NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Appeals

NOTICE OF
December 30, 2016 09:48

By: MATTHEW J. MARKLING 0068095

Confirmation Nbr. 947643

MICHAEL J. SKINDELL — CA 15 103976

vs.

Judge:

MARY LOUISE MADIGAN, ET AL.

Pages Filed: 52

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

MICHAEL J. SKINDELL,	)	CASE NO. CA-15-103976
Plaintiff-Appellant,	)	On Appeal from the Cuyahoga County Court of Common Pleas, Case No. CV-15-855961
v.	)	
MARY LOUISE MADIGAN, et al.,	)	
Defendants-Appellees.	)	

PLAINTIFF-APPELLANT'S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff-Appellant Michael J. Skindell ("Skindell") hereby submits the affidavit of Brian Essi as supplemental authority regarding the Open Meeting Act violations of Defendants-Appellees[1] and as a representative sample of the type of substantive evidence that Skindell would have presented in *Skindell v. Madigan*, Cuyahoga Case No. CV-15-8555961 (Judge Friedman) ("Trial Court") had the Trial Court actually afforded Skindell the opportunity to (1) conduct any discovery and (2) have more than one business day to prepare for, and present, his entire case in chief before a bench trial on the merits.

Brian Essi's affidavit provides additional authority regarding whether Appellees deliberated on, or considered, an agreement between the City of Lakewood, Lakewood Hospital Association, and the Cleveland Clinic Foundation ("Master Agreement") to close the Lakewood Hospital prior to the formal City

[1] Defendants-Appellees are Mary Louise Madigan, Ryan Nowlin, David W. Anderson, Thomas R. Bullock III, Shawn Juris, Cindy Marx, Samuel T. O'Leary, Lakewood City Council ("City Council"), and The City of Lakewood, Ohio (collectively, "Appellees").

Council public readings and meetings of December 7, 2015, December 14, 2015, and December 21, 2015, in violation of the Ohio Open Meetings Act.

While Skindell would not ordinarily submit supplemental authority other than legal citations on appeal, Skindell is compelled to submit this supplemental authority in response to Appellees' wholly improper decision to submit additional evidentiary material outside the transcript of proceedings from the Trial Court in their motion to dismiss. *See* Appellees' Motion to Dismiss at Exhibit A, Affidavit of Jennifer Pae (testifying regarding payments made pursuant to the Master Agreement that has no relation to the issue of mootness); Appellees' Motion to Dismiss at Exhibit B, Affidavit of Dr. J. Stephen Jones (testifying regarding the improper deliberations that occurred leading to the formulation of the Master Agreement, which has nothing to do with the issue of mootness); Appellees' Motion to Dismiss at Exhibit C, Affidavit of Bryce Sylvester (testifying regarding the Master Agreement); Appellees' Motion to Dismiss at Exhibit D, Affidavit of Scott K. Gilman (testifying regarding the demolition of a parking garage related to the Lakewood Hospital); Appellees' Motion to Dismiss at Exhibit D, Affidavit of Scott K. Gilman, Exhibit 1 (depicting the demolition of a parking garage not submitted in the transcript of proceedings); Appellees' Motion to Dismiss at Exhibit D, Affidavit of Scott K. Gilman, Exhibit 2 (depicting the demolition of a parking garage not submitted in the transcript of proceedings); Appellees' Motion to Dismiss at Exhibit D, Affidavit of Scott K. Gilman, Exhibit 3 (depicting the demolition of a parking garage not submitted in the transcript of proceedings); Appellees' Motion to Dismiss

at Exhibit D, Affidavit of Scott K. Gilman, Exhibit 4 (depicting the demolition of a parking garage not submitted in the transcript of proceedings).

Respectfully submitted,

/s/ Matthew John Markling
Matthew John Markling (0068095)
Patrick Vrobel (0082832)
Sean Koran (0085539)
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Attorneys for Plaintiff-Appellant Michael J. Skindell

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by email or the Court's electronic filing system, on December 30, 2016, to the following:

Robert E. Cahill
Sutter O'Connell Co.
1301 East 9th Street
3600 Erieview Tower
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rcahill@sutter-law.com

Kevin M. Butler
City of Lakewood, Ohio — Law Director
12650 Detroit Road
Lakewood, Ohio 44107
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Attorneys for Defendants-Appellees

/s/ Matthew John Markling
Matthew John Markling (0068095)

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

MICHAEL J. SKINDELL,	)	CASE NO. CA-15-103976
Plaintiff-Appellant,	)	On Appeal from the Cuyahoga
v.	)	County Court of Common Pleas, Case
	)	No. CV-15-855961
MARY LOUISE MADIGAN, et al.,	)	
Defendants-Appellees.	)	

STATE OF OHIO)
) SS: **BRIAN ESSI**
COUNTY OF CUYAHOGA)

I, BRIAN ESSI, having been first duly sworn, depose and state that I have personal knowledge of the facts and matters that follow:

1. I am over the age of 18 and not laboring under any disabilities.

2. I am a resident in the City of Lakewood.

3. I have personally reviewed the transcript of proceedings from the December 21, 2015 hearing in *Skindell v. Madigan*, Cuyahoga Case No. CV-15-8555961 (Judge Friedman).

4. During the December 21, 2015 hearing, Defendant-Appellee Samuel O'Leary ("Councilmember O'Leary") testified on behalf of Defendants-Appellees Mary Louise Madigan, Ryan Nowlin, David W. Anderson, Thomas R. Bullock III, Shawn Juris, Cindy Marx, Lakewood City Council ("City Council"), and The City of Lakewood, Ohio ("City of Lakewood") (collectively, "Appellees") regarding whether Appellees had deliberated on or considered an agreement between the City of Lakewood, Lakewood Hospital Association, and the Cleveland Clinic Foundation ("Master Agreement") to close the Lakewood Hospital prior to the formal City Council public readings and meetings of December 7, 2015, December 14, 2015, and December 21, 2015, in violation of the Open Meetings Act.

a. Specifically, Councilmember O'Leary testified that the Master Agreement "didn't exist yet [as of December 7, 2015] so it wasn't being deliberated." Tr. 63:12-13.

b. Councilmember O'Leary further testified that "[t]he agreement that was announced on December 7th did not exist when it was announced and, therefore, it is correct to say the council had not deliberated on the definitive agreement that wasn't in existence yet, absolutely." Tr. 63:18-22.

5. Information obtained from the City of Lakewood through public records requests or other public sources demonstrates that this testimony is, at best, misleading and potentially false.

6. Drafts of the Master Agreement existed as early as February 18, 2015 and Councilmember O'Leary and Appellees' legal counsel acknowledged in the presence of the other Appellees that they knew drafts of the Master Agreement existed as early as April 6, 2015.

a. Specifically, public records demonstrate that Appellees Mary Louise Madigan and Thomas R. Bullock III were present at a February 18, 2015 meeting of the Lakewood Hospital Association ("LHA") Trustees when references to the definitive agreement, also known as the Master Agreement, were made and then documented in the minutes of the February 18, 2015 LHA Trustees Meeting:

> Next Mayor Summers reviewed key points including but not limited to the hiring of legal counsel for review of the Definitive Agreement. Mr. Meehan reported that the a [sic] draft of the final agreement had been written and was presently in a review process with a goal to present to the City of Lakewood and other relevant parties within one week.

b. A copy of the board book dated May 13, 2015, and containing the February 18, 2016 LHA Board Minutes that I received on July 15, 2016, pursuant to a public records request dated March 15, 2016, is attached hereto and incorporated herein as Exhibit A. I authenticate Exhibit A as a true and accurate copy of the public records response that I received on July 15, 2016 from the City of Lakewood.

7. On April 6, 2015, the City of Lakewood Law Director Kevin Butler ("Law Director Butler") and Councilmember O'Leary acknowledged that a draft of the Master Agreement existed on that date:

> O'Leary: "It's certainly been strongly suggested that there's a draft or something closely resembling a draft of the definitive agreement as they [the Clinic] see it."
>
> Butler: "Yes...Yes..."
>
> * * *
>
> O'Leary: "It seems to me that it could save a lot of time in this process if rather than going into extraordinary detail discussing a letter of intent which contemplates an agreement that's in fact already in existence if we were to just sit down with the agreement that's already in existence and start to analyze that as a starting point."

a. Audio of the April 6, 2015 Lakewood City Council Committee of the Whole meeting is publically available on the City of Lakewood's website, Lakewood Ohio, available at http://www.onelakewood.com/wp-content/uploads/2015/06/C.O.W.-04-06-15.mp3 (accessed Dec. 28, 2016).

8. On May 13, 2015, I received a redlined copy of the Master Agreement, dated April 6, 2015, from a representative of the LHA. The email correspondence associated with the redlined copy of the Master Agreement indicates that the City of Lakewood had the redlined copy of the Master Agreement in its possession on that date.

a. A copy of the redlined Master Agreement that I received from a representative of the LHA is attached hereto and incorporated herein as Exhibit B. I authenticate Exhibit B as a true and accurate copy of the redlined Master Agreement that I received on May 13, 2015.

9. On June 22, 2015, July 10, 2015, and July 17, 2015, Law Director Butler sent a series of emails to Appellees, including Councilmember O'Leary, specifically discussing the "Master Agreement."

a. A copy of the June 22, 2015, July 10, 2015, and July 17, 2015 email chain that I received on July 15, 2016, pursuant to a

public records request dated March 15, 2016, is attached hereto and incorporated herein as Exhibit C. I authenticate Exhibit C as a true and accurate copy of the public records response that I received on July 15, 2016, from the City of Lakewood.

10. Councilmember O'Leary stated at a December 7, 2015 press conference regarding the Master Agreement (the same date that he later testified the Master Agreement did not exist) that "This new agreement funds our future and a vibrant new downtown district. Specifically, this agreement means the Cleveland Clinic will invest $34 million in a new modern family health center and emergency department [* * *] demolishing the old parking garage is part of the agreement." Other Appellees that spoke during the December 7, 2015 press conference specifically referenced aspects of an existing agreement that had been considered and reviewed by Appellees prior to December 7, 2015.

    a. A video of the December 7, 2015 Lakewood Hospital Press Conference is publically available on the City of Lakewood's YouTube channel at YouTube, City of Lakewood Ohio, *Lakewood Hospital Press Conference, Dec 7, 2015* (Dec. 7, 2015), available at https://www.youtube.com/watch?v= 1ChNMhrAXCk (accessed Dec. 28, 2016).

11. On December 8, 2015 at 8:00 am, Councilman O'Leary and I met for coffee at a restaurant called Cravings in Rocky River to discuss the Master Agreement and proposed Ordinance 49-15 that would adopt the Master Agreement. Councilman O'Leary told me that he possessed a copy of the agreement and indicated that he would vote to approve the pending legislation adopting the Master Agreement.

FURTHER AFFIANT SAYETH NAUGHT.

Brian Essi

SWORN TO BEFORE ME and subscribed in my presence this 30TH day of December 2016.

Notary Public
KEVIN WITT, MY COMMISSION HAS NO EXPIRY

LAKEWOOD HOSPITAL ASSOCIATION

Regular Meeting of the Board of Trustees
Wednesday, May 13, 2015
4:00 p.m.

Lakewood Hospital Wasmer Auditorium

PLEASE SEE AGENDA AT BACK OF BOOK

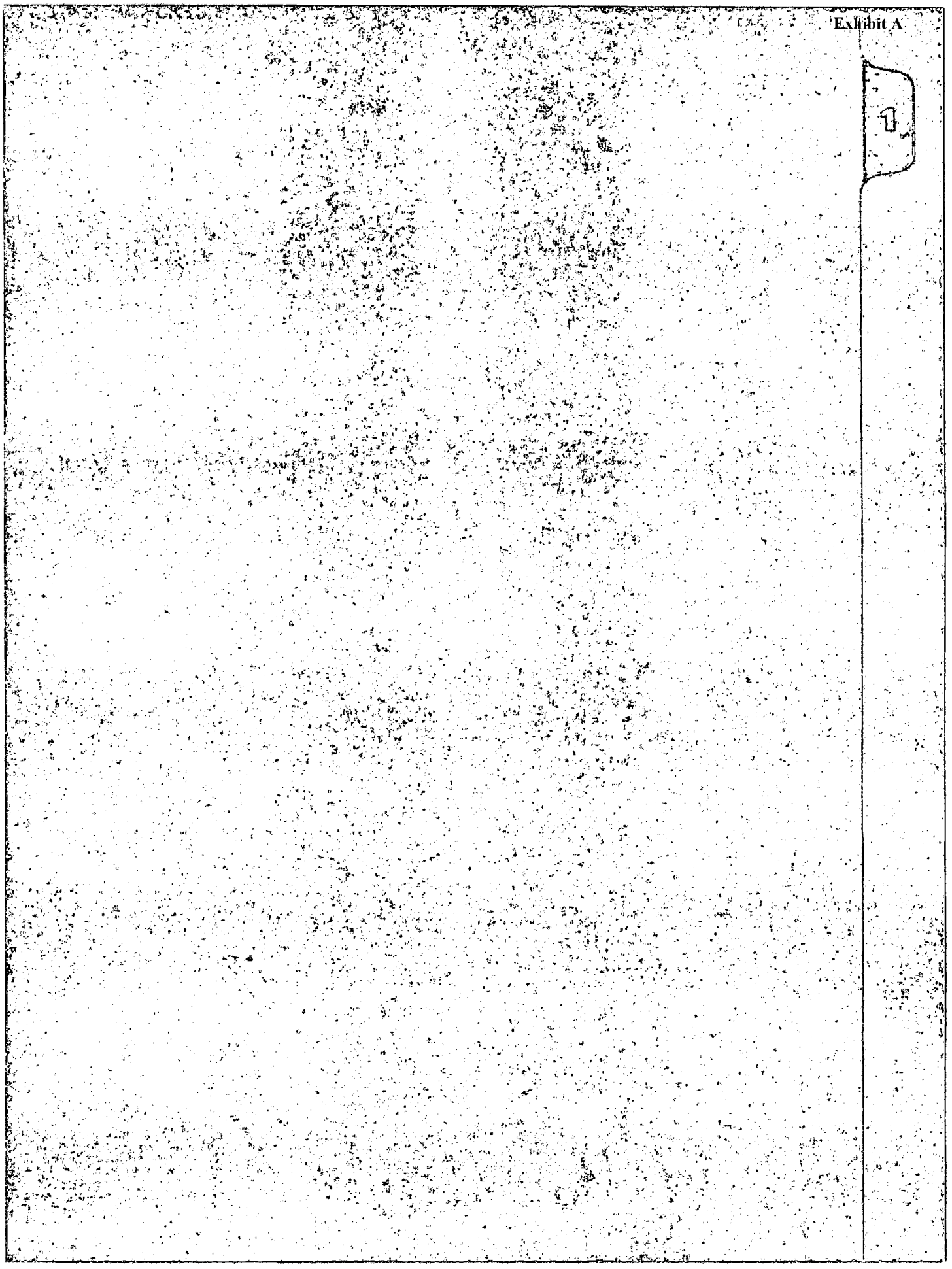
Exhibit A
1

Lakewood Hospital
a Cleveland Clinic hospital

LAKEWOOD HOSPITAL ASSOCIATION

MINUTES OF THE ANNUAL MEETING OF THE BOARD OF TRUSTEES

FEBRUARY 18, 2015

Attendance

Trustees Present: Thomas J. Gable (Chair of the Board), M. Ellen Brzytwa, RN, MSN, MPH (Vice Chair of the Board), James R. Bekeny, MD, Curtis M. Brosky, Thomas Bullock (Lakewood City Councilman), Carl A. Culley, Jr. MD, Rev. Jon M. Fancher, DMin, Richard B. Freeman, MD, Joseph P. Gibbons, Esq., William R. Gorton, Kenneth Haber, CPA, J. Stephen Jones, MD (President Regional Hospitals and FHC), Kathleen McGorray, Ph.D, John Litten, Mary Louise Madigan (Lakewood City Councilwoman), John T. O'Neill, Rebecca Patton, MSN, RN, Dennis J. Roche, and Hon. Michael P. Summers (Lakewood Mayor).

Administration Present: Ankit Chhabra (Finance Director), Tarek Elsawy, MD, (Vice President, Regional Medical Operations), Michael P. Harrington (Chief Accounting Officer, CCF), Michael J. Meehan, Esq. (General Counsel, Regional Hospitals), William J. Riebel, MD (Vice President, Medical Operations), Shannan D. Ritchie (Interim Hospital President), Mary Sauer, MBA, BSN, RN (Chief Nursing Officer), Deborah Sukey (Executive Assistant), and Karen Weisman (Quality Director).

Call to Order

Pursuant to due notice, the Annual Meeting of the Board of Trustees of Lakewood Hospital Association ("LHA"), dba Lakewood Hospital, a Cleveland Clinic Hospital, was held on Wednesday, February 18, 2015, at 4:00 p.m. in Wasmer Auditorium at Lakewood Hospital, 14519 Detroit Avenue, Lakewood, Ohio. The aforementioned members of the Board of Trustees, constituting a quorum, were present. Mr. Gable chaired the meeting and Mr. Meehan served as Recording Secretary.

Mr. Gable called the meeting to order. He welcomed all in attendance and thanked them for their participation.

CHAIR'S REPORT

Minutes of October 29, 2014 Meeting of the Board of Trustees and Minutes of January 14, 2015 Special Meeting of the Board of Trustees

Mr. Gable began the meeting by reviewing the minutes of the Regular Meeting of the Board of Trustees of Lakewood Hospital Association ("LHA") held on October 29, 2014, and the Special Meeting minutes of January 14, 2015, copies of which had been distributed in advance.

A brief discussion followed and the following items were noted as corrections to the Special Meeting minutes of January 14, 2015, and the Trustees directed that the indicated changes be made prior to the release of the minutes:

> Attendees should reflect the following:
> Remove James R. Bekeny, MD
> Add Kathleen McGorray, PhD
>
> Mr. Haber requested on page 23 that his title be reflected as President of the Board of Trustees of Lakewood Hospital Foundation.

A general discussion followed and, on motion duly made and seconded, the minutes were unanimously approved with the noted corrections, and the acts described therein were ratified as acts of Lakewood Hospital Association.

CONSENT AGENDA

Mr. Gable then reviewed the Consent Agenda.

Goverernance Committee Report

He called upon Mr. Meehan in the absence of Dr. Tabbaa to present the Governance Committee Report. Mr. Meehan reported that the meeting minutes of November 4, 2014 were provided in advance of the meeting. He stated that the primary reason for the meeting was to propose, appoint, and elect the trustees and officers, and committee chairs and members for the year 2015. At the time of the committee meeting it was not known who would succeed Dr. Bronson and that subsequently Dr. J. Stephen Jones, had been appointed as the President of the Regional Hospitals and Family Health Centers.

Mr. Meehan reported that following the committee meeting discussions were held with Messrs, Ken Haber, David Lesjak, Dennis Roche, and Dr. Richard B. Freeman whose terms were expiring. These discussions were all very positive in that the trustees were willing to continue to serve as trustees of Lakewood Hospital Association. Mr. Lesjak had expressed a willingness to

continue to serve until the matter involving the future planning for the hospital had concluded but not to fulfill a full 5-year term.

Mr. Meehan also said that Mr. Gibbons, whose term was expiring as a Community Trustee, had been reappointed by City Council subsequent to the Governance Committee meeting and prior to the instant meeting.

A general discussion followed and, on motion duly made and seconded, the Lakewood Hospital Association Board of Trustees unanimously adopted the following.

Election of Lakewood Hospital Association Trustees

RESOLVED, that the Lakewood Hospital Association Board of Trustees hereby accepts the recommendation of the Governance Committee and elects the following persons, subject to the approval of Cleveland Clinic as Member, to the Lakewood Hospital Association Board of Trustees to serve for a five (5) year term commencing on January 1, 2015, and expiring December 31, 2019, or until their successors are duly elected and qualified pursuant to the Lakewood Hospital Association Amended Code of Regulations, as the same may be amended from time to time:

Kenneth Haber	General Trustee
David M. Lesjak	General Trustee
Dennis J. Roche	General Trustee
Joseph P. Gibbons *(Re-appointment by Council, City of Lakewood)*	Community Trustee

The Board of Trustees also acknowledged the reappointment by Cleveland Clinic as the Member of the following Member Trustee:

Richard B. Freeman, MD *(Appointed by the Member, Cleveland Clinic)*	Member Trustee

Election of Officers

RESOLVED, that the Lakewood Hospital Association Board of Trustees hereby accepts the recommendation of the Governance Committee and elects the following persons to the offices of the Lakewood Hospital Association set forth opposite their respective names to serve for a one (1) year term commencing on January 1, 2015, or until their successors are duly elected and qualified pursuant to the Lakewood Hospital Association Amended Code of Regulations, as the same may be amended from time to time.

Chair of the Board	Thomas J. Gable
Vice Chair of the Board	M. Ellen Brzytwa, RN, MSN, MPH

President	J. Stephen Jones, M.D.
(Per Article IV, Sec. 6.5 of the Code of Regulations: appointed by Cleveland Clinic)	
Secretary	Michael J. Meehan, Esq.
Chief Financial Officer, CCF	Steven C. Glass
Chief Accounting Officer & Controller, CCF	Michael Harrington

Lakewood Hospital Association Board Committee Appointments

Mr. Meehan reported that there was one addition to the listing of the Committees recommended by the Governance Committee and that was the Policy Committee. The Policy Committee was implemented following approval at the October 29, 2014 meeting of the Board of Trustees, to advance of the Centers for Medicare and Medicaid Services (CMS) recommendations in which it was expected that governing boards of Medicare providers approve policies and procedures and other documents that dealt with a topic for which CMS or an accrediting body had determined that such policies or other documents should be maintained. He said that, as an enterprise, the Cleveland Clinic system had developed a policy approval process that included input from the regional hospitals like Lakewood Hospital. He said that the policy process had recently been standardized as part of a consistent system and that governing board approval had been integrated into the approval process. He said that those policies containing a clinical component would be approved by the respective Medical Executive Committees of the hospitals in addition to receiving governing board approval.

A general discussion followed and, on motion duly made and seconded, the Lakewood Hospital Association (LHA) Board of Trustees unanimously adopted the following.

> **RESOLVED,** that the persons identified on the attached Exhibit A are hereby appointed to the committees set opposite their respective names, to serve for a one (1) year term commencing January 1, 2015, or until their successors are duly appointed.

Policy Committee Report

Next Mr. Gable called upon Mr. Brosky to provide a report on the Policy Committee. Mr. Brosky reported that the committee had met on three occasions and that the minutes of October 30 and November 11, 2014, and January 23, 2015 had been provided in advance of the meeting.

Mr. Meehan requested that the documents approved at the meetings of the Policy Committee be ratified by the Board. A brief discussion followed and, on motion duly made and seconded, the Lakewood Hospital Association Board of Trustees unanimously ratified the actions of the Policy Committee of the Board of Directors of Lakewood Hospital Association on October 30 and November 11, 2014, and January 23, 2015.

Community Advisory Council Report

Mr. Gable next called upon Dr. McGorray to provide the Community Advisory Council Committee Report. Dr. McGorray reported the meeting minutes of January 21, 2015 had been provided within the meeting materials provided in advance. She reported that the meeting followed the January 15, 2015 announcement of healthcare delivery transformation in the City of Lakewood, specifically Lakewood Hospital, and that those in attendance were very supportive of future changes.

System Report

Next Mr. Gable called upon Dr. Jones to provide a health system report. Dr. Jones reported that the Cleveland Clinic Management Report of February 2, 2015 had been provided in advance of the meeting. He then highlighted key general news and announcements including that the Cleveland Clinic had been selected a one of 89 new Medicare Shared Savings Program Accountable Care Organizations (ACOs), as of January 1, 2015. Dr. Jones reported that as an ACO, the Cleveland Clinic will demonstrate the ability to place patients first while improving quality, access and care affordability. He also announced the appointment of Tarek Elsawy, MD, as the Vice President of Regional Operations. Dr. Elsawy previously served as Chief Medical Officer of the Quality Alliance and Associate Director in Regional Medical Operations. Dr. Jones reported that the affiliation with Akron General continued to solidify and that Akron General Partners Physician Group, the hospital's multi-specialty group practice, would join the Cleveland Clinic's Quality Alliance in 2015. Dr. Jones concluded his report by sharing that as of January 2, 2015, Superior Medical Care had been integrated into the Cleveland Clinic with a group of 18 physicians, and that the Brunswick Freestanding Emergency Department had seen 6,609 patients since opening six months earlier.

Mr. Gable asked if the items shown on the Consent Agenda portion of the meeting agenda should be extracted for a detailed discussion or presentation later in the meeting, whereupon, no items were extracted from the agenda.

On motion duly made and seconded, the aforementioned Resolutions for items shown on the Consent Agenda were unanimously adopted.

MANAGEMENT REPORTS

Hospital Report

Mr. Gable then called upon Mr. Ritchie to provide an update on the hospital. Prior to presenting his report Mr. Ritchie called upon Ms. Sauer to provide an update on nursing services. Ms. Sauer reported that the hospital was most recently the recipient of the Nursing Institute's award for the most improved metrics in November 2014. She summarized that the award was given to

those hospitals who had achieved one of the following: highest ratio of 100% in core measures; most improved HCACPS scores; or quality metrics. Ms. Sauer reported that the hospital continued to achieve success in a number of measures due to a team approach.

Mr. Ritchie began by reporting that, following the announcement of the proposal involving the future planning for Lakewood Hospital, the overall hospital caregiver climate remained positive. One of the actions immediately following the announcement was to hold several employee forums over three days capturing all shifts and weekends. Department rounding continued by the management team, including members of Human Resources, and more recently management had implemented department sit-down chats. An employee updated letter and FAQ mailing was planned for later in the month. As part of the ongoing communication process, Mr. Ritchie reported that he had personally met to date with 19 of the top admitting physicians who all expressed that they were 100% committed to the continued support of the hospital.

It was reported next by Mr. Ritchie that the hospital had received notice from the Ohio Department of Health describing a determination that the hospital did not meet the volume requirement for high risk cardiac catheterization procedures. An action plan had been developed and submitted stating that the hospital had opted to discontinue high risk heart catheterizations. The hospital had also opted to discontinue doing open heart surgeries as part of the action plan; however, open heart surgeries had not been performed at the hospital for approximately 7 years. The hospital would continue with a low risk Cardiac Catheterization and Diagnostic Procedure program. This programming change still allowed existing staff to float between hospitals assuring skill sets are maintained. Mr. Ritchie said that a multi-disciplinary team reviewed hospital metrics, including retention and recruitment, policies and procedures, and patient access, on a weekly basis.

Following Mr. Ritchie's report, a general discussion was held regarding the recent community forums hosted by the City of Lakewood to discuss the proposal for the hospital's future planning. It was suggested that perhaps the appointed community trustees could participate in a community forum. Other ideas were discussed to help present communication vehicles for the hospital trustees to describe the rational for the proposal. LHA Trustee and Council President Madigan outlined City Council's plans for a multiple-month long series of weekly (or more often) City Council Committee of the Whole public meetings that would provide opportunities for public discussion and education regarding the proposal.

QUALITY COMMITTEE

Mr. Gable then called upon Ms. Weisman to present the Quality Committee report. She reported that the Executive Quality Council had met on three occasions and that the minutes thereof had been included in the Board materials distributed in advance of the meeting. [redacted]

[redacted]

MEDICAL STAFF REPORT

The Chair then stated that the Board would receive a peer-review privileged report from the Medical Staff. Credentialing actions were submitted by Dr. Culley for ratification and included new appointments and the granting of clinical privileges, reappointments of two-year terms, granting of additional privileges to current members of the Medical Staff, leaves of absence, and acceptance of resignation actions taken through the expedited credentialing process conducted on November 3 and December 1, 2014, and January 5 and February 2, 2015.

In the absence of Dr. Crandell, Dr. Culley and Dr. Riebel presented the actions of the Medical Executive Committee as it related to new or revised delineation of privileges in Core Teleneurology and Cardiology. It was reported that Teleneurology was a system-wide approach that enhanced the speed in which stroke patients were treated. Changes in Cardiology were related to programming and low risk cardiac caths and diagnostics.

A general discussion followed and, on motion duly made and seconded, the Board of Trustees unanimously ratified and approved the aforementioned credentialing and privileging actions of November 3 and December 1, 2014, and January 5 and February 2, 2015, as well as the aforementioned new or revised delineation of privileges in Core Teleneurology and Cardiology.

FINANCE AND AUDIT COMMITTEE

The Chair then called upon Mr. Haber to deliver a report from the Finance and Audit Committee. Mr. Haber reported that the Finance and Audit Committee had met on October 23 and November 25, 2014. The committee also met on February 10 and that the minutes of that meeting would be provided at the next meeting. He indicated that that a revised 2014 Financial Summary had been distributed to the Trustees prior to the meeting.

Mr. Haber called upon Mr. Chhabra to deliver the financial report. Mr. Chhabra reported operating income for the year ending December 2014 was ($837) thousand, resulting in an operating margin of (0.7%), which was ($1.6) million or (207%) unfavorable to the budget of $781 thousand. Reported earnings before interests, depreciation and amortization (EBIDA) for year ending December 2014 was $4.9 million, which was ($1.7) million or (26.3%) unfavorable to the budget of $6.6 million. Mr. Chhabra reported overall activity was below plan; with observations favorable to budget by 755 cases. He concluded his report of the 2014 financial summary with a summarization of payor mix trends.

Next, Mr. Chhabra provided a January 2015 preliminary financial update. He reported that the operating revenue per plan (below 2014), included prior period Medicare revenue of $149k. Overall activity at plan (below 2014), acute admissions 4% above plan, OP and IP Surgeries slightly above plan, and ED Volume (T&R and Admissions) 1% above plan. Outpatient Encounters were 4% below plan. Operating expenses were per plan. EBIDA was 15% favorable to plan, unfavorable to last year and that current operations EBIDA are below budget.

A general discussion followed and, on motion duly made and seconded, the Board of Trustees unanimously accepted and approved unaudited Finance Report for the period ended December 31, 2014.

LAKEWOOD HOSPITAL FOUNDATION REPORT

Mr. Gable then asked Mr. Haber to deliver the Lakewood Hospital Foundation Update from the Lakewood Hospital Foundation for October 2014 – February 2015 dated February 6, 2015, a copy of which had been distributed to the Trustees in advance. Mr. Haber highlighted two items from the report. First he acknowledged the members of the Board of Trustees for their generosity in annual giving. The Foundation reached its goal of 100% participation. Secondly, Mr. Haber reported that the Lakewood Hospital Foundation Board and staff continued to review Signature Event Status, as well as reviewing how the Foundation plans to move forward from a mission standpoint. He then summarized a number of actions with a focus on working through all the options available to meet the needs of the donors and the community.

HOSPITAL PLANNING REPORT

Mr. Gable next called upon the Mr. Summers for a report from Hospital Planning. Mayor Summers reported that to-date two Community Forums had been held. The first was on January 28, 2015 with approximately 300-350 in attendance, and the second was on February 20 with 120 attendees present. A third Community Forum was planned for March 10, 2015 at the Lakewood City Hall Auditorium. He next summarized how the City of Lakewood can begin to shape the proposed Family Health Center to the Wellness Foundation. He reported that there are a number of aspects to engage healthy living while taking into consideration the potential that

funding could be 2 years away. Next Mayor Summers reviewed key points including but not limited to the hiring of legal counsel for review of the Definitive Agreement. Mr. Meehan reported that the a draft of the final agreement had been written and was presently in a review process with a goal to present to the City of Lakewood and the other relevant parties within one week. Mayor Summers continued his report by stating that documents within the City's possession not bound by confidentiality were posted on the city website. He reported that citizens were showing interest in the proposal as evidenced by the number of internet hits to the City's web site. The Mayor indicated that City of Lakewood Council retained legal counsel. A general discussion followed, during which the past and future action steps were summarized.

Following discussion Councilwoman Madigan requested consideration additional time being granted for the review process. Dr. Jones said he supported the request from the Clinic's standpoint to help enable a thorough understanding of the issues by both City Council and the citizens of Lakewood. Dr. Jones indicated that an extension from the current expiration of the Letter of Intent (which would be in mid-March, 2015) until May 31, 2015 should be an adequate period of time to meet these needs without adversely impacting employment continuity or the terms that had been provided in the Letter of Intent.

A general discussion followed and, on motion duly made and seconded, the Board of Trustees unanimously adopted the following Resolution:

> **RESOLVED:** that the Board of Trustees of Lakewood Hospital Association hereby authorizes the Chairman of the Board of Trustees to sign, on behalf of Lakewood Hospital Association, an amendment to the Letter of Intent dated January 14, 2015 among Cleveland Clinic, Lakewood Hospital Association, and Lakewood Hospital Foundation Regarding the Future of Health Care Services to the Lakewood Community, amending Item VIII, Term, Section (A), to read in its entirety as follows:
>
> This Letter of Intent will commence as of the Effective Date and shall terminate upon the effective date of the 2015 Definitive Agreement or May 31, 2015, whichever is sooner. Any party may voluntarily terminate this Letter of Intent and cease the discussions concerning the Potential Arrangement at any time by providing written notice to the other parties.

EXTRACTED ITEMS FROM CONSENT AGENDA

No items had been extracted from the Consent Agenda.

ADJOURNMENT

There being no further business to come before the meeting, the same, on motion duly made and seconded, was adjourned.

Michael J. Meehan, Esq.
Recording Secretary

Exhibit B

From: Lisa Fry <lfry@subsidiumhealthcare.com>
To: "Meehan, Michael J., Esq." <MEEHANM@ccf.org>
Cc: "fourgablemgmt@aol.com" <fourgablemgmt@aol.com>, Brad Guest <bguest@subsidiumhealthcare.com>
Sent: Mon, 13 Apr 2015 5:05 PM
Subject: RE: Lakewood Master Agreement

Mike –

Here is the version of the Master Agreement with Subsidium's comments/questions and redlines. Please take with the caveat that this is definitely not our "final" version of comments back to the Clinic……it has not yet been reviewed by either LHA or LHF legal counsel or by the key representatives of either party. So far, this just reflects our preliminary questions and comments. I talked with Tom Gable this afternoon, and he gave us the go-ahead to share this, so I just wanted to make sure you were also aware of that.

Look forward to talking with you at 5:15. Thanks, Lisa

Lisa Fry
Partner
<image001.jpg>
www.SubsidiumHealthcare.com
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From: Meehan, Michael J., Esq. [mailto:MEEHANM@ccf.org]
Sent: Monday, April 13, 2015 4:03 PM
To: Lisa Fry
Subject: and can you send me the ...

... documents (redlined master agreement or anything else) that LHA sent to the City. Thx.

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MASTER AGREEMENT
AMONG
CITY OF LAKEWOOD, LAKEWOOD HOSPITAL ASSOCIATION, THE CLEVELAND CLINIC FOUNDATION, AND LAKEWOOD HOSPITAL FOUNDATION REGARDING THE FUTURE OF HEALTH CARE SERVICES IN THE LAKEWOOD COMMUNITY

This MASTER AGREEMENT ("**Master Agreement**") is made as of this ____ day of May, 2015 (the "**Effective Date**"), by and among the City of Lakewood, Ohio, a municipal corporation and political subdivision in and of the State of Ohio (the "**City**"); Lakewood Hospital Association, an Ohio nonprofit corporation ("**LHA**"); The Cleveland Clinic Foundation, an Ohio nonprofit corporation (the "**Clinic**"); and Lakewood Hospital Foundation, an Ohio nonprofit corporation ("**LHF**") (the foregoing are sometimes referred to herein individually as a "**party**" and collectively as the "**parties**").

RECITALS

WHEREAS, the City and LHA have a lease agreement dated as of December 23, 1996 (together with any amendments thereto, the "**1996 Lease**") under which the City leases to LHA certain real property as more particularly described on Exhibit A (the "**Land**") and personal property currently occupied or used by LHA to operate what is commonly known as Lakewood Hospital (the "**Hospital**");

WHEREAS, LHA operates the Hospital, as a community hospital located in the City of Lakewood, Ohio that provides hospital and health care services to residents of Lakewood and its surrounding communities;

WHEREAS, the Clinic operates a multi-specialty academic medical center that integrates clinical and hospital care with research and education, and the Clinic's health system is comprised of community hospitals, affiliate hospitals, and family health centers with a northeast Ohio, national and international presence;

WHEREAS, the Clinic is the sole corporate member of LHA pursuant to a Definitive Agreement executed on December 19, 1996 (the "**1996 Definitive Agreement**") that terminates upon the expiration or termination of the 1996 Lease;

WHEREAS, LHF generates philanthropic support to enhance LHA's ability to fulfill its mission in operating the Hospital and contributes to and supports LHA so long as the Hospital is a municipally-owned institution in the City of Lakewood that is operated for the public benefit and for charitable, educational and scientific purposes;

WHEREAS, each of LHA, the Clinic, and LHF is exempt from federal income tax under Section 501(a) by reason of being described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, LHF being a functionally integrated Type III supporting organization of LHA;

WHEREAS, at both the national and local levels, health care is in the midst of unprecedented transformation, and the manner in which care is delivered to patients is rapidly shifting from inpatient hospital care to outpatient and home care;

WHEREAS, in anticipation of this transformation, the parties hereto seek to address the future health care needs of the Lakewood community and its residents now and not wait until the 1996 Lease expires, have developed a vision that Lakewood become the healthiest city in America, and are prepared to make a major investment in the future of health care for the City of Lakewood;

WHEREAS, LHA, the Clinic, and LHF entered into a non-binding Letter of Intent that established a conceptual framework for a series of transactions among the parties hereto, including the City, to transition the operations of the Hospital (the "**Transition**") to implement this vision and fulfill the following objectives (the "**Founding Principles**"), and the City seeks to join the other parties under this Master Agreement and to participate in the Transition:

- The strategic vision of health care for the Lakewood community and its residents is based on the knowledge that health care is changing from a facility- and physician-based paradigm (keep physician-based), designed to care for the sick, to a population-based effort that aims to improve the health of an entire community by helping people live healthier lives, treating their health conditions early to prevent chronic diseases, and reducing the need for "sick care" in hospitals. This is the future of health care.

- The services currently provided by the Hospital will be transformed from a predominantly inpatient focus to a comprehensive ambulatory (outpatient)-based program of health care services, wellness activities, and outreach services that will touch the lives of the Lakewood community and a large number of its residents, significantly more than are served currently by the Hospital.

WHEREAS, the parties have determined that the Transition and related commitments contemplated herein are in furtherance of such Founding Principles; and

WHEREAS, this Master Agreement will serve as the guiding document for the transactions contemplated by the Transition.

AGREEMENT

NOW, THEREFORE, the parties hereto, intending to be legally bound, and in consideration of the premises and the mutual covenants, representations and warranties set forth in this Master Agreement, as well as other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, do hereby agree as follows:

ARTICLE I

Master Agreement and Ancillary Agreement Overview

This Master Agreement sets forth the agreement of the parties and the framework for the Transition and related transactions. The terms of this Master Agreement set forth the definitive agreements of the parties with respect to the matters described herein. Further, this

Master Agreement cross references other agreements that are attached hereto as exhibits ("**Ancillary Agreements**"), which set forth detailed terms for transactions related to the Transition. The terms of this Master Agreement are effective as of the Effective Date.

ARTICLE II

Cleveland Clinic Family Health Center at Lakewood

2.1 Construction of Family Health Center at Lakewood. The Clinic will construct a new comprehensive Cleveland Clinic Family Health Center (the "**FHC**") of approximately 62,100 gross square feet on the north portion of the Land upon which the Hospital is currently located and more particularly described in the FHC Site Sale Agreement (defined in Section 5.1(a)) (the "**FHC Site**"). Through the FHC Site Sale Agreement, the City will convey the FHC Site to the Clinic for the FHC, which will include drive-up access and immediately adjacent selected parking ("**FHC Parking**"). The Clinic's capital commitment for the design, construction and equipping of the FHC and FHC Parking will be approximately $34,000,000.

2.2 Parking. Attached hereto as Exhibit B is the business plan for parking associated with the FHC and surrounding areas that has been jointly developed by the City and the Clinic. Under the business plan for parking, the City will provide and maintain (or will arrange for the provision and maintenance of) safe and adequate parking for the FHC at a location proximal to the FHC while the Clinic owns and operates the FHC. The City (or its designee) may charge parking customers for parking. For the avoidance of doubt, the parking referenced in this Section 2.2 does not include the FHC Parking described in Section 2.1.

2.3 Post-Construction Obligation of the Clinic to Operate FHC. The Clinic will staff, own, operate, and manage the FHC. While the Clinic owns and operates the FHC, the Clinic will (a) expend the capital required to maintain the safety and appearance of the FHC in a manner consistent with the Clinic's other family health centers and (b) will offer the following services: (i) emergency department (24/7/365), (ii) primary care featuring an advanced medical home model, (iii) selected specialties, which will be determined by ongoing evaluation of community need and utilization, (iv) extended hours/weekends for certain services, which will be determined by ongoing evaluation of community need and utilization, (v) procedures including cardiac and pulmonary testing, (vi) radiology and lab services, (vii) eVisits/My Chart, and (viii) home care coordinated with the FHC and Fairview Hospital. The Clinic will continually monitor the health care needs of the Lakewood community and adjust this list of services as appropriate to address the health care needs of the Lakewood community and its residents.

ARTICLE III

Wind-Down and Dissolution of LHA

3.1 Wind-Down and Dissolution Plan. The parties acknowledge and agree that LHA will take steps to cease the Hospital's inpatient hospital operations. LHA will establish a wind-down and dissolution plan ("**Wind-Down Plan**") that describes the orderly cessation of such services and LHA's operation between the Effective Date and LHA's dissolution. The Wind-Down Plan should also describe what metrics and indicators will be used to guide operating

decisions regarding patient safety and asset preservation, and what the target ranges of those metrics are expected to be. Variances from these target ranges would then potentially indicate necessary deviations from the Wind-Down Plan as indicated in Section 3.2(c) below.

3.2 Governance of LHA During Wind-Down.

(a) Amendment of LHA's Governing Documents. Attached hereto Exhibit C are the Amended and Restated Articles of Incorporation of LHA and attached hereto as Exhibit D is the Amended and Restated Code of Regulations of LHA, which are effective as of the Effective Date.

(b) LHA President Responsibilities. LHA's President will direct LHA's wind-down and subsequent dissolution pursuant to the Wind-Down Plan. LHA's President will have the exclusive authority to determine the timing and dates of the cessation of patient operations and to adjust LHA's activities and the timing of such activities described in the Wind-Down Plan to protect patient safety or to preserve the assets of LHA.

(c) Cooperation of LHA Board of Trustees. The members of the LHA Board of Trustees will cooperate with and support the decisions of LHA's President except that they are not bound to agree to a decision that they in good faith believe is contrary to their fiduciary obligations to LHA.

3.3 Financial Issues Related to LHA's Wind-Down.

(a) Operating Revenues and Expenses. LHA will receive all revenues and incur all expenses, whether direct or allocated, associated with the continuing existence and operations of LHA between the Effective Date and the final dissolution of LHA.

(b) Wind-Down and Demolition Costs. LHA will bear all costs of terminating and winding down its patient and other operations and all costs of demolition to prepare the FHC Site for the construction of the FHC and for the demolition of the structures remaining on the Remaining Hospital Site Property (as defined in Section 5.1(c)) to prepare the Remaining Hospital Site Property to return for use by the City (the "**Wind-Down Costs**"), up to the maximum of LHA's net asset value excluding, as applicable, any value on LHA's balance sheet that is attributable to the assets described in Sections 3.3(c)(2) and 3.3(c)(3), which are committed to be returned to the City upon LHA's dissolution ("**Net Asset Value**"). Any Wind-Down Costs in excess of LHA's Net Asset Value will be borne by the Clinic. Wind-Down Costs shall include, without limitation, requisite capital expenditures, lease payments under the Interim Lease Agreement (as defined in Section 5.4), payments on notes payable, retirement plan costs, building demolition, abatement and relocation, severance and retention costs, insurance costs as described in Section 9.10, and post-closure closing costs.

(c) Dissolution Distribution. Notwithstanding the provisions of Article Six of the 1996 Definitive Agreement or any similar provisions elsewhere, upon LHA's dissolution, as part of the transactions contemplated by the Transition including the Clinic's payments under ARTICLE VI, the parties agree and acknowledge that all of LHA's property of every nature and description, and any and all personal property, equipment and fixtures at the Hospital, shall be

transferred to the Clinic. Notwithstanding the foregoing, the parties agree that the following will not be transferred to the Clinic:

(1) LHA's "Beneficial interest in Lakewood Hospital Foundation, Inc." as reflected on LHA's balance sheet.

(2) Any right LHA may have to the Land, which shall remain the property of the City, subject to the City's sale of the FHC Site pursuant to the FHC Site Sale Agreement described in Section 5.1(a) and the Interim Lease Agreement described in Section 5.4.

(3) Any right LHA may have to the following items described on Exhibit C of the 1996 Lease, which shall remain the property of the City and shall not be transferred to the Clinic: (i) Belle Avenue parking garage, (ii) Lakewood Hospital Professional Building, (iii) Community Health Care Center, (iv) residential homes (whether or not explicitly described in Exhibit C of the 1996 Lease), and (v) paved parking lots (whether or not explicitly described in Exhibit C of the 1996 Lease).

3.4 Side Letter of Satisfaction between City and LHA. Attached hereto as Exhibit E is a side letter between the City and LHA confirming that the actions taken by LHA pursuant to this Master Agreement after the Effective Date shall not constitute a breach of the 1996 Lease or other agreement between the City and LHA (the "**Side Letter Agreement**").

3.5 Termination of 1996 Definitive Agreement. Attached hereto as Exhibit F is the termination agreement between LHA and the Clinic, pursuant to which the 1996 Definitive Agreement is terminated as of the Effective Date.

ARTICLE IV

Lakewood Hospital Foundation and New Lakewood Community Health Foundation

4.1 Repurposing of LHF. Because LHF's purpose is to support LHA's operation of a hospital facility in Lakewood and, due to the Transition, such purpose is no longer viable or appropriate, LHF has adopted, effective as of the Effective Date, amended and restated articles of incorporation (attached hereto as Exhibit G) and amended and restated code of regulations (attached hereto as Exhibit H). Pursuant to its new governing documents, LHF's purposes will be to continue to support LHA's hospital operations while the Hospital is in operation and to support community health and wellness activities in the City of Lakewood consistent with the Founding Principles. The corporate name of LHF may be changed to reflect its new purposes, but for the sake of clarity and convenience will be referred to herein as "LHF."

4.2 Formation of New Lakewood Community Health Foundation. To support community health and wellness activities in the City of Lakewood consistent with the Founding Principles, a new foundation will be formed. The corporate name of the new foundation is to be determined, but for sake of clarity and convenience will be referred to herein as "LCHF." Attached hereto Exhibit [ ] are the Articles of Incorporation of LCHF and attached hereto as Exhibit [ ] is the Code of Regulations of LCHF, which are effective as of the Effective Date.

4.3 Funding of LHF. Unless otherwise restricted, LHF will use its existing funds in furtherance of its amended purposes.

4.4 Funding of LCHF. In connection with the transactions contemplated by the Transition and in furtherance of the Founding Principles, LHA and the Clinic will fund the activities of LCHF as described in Sections 6.2(a) and 6.2(b), respectively.

4.5 Naming Rights. In recognition of the Clinic's contributions to LCHF as described in Section 6.2(b), LCHF grants to the Clinic a suitable naming opportunity in connection with the activities of LCHF. LCHF and the Clinic will mutually agreed upon the parameters of such naming opportunity. LCHF and the Clinic agree that the naming opportunity will not include the name of the LCHF corporate entity. The Clinic's naming rights under this Section 4.4 will survive until the later of one year after the final Annual Contribution payment described in Section 6.2(b) and the period during which the Clinic owns and operates the FHC. Add limitation that external funding/naming opportunities will take precedence over CCF's exercise of the rights described in this paragraph?

4.6 Representation on Governing Board. The Clinic will have the right to appoint two (2) voting members on the governing board of LCHF, which shall not have not less than five (5) nor more than twenty-one (21) members. The Clinic's rights under this Section 4.6 will survive until the later of one year after the final Annual Contribution payment described in Section 6.2(b) and the period during which the Clinic owns and operates the FHC.

4.7 Principal Health Care System Affiliate.

(a) Right of First Refusal. The Clinic will be the principal health care system affiliate for LCHF's activities. As such, LCHF hereby grants to the Clinic a right of first refusal (the "**Right of First Refusal**") to participate in any health and wellness program, product, activity or service that LCHF seeks to offer or support in excess of $500,000 per year in estimated annual revenue or grant ("**Designated Program**"). LCHF hereby agrees that pursuant to the Right of First Refusal, LCHF shall not offer or support a Designated Program with any other Person (or Affiliate thereof) that operates a health care system other than the Clinic, except in compliance with the provisions of this Section 4.7.

(b) Procedure for Proposed Designated Program. If LCHF has a bona fide desire to offer or support a Designated Program, LCHF shall deliver to the Clinic a notice (the "**Proposed Program Notice**") that: (i) certifies that LCHF desires to move forward with such Designated Program, (ii) identifies the Person or Persons with whom the Designated Program would be undertaken (the "**Proposed Partner**"), and (iii) encloses a description of the Designated Program, containing all material terms thereof.

(c) Notice of Election. The Clinic shall, within ninety (90) days after delivery of the Proposed Program Notice, deliver to LCHF notice of whether the Clinic intends to exercise its Right of First Refusal. If the Clinic exercises its Right of First Refusal, its participation in the Designated Program shall be identical to the participation described in the Proposed Program Notice; provided that, if the participation set forth in the Proposed Program Notice cannot be precisely matched by the Clinic (e.g., use of the name of the Proposed Partner),

LCHF and the Clinic will negotiate in good faith to fix terms that result in LCHF receiving value that is equivalent to the value LCHF would receive under the Proposed Program Notice. If the Clinic fails to deliver notice of its intent to exercise its Right of First Refusal within such ninety (90) day period, the Clinic shall be deemed to have elected not to exercise its Right of First Refusal, and LCHF shall be permitted to consummate the proposed Designated Program in accordance with the Proposed Program Notice.

(d) Designated Program with Proposed Partner. If the Clinic elects (or is deemed to have elected) not to exercise its Right of First Refusal, LCHF may pursue the Designated Program on the terms described in the Proposed Program Notice within one hundred fifty (150) days after the delivery of the Proposed Program Notice to the Clinic. If the Designated Program is not implemented within such one hundred fifty (150) day period, LCHF shall again be required to comply with the terms of this Section 4.7, unless such requirement is waived by the Clinic.

(e) Designated Program with the Clinic. If the Clinic notifies LCHF in accordance with Section 4.7(c) that it elects to exercise its Right of First Refusal, LCHF and the Clinic shall agree to appropriate and customary terms for the Designated Program, including a time line for implementing the Designated Program.

(f) Survival of Right of First Refusal. The Clinic's rights under this Section 4.7 will survive until the later of one year after the final Annual Contribution payment described in Section 6.2(b) and the period during which the Clinic owns and operates the FHC.

4.8 Assistance in LHF Activities. For a period of up to three (3) years following the Effective Date, the Clinic will use commercially reasonable efforts to assist the Lakewood community and LCHF to attract and contract with a wellness center partner or vendor to be involved in the development of an additional health and wellness campus and/or facility on the Remaining Hospital Site Property. **[Drafter's note: Parties to discuss issue of wellness center or other development of the Remaining Hospital Site Property.]**

ARTICLE V

REAL ESTATE MATTERS

5.1 Sale of Portion of Hospital Site for FHC; Option; Restrictive Covenant.

(a) Attached hereto as Exhibit I is a purchase and sale agreement ("**FHC Site Sale Agreement**"), pursuant to which the City will convey the FHC site to the Clinic for a purchase price of **[$_____]**.

(b) Option Agreement. Attached hereto as Exhibit J is an option agreement (the "**FHC Option Agreement**") between the City and the Clinic that provides for the following: (i) if the Clinic no longer wishes to own and operate the FHC, the Clinic will offer the FHC Site and improvements thereon to the City at a price that does not exceed fair market value as determined by an appraisal process described in the FHC Option Agreement; (ii) if the City does not wish to exercise its right to acquire all of the improvements, but exercises its right to acquire the FHC Site, the City will have the right to buy back the FHC Site at a price equal to the amount

paid by the Clinic for the FHC Site; provided that if such price exceeds the fair market value, as determined by an appraisal process described in the FHC Option Agreement, the purchase price will be the price determined by the appraisal process; and (iii) if the City elects not to purchase the FHC Site or the improvements thereon, the Clinic may sell or lease such FHC Site and/or improvements thereon to any third party. If the City exercises the option to acquire the FHC Site only and none of the improvements located thereon as described in clause (ii) above, the Clinic may sell any portion of the improvements to a third party and the City will, in conjunction therewith, negotiate a ground lease with such third party upon commercially reasonably terms and at a rent not to exceed fair market value (as determined pursuant to the FHC Option Agreement).

(c) Restrictive Covenant. As part of the consideration for the Clinic's acquisition of the FHC Site, a restrictive covenant (the "**Covenant**") will be placed on the Land except for the portion of the Land conveyed to the Clinic pursuant to the FHC Site Sale Agreement (such remaining Land, the "**Remaining Hospital Site Property**"). Pursuant to the Covenant, no health care system provider will be permitted to operate or manage a facility, and no signage identifying such provider will be permitted, on the Remaining Hospital Site Property without the Clinic's prior written consent while the Clinic owns and operates the FHC.

5.2 Sale of Property at 850 Columbia Road. Attached hereto as Exhibit K is the purchase and sale agreement between LHA and the Clinic ("**850 Columbia Road Sale Agreement**"), pursuant to which LHA will sell the land and improvements located at 850 Columbia Road, Westlake, Ohio property to the Clinic for a purchase price of Eight Million Two Hundred Thousand Dollars ($8,200,000) (the "**Columbia Purchase Price**"). LHA will direct that the Columbia Purchase Price (subject to any adjustments described in the 850 Columbia Road Sale Agreement) be paid by the Clinic to the City.

5.3 Termination of 1996 Lease. Attached hereto as Exhibit L is a lease termination agreement, pursuant to which the City and LHA terminate the 1996 Lease as of the Effective Date.

5.4 Interim Lease Agreement. Attached hereto as Exhibit M is a lease agreement between the City and LHA, pursuant to which the City will lease the Remaining Hospital Site Property to LHA ("**Interim Lease Agreement**").

ARTICLE VI

FINANCIAL OBLIGATIONS

6.1 LHF Funding. LHF will maintain all of its existing funds and, unless otherwise restricted, use such funds in accordance with and in furtherance of the purposes described in LHF's amended and restated governing documents.

6.2 Clinic Funding of LHF.

(a) Cash Payments to LCHF.

(1) In recognition of the parties' intention that LHA's assets be used for the benefit of the Lakewood community and its residents, the Clinic will transfer Twelve Million, Two Hundred Thousand Dollars ($12,200,000) through LHA to LCHF in immediately available funds ("**Initial Payment**") on the Effective Date.

(2) In further recognition of the parties' intention that LHA's assets be used for the benefit of the Lakewood community and its residents, within thirty (30) days of the commencement of operations and provision of patient care at the FHC and the City's approval of a plan to complete the demolition or modification of the remainder of current Hospital facility on the Remaining Hospital Site Property, the Clinic will transfer Twelve Million, Two Hundred Thousand Dollars ($12,200,000) through LHA to LCHF in immediately available funds. The plan regarding the Remaining Hospital Site Property must be completed in good faith and submitted by LHA to the City for approval no later than thirty (30) days before the commencement of operations and provision of patient care at the FHC.

(b) Annual Contributions to LCHF. In support of the furtherance of the purposes of LCHF, the Clinic will make sixteen (16) annual payments to LCHF of $500,000 each, with the first payment being made on the Effective Date and subsequent payments being made on each anniversary of the Effective Date for 15 consecutive years (each, an "**Annual Contribution**").

6.3 Financial Obligations of LHA. LHA will (i) receive the revenues and be responsible for its expenses as described in Section 3.3(a); (ii) bear the wind-down and Hospital demolition costs as described in Section 3.3(b); and (iii) distribute its assets upon dissolution as described in Section 3.3(c).

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

7.1 Mutual Representations and Warranties. Each party represents and warrants to the other parties that the statements contained in this Section 7.1 are true and correct as of the Effective Date.

(a) Authorization; Enforceability. Each party represents and warrants that it has all requisite power, authority and capacity to execute and deliver this Master Agreement and any other agreements to be entered into by it in connection with the Transition as contemplated hereby and to perform its obligations under this Master Agreement and any such other agreements, and to consummate all transactions contemplated hereby. The execution and delivery of this Master Agreement, and the performance of the transactions contemplated hereby, have been duly and validly authorized by the applicable governing board or bodies of such party, and all action (corporate, legislative or otherwise) necessary for the authorization and consummation of the transactions contemplated this Master Agreement has been taken. This Master Agreement has been duly executed and delivered by such party, and constitutes a valid

and binding obligation of such party, enforceable against such party in accordance with its terms subject to (i) bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally, and (ii) general principles of equity, including the availability of specific performance, and public policy.

(b) Absence of Conflicts. Each party represents and warrants that its execution, delivery and performance of this Master Agreement will not (i) result in the breach or violation of any term or provision of or constitute a default under or conflict with any terms or provision of: its articles of incorporation, code of regulations, charter, bylaws, or any other of its organizational or governing documents, or any contract, agreement, lease, mortgage, license, permit, authorization, or other obligation to which it or any of its Affiliates is a party, or by which it or any of its Affiliates is bound, (ii) constitute such an event that with notice, lapse of time, or both, would result in any such breach, violation or default, (iii) conflict with or result in any violation by such party or any of its Affiliates of any constitution, statute, rule, regulation, ordinance, code, order, judgment, writ, injunction, decree or award, or constitute an event that with notice, lapse of time, or both, would result in any such violation or (iv) result in the creation or imposition of any lien, charge or encumbrance upon or with respect to the assets or property of such party or any of its Affiliates.

(c) Consents. Each party represents and warrants that it has (i) obtained all material consents, approvals, authorizations and clearances of governmental authorities required of it to consummate the transactions contemplated hereby; (ii) provided such information and communications to governmental authorities as such governmental authorities may reasonably request; and (iii) assisted and cooperated with the other parties' efforts to obtain all consents, licenses, permits, approvals, authorizations and clearances of governmental authorities that the parties reasonably deem necessary or appropriate and to prepare any document or other information reasonably required of it by any such governmental authorities to consummate the transactions contemplated herein. Each party represents and warrants that neither it nor any of its Affiliates have entered into any agreement with any governmental authority to delay the consummation of or not consummate the transactions contemplated by this Master Agreement.

(d) No Litigation. Each party represents and warrants that no action, suit or proceeding has been instituted or, to its Knowledge, is threatened to restrain, prohibit, delay or otherwise challenge the legality or validity of any of the transactions contemplated by this Master Agreement or which would reasonably be expected to have a material adverse effect such party.

(e) Donor Restrictions. Each party represents and warrants that, to its Knowledge, there are no restrictions imposed by any donor affecting any material real estate or other material assets of a party that would prohibit, limit or restrict such party's ability to enter into this Master Agreement or to consummate any of the transactions contemplated hereby.

(f) No Misrepresentation. Each party represents and warrants that, to its Knowledge, none of the representations and warranties made by it in this ARTICLE VII contains any untrue statement of a material fact or omits to state a material fact necessary in order to make such representation and warranty not misleading.

7.2 Representations and warranties of the Clinic, LHA and the City. Each of the Clinic, LHA and LHF represents and warrants to the other parties that the statements contained in this Section 7.2 are true and correct as of the Effective Date.

(a) Organization and Standing. Each of the Clinic, LHA and the City represents and warrants that it is an Ohio nonprofit corporation duly organized and validly existing under the Chapter 1702 of the Ohio Revised Code, and in good standing under the laws of the State of Ohio.

(b) Tax Status.

(1) The Clinic represents and warrants that it is recognized as exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code. The Clinic has no Knowledge of any action by the Internal Revenue Service to revoke or terminate the tax status of the Clinic.

(2) LHA represents and warrants that it is recognized as exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code. LHA has no Knowledge of any action by the Internal Revenue Service to revoke or terminate the tax status of LHA.

(3) I think we need a rep and warrant for the City here as well.

(4) LHF represents and warrants that it is recognized as exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code. LHF has no Knowledge of any action by the Internal Revenue Service to revoke or terminate the tax status of LHF.

7.3 Knowledge. As used in this ARTICLE VII, the term "**Knowledge**" means to the actual knowledge of the party's officers and the members of a party's governing board or body.

ARTICLE VIII

The Closing

8.1 Closing. The closing of the transactions contemplated by this Master Agreement (the "**Closing**") shall take place on the Effective Date at a location and time as the parties shall mutually agree. Unless otherwise agreed upon by the parties in writing, the Closing shall be effective as of the Effective Date.

8.2 The Clinic's Deliveries at the Closing. At the Closing, in addition to any other documents specifically required to be delivered pursuant to this Master Agreement, the Clinic shall deliver the following:

(a) The Initial Payment to LCHF;

(b) The initial annual contribution described in Section 6.2(b);

(c) certified copies of resolutions of the Clinic's Board, duly adopted and in full force and effect as of the Effective Date, authorizing and approving Clinic's performance of the transactions contemplated under this Master Agreement and the execution and delivery of the documents described herein;

(d) certificates of incumbency for the Clinic's officers executing this Master Agreement, dated as of the Effective Date;

(e) copies of the following agreements executed by a duly authorized officer of the Clinic: FHC Site Sale Agreement, the FHC Option Agreement; the 850 Columbia Road Sale Agreement, and the Termination of 1996 Definitive Agreement; and

(f) such other instruments and documents as the parties reasonably deem necessary to effect the transactions contemplated by this Master Agreement, including all completed Exhibits to this Master Agreement.

8.3 LHA's Deliveries at the Closing. At the Closing, in addition to any other documents specifically required to be delivered pursuant to this Master Agreement, LHA shall deliver the following:

(a) certified copies of resolutions of the LHA Board, duly adopted and in full force and effect as of the Effective Date, authorizing and approving LHA's performance of the transactions contemplated under this Master Agreement and the execution and delivery of the documents described herein;

(b) certificates of incumbency for the officers of LHA executing this Master Agreement, dated as of the Effective Date;

(c) copies of the following agreement executed by a duly authorized officer of LHA: the 850 Columbia Road Sale Agreement, the Side Letter Agreement, the Termination of 1996 Lease Agreement, the Termination of 1996 Definitive Agreement, and the Interim Lease Agreement for Hospital Site; and

(d) such other instruments and documents as the parties reasonably deem necessary to effect the transactions contemplated by this Master Agreement, including all completed Exhibits to this Master Agreement.

8.4 LHF's Deliveries at the Closing. At the Closing, in addition to any other documents specifically required to be delivered pursuant to this Master Agreement, LHF shall deliver the following:

(a) LHF's amended and restated articles of incorporation and code of regulations, certified by the Secretary of LHF;

(b) certified copies of resolutions of the LHF Board, duly adopted and in full force and effect as of the Effective Date, authorizing and approving LHF's performance of the transactions contemplated under this Master Agreement and the execution and delivery of the documents described herein;

(c) certificates of incumbency for the officers of LHF executing this Master Agreement, dated as of the Effective Date; and

(d) such other instruments and documents as the parties reasonably deem necessary to effect the transactions contemplated by this Master Agreement, including all completed Exhibits to this Master Agreement.

8.5 The City's Deliveries at the Closing. At the Closing, in addition to any other documents specifically required to be delivered pursuant to this Master Agreement, the City shall deliver the following:

(a) certified copies of resolutions of the City Council of Lakewood, duly adopted and in full force and effect as of the Effective Date, authorizing and approving the City's performance of the transactions contemplated under this Master Agreement and the execution and delivery of the documents described herein;

(b) certificates of incumbency for the City's officials executing this Master Agreement, dated as of the Effective Date;

(c) copies of the following agreement executed by a duly authorized officer of the City: FHC Site Sale Agreement, the FHC Option Agreement, the Side Letter Agreement, the Termination of 1996 Lease Agreement, and the Interim Lease Agreement for Hospital Site; and

(d) such other instruments and documents as the parties reasonably deem necessary to effect the transactions contemplated by this Master Agreement, including all completed Exhibits to this Master Agreement.

ARTICLE IX

Post-Closing Obligations

9.1 Payment Obligations. The Clinic shall fulfill the payment obligations set forth in Sections 6.2(a)(2) and 6.2(b).

9.2 Relocation of Fairview/Cleveland Clinic Family Medicine Residency. No later than six (6) months after date on which the FHC commences operations and begins providing health care services patients, the Clinic will relocate the Fairview/Cleveland Clinic Family Medicine Residency, which is currently at the Fairview Center for Family Practices, to the FHC campus.

9.3 LHA Record Retention. Upon LHA's cessation of operations, the Clinic will maintain and administer the archival recordkeeping operations of LHA, complying with applicable laws, pursuant to the Clinic's record retention policies.

9.4 Public Support of Transition. Each of the parties shall publicly support the Transition and the activities undertaken pursuant to this Master Agreement.

9.5 Cooperation in Orderly Cessation of Services at the Hospital.

(a) The City and LHF agree to cooperate with LHA to effect an orderly and efficient closure of the Hospital and the transition of patient care. Each of the City, on its own behalf and on behalf of its governmental officials, City Council, other bodies, boards and councils of any kinds, and its officers, departments, employees, agents, attorneys, affiliates, successors and assigns (collectively, the "City Parties") and LHF, on its own behalf and on behalf of its Affiliates, members, officers, directors, trustees, employees, agents, attorneys, donors, affiliates, successors and assigns (collectively, the "LHF Parties"), hereby forever waives, releases and discharges LHA and the Clinic and their respective Affiliates, members, officers, directors, trustees, employees, agents, attorneys, donors, affiliates, successors and assigns (the "Hospital Parties"), from any and all known and unknown claims, demands, injuries, damages, actions, costs, expenses, attorneys' fees, liability and suits in equity or law, known or unknown (collectively, "Claims"), that arise out of or relate to the Transition, including closing of the Hospital, the cessation of services or programs at the Hospital, or the demolition of the Hospital building and from any other events, transactions, relationships, agreements, acts or omissions that occur in connection with such events. The City agrees that neither it nor any of the City Parties, and LHF agrees that neither it nor any of the LHF Parties, will take direct or indirect action or support any action or encourage others to take any action that is intended to or will (i) delay, stop, reverse or otherwise impede LHA or the Clinic from taking the actions contemplated by the Transition or (ii) recover damages of any kind against any of the Hospital Parties that relate to any of the foregoing. If the City and LHF violate their obligations under this Section 9.5(a), LHA and the Clinic shall be forever relieved of their respective future obligations under this Master Agreement.

(b) If LHA or the Clinic is (i) delayed, stopped or otherwise impeded from taking the actions contemplated by the Transition, (ii) subjected to an action that attempts to cause any such delay, stoppage or impediment or (iii) subjected to an action to recover damages of any kind against any of LHA, the Clinic or their respective Affiliates that relates to any of the foregoing, and neither LHF or the City has violated Section 9.5(a), the Clinic may offset any damages, awards and costs (including legal fees) incurred by the Clinic in addressing any such matters against any future installment of the payment described in Section 6.2(a)(2) or the Annual Contributions. This Section 9.5(b) shall not apply to a routine business dispute involving a vendor or service contract relating to the Hospital, so long as neither LHF nor the City has violated Section 9.5(a).

(c) Nothing in this Section 9.5 shall be deemed to relieve LHF or the City of any of its obligations, or waive any of LHA's or the Clinic's rights, under this Master Agreement.

9.6 Negotiations between Lakewood and Avon. The Clinic will use its best efforts to facilitate negotiations between the City of Avon and the City of Lakewood to compensate the City of Lakewood for the loss of payroll taxes consistent with the payroll tax revenue sharing agreement that the City of Avon entered into with other nearby municipalities in 2005.

9.7 General Support of LHF Activities. The Clinic will assist LHF's wellness activities as described in Section 4.8.

9.8 Wind-Down and Dissolution Activities. LHA will undertake the activities described in ARTICLE III.

9.9 Transfer of Real Property. To the extent necessary, LHA will cooperate in transferring to the City any real estate rights that it may have in the Remaining Hospital Site Property or pursuant to the 1996 Lease.

9.10 Insurance. In consideration for insurance premiums paid by or allocated to LHA, the Clinic will provide insurance protection (indemnity and defense), including without limitation professional liability and directors and officers insurance, for the officers, trustees, employees, and other agents of LHA, for LHA-related occurrences both prior to and subsequent to the dissolution of LHA.

9.11 Approvals. The City will promptly grant all zoning, architectural, construction, engineering, regulatory, tax-exemption or other approvals within its authority as requested by the Clinic in the design, construction, and maintenance of the FHC; provided that the Clinic properly follows established processes for obtaining such approvals.

9.12 City Obligations. If testimony or documents are sought from the City or any public office or official relating to the Transition, whether informally or by legal process, the City agrees to provide notice of such request as promptly as possible to the Clinic's Chief Legal Officer. In addition to the other obligations in this ARTICLE IX, the City shall meet its parking obligations described in Section 2.2 and its obligations under the restrictive covenant described in Section 5.1(c).

9.13 LHF Obligations. In addition to the other obligations in this ARTICLE IX, LHF shall abide by Sections 4.2, 4.4 4.6 and 4.7.

ARTICLE X

Dispute Resolution

10.1 Covered Disputes. All controversies and claims arising under or relating to this Master Agreement shall be resolved in accordance with this ARTICLE X. The parties shall negotiate all matters of joint concern in good faith, with the intention of resolving issues between them in a mutually satisfactory manner. If a disagreement between or among the parties cannot be resolved through informal discussions, it shall be deemed a "**Dispute**" upon one party (the "**Declaring Party**") declaring, by the delivery of a written notice (the "**Notice**") to the other parties, that a Dispute exists. The Notice shall specify the nature and cause of the Dispute and the action that the Declaring Party deems necessary to resolve the Dispute. Following receipt of the Notice, appropriate officers of the parties shall use good faith efforts to resolve the Dispute. If a Dispute is not resolved by the officers within thirty (30) days of the date of the Notice, the matter shall be referred to the respective Board chairs of LHA, LHF and Lakewood City Council and the Chair of the Executive Committee of the Cleveland Clinic Regional Hospitals. If a Dispute is not resolved between such designees of the respective parties within thirty (30) days of the date of submission thereto, the matter shall be resolved in accordance with the arbitration procedures below.

10.2 Arbitration Process. The parties agree that the arbitration shall be conducted in accordance with the then-current rules of the American Health Lawyers Association, as modified herein. The parties shall use a panel of arbitrators. Each party to the Dispute shall select one arbitrator and those arbitrators shall select on additional arbitrator who shall hear the Dispute. The arbitrators shall make each determination in a manner that is consistent with this Master Agreement, including the parties' intent as expressed herein. Without limiting the foregoing, the parties agree that the arbitrators are empowered to (a) make determinations regarding the reasonableness of a party's acts or omissions and (b) take into account that a party's approach to fulfilling an obligation under this Master Agreement must be based upon a financially sustainable and responsible model that takes into consideration financial and patient care concerns on a system-wide basis. All decisions of the arbitrators are final and shall be binding upon the parties. Each party to this arbitration shall be solely responsible for their own attorneys' fees and expenses, legal expenses and witness fees and expenses. Any other usual and customary expenses incurred by the arbitrators or the expense of such arbitration proceeding shall be equally divided between the parties, irrespective of the outcome of such proceeding. The arbitration will be conducted in Cleveland, Ohio. The arbitrators are to apply the laws of the State of Ohio law without regard to its choice of laws principles. The parties agree that any award, order, or judgment pursuant to the arbitration is final and may be entered and enforced in any court of competent jurisdiction.

10.3 General. The parties agree that all aspects of the dispute resolution process, up to and including the special committee process, shall be conducted in confidence. The parties agree that all statements made in connection with informal dispute resolution efforts shall not be considered admissions or statements against interest by either party. The parties further agree that they will not attempt to introduce such statements at any later trial or mediation between the parties.

ARTICLE XI

Miscellaneous Provisions

11.1 Definitions. The term "**Affiliate**" when used in connection with a particular entity means any Person directly or indirectly controlled by or under common control with such entity. "**Control**" or "**controlled by**" shall mean the power to elect through membership, ownership, contract, or otherwise, fifty percent (50%) or more of the board of trustees, directors or managers (or others performing similar functions) of a Person. "**Control**" also includes the power to direct or cause the direction of the policies and management of an entity, whether through contract, membership interests, ownership of voting securities, a lease, a management agreement, or other arrangement. The term "**Person**" means any individual, partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association or any other entity.

11.2 Survival. The representations and warranties of the parties shall survive the Closing for a period of six months after the Effective Date. No representations and warranties shall survive the termination of this Master Agreement. All covenants and agreements that contemplate performance thereof following the Effective Date will survive the Effective Date in accordance with their respective terms as described herein.

11.3 Waivers and Amendments. This Master Agreement may not be amended or modified and compliance herewith may not be waived (either generally or in a particular instance and either retroactively or prospectively) except with the written consent of both parties hereto.

11.4 No Third Party Beneficiaries. This Master Agreement is intended solely for the benefit of the parties hereto and not for the benefit of any other person or entity.

11.5 Enforcement of Remedies. To the extent a party's obligation under this Master Agreement is explicitly directed to one or more, but not all, of the parties, only the party(ies) to whom the obligation is directed shall have the ability to enforce such obligation. Further, to the extent any terms of this Master Agreement conflicts with the terms of an Ancillary Agreement, the terms of the Ancillary Agreements shall govern. If a dispute arises under an Ancillary Agreement, only the parties to such agreement will be entitled to enforce remedies thereunder and the other parties to this Master Agreement are not third party beneficiaries by virtue of this Master Agreement.

11.6 Binding Effect. Except as provided otherwise, all of the terms and provisions of this Master Agreement shall be binding upon and inure to the benefit of and be enforceable by the duly authorized successors and assigns of the parties hereto.

11.7 Headings. The headings contained in this Master Agreement, in any Exhibit hereto are for reference purposes only and shall not affect in any way the meaning or interpretation of this Master Agreement. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Master Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit but not otherwise defined therein, shall have the meaning as defined in this Master Agreement. When a reference is made in this Master Agreement to a Section or Exhibit such reference shall be to a Section of, or an Exhibit to, this Master Agreement unless otherwise indicated.

11.8 Entire Agreement. The parties agree that this Master Agreement, including the Exhibits hereto, which are incorporated herein by reference, represents the complete and exclusive statement of the agreement among them with respect to the subject matter hereof and supersedes all other agreements, oral or written, between them relating to the subject matter of this Master Agreement.

11.9 Assignment. No party shall assign this Master Agreement or any of its rights or obligations hereunder (including by operation of law in connection with a merger or consolidation) without the prior written consent of the other party. Any attempt at assignment of this Master Agreement in violation of this Section 11.9 shall be void and of no effect.

11.10 Notices. Any and all notices and other communications made or given pursuant to this Master Agreement shall be in writing and shall be sufficiently made or given if transmitted by hand delivery with receipt therefore, by certified or registered mail, postage prepaid, return receipt requested, or by a national overnight delivery service with guaranteed next-day delivery with receipt therefore, addressed as provided below; or, if the receiving party consents in advance, transmitted and received via telecopy or via such other electronic transmission mechanism as may be available to the parties. If a notice or communication is transmitted by hand delivery, certified

or registered mail or Federal Express or other delivery service, as provided above, then such notice or communication shall be addressed as follows:

if to the Clinic:

The Cleveland Clinic Foundation
Office of the Chief Executive Officer and President
9500 Euclid Avenue
Cleveland, OH 44195
Attn: Delos M. Cosgrove, M.D., Chief Executive Officer and President

With a copy to:

The Cleveland Clinic Foundation
Law Department
3050 Science Park Drive, AC3-21
Beachwood, Ohio 44122
Attn: David W. Rowan, Chief Legal Officer

If to LHA: _____

If to LHF: _____

If to the City: _____

or such other address as the party may designate in writing to the other party from time to time. Notices and communications shall be effective when received.

11.11 Counterparts. This Master Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

11.12 Governing Law. This Master Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

11.13 Severability. If any of the terms or provisions of this Master Agreement or the application thereof to any person or this Master Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Master Agreement and the application of such terms or provisions to other persons or circumstances shall not be affected thereby, but rather shall be enforceable to the greatest extent permitted by law. In substitution for any provision of this Master Agreement held unlawful, invalid or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the parties hereto to the fullest extent permissible under law.

11.14 Expenses. Each party hereto shall pay its own legal, accounting, out-of-pocket and other expenses incident to this Master Agreement.

11.15 Further Assurances. Each party will, whenever and as often as it shall be reasonably requested by any other party, for no additional monetary remuneration, take or cause to be taken all actions and execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents, as may be necessary in order to carry out the terms and conditions of this Master Agreement and the Ancillary Agreements and to consummate and make effective transactions herein and therein contemplated and shall do any and all other acts as many be reasonably requested in order to carry out the intent and purpose of this Master Agreement and the Ancillary Agreements.

11.16 Time of Essence. Time is of the essence in the performance of this Master Agreement. This Section may be waived only in a writing expressly referring hereto.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed this Master Agreement as of the date first written above.

THE CITY OF LAKEWOOD

By:_____

Name:_____

Title:_____

THE CLEVELAND CLINIC FOUNDATION

By:_____

Name:_____

Title:_____

LAKEWOOD HOSPITAL ASSOCIATION

By:_____

Name:_____

Title:_____

LAKEWOOD HOSPITAL FOUNDATION

By:_____

Name:_____

Title:_____

Exhibits

Exhibit A -	Land
Exhibit B -	Business Plan for Parking
Exhibit C -	Amended and Restated Articles of Incorporation of Lakewood Hospital Association
Exhibit D -	Amended and Restated Code of Regulations of Lakewood Hospital Association
Exhibit E -	Side Letter Agreement between the City of Lakewood and Lakewood Hospital Association
Exhibit F -	Termination of 1996 Definitive Agreement between Lakewood Hospital Association and the Clinic
Exhibit G -	Amended and Restated Articles of Incorporation of Lakewood Hospital Foundation
Exhibit H -	Amended and Restated Code of Regulations of Lakewood Hospital Foundation
Exhibit I -	FHC Site Sale Agreement between the City of Lakewood and the Clinic
Exhibit J -	FHC Option Agreement between the City of Lakewood and the Clinic
Exhibit K -	850 Columbia Road Sale Agreement between Lakewood Hospital Association and the Clinic
Exhibit L -	Termination of 1996 Lease Agreement between the City of Lakewood and Lakewood Hospital Association
Exhibit M -	Interim Lease Agreement between the City of Lakewood and Lakewood Hospital Association

May need to add Exhibits for the new foundation – Lakewood Community Health Foundation (LCHF)

Exhibit C

From:	Bullock, Tom
To:	Smyers, Robyn Minter
Cc:	Pae, Jennifer; Butler, Kevin; "John Bodine" (jbodine@huronconsultinggroup.com); Greenwald, Cathryn
Subject:	Re: Lakewood Hospital
Date:	Wednesday, July 22, 2015 6:12:59 PM
Attachments:	image005.png image006.png

Aha. Sure is helpful. Thanks very much. Looping in Mayor Summers here.

At the appropriate time, I'd like to summarize this and other recent email discussion w/Dir. Pae and Mr. Bodine this week to my Council colleagues... have not yet done so, but I suspect all these insights would be elucidating.

Tom Bullock
Lakewood City Council at Large
(216) 337-1318
Sign up for Lakewood emergency notifications: http://tinyurl.com/o2mmsr5
Report-a-problem free smart phone app: tinyurl.com/kjgsb2x
Report-a-Problem webform: tinyurl.com/l4n7acj
How was our service? tinyurl.com/kw2zj6v

From: Smyers, Robyn Minter <Robyn.Smyers@thompsonhine.com>
Sent: Wednesday, July 22, 2015 5:27 PM
To: Bullock, Tom
Cc: Pae, Jennifer; Butler, Kevin; 'John Bodine' (jbodine@huronconsultinggroup.com); Greenwald, Cathryn
Subject: Lakewood Hospital

Hi Tom,

Below are our thoughts on the questions you raised. We're happy to discuss these items further if you would like. We've reproduced your questions below for clarity.

Isn't the $91.5 million in deferred maintenance ($95 million if you include the parking garage) and the recent payment of LHA debt down to $0 a tacit statement by leadership over the last 5-10 years that LHA is not viable, since no attempt to incur the expense of the investments needed to compete was made?

Is the reference to "leadership" in your question to City leadership or LHA leadership? It does not appear that there has been any expectation on the City's part that it would be investing additional funds into capital improvements at the Hospital, nor do there appear to have been requests made by LHA that the City invest any such funds. As Jenn notes, the last funding of debt was in 2003. We cannot speak to LHA's or the City's motivations, but Jenn's explanation that Hospital revenues were uncertain and LHA did not want to take the risk of incurring debt under those conditions would certainly make sense.

The statement in the Huron report that the financial burden of replacements or renovations would fall to the City refers to the fact that the responsibility for the property and improvements will revert

to the City upon the expiration of the lease. If the City were to try to lease or sell the facility to another operator, it seems likely that it would have to make some capital improvements or make other concessions to make another party willing to do so.

Who ought to have been financing these investments? LHA? CCF? The City? Who ought to have proposed them?

As we discussed at last week's meeting, the lease contains language requiring that LHA maintain the Hospital in "good repair and operating condition" during the term of the lease, but does not place an affirmative obligation on LHA to make capital repairs or improvements beyond what is required to keep the Hospital in "good repair and operating condition." We cannot speak to the parties' expectations in 1985 or 1996, but there is no express requirement in the lease that LHA make capital improvements outside of its express lease obligations. There is no obligation, for instance, to make the capital investments that would be required to maintain the profitability or competitiveness of the Hospital. The City also does not have the ability to force LHA to make improvements beyond the obligation to maintain the Hospital in "good repair and operating condition."

The Definitive Agreement does not place any financial obligations on CCF to fund capital or other obligations of LHA out of CCF's own resources, except for the cash-to-debt ratio and the requirement of the initial capital investment of $10M over the first 5 years of the Definitive Agreement. We have asked Huron to specifically address the cash-to-debt ratio in their report; however, LHA cannot (1) undertake capital projects over $500K, (2) incur indebtedness over $500K, or (3) make capital expenditures in excess of $500K, each without CCF approval, and if the cash-to-debt ratio covenant is triggered by expenditures/indebtedness approved by CCF, CCF is advancing (not gifting) the funds to LHA (subject to potential forgiveness if not repaid by the end of the term of the Definitive Agreement).
We hope that the above is helpful.

Robyn Minter Smyers |Cleveland Partner-in-Charge|Thompson Hine LLP|
3900 Key Center |127 Public Square |Cleveland, OH 44114
Office: +1.216.566.5830 **|Mobile:** +1.216.287.1491
Fax: +1.216.566.5800 **|Email:** Robyn.Smyers@ThompsonHine.com
Web: http://www.ThompsonHine.com

From: Bullock, Tom [mailto:Tom.Bullock@lakewoodoh.net]
Sent: Tuesday, July 21, 2015 4:23 PM
To: Pae, Jennifer; Smyers, Robyn Minter
Cc: Butler, Kevin
Subject: Re: Hospital matters: a general update

Hi Jenn (cc'ing Robyn here too),

One more round of questions your writing, and the Huron report has prompted. On page 19 of the recent Huron report (our DRAFT Phase One report), it says (emphasis added),

"The total renovation costs for the facility have been estimated at $91.5 million. While the lease includes customary tenant covenants requiring LHA to maintain the Hospital in good repair and operating condition during the term of the lease, *these covenants should not be interpreted as requiring LHA to make material capital investments in the Hospital, to maximize Hospital revenues or to operate the Hospital as a state of the art facility. Consequently, the financial burden of the facility replacement or renovation would fall to the City* if LHA declines to renew the lease at expiration."
This would seem to indicate that the point you made at the conclusion of your column: "The City of Lakewood voter's made that decision in 1985 to shift the liability for Lakewood Hospital capital improvements from the City to LHA."
...is either subject to a disputed interpretation, or that the 1985/1987 changes were not successfully constructed to achieve their intended outcome.

That prompts a pair of corollary question from me:

1. Isn't the $91.5 million in deferred maintenance ($95 million if you include the parking garage) and the recent payment of LHA debt down to $0 a tacit statement by leadership over the last 5-10 years that LHA is not viable, since no attempt to incur the expense of the investments needed to compete was made?
2. Who ought to have been financing these investments? LHA? CCF? The City? Who ought to have proposed them?

I'd welcome your analysis here.

In addition, Robyn, can you shed any light?

Thanks,
Tom

Tom Bullock
Lakewood City Council at Large
(216) 337-1318
Sign up for Lakewood emergency notifications: http://tinyurl.com/o2mmsr5
Report-a-problem free smart phone app: tinyurl.com/kjgsb2x
Report-a-Problem webform: tinyurl.com/l4n7acj
How was our service? tinyurl.com/kw2zj6v

From: Pae, Jennifer
Sent: Friday, July 17, 2015 4:23 PM
To: Butler, Kevin; Anderson, David; Bullock, Tom; Juris, Shawn; Madigan, Mary; Marx, Cynthia; Mary Madigan; Nowlin, Ryan; O'Leary, Sam; Strachan, Shannon; Summers, Mike; Siley, Dru
Cc: 'Smyers, Robyn Minter (Robyn.Smyers@thompsonhine.com)'; 'Greenwald, Cathryn'
Subject: RE: Hospital matters: a general update

You may also know that I recently took to social media regarding my opinions regarding the Lakewood Hospital transition and how they relate to the City's finances. I'm going to share this piece on the Deck, Buzz, NextDoor and FB this evening:

The Cost of Maintaining the Bricks and Mortar

On July 16, 2015 Summa Health System's president, Dr. Tom Malone, gave a speech to the Akron Roundtable about changes in healthcare: http://www.ohio.com/news/local/summa-ceo-big-changes-coming-for-patients-1.608740

He said, "People need to understand that looking at the hospitals and the bricks and mortar isn't where that care is being delivered anymore."

And this got me thinking about the bricks and mortar aspect of the Lakewood Hospital transition discussion, and Lakewood resident Tom Monahan's recent question to me about the City's indebtedness. Yes, it is municipal finance stuff, and it is what I think about.

The 23-member governing board of the Lakewood Hospital Association (LHA) knows that the hospital and the surrounding properties it is responsible for are in need of significant capital investment.

It is one thing to have the financial means to pay your mortgage and keep the lights on, but any property owner knows if you cannot pay for upkeep and maintenance you are going to run into trouble. You might think otherwise, but it is the Lakewood Hospital Association's responsibility for upkeep and maintenance of the hospital and its surrounding properties, not the Cleveland Clinic or the City of Lakewood. LHA took on this responsibility through its lease with the City of Lakewood, first in 1987, and revised in 1996, when that private, non-profit organization took over all of the hospital's assets and liabilities from the City.

In the recent Huron Consulting draft report, it is estimated that Lakewood Hospital needs over $91 million in improvements. And these are not improvements to make it a shiny new hospital. It is to replace existing systems in order for them to continue to operate safely and efficiently. In addition, the parking garage needs about $4 million just to bring it up to code and ADA compliance. That means LHA needs to come up with at least $95 million for capital

investments.

That also means if another healthcare system or private physician practice took over the hospital, they would have to take on this liability and future expenses. And this amount is only going to increase over time if it is not addressed in the remaining 10 years of the lease between LHA and the City. The question is who is going to pay for this?

There is a call from some in the community that the City should take back the hospital. That means that suddenly the City would now have a $95 million liability. The City definitely does not have that kind of money sitting around. It would have to borrow to cover those expenses, and the City of Lakewood would have to come up with the ability to pay that debt back.

The $95 million in capital investments for the hospital will not necessarily make operations profitable. So if the hospital shut down during those 20 years, the City would still be on the hook for paying back the debt. In my opinion, this magnitude of borrowing would severely limit the City's ability to undertake any other capital improvements such as streets, parks and routine replacement of its fleet of vehicles during those 20 years. It would definitely hurt its strong bond rating of Aa2 by Moody's Investor Service, and put at risk the fiscal strength the City has built over the past 8 years.

For starters, the City only has capacity to borrow an additional $30 million in debt as permitted by law. However, if there was a mechanism to issue the $95 million in debt for the needed hospital improvements, I estimate that a 20-year bond will cost the City approximately $5 million a year in annual debt service (principal and interest).

To put an additional $5 million a year in perspective, that is the annual cost of the City's Parks and Refuse divisions combined. City Council would have to increase your income taxes by 1%, from 1.5% to 2.5% to generate an additional $5 million a year. Or Lakewood voters could levy an additional 5.95 mills of property tax to come up with an additional $5 million a year. For a $100K valued home, that would be an increase of nearly $210 a year for 20 years.

So everyone needs to ask themselves, is it worth the risk and cost? The City of Lakewood voter's made that decision in 1985 to shift the liability for Lakewood Hospital capital improvements from the City to LHA. Let's not go backwards, but instead let City Council deliberate on the issues and begin to negotiate the best deal for Lakewood going forward.

From: Butler, Kevin
Sent: Friday, July 17, 2015 3:37 PM
To: Anderson, David; Bullock, Tom; Juris, Shawn; Madigan, Mary; Marx, Cynthia; Mary Madigan; Nowlin, Ryan; O'Leary, Sam; Strachan, Shannon; Summers, Mike; Siley, Dru; Pae, Jennifer
Cc: 'Smyers, Robyn Minter (Robyn.Smyers@thompsonhine.com)'; 'Greenwald, Cathryn'
Subject: RE: Hospital matters: a general update

Confidential Attorney-Client Communication: Do Not Forward

Councilmembers, Mayor, Directors,

Please do not share this email. It is privileged and confidential. Here's an update on our status related to the proposal before you:

New master agreement: Our work in last Monday's committee meeting tightened the schedule so you now know when you'll weigh in on the strategic negotiating points in the event we proceed to negotiate with the Clinic. You all should have received the updated meeting schedule from Monique, and it's also posted here.

Huron Consulting's work: John Bodine of Huron Consulting will be here to present on August 17 and will have released his firm's report beforehand, in accordance with the updated schedule. We saw an article this morning in the ABJ, reporting on a talk from the Summa system's CEO, that seems to confirm some of the materials we've read in Huron's phase-one report. ("At Summa, Malone said, the focus is shifting from hospital-based services to efforts that coordinate all the care patients seek from a variety of providers, primarily on an outpatient basis. 'This is why I went to medical school,' Malone said. 'This is a better model of care.'")

Litigation: In *Graham v. City of Lakewood*, the lawsuit filed as a taxpayer action, the city and other defendants are working on a written response to the plaintiffs' motion for an injunction and preparations for the injunction hearing tentatively scheduled for August 13 in Judge O'Donnell's courtroom. Not much else to report there.

I have attached for your edification, however, a transcript of the July 7 conference between Judge O'Donnell and several of the attorneys on the case, after which the judge denied the plaintiffs' motion for emergency temporary relief. I wrote to you about this last Friday. Through their lawyer, Chris DeVito, the plaintiffs in essence asked the judge to order LHA and the Clinic to run the hospital as it was run prior to 2010, a request the judge found to be fraught with peril. One exchange is telling in that it gives you a peek into the minds of the plaintiffs, who must genuinely believe an alternative operator will step in to run the hospital at their request:

> *THE JUDGE: "Essentially, I really think what you're asking is that the hospital be appointed to the equivalent of a receivership."*
>
> *MR. DeVITO: "That's where I was going to go. I think the appropriate procedure is to order the specific performance [i.e., to force the parties to keep running the hospital]. If they fail to abide by that, then we can find our own hospital administrator, take over LHA and we will run it as a hospital."*

Real estate: Dru has sent you the brokers opinion of value and facilities assessments related to the parking garage, community health center and professional office building on the west side of Belle. He is scheduled to speak before you on July 27. I do not believe an executive session is in order for this meeting. I'll be out of the country at the time, for what it's worth, back on August 1.

Communications strategy: You've seen the Mayor's latest *Observer* piece debunking the claims that he has plans for a recreation center on the hospital site. His work on a media strategy continues. Know that I'll begin coordinating with you and the Council office the "facts as we know them" piece for distribution after August 17. We'll be circulating drafts well in advance of that date.

New charter proposal: We had heard that some contingent of the Save Lakewood Hospital group would be seeking a charter amendment requiring voter approval of any hospital deal adopted by Council. Yesterday Ed Graham came into city hall with his attorney and offered up ballot language that, if adopted by the voters, would ostensibly do that. I've attached what they submitted. The committee now must gather signatures amounting to 10 percent of Lakewood's voters, and if they do you'll be obligated to send the issue to an upcoming election (depending on when the petitions are submitted). It's possible this issue will go onto the November ballot. In light of the confusion that could be created among the voters, I'd strongly suggest that Council wait to send the proposed third amended charter to the ballot until a 2016 election. I've spoken with Council President Madigan and she appears to be in agreement with me.

See you all Monday.

Kevin

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From: Butler, Kevin
Sent: Friday, July 10, 2015 2:39 PM
To: Anderson, David; Bullock, Tom; Juris, Shawn; Madigan, Mary; Marx, Cynthia; Mary Louise Madigan (mlmadigan9@hotmail.com); Nowlin, Ryan; O'Leary, Sam; Strachan, Shannon; Summers, Mike; Siley, Dru; Pae, Jennifer
Cc: 'Smyers, Robyn Minter (Robyn.Smyers@thompsonhine.com)'; Greenwald, Cathryn
Subject: RE: Hospital matters: a general update

Confidential Attorney-Client Communication: Do Not Forward

Councilmembers, Mayor, Directors,

Please do not share this email. It is privileged and confidential. Prior to Council's Committee of the Whole meeting Monday night, here's an update on our status related to the proposal before you:

New master agreement: Robyn continues to work with Mike Meehan on the Clinic's drafting and coordination of a proposed definitive agreement, most importantly the attachments to that agreement which would form the basis for much of the deal. It bears repeating we are not negotiating a new agreement at this point. We continue to wait for Huron's work to be completed, even in phases (see below), and of course we must continue to work with and hear from all of you to form, with our consultant's and attorneys' input, our key negotiating points. Robyn and Cathryn Greenwald will be in attendance Monday and can provide a fuller update.

Huron Consulting's work: Huron Consulting continues its work on our behalf and has prepared a *draft* report that remains a work in progress. The draft encompasses much of the first phase of Huron's consultancy. John Bodine indicated to me that other sections are being developed as Huron works through each other phase – for example, with respect to Subsidium's analysis and process and the hospital's financials – but those other sections wouldn't be available by Monday. I anticipate

sending out the report later today, when I'm expecting it from Huron, so you can review it prior to Monday evening. John will participate in our meeting by phone (he'll be in Dallas) and will give us an update on his work, the path ahead for Huron Consulting, and some of the early key conclusions that firm has reached.

Litigation: In *Graham v. City of Lakewood*, the lawsuit filed as a taxpayer action, three significant things have happened since my last update. First, the city has asked Judge O'Donnell to order the plaintiffs to post a bond in a higher amount that would protect the city against any losses, including potential attorney fees, should the litigation delay any of our work. A bond is required in taxpayer actions to guard the public against haphazard claims and lost time and money. The plaintiffs posted a paltry $100 bond when they filed the complaint and we've asked that it be increased, at the judge's discretion, to somewhere closer to $250,000.

Next, the plaintiffs unsuccessfully sought this week an emergency order, based on Dr. Kilroy's affidavit, that would force LHA and the Clinic to return the hospital to pre-2010 status quo in terms of its services, employees and equipment. On the same day the plaintiffs made their request, the court found that they did not meet the test for emergency injunctive relief. The judge set a fuller hearing for August 13, which may or may not go forward depending on how he rules on the briefs to be filed in the case. Part of the motion seeks an order stopping you from deliberating over the hospital, a request against which we'll vigorously defend you.

Finally, the defendants will file a joint motion to dismiss the case today, which I'll also attach in a follow-up email. Although it's long, it's a good read and the work of many able hands. If this motion is granted, which wouldn't happen until, I suspect, at least mid-September, the case would be thrown out entirely.

Incidentally, I've heard that some councilmembers have received a few oddball anonymous calls lately about the litigation—one apparently alleging the city has set aside a pool of money for the Clinic's use to settle the lawsuit. That's a doozy, and as you might have guessed untrue. If you have any questions about the case just let me know.

Real estate: Dru is awaiting formal word from our outside appraisers on the valuation of the city-owned properties that constitute a portion of the proposal before you. I anticipate he'll have a better update by the time he next presents to COW, and perhaps documents to share by then as well. He can also discuss Monday his progress on visioning for the hospital site should it become developable.

Communications strategy: I know you've been working on formulating a communications strategy. I can tell you the Mayor is working on this as well, and he can further update you on Monday. It remains a work in progress but I think there are a few emerging ideas (and new people involved) that will prove helpful for this initiative.

Have faith in this process and be proud of your work. Expect a follow-up email from me later that attaches the documents I reference. Otherwise, see you Monday in Committee of the Whole.

Exhibit C

Kevin

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From: Butler, Kevin
Sent: Monday, June 22, 2015 12:22 PM
To: Summers, Mike; Siley, Dru; Pae, Jennifer; Anderson, David; Bullock, Tom; Juris, Shawn; Madigan, Mary; Marx, Cynthia; Mary Louise Madigan (mlmadigan9@hotmail.com); Nowlin, Ryan; O'Leary, Sam
Cc: Smyers, Robyn Minter (Robyn.Smyers@thompsonhine.com)
Subject: Hospital matters: a general update

Confidential Attorney-Client Communication: Do Not Forward

Councilmembers, Mayor, Directors,

Please do not share this email. It is privileged and confidential.

I hope you had a nice weekend. Prior to Council's Committee of the Whole meeting tonight, here's an update on our status related to the proposal before you:

Other healthcare systems: You may by now have read the developments from last Friday, namely that MetroHealth's Dr. Boutros sent Mayor Summers a letter that day (attached) indicating his system is not interested in running Lakewood Hospital as an inpatient facility. (Here are links to articles on this update, from Crain's and Cleveland.com.) At the same time as that letter came to us, I received a copy of a letter (attached) from the Cleveland Clinic's chief of staff, Dr. Donley, to Dr. Boutros, reassuring Dr. Boutros that the Clinic would not stand in the way of MetroHealth submitting a proposal for the site. Dr. Donley's letter is of less consequence now, and I'm not sure how the two letters interrelate, if at all, but nonetheless I view this is as a fairly significant development. Note: Part of the scope of Huron's work is to determine whether Subsidium's process might have yielded additional suitors for the operation of a healthcare facility in Lakewood. That won't change with this news.

New master agreement: Robyn and I have been in conversations with Clinic and Lakewood Hospital Association attorneys about the timing of the drafting a new master agreement, always sure to caution the other parties that the city must complete its due diligence process before we decide to engage in negotiating a deal. Huron's and your input would, of course, be important contributions to this work if it came to pass. In the interim, we've requested updates to the master agreement from the Clinic, to the extent the Clinic would propose to adjust certain items (for example, the location of the new family health center). We've also requested a listing of attachments to the master agreement and who the Clinic proposes would draft each of those documents. We have no attachments at this point; they're nothing less than essential to giving us all an understanding of the deal being proposed.

Huron Consulting's work: Huron Consulting has begun its work on our behalf. It's expected we'll have the first deliverable from Huron – the firm's views on healthcare trends – this week. By July 15,

we should have the result of Huron's work with respect to Subsidium's engagement and the analysis of the definitive agreement's financial covenants. By July 22, we should have the result of Huron's work on Lakewood Hospital's financial position and management fees, including a comparison with industry benchmarks.

Litigation: We've obtained a transcript of the pretrial conference from the June 4 hearing in *Graham v. City of Lakewood* before Judge John O'Donnell. I've attached the transcript for your review on the off chance you'd find compelling a bunch of lawyers talking. We continue to work through the claims process with our insurer, Trident, in order to minimize our expense defending the lawsuit. Meanwhile, we've retained Brzytwa, Quick and McCrystal LLC to join this department in defending the suit. Motions to dismiss from all defendants are due by July 10, and it's expected all defendants will file such motions. The plaintiffs would have until the second week of September to file responses to those motions.

Real estate: The appraisal of the medical facility at 850 Columbia Road, ordered and paid for by its owner, Lakewood Hospital Association, is in and was shared with us on Friday. I've attached it for your review.

See you tonight in Committee of the Whole.

Best wishes,

Kevin

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