-11-022 and 007-11-025; and

WHEREAS, the complexities involved in this TOD require flexibility and change over the course of the development; and

WHEREAS, the DUA describes certain objectives and elements which are to be included in the TOD and the Parties now desire to modify and/or to further define those objectives and elements; and

WHEREAS, the DUA includes certain time frames and deadlines for the TOD and the Parties now desire to modify and/or to further define those time frames and deadlines; and

WHEREAS, the DUA describes the responsibilities of the Parties, and the Parties now desire to modify and/or to further define those responsibilities.

THEREFORE, the Parties agree upon this First Amendment to their Development and Use Agreement as follows:

1. **INCORPORATION OF RECITALS; CAPITALIZED TERMS**. The Recitals portion of this Amendment are hereby incorporated by this reference as though they were fully set forth and rewritten herein. Capitalized terms not defined herein shall have the meaning given such terms in the Original DUA.
2. **DATES**. The Parties agree to modify the deadlines in the DUA in accordance with developments in the concept for the project.
 - a. The DUA originally required Developer to submit plans to the City Review Bodies by October 31, 2022 (DUA Section 4.2), with a right to cure. The Parties hereby agree to extend this submission deadline for so long as necessary in order to permit the Parties to seek public funding for certain elements of the Project, prior to having to submit plans to the City Review Bodies. As further provided in Section 2.e., below, Developer shall submit conceptual plans for the Project to applicable City Review Bodies following the Parties receipt and consideration of the initial determination on Grant Application(s) (defined below). A Grant Application must be filed within twenty-four (24) months of the effective date of this Amendment.
 - b. The public funding process contemplated herein necessitates extensions of other deadlines and performance dates contained in the Original DUA, including but not limited to extending the financing dates, closing date and construction start dates. The Parties acknowledge and agree that as the timeline for the public funding process is indefinite and uncertain, such other deadlines and performance dates provided in the Original DUA shall

be and hereby are extended indefinitely until such time as the Parties have received a determination on any Grant Application(s), have thereafter assessed the viability of the Project and have determined to proceed with some or all portions of the Project contemplated herein. Thereupon the Parties shall reconsider and determine in good faith appropriate and reasonable deadlines and performance dates hereunder.

- c. GCRTA shall submit, by, for, on behalf of and/or in connection with the Project contemplated herein, grant application(s) to applicable federal authorities (as determined in GCRTA's sole discretion), seeking public funding of the Project in whole or in part (the "**Grant Application(s)**").
- d. GCRTA will promptly notify Developer upon receipt of the determination of each and any Grant Application(s) so submitted, from the federal authority to which such Grant Application(s) were submitted. The Parties shall meet within thirty (30) days thereafter to determine whether to proceed with the TOD based on such determination (the "**Determination Meeting**").
- e. Should the Parties determine at or in connection with such Determination Meeting to continue to proceed with the Project, Developer shall use all reasonable efforts to prepare, produce and submit a conceptual project plan for review to City Review Bodies within ninety (90) days following such Determination Meeting.
- f. If the project proceeds because of a successful grant application, then in that event the Parties agree that GCRTA's ownership interest in the LLC Entity to be formed pursuant to the Original DUA shall be ten percent (10%).

3. PUBLIC FUNDS FOR CONNECTIONS TO WEST 25TH RAPID STATION AND ACROSS RED LINE. The GCRTA will seek grant funds and/or other funding

sources, and the Parties will coordinate, for some portion of the following elements:

- a. A bridge cap spanning the Red Line starting at Abbey Avenue and extending south, as more specifically shown on Exhibit 3a, attached hereto and made a part hereof (the "**Bridge Cap**"). The Bridge Cap will support the creation of a new plaza and related green space, together with links to the west side of the TOD. Plaza design to be jointly designed and approved by Developer and GCRTA.
- b. A pedestrian promenade connecting to the Bridge Cap.
- c. The addition of a second head house for the West 25th Street Rapid Transit Station, including a design which integrates the station into the TOD. However, this element is intended to be primarily designed, funded, and constructed by GCRTA. The connections with the Bridge Cap will be jointly designed and approved by Developer and GCRTA.
- d. To the extent this Agreement contemplates Project design as being "jointly designed and approved by Developer and GCRTA," the Parties acknowledge and agree that the Developer shall initiate and direct the design process, provided major components and overall plan design shall be subject to GCRTA review and approval in its sole but reasonable discretion.
- e. The Parties acknowledge that legal requirements to qualify for public grant funding require GCRTA to maintain satisfactory continuing control, which could include requiring GCRTA ownership, of the publicly funded project elements.

- f. GCRTA shall submit at least one (1) Grant Application(s) for funding of part or parts of these elements of this TOD. The Parties acknowledge and agree that such obligation is not a commitment from GCRTA to apply for funding of all elements of the Project, nor is it a commitment for GCRTA to provide the local share or matching funds that may be required by the applicable grant (these may be provided by the Developer or other sources) The priority for the above elements, as well as the potential Grant Application(s) and funding sources for same, are still to be determined. The Parties will communicate and cooperate on assessment and pursuit of such funding efforts. GCRTA, as primary applicant, will make final determinations on what public funding applications it will submit.
- g. The Parties agree to meet promptly following the execution of this Amendment to determine the value and necessity for engaging a third-party consultant to provide guidance and recommendations with respect to grant sources and preparation of the Grant Application(s). The Parties will cooperate on the selection of such consultant. Such consultant should be experienced and knowledgeable in public funding for large, urban (generally, and preferably TOD specific) projects. The Developer will engage such consultant. Upon such engagement, GCRTA will contribute fifty percent (50%), up to a maximum contribution of twenty thousand dollars (\$20,000.00), of the consulting fees and related TOD planning and Grant Application preparation costs. Developer will be responsible for any further consulting fees and related TOD planning and Grant Application preparation costs.

4. DEVELOPER COMMITMENTS.

- a. The residential component of the TOD will include a minimum of 125 units encompassing 135,000 square feet.
- b. The commercial component of the TOD will include a minimum of 47,200 square feet.
- c. The Developer will invest a minimum of \$60,145,000 in the TOD. The parties acknowledge and agree that such investment may be through any combination of equity, debt, public incentives (exclusive of funds received through Grant Applications provided for in this Amendment), available tax credit and/or other soft funding sources as Developer may seek, provide, or obtain.
- d. The Developer will waive any interest in GCRTA property to the west of the Red Line within or adjacent to the TOD site.
- e. The Developer will reasonably cooperate with the owner and/or developer of the project or projects on the west side of the Red Line adjacent to the TOD site to jointly agree to site design connections and a pedestrian circulation plan.
- f. The Developer will be responsible for the day-to-day cleanup and maintenance of the bridge cap and pedestrian promenade, in conjunction with the owner and/or developer of the project or projects on the west side of the Red Line adjacent to the TOD site (either on *pro rata* basis or as otherwise agreed between owners and/or developers).

5. GCRTA COMMITMENTS.

- a. GCRTA will sell reasonably unrestricted air rights to Developer for the bridge cap supporting the new plaza and green space for fair market value,

provided that such sale of air rights is compatible with the applicable grant requirements.

- b. GCRTA will be responsible for the capital repair expenditures for the bridge cap and pedestrian promenade, which capital repair is anticipated to be funded primarily from connection fees paid by Developer and the owner and/or developer of any projects in the west side of the Red Line referenced herein. The method of valuation of such connection fees will be addressed in a subsequent amendment to the DUA or in another document agreed upon by the Parties.

[Signature page follows]

The Parties have executed this First Amendment to the Development and Use Agreement as of the date specified herein.

THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

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

Date: _____

APPROVED AS TO LEGAL FORM:

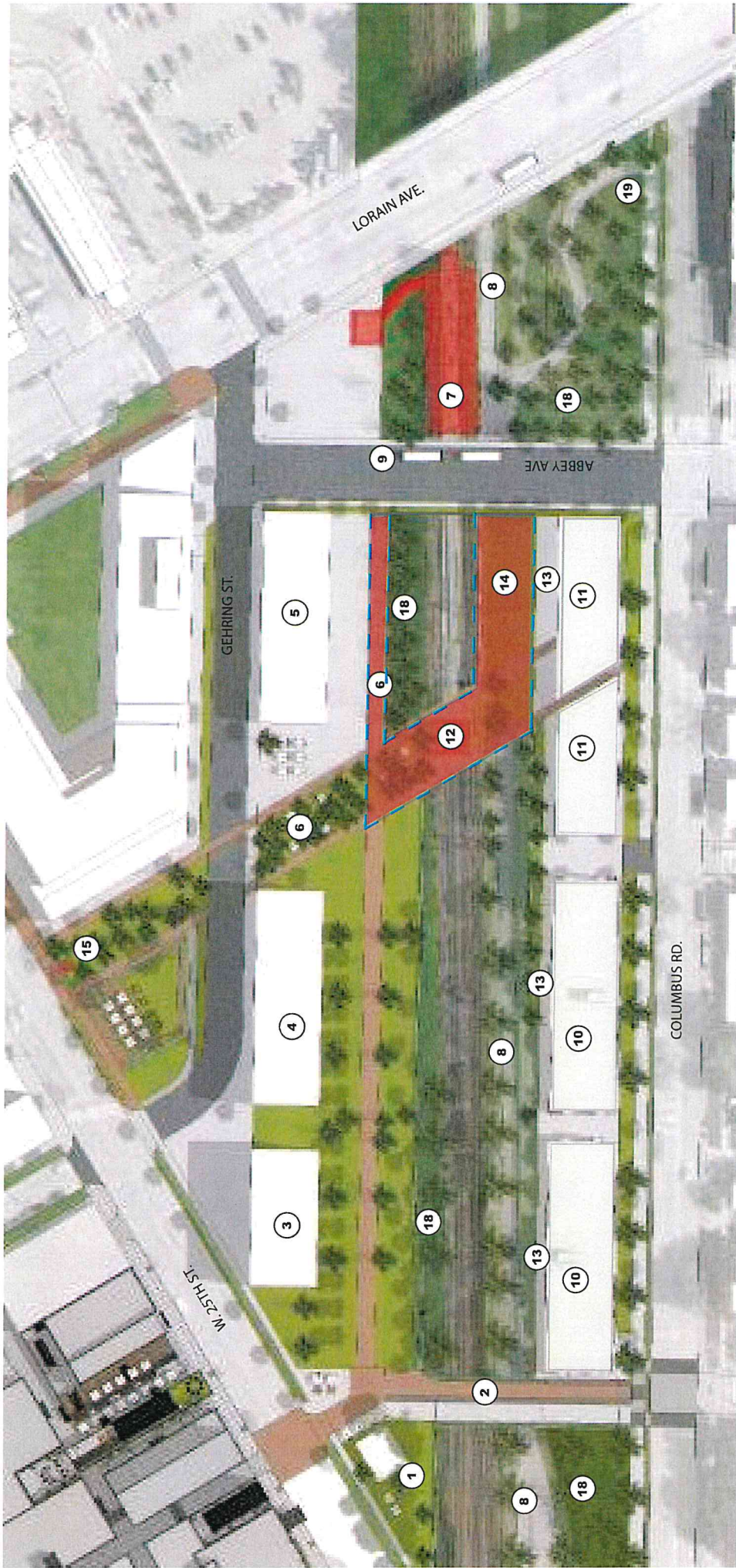
Janet E. Burney, General Counsel
Deputy General Manager for Legal Affairs

AJAPPJR, LLC

By: _____
Jori Maron, Manager

Date: _____

Exhibit 3A



- 1. DOG PARK & CAFE: +/-1,300 SF
- 2. WILLEY PEDESTRIAN BRIDGE: TBD SF
- 3. HARBOR BAY PH 2 MIXED USE: TBD SF
- 4. HARBOR BAY PH 2 MIXED USE: TBD SF
- 5. EXISTING BUILDING: +/-10,600 SF
- 6. PEDESTRIAN PROMENADE
- 7. RED LINE PLATFORM
- 8. EXISTING RED LINE GREENWAY
- 9. RTA BUS STOP/VEHICULAR DROP OFF

- 10. 5 STORY RESIDENTIAL W/ GREEN ROOF
RESIDENTIAL: +/-54,000 SF
- 11. 5-6 STORY RESIDENTIAL W/ GREEN ROOF
RESIDENTIAL: +/-81,000 SF
- 12. ACCESS TO TRAIN PLATFORM
- 13. 1 STORY COMMERCIAL
COMMERCIAL: +/-47,200 SF
- 14. FUTURE METRO PARKS DEVELOPMENT
FLEX SPACE: +/-6,800 SF

15. BRT STATION

- 18. EXISTING TREES (PRESERVED)
- 19. GREENWAY TRAILHEAD

Proposed Area for Grant Funding



RTA CONCEPTUAL MASTER PLAN

