

**DOCKET
OF A MEETING OF
THE LAKEWOOD CITY COUNCIL
TO BE HELD IN THE COUNCIL CHAMBERS
LAKEWOOD CITY HALL - 12650 DETROIT AVENUE
MAY 21, 2018
7:30 P.M.**

The Regular Meetings of Lakewood City Council shall be held on the first and third Mondays of each month at 7:30 P.M., except that when such meeting date falls on a holiday such meeting shall instead be held on the following day. A Docket and Agenda of the business proposed to be transacted by Council will be available in the Clerk's Office and on the City's website www.onelakewood.com as soon after 4 PM on the Friday before a Council meeting as possible.

Section 121.08 of the Codified Ordinances of the City of Lakewood establishes rules for the public to follow when speaking before Council:

ADDRESSING COUNCIL – The President may recognize any non-member for addressing Council on any question then pending. In such cases, the person recognized shall address the chair, state his or her name and address and the subject matter he or she desires to discuss. Speakers must be courteous in their language and avoid personalities. When addressed by the Chair, the speaker must yield the floor and comply with all rulings of the chair, said rulings not being open to debate. Except with permission of Council specifically given, speakers shall be limited to five minutes. No person who has had the floor shall again be recognized until all others desiring an opportunity to speak have been given an opportunity to do so.

AGENDA ITEMS PROTOCOL:

The Clerk at the beginning of the meeting will present the AGENDA ITEMS sign-in sheet to the President of Council. Speakers will be called to address Council by the Chair. A citizen must first write his or her name, address and agenda item number on the designated sign-in sheet in order to be recognized.

PUBLIC COMMENT PROTOCOL:

The clerk at the end of the meeting will present the PUBLIC COMMENT sign-in sheet to the President of Council. Public Comment will be welcomed at the end of a Council Meeting on miscellaneous issues or issues other than agenda items. A citizen must first write his or her name, address and topic on the designated sign-in sheet in order to be recognized. The forum is not designed to be a question and answer session.

- I. Pledge of Allegiance
 - II. Moment of Silence
 - III. Roll Call
- Reading and disposal of the Minutes of the Special Meetings of Council held , April 23, 2018 and April 30, 2018

Reading & disposal of the Minutes of the Regular Meeting of Council held May 7, 2018.

Reports, legislation and communications from Members of Council, the Mayor and other City Officials.

****OLD BUSINESS****

1. Committee of the Whole Report regarding May 14, 2018 Committee of the Whole meeting. (Pg. 5) Committee of the Whole Report of meeting May 21, 2018 (To Be Provided)
2. **RESOLUTION NO. 9000-18** – A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, approving of a street encroachment permit pursuant to Section 901.18 of the Codified Ordinances in favor of the Cleveland Clinic Foundation, in furtherance of the approved site plan for the permittee's family health center. REFERRED TDO THE COMMITTEE OF THE WHOLE 5/7/18) (Pg. 7)
3. **RESOLUTION NO. 9001-18** – A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor and Director of Law to enter into a purchase agreement with Robert Dobush, owner of the property located at 16021 Madison Avenue, Lakewood, Ohio (PPN 313-14-007) for valuable consideration including the settlement of all outstanding claims against Dobush for the demolition of the structures that formerly stood on that site and was commonly known as the Hilliard Square Theater. (REFERRED TO THE COMMITTEE OF THE WHOLE 5/7/18) (Pg. 14)
4. **ORDINANCE NO. 25-18** – AN ORDINANCE to amend Section 1105.02 of the Zoning Code of the Codified Ordinances of the City of Lakewood by changing and revising the Zoning Map of the City with respect to certain property as set forth and described as 1456 and 1470 Warren Road (PPN 314-04-063), from C4 (Public Schools) to C3 (Commercial, General Business). (REFERRED TO THE PLANNING COMMISSION 4/2/18, 2ND READING 4/16/18. REPORTED OUT FROM PLANNING COMMISSION – COMMISSION RECOMMENDED ADOPTION 5/7/18. REFERRED TO THE COMMITTEE OF THE WHOLE 5/7/18) (Pg. 30)

****NEW BUSINESS****

5. Communication from Council President O'Leary regarding appointing Maureen McHugh Bach as interim Clerk of Council. (Pg.32)

6. **RESOLUTION NO. 9003** – A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, appointing Maureen McHugh Bach as interim Clerk of Council. (Pg. 33)
7. Communication from Councilmember Rader regarding Community Discussion on Strategies Advancing Racial Equality. (Pg. 34)
8. Lakewood Heritage Advisory Board Preservation Awards Presentation (TO BE PROVIDED)
9. Communication from Mayor Summers regarding NOPEC, Inc. Energized Community Grant for LED streetlights. (Pg. 36)
10. Communication from Law Director Butler regarding Lakewood Park concession lease with HELP Foundation, Inc. (Pg. 37)
11. **ORDINANCE NO. 28-18** – AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing and directing the Mayor to enter into a concession lease agreement with HELP Foundation, Inc. for the operation of food concessions at Lakewood Park, pursuant to Section 155.08 of the Codified Ordinances. (Pg. 38)
12. Communication from Law Director Butler regarding Ordinance adding finance processes to the Code following passage of Third Amended Charter. (Pg. 49)
13. **ORDINANCE NO. 29-18** – AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, enacting various sections of the Codified Ordinances of the City of Lakewood in order to codify certain provisions with respect to financial processes in the city. (Pg. 50)
14. Communication from Law Director Butler regarding Resolution adopting Foundation Planning Task Force recommendations regarding Healthy Lakewood Foundation. (Pg. 53)
15. **RESOLUTION NO. 9004-18** – A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, adopting

the recommendations of the Foundation Planning Task Force for the creation of the Healthy Lakewood Foundation, the appointment of its initial board and the approval of its initial governing documents, all in accordance with the Master Agreement governing healthcare in Lakewood dated December 21, 2015. (Pg. 54)

16. *(Add-on) Planning Commission Report regarding 1375, 1379 & 1381 Fry Avenue Rezoning. (Pg. 80)
17. *(Add-on) **ORDINANCE NO. 23-18** – AN ORDINANCE to amend Section 1105.02 of the Zoning Code of the Codified Ordinances of the City of Lakewood by changing and revising the Zoning Map of the City with respect to certain property as set forth and described as 1381 Fry Avenue (PPN 312-33-054), 1379 Fry Avenue (PPN 312-33-053), and 1375 Fry Avenue (PPN 312-33-052) from C3 (Commercial, General Business) to PD (Planned Development. (READ, REFERRED TO THE PLANNING COMMISSION 3/19/18, 2ND READING 4/2/18) (Pg. 81)



12650 DETROIT AVENUE 44107 216/529-6055 FAX 216/226-3650

www.onelakewood.com

Lakewood City Council

SAMUEL T. O'LEARY, PRESIDENT

DAVID ANDERSON, VICE PRESIDENT

Council at Large
THOMAS R. BULLOCK III
MEGHAN GEORGE
TRISTAN RADER

Ward Council
DAVID W. ANDERSON, WARD 1
SAM O'LEARY, WARD 2
JOHN LITTEN, WARD 3
DANIEL O'MALLEY, WARD 4

May 21, 2018

Lakewood City Council
Lakewood, OH 44107

Re: May 14th Committee of the Whole Report

Dear Members of Council,

Committee of the Whole met May 14th to discuss three items of legislation referred to it at the May 7th Council meeting. The Committee was joined by Law Director Butler and Planning Director Sylvester. The absences of Councilmembers O'Malley and Anderson were excused.

The first item on the agenda was Resolution 9000-18 to approve a street encroachment permit that would allow the Cleveland Clinic Family Health Center to implement a planned patient drop-off area on the eastern side of its property on Belle Ave. and to install a monument sign on the southwest corner. Director Sylvester explained that this encroachment has been long-envisioned as the best way to execute the Clinic's planned patient drop-off area and detailed the many public meetings of ABR and Planning Commission at which this site plan and design were discussed and ultimately approved. Directors Sylvester and Butler addressed Committee members' questions about traffic and landscaping related to the encroachment. After further discussion on these matters the Committee unanimously recommended adoption of Resolution 9000-18 at the next Council meeting.

The next item on the agenda was Resolution 9001-18 to authorize the City to purchase the property at which the former Hilliard Theater was located. In 2016, after many years of the building being a safety issue and an eyesore the City arranged for it to be demolished at a cost to taxpayers of \$960,000 and subsequently placed a lien on the property for the same amount. Director Butler explained that although the City is entitled to bring the owner to court for the cost, the best outcome is to gain control of the property by purchasing it from the owner at a nominal fee which this Resolution authorizes the City to do. After further discussion on this matter the Committee unanimously recommended adoption of Resolution 9001-18.

The final item on the agenda was Ordinance 25-18 which would change the zoning at 1456 and 1470 Warren Rd. from C4 to C3. Director Sylvester explained that Liberty Development Co. was selected through a competitive process by the Board of Education to redevelop the Board properties at 1456 and 1470 Warren. 1456 Warren is envisioned to be an adaptive re-use. The Board is planning to sell the property to Liberty in order to lease it back as a tenant. The plans for 1470 Warren are yet to be determined.

Committee members asked to hear more on the background of this project from both the developer and from the Board of Education before entertaining a vote and moved to refer the matter back to Council for further deliberation.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "S. O'Leary", written in a cursive style.

Sam O'Leary
President of Council - Ward 2
Committee of the Whole, Chair

RESOLUTION NO. 9000-18

BY:

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, approving of a street encroachment permit pursuant to Section 901.18 of the Codified Ordinances in favor of The Cleveland Clinic Foundation, in furtherance of the approved site plan for the permittee's family health center.

WHEREAS, pursuant to the terms of the master agreement governing healthcare in Lakewood dated December 21, 2015, The Cleveland Clinic Foundation is constructing a family health center at the southwest corner of Belle and Detroit Avenues; and

WHEREAS, the master agreement required the City's Architectural Board of Review to consider and ultimately approve of a site plan for the construction of the new family health center; and

WHEREAS, the site plan approved by the Architectural Board of Review calls for a drop-off and valet parking area and monument sign that are designed to occupy a portion of the Belle Avenue public right-of-way located adjacent to the Clinic's property; and

WHEREAS, the Clinic is constructing sidewalks for public use along Belle Avenue as a part of that approved site plan; and

WHEREAS, Section 901.18, Erecting Buildings or Structures on Public Ground, of the Codified Ordinances of the City of Lakewood governs use of public grounds upon approval of Council under the terms and conditions described in that Section; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this resolution is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments in that the City wishes to ensure the family health center opens on schedule in the second quarter of 2018; now, therefore,

BE IT ORDAINED BY THE CITY OF LAKEWOOD, STATE OF OHIO

Section 1. The Council of the City of Lakewood hereby approves of a street encroachment permit in the form attached hereto as **Exhibit A**, pursuant to Section 901.18 of the Codified Ordinances, in favor of The Cleveland Clinic Foundation, in furtherance of the approved site plan for the permittee's family health center, certain elements of which shall occupy a portion of the Belle Avenue public right-of-way located adjacent to the permittee's property at the southwest corner of Belle and Detroit Avenue.

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such deliberations of this Council an any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 3. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least two thirds of the members of Council, this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

PRESIDENT

CLERK

Approved: _____

MAYOR

ENCROACHMENT PERMIT

The City of Lakewood ("City"), through its Director of Public Works ("Director"), under authority of Resolution No. _____, adopted on _____, 2018, permits The Cleveland Clinic Foundation, an Ohio non-profit corporation ("Permittee"), to install, use, and maintain a patient drop-off and access area and exterior monument signage for its family health center that will encroach into the public right-of-way beneath Belle Avenue at the locations more fully described as follows: [See Exhibit 1]

The City reserves the right of reasonable entry to the encroachment areas.

Permittee shall construct and install the encroaching objects and facilities only according to plans and specifications first approved by the Director.

Permittee shall obtain all other required permits including, but not limited to, a Building Permit before constructing the encroaching objects and facilities.

Permittee shall pay directly to the Cuyahoga County Fiscal Officer, no later than the due date, any taxes, assessments, or other costs from which Permittee is not exempt, that may result from Permittee's construction and maintenance on or its use of the encroachment areas. No later than five days after any payment, Permittee shall provide the City with a copy of the receipted tax bill(s) showing timely, full payment of the taxes owed. If Permittee has paid the full amount of any taxes that may be due at the time of filing and until resolution of any complaints, it may, at its sole expense, contest either the validity and/or the amount of such taxes, in either its own name or on behalf of the City.

Permittee shall indemnify, protect, and save the City harmless from any loss or damage arising out of any claim for injury, including death, to any person(s), or damage to any property, incurred by or asserted against the City and arising, directly or indirectly, from the construction,

EXHIBIT

A

installation, use, and maintenance of the encroachment by Permittee, or from any taxes, assessments, or costs resulting directly or indirectly from the encroachment.

During the effectiveness of this Permit, Permittee shall procure and maintain in force Commercial General Liability insurance, including Completed Operations coverage, having limits of not less than \$1,000,000 on account of any incident involving injuries, including death, to one or more persons, and property damage insurance having limits of not less than \$1,000,000, or a combined single limit of \$1,000,000, provided, however, that nothing in this Permit limits Permittee's indemnification obligations to the above limits of insurance. The insurance provided shall include the City as an additional insured and shall be satisfactory to the City Director of Law. Permittee shall require its insurance company(ies) to provide in the policy or policies and on any certificate evidencing the coverage(s) a special provision requiring the insurance company to notify the Director of Public Works, in writing, at least 30 days before it cancels or reduces the insurance. If the insurance company(ies) cannot or will not provide such notice, then Permittee shall notify the Director of Public Works, in writing, at least 30 days before it cancels or reduces the insurance coverage or limits, and within no more than 10 days after it is notified of any cancellation or reduction of the insurance by an insurance company.

This Permit is revocable at any time at the will of the Council of the City of Lakewood only in the event Permittee no longer owns and operates the family health center on the adjacent parcel, Cuyahoga County Parcel No. 314-04-001. Upon revocation, Permittee shall cease all operations and uses existing by virtue of this Permit and may be required, at no cost to the City, to remove any installations made under this Permit.

Permittee may assign this Permit only with prior written consent of the Director.

Granted _____, 2018.

THE CITY OF LAKEWOOD

JOSEPH J. BENO, Director of Public Works

Date

PERMITTEE:

THE CLEVELAND CLINIC FOUNDATION

Signature

Print Name and Title

Date

The legal form and correctness
of this instrument is approved.

THE CITY OF LAKEWOOD

Kevin M. Butler, Director of Law

Date



DONALD G. BOHNING & ASSOCIATES, INC.

CIVIL ENGINEERING & SURVEYING

7979 HUB PARKWAY • VALLEY VIEW, OHIO 44125 • (216) 642-1130

FAX • (216) 642-1132

EXHIBIT

1

Parking Easement
Belle Avenue
DGB 4379-2

August, 2017

Legal Description

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio, and known as being part of Original Rockport Township Section 22, and bounded and described as follows:

Beginning at a point in the southerly line of Detroit Avenue, 76 feet wide, as widened by deed to the City of Lakewood recorded in Volume 4510, Page 97 of Cuyahoga County Records, at its intersection with the westerly line of Belle Avenue, variable width;

Thence South 00 degrees 32 minutes 32 seconds East along the westerly line of Belle Avenue, 16.75 feet to a point, and the principal place of beginning of the easement herein described;

Thence North 89 degrees 27 minutes 28 seconds East, 30.17 feet to a point;

Thence South 00 degrees 32 minutes 32 seconds East, 330.62 feet to its intersection with the easterly prolongation of the southerly line of Parcel 1A in a Map of Lot Consolidation/Lot Split as shown by the recorded plat in Volume 383, Page 19 of Cuyahoga County Map Records;

Thence South 89 degrees 26 minutes 25 seconds West along the easterly prolongation of the southerly line of said Parcel 1A, 15.17 feet to a point in the westerly line of Belle Avenue,

Thence North 0 degrees 32 minutes 32 seconds West along the westerly line of Belle Avenue, 172.10 feet to an angle point, therein;

Thence North 19 degrees 36 minutes 31 seconds West along the westerly line of Belle Avenue, 45.92 feet to an angle point, therein;

Thence North 0 degrees 32 minutes 32 seconds West along the westerly line of Belle Avenue, 115.12 feet to the principal place of beginning, as described by Donald G. Bohning & Associates, Inc. in August, 2017.

The courses used in this description are referenced to an assumed meridian and are used to indicate angles only.

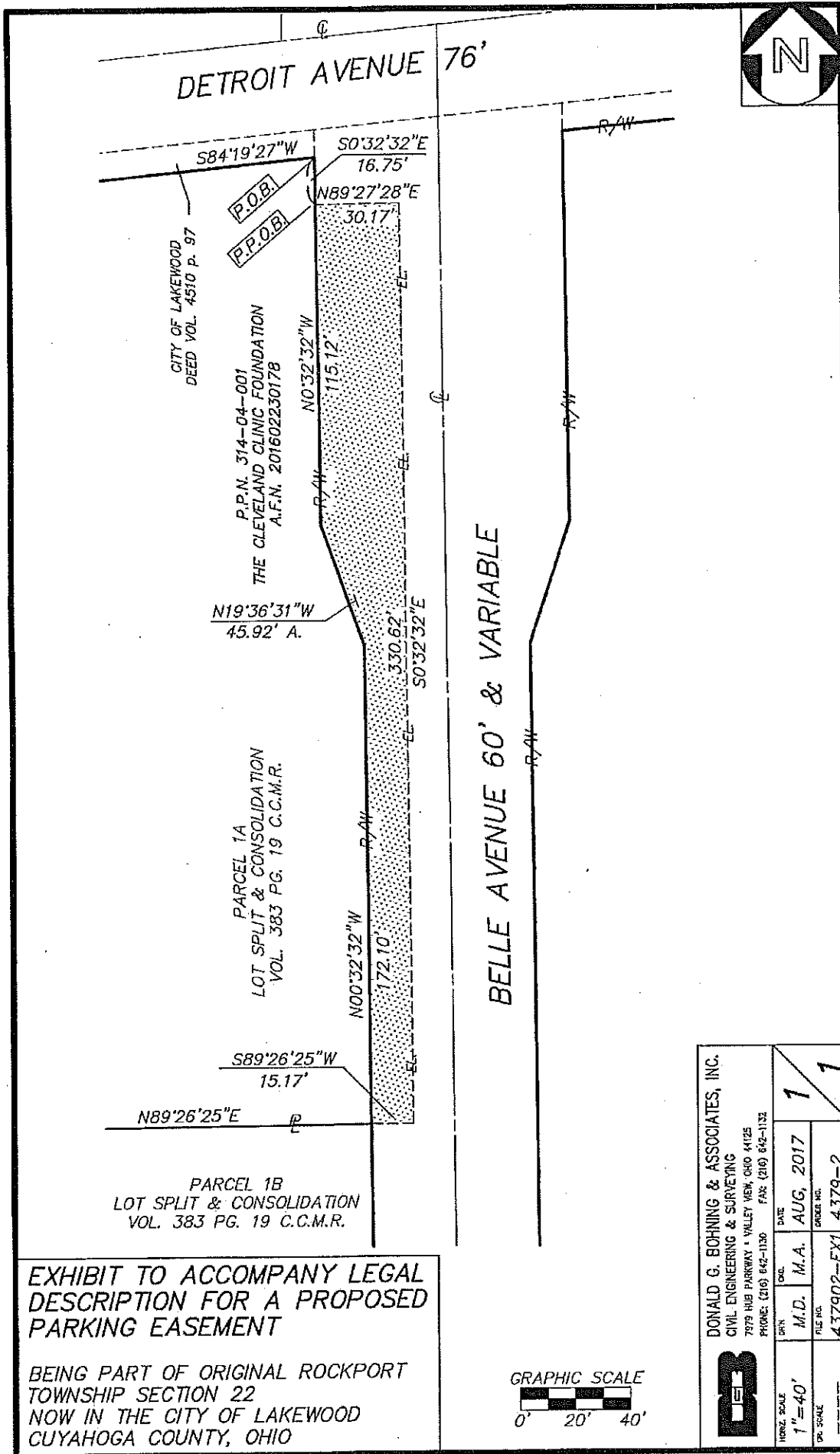
Michael A. Ackerman

Registered Surveyor No. 8196

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1



RESOLUTION NO. 9001-18

BY:

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor and Director of Law to enter into a purchase agreement with Robert Dobush, owner of the property located at 16021 Madison Avenue, Lakewood, Ohio (PPN 313-14-007), for valuable consideration including the settlement of all outstanding claims against Dobush for the demolition of the structures that formerly stood on that site and was commonly known as the Hilliard Square Theater.

WHEREAS, the City declared the structure formerly located at 16021 Madison Avenue, Lakewood, Ohio a structural nuisance and razed the structure in 2017; and

WEREAS, Lakewood expended funds exceeding \$900,000 to abate environmental hazards and to raze the structure; and

WHEREAS, there is currently a lien on the property exceeding \$1,000,000 which includes the amount of abatement and delinquent taxes; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power of local self-government, and the power to enact laws that are for the health, safety, welfare; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this resolution is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments in that it is necessary and in the best interest of the City to resolve the claims and accept this vacant property immediately; now, therefore,

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The Mayor and Director of Law are hereby authorized to enter into an agreement, in substantially the same form as attached as Exhibit A, with Robert Dobush, owner of the property located at 16021 Madison Avenue, Lakewood, Ohio (PPN 313-14-007), for valuable consideration including the settlement of all outstanding claims against Dobush for the demolition of the structures that formerly stood on that site and was commonly known as the Hilliard Square Theater.

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 3. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least two thirds members of Council, this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

PRESIDENT

CLERK

Approved: _____

MAYOR

HILLIARD SQUARE THEATER SALE AGREEMENT

THIS HILLIARD SQUARE THEATER SALE AGREEMENT (this "Agreement") is made and dated as of April __, 2018 (the "Effective Date"), by and between Robert W. Dobush, married ("Seller"), and the City of Lakewood, Ohio, an Ohio municipal corporation (together with its respective successors and assigns, "Purchaser").

RECITALS

WHEREAS, Seller is the owner of a former theater building within Lakewood, Ohio, known as the Hilliard Square Theater building; and

WHEREAS, Purchaser instituted certain nuisance proceedings related to the Property (defined below) owned by Seller, which was in violation of code intended to protect the health, safety and welfare of the community and its residents and visitors; and

WHEREAS, Seller wishes to terminate the nuisance proceedings and payment therefor by entering in to this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and in reliance upon the representations and warranties contained herein, the parties hereto covenant and agree as follows:

ARTICLE 1 **DEFINITIONS**

As used in this Agreement, the following terms shall have the following designated meanings:

"Agreement" has the meaning set forth in the introductory paragraph hereof.

"Applicable Law" means all statutes, laws, common law, rules, regulations, ordinances, codes or other legal requirements of any Governmental Authority, board of fire underwriters and similar quasi-governmental agencies or entities, and any judgment, injunction, order, directive, decree or other judicial or regulatory requirement of any court or Governmental Authority of competent jurisdiction affecting or relating to the Person or Property in question.

"Business Day" means any day, other than a Saturday, Sunday or "legal holiday."

"Closing" has the meaning set forth in Section 3.1 hereof.

"Closing Date" means a date mutually agreeable to Seller and Purchaser for the Closing, not later than sixty (60) days following the Effective Date; provided, however, that Purchaser, by not less than five (5) days' advance notice to Seller, may elect to accelerate the Closing to no later than June 30, 2018.

"Deed" has the meaning set forth in Section 3.2(a) hereof.

"Escrow Agent" shall mean Providence Title Agency, Inc., 27540 Detroit Road, Westlake, Ohio 44145.

"Governmental Authority" shall mean any federal, state or local government or other political subdivision thereof, including, without limitation, any agency or entity exercising executive, legislative, judicial, regulatory or administrative governmental powers or functions, in each case to the extent the same has jurisdiction over the Person or property in question.

"Improvements" means Seller's right, title and interest in and to any buildings, structures, fixtures and improvements on the Land.

"Land" means Seller's right, title and interest in and to the real property more particularly described on Exhibit A attached hereto, together with all and singular the rights and appurtenances pertaining to such property, including any right, title and interest in and to adjacent streets, alleys, easements and rights-of-way.

"Leases" means all real property leases pertaining to the Improvements or the Land.

"Liens" means all liens, charges, claims, security interests, title defects, title exceptions, and other encumbrances (but excluding encumbrances that will be released at Closing by payment and, with respect to recorded encumbrances, by an instrument sufficient to cause such encumbrances to be released of record under applicable law).

"Losses" has the meaning set forth in Section 5.3(b) hereof.

"Permitted Exceptions" means, collectively: (a) Liens of record, (b) exceptions for taxes and other governmental charges and assessments (including special assessments) that are not yet due and payable and any and all supplemental taxes, if any (c) local, county, state and federal laws, ordinances or governmental regulations now or hereafter in effect relating to the Property, and (d) all matters set forth on Exhibit B to the Deed attached hereto.

"Person" means any natural person, corporation, general partnership, limited partnership, limited liability partnership, limited liability company, trust, union, association, court, agency, government, tribunal, instrumentality, or other entity or authority.

"Property" means, collectively, the Land and the Improvements.

"Purchase Price" has the meaning set forth in Section 2.2 hereof.

"Purchaser" has the meaning set forth in the first paragraph hereof.

"Seller" has the meaning set forth in the first paragraph hereof.

"Title Policy" means an ALTA 2006 owner's title insurance policy, in the amount equal to the current total appraised value of the Property as determined by the Cuyahoga County Fiscal Officer, issued by the Escrow Agent, as agent for a national title underwriter acceptable to Purchaser, insuring that Purchaser has good and marketable title to the Land free

and clear of all Liens other than Permitted Exceptions, with the standard pre-printed exceptions deleted and with customary endorsements as reasonably requested by Purchaser.

ARTICLE 2

THE TRANSACTION

2.1 Purchase and Sale of Property. On the terms and subject to the conditions contained in this Agreement, on the Closing Date, Purchaser shall purchase from Seller, and Seller shall sell, convey, assign, transfer and deliver to Purchaser, free and clear of all Liens created by or through Seller, other than Permitted Exceptions, all of Seller's right, title and interest in and to the Property.

2.2 Purchase Price. The purchase price (the "Purchase Price") for the Property shall be cash in the amount of \$10.00. At Closing, Purchaser shall pay the Purchase Price to Seller in immediately available funds.

ARTICLE 3

THE CLOSING

3.1 Place of Closing. The consummation of the transactions provided for in this Agreement including delivery of the Deeds for recording in the Official Records of Cuyahoga County, Ohio (the "Closing") shall be an escrow closing through the Escrow Agent on the Closing Date, but subject to satisfaction of all of the conditions of Closing set forth in Article 4 hereof, and elsewhere in this Agreement.

3.2 Deliveries by Seller. At the Closing, Seller shall deliver to Purchaser the following:

(a) a limited warranty deed in the form attached hereto as Exhibit B (a "Deed"), conveying to Purchaser all of Seller's right, title and interest in and to the Land and Improvements located thereon;

(b) a signed counterpart of the closing statement provided by the Escrow Agent;

(c) any other documents, instruments and writings (either executed counterparts or otherwise) required or reasonably requested by Purchaser or Escrow Agent to be delivered by Seller pursuant to this Agreement for the due transfer of the Property to Purchaser, free and clear of all Liens, other than Permitted Exceptions, each in form and substance reasonably satisfactory to Purchaser;

(d) to the extent requested by Escrow Agent, evidence sufficient to establish the authority of the Seller (or other person or entity signing on behalf of Seller); and

(e) if and to the extent requested by Escrow Agent, an owner's title affidavit and a gap indemnity in a form reasonably acceptable to Escrow Agent in order for the Escrow Agent to be able to issue the Title Policy to Purchaser at Closing.

3.3 Deliveries by Purchaser. At the Closing, Purchaser shall deliver the following:

- (a) the Purchase Price;
- (b) a single counterpart of the closing statement provided by the Escrow Agent; and
- (c) any other documents, instruments and writings (either executed counterparts or otherwise) required or reasonably requested by Seller to be delivered by Purchaser pursuant to this Agreement for the due transfer of the Property to Purchaser, free and clear of all Liens, other than Permitted Exceptions, each in form and substance reasonably satisfactory to Purchaser.

3.4 Possession. Seller shall deliver possession of the Property, and Purchaser shall have the right to take possession of the Property, upon Closing.

3.5 Closing Costs. Purchaser shall pay for the preparation of the Deed and other closing documents deemed necessary by Purchaser. Purchaser shall pay for any title insurance premiums (including any endorsements) and examination or search fees necessary or in connection with the issuance of the Title Policy, any mortgage or stamp tax, transfer taxes and fees, the costs of a land survey. Other costs associated with the Closing and transactions contemplated under this Agreement shall be allocated as provided elsewhere in this Agreement.

ARTICLE 4

CLOSING CONDITIONS

Purchaser's obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction at or prior to the Closing of each of the following conditions:

(a) Seller shall have performed all agreements and covenants required by this Agreement to be performed by it prior to or at the Closing Date in all material respects.

(b) All representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects.

(c) No order or injunction of any court or administrative agency of competent jurisdiction nor any statute, rule, regulation or executive order promulgated by any Governmental Authority of competent jurisdiction shall be in effect as of the Closing which restrains or prohibits the transfer of the Property or the consummation of any other transaction contemplated hereby.

(d) Purchaser shall have received all of the documents required to be delivered by Seller under Section 3.2.

(e) Escrow Agent shall have delivered the Title Policy to Purchaser (or a binding agreement to issue such Title Policy upon payment of the premium therefor).

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Purchaser's Representations and Warranties. Purchaser hereby represents and warrants to Seller that as of the Effective Date, to Purchaser's knowledge, there are no circumstances or facts that would prevent Purchaser from engaging in the transactions contemplated in this Agreement.

5.2 Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows as of the Effective Date:

(a) Authorization. (i) Seller has the requisite power and authority to enter into this Agreement and to carry out Seller's obligations hereunder, (ii) the execution, delivery and performance of this Agreement by Seller and the consummation by Seller of the transactions contemplated thereby have been duly authorized by all requisite action and (iii) this Agreement has been duly and validly executed and delivered by Seller and (assuming this Agreement constitutes a valid and binding obligation of Purchaser) constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms.

(b) Consents and Approvals. No consent, approval or authorization of, or declaration, filing, or registration with, any United States federal or state governmental or regulatory authority (except those of Purchaser) is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, except for consents, approvals, authorizations, declarations, filings or registrations, which, if not obtained, would not, individually or in the aggregate, have a material adverse effect on the transactions contemplated by this Agreement.

(c) No Conflicts. The execution, delivery and compliance with, and performance of the terms and provisions of, this Agreement, and the sale of the Property, will not (i) conflict with or result in any violation of any provision of any bond, note or other instrument of indebtedness, contract, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which Seller is a party in its individual capacity, or (ii) violate any existing term or provision of any order, writ, judgment, injunction, decree, statute, law, rule or regulation applicable to Seller or its assets or properties in any material respect.

(d) No Leases. No tenants, under any Leases or other instruments, have interests in or possession of the Property.

5.3 Survival; Breach. The representations and warranties contained in this Agreement shall survive for a period of six (6) months after the Closing. The indemnity provisions of this Agreement shall survive Closing indefinitely.

ARTICLE 6
PRORATIONS

All real estate taxes and real estate assessments appearing on the tax duplicate shall be the responsibility of Purchaser, such that all such amounts relating to the Property which relate to

periods prior to the Closing shall be the responsibility of Purchaser at Closing. All utilities and other amounts customarily prorated in real estate transactions similar to the transaction contemplated by this Agreement (based upon the most recent ascertainable bills if current bills and/or information are not available) shall be prorated at Closing such that all such amounts relating to the Property (a) which relate to periods prior to the Closing shall be the responsibility of Seller and (b) which relate to periods from and after the Closing shall be the responsibility of Purchaser. All prorations shall be final. At Closing, Seller shall have the right to net any amounts owed by Seller with respect to the foregoing against the Purchase Price.

ARTICLE 7 MISCELLANEOUS

7.1 Assignment.

(a) This Agreement will inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto and their respective successors and assigns, except as provided in subsections (b) and (c) below.

(b) Seller may not assign any of its duties or obligations hereunder without the prior written consent of Purchaser, which consent shall not be unreasonably withheld.

(c) Purchaser may assign any of its rights, duties or obligations hereunder in whole or in part without Seller's consent, provided that, notwithstanding any such assignment, Purchaser shall continue to be obligated and liable for all of Purchaser's obligations and liabilities under this Agreement.

7.2 Notices. Any and all notices and other communications made or given pursuant to this 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 Seller:

Robert W. Dobush
126 S. MAIN ST.
WELLINGTON, OHIO
44090

With a copy to:
JOHN LIND
3185 BELVOIR
SHAKER HTS, OH. 44122

If to Purchaser:

City of Lakewood
12650 Detroit Ave.
Lakewood, Ohio 44107
Attention: Mayor

With a copy to:

City of Lakewood
12650 Detroit Ave.
Lakewood, Ohio 44107
Attention: Law Director

7.3 Expenses. Except as otherwise provided in this Agreement, each party hereto shall pay its own expenses, including attorneys' and accountants' fees, in connection with this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby.

7.4 Brokerage Commissions and Fees. Purchaser warrants and represents that it has not engaged any real estate broker(s) in connection with the transactions contemplated by this Agreement. Seller warrants and represents that it has not engaged any real estate broker(s) in connection with the transactions contemplated by this Agreement, and agrees that should any claim be made for commissions or fees by any broker(s) claiming through Seller against Purchaser, Seller will indemnify and hold Purchaser free and harmless from and against any and all loss, liability and expenses in connection therewith. In connection with the foregoing, the parties understand and acknowledge that any real estate broker engaged by or representing Purchaser shall not be entitled to share any portion of the commission or fees that are being paid by Seller to its broker in connection with this Agreement and the transactions contemplated herein. Notwithstanding anything contained herein to the contrary, the provisions of this Section 7.4 shall survive Closing.

7.5 Waiver. Unless otherwise set forth herein, any term or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof. Unless specified otherwise elsewhere in this Agreement, to be effective, such waiver shall be in writing, shall specifically refer to this Agreement and the term or condition being waived, and shall be executed by an authorized agent of such party. A waiver on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion. A waiver hereunder shall be effective without notice to any Person, in relation to such waiver.

7.6 Amendment. This Agreement may be modified or amended only in a writing duly executed by or on behalf of each of the parties hereto, which writing shall make specific reference to this Agreement.

7.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.8 Headings, Gender, Etc. The headings used in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement. Unless the context of this Agreement otherwise requires, (a) words of any gender shall be deemed to include each other gender, (b) words using the singular or plural number shall also include the plural or singular number, respectively, (c) references to "hereof," herein," "hereby" and similar terms shall refer to this entire Agreement, and (d) each reference to Seller shall be a reference to any of its subsidiaries and predecessors and each representation, warranty, covenant and other agreement made herein with respect to Seller shall be deemed made with respect to all such subsidiaries and predecessors. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent and no rule of strict construction shall be applied against any Person.

7.9 Choice of Law. This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio, without regard to conflicts-of-laws principles thereof.

7.10 Third-Party Beneficiary. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person, firm or legal entity of any kind, other than the parties hereto and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement; provided, however, notwithstanding the foregoing, the parties hereto agree that the City shall be a third-party beneficiary of all of the rights hereunder that inure to the benefit of the Seller including, without limitation, the right to have the Initial Proceeds delivered directly to the City as provided by Section 2.2.

7.11 TIME IS OF THE ESSENCE. TIME IS OF THE ESSENCE WITH RESPECT TO ALL OF PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, PROCEEDING TO CLOSING ON THE CLOSING DATE.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed as of the date first written above.

SELLER:

Robert W. Dobush

ROBERT W. DOBUSH

PURCHASER:

THE CITY OF LAKEWOOD, OHIO, an
Ohio municipal corporation

By: _____

Name: _____

Its: _____

The legal form and correctness of this
instrument is approved:

By: _____

Name: Kevin M. Butler

Its: Director of Law

EXHIBIT A

[Legal Description of Land – to be inserted]

EXHIBIT B

Form of Deed

LIMITED WARRANTY DEED

Robert W. Dobush, married, GRANTOR, of [WELLINGTON, OH.], hereby GRANTS, **WITH LIMITED WARRANTY COVENANTS**, to the City of Lakewood, Ohio, a municipal corporation, GRANTEE, whose tax mailing address is 12650 Detroit Avenue, Lakewood, Ohio 44107, County of Cuyahoga, State of Ohio, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the following described tract of land in Cuyahoga County, State of Ohio:

See Exhibit A attached hereto and made a part hereof.

SUBJECT TO the matters set forth in Exhibit B attached hereto.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has caused this Limited Warranty Deed to be executed the day and year first above written.

GRANTOR:

Robert W. Dobush
ROBERT W. DOBUSH

[MARY A. DOBUSH], spouse of the grantor Robert W. Dobush, releases all rights of dower therein.

Mary A. Dobush
[SPOUSE NAME]

STATE OF OHIO)
) SS:
COUNTY OF Lorain)

BEFORE ME, a Notary Public in and for said County and State, personally appeared Robert W. Dobush and [MARY A. DOBUSH], who acknowledged that they did execute the foregoing instrument, and that the same was their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at this 26 day of April, 2018.

Karen A. Hoffman
Notary Public
Name: Karen A. Hoffman
My Commission Expires: 11-30-2019

(SEAL)

This instrument was prepared by:
Kevin M. Butler, Director of Law
City of Lakewood, Ohio
12650 Detroit Avenue
Lakewood, Ohio 44107

KARENA. HOFFMAN
NOTARY PUBLIC, State of Ohio
My Commission Expires 11/30/2019

EXHIBIT A TO DEED

[Legal Description – to be inserted]

EXHIBIT B TO DEED

Permitted Exceptions

1. Liens and exceptions for taxes and other governmental charges and assessments (including special assessments) that are not yet due and payable and any and all supplemental taxes attributable to the period from and after the date hereof.
2. Easements, conditions and restrictions of record.

ORDINANCE NO. 25-18

BY:

AN ORDINANCE to amend Section 1105.02 of the Zoning Code of the Codified Ordinances of the City of Lakewood by changing and revising the Zoning Map of the City with respect to certain property as set forth and described as 1456 and 1470 Warren Road (PPN 314-04-063), from C4 (Public Schools) to C3 (Commercial, General Business).

WHEREAS, it is desirable and necessary to rezone the property to allow for the redevelopment of the property; and

WHEREAS, the redevelopment meets the purposes and intent of the Zoning Code; and

WHEREAS, Article 18, Section 3 of the Constitution of the State of Ohio permits municipalities to exercise all powers of local self-government and to adopt and enforce within their limits such as local police, sanitary and other regulations as are not in conflict with general laws; now, therefore

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. Section 1105.02 of the Zoning Code of the Codified Ordinances of the City of Lakewood be and the same is hereby amended by changing and revising the Zoning Map of the City from C4 (Public Schools) to C3 (Commercial, General Business) for the following property:

[See description found in survey and site map attached collectively hereto as Exhibit A]

Section 2. The Director of Planning and Development is hereby authorized and directed to make the reclassification change on the zoning map of the City of Lakewood, Ohio, in order to reflect the amendment designated in Section 1 of this ordinance.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Adopted: _____

PRESIDENT

CLERK OF COUNCIL

Approved: _____

MAYOR



12650 DETROIT AVENUE 44107 216/529-6055 FAX 216/226-3650
www.oneLakewood.com
Lakewood City Council
SAMUEL T. O'LEARY, PRESIDENT
DAVID ANDERSON, VICE PRESIDENT

Council at Large
THOMAS R. BULLOCK III
MEGHAN GEORGE
TRISTAN RADER

Ward Council
DAVID W. ANDERSON, WARD 1
SAM O'LEARY, WARD 2
JOHN LITTEN, WARD 3
DANIEL O'MALLEY, WARD 4

May 21, 2018

RE: Maureen McHugh Bach Interim Clerk

Dear Members of Council:

The current Clerk of Council is retiring May 31, 2018. Attached is a Resolution appointing Maureen McHugh Bach as Interim Clerk which will allow for the continuation of Clerk of Council duties until such time as a permanent Clerk of Council is confirmed.

Sincerely,

/s/ Sam O'Leary

Attachment

RESOLUTION NO.

BY:

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, appointing **Maureen McHugh Bach** as interim Clerk of Council.

WHEREAS, the impending retirement of the Clerk of Council, Mary T. Hagan, will cause a vacancy in that office, thus requiring the appointment of an interim clerk; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this resolution is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments, in that the position to be occupied by this appointee is soon to be vacant; now, therefore

BE IT RESOLVED BY THE CITY OF LAKEWOOD:

Section 1. Pursuant to Section 2.7 of the Third Amended Charter and Section 121.14 of the Lakewood Codified Ordinances, Council hereby appoints **Maureen McHugh Bach** as interim Clerk of Council.

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were passed in open meetings of this Council and that all deliberations of this Council and any of its committees that resulted in such actions were in meetings open to the public and in compliance with legal requirements.

Section 3. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this ordinance, and provided it receives the affirmative vote of at least five members of Council, this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

PRESIDENT

CLERK

Approved: _____

MAYOR



12650 DETROIT AVENUE 44107 216/529-6055 FAX 216/226-3650

www.onelakewood.com

Lakewood City Council

SAMUEL T. O'LEARY, PRESIDENT

DAVID ANDERSON, VICE PRESIDENT

Council at Large
THOMAS R. BULLOCK III
MEGHAN GEORGE
TRISTAN RADER

Ward Council
DAVID W. ANDERSON, WARD 1
SAM O'LEARY, WARD 2
JOHN LITTEN, WARD 3
DANIEL O'MALLEY, WARD 4

May 21, 2018

Lakewood City Council
Lakewood, OH 44107

Re: Community Discussion on Strategies Advancing Racial Equality

Thirty years ago, a Princeton sociologist identified a number of metropolitan areas as "hypersegregated." These outliers were marked by an extreme, and stark segregation of African American residents. The consistent outcome of hypersegregation is separate, very unequal conditions that prove difficult for minority populations to escape.

A few years ago, professor Douglas Massey revisited his conclusions, and found good news and bad news. The bad news is that half of the metros from his original findings are as hypersegregated now as 30 years ago, and they still include greater Cleveland. The good news is, the other half showed real improvement is possible, and has been achieved in other major cities in Ohio.

Lakewood can and should help lead this region away from hypersegregation and other institutional barriers to racial equality. Public opinion has changed significantly within the past generation. People appreciate diversity, want to welcome it, and take pride in expressing these views.

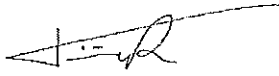
As community leaders, I believe it's our job to build on the progress that has been made, including through proactive public policy like our cities anti-discrimination laws many here worked very hard on. We need to make sure we not only lower barriers, but reach out to populations whom they have historically turned away.

Lakewood City Council
May 21, 2018
PAGE TWO

Tonight, I'm not proposing an answer or single solution. Instead I'd like to start with a discussion. In June, I'll be meeting with policy minded citizens, and representatives from the NAACP, Black Lives Matter, The Cleveland Housing Center and Cleveland State to look for areas where we can improve and strategies that might be effective.

I welcome all of you to add to these conversations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tristan Rader', with a long horizontal line extending from the end of the signature.

Tristan Rader
Councilmember At-Large



12650 DETROIT AVENUE • 44107 • 216/521-7580 • fax 216/521-1379
Website: www.onelakewood.com

MICHAEL SUMMERS
MAYOR

May 16, 2018

Dear Members of Council,

Pursuant to your approval of Resolution No. 8986-18 accepting the NOPEC, Inc. Energized Community Grant in the amount of \$216,474.00, I have worked with the Public Works Department and the Planning Department to analyze several projects that would be eligible for the NOPEC grant money. According to NOPEC policy, eligible projects include those that reduce electric and/or gas consumption through facility improvements.

The goal is to leverage these grant monies as best we can on projects that meet our city objectives and goal of sound governance while also complying with NOPEC's policy. As a result, the proposed project is to transition from legacy streetlighting (high-pressure sodium and mercury vapor) to LED streetlights which will result in future energy savings, and a projected time-frame for return on investment.

The project will use a portion of this year's NOPEC grant award in the amount of \$106,855. The funding will enable the city to work with First Energy to transition the existing High Pressure Sodium Streetlights to high-efficiency LED Streetlights on the commercial corridors of Detroit and Madison Avenues. The high-efficiency LED lights are manufactured by GE and will be obtained through the LED Streetlight Pilot Program

The estimated yearly energy savings gained from the replacement of a total of 355 streetlights is \$25,973.00. LED systems are a proven technology that provides high quality, reliable lighting at a significant cost savings. The projected time-frame for the return on the city's investment is 4.01 years.

Unless council would like to refer this recommendation for further committee discussion, the administration will move forward and work with NOPEC to get this first project approved.

Respectfully submitted,

Mike Summers
Mayor



**LAW DEPARTMENT
OFFICE OF PROSECUTION**

12650 Detroit Avenue, Lakewood, Ohio 44107
(216) 529-6030 | Fax (216) 228-2514
www.onelakewood.com
law@lakewoodoh.net

Direct dial: (216) 529-6034
kevin.butler@lakewoodoh.net

KEVIN M. BUTLER
DIRECTOR OF LAW

PAMELA L. ROESSNER
CHIEF PROSECUTOR

JENNIFER L. SWALLOW
CHIEF ASSISTANT
LAW DIRECTOR

ANDREW N. FLECK
ASSISTANT PROSECUTOR/
ASSISTANT LAW DIRECTOR

May 21, 2018

Lakewood City Council
12650 Detroit Avenue
Lakewood, Ohio 44107

Re: Lakewood Park concession lease with HELP Foundation, Inc.

Dear Members of Council:

Following this communication is an ordinance I introduce on Mayor Summers' behalf that, if adopted, would grant a concession lease to HELP Foundation, Inc., for the provision of food concessions at Lakewood Park in 2018.

As you may know, HELP Foundation recently acquired Cornucopia, Inc., a longstanding Lakewood non-profit organization, which continues to provide an important service to the Lakewood community and the community at-large. Last year Cornucopia ran the concession operations at Lakewood Park successfully and without controversy, and HELP Foundation wishes to continue that service in 2018. It is the Mayor's intention to permit HELP Foundation to continue to offer higher-quality food services at the Foster Pool/Kid's Cove snack stand, with a mobile food cart at the Solstice Steps, and with sales during Friday Night Flicks and other park special events. The lease terms have not in any measurable way changed since last year.

On the Mayor's behalf I ask that this legislation be considered for suspension and adoption this evening, as HELP Foundation wishes to restart concession operations during the upcoming holiday weekend.

Very truly yours,

Kevin M. Butler

ORDINANCE NO.

BY:

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing and directing the Mayor to enter into a concession lease agreement with HELP Foundation, Inc. for the operation of food concessions at Lakewood Park, pursuant to Section 155.08 of the Codified Ordinances.

WHEREAS, the City is the owner of real property located in Lakewood, Ohio, known as Lakewood Park; and

WHEREAS, HELP Foundation, Inc., whose predecessor in interest, Cornucopia, Inc., previously operated Nature's Bin and continues to operate a prepared food commissary and training center on Sloane Avenue, is a Cleveland- and Lakewood-based nonprofit organization with the special mission of providing work adjustment training for people with disabilities including developmental disabilities, mental illness, autism, visual and hearing impairment, and injuries resulting from accident or illness; and

WHEREAS, Cornucopia, Inc., served as the city's concessionaire at Lakewood Park during the 2017 season with success and without controversy; and

WHEREAS, the City has determined that continuing to make available food concessions at Lakewood Park offered by this local, longstanding non-profit corporation is in the best interests of the City and will further the interests of the City and its residents; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this ordinance is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments, in that the beginning of the 2018 park season is upon us; now, therefore,

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The Mayor is hereby authorized and directed, on behalf of the City, to enter into a concession lease agreement with HELP Foundation, Inc. for the operation of food concessions at Lakewood Park, pursuant to Section 155.08 of the Codified Ordinances, the agreement to be on terms approved by the Director of Law and in substantially the same form as the document attached as Exhibit A.

Section 2. To the extent HELP Foundation, Inc.'s provision of services or other operation under the concession lease agreement conflicts with other established municipal rules and ordinances related to the presence of persons or the operation of food service in Lakewood Park, the concession lease agreement shall control over those rules and ordinances.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 4. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this ordinance, and provided it receives the affirmative vote of at least two thirds of the members of Council, this ordinance shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

President

Clerk

Approved _____

Mayor

Exhibit A
Concession Lease Agreement

(See following pages)

CONCESSION LEASE AND PERMIT

THIS CONCESSION LEASE AND PERMIT is made between the City of Lakewood, Ohio, as lessor ("lessor" or "the City"), and HELP Foundation, Inc., an Ohio non-profit corporation, as lessee ("lessee") on the date appearing below.

1. **LEASED PREMISES.** The premises subject to this lease consist of an interior one-room concession stand in the standalone building situated between Foster Pool and the Kids Cove playground area in Lakewood Park, which is located at the intersection of Belle Avenue and Lake Avenue (14532-14800 Lake Avenue) in Lakewood, Ohio. This lease shall also entitle the lessee to perform food concessions elsewhere in Lakewood Park during the term of this lease, as further provided herein.

2. **TERM.** The term of this lease shall begin on May 1, 2018 and end on April 30, 2019, and may be renewable on such terms as are approved by the parties.

3. **RENT.** There shall be no rent paid by lessee during the original term of this lease. Base rent and/or percentage rent that is a percentage of gross revenue of lessee's operations, in an amount or amounts agreed to by the parties, may be payable during any renewal terms.

4. **UTILITIES AND MAINTENANCE.**

(A) Utilities. Lessor shall provide and pay for heat, water, electricity and any other utility service currently being provided to the premises.

(B) Maintenance and repair. Lessee, at its own expense, shall keep the premises, appliances, equipment and appurtenant installations in good repair and working order, except that Lessor shall maintain electrical, HVAC and plumbing facilities and structural portions of the leased premises at its expense unless any damage thereto is caused by lessee.

(C) Health, sanitation and safety. Lessee, at its own expense, shall keep the premises clean, neat, orderly, safe and sanitary at all times, and provide for the proper handling and disposal of garbage, trash, and other refuse. Notwithstanding the foregoing, the City will collect Lessee's trash and dispose of it at the City's expense.

5. **ADDITIONAL PAYMENTS BY LESSEE.** In the event lessee fails to keep the premises, appliances, equipment and appurtenances in good condition and repair, or in a clean and orderly condition, or fails to pay any taxes or discharge any lien required by this lease to be paid or discharged by lessee, or fails to purchase and maintain insurance as required by the lease, or otherwise fails to perform any condition of the lease, the City may cure any such default by lessee in the manner and to the extent the City considers necessary or advisable in order to protect its interests or the interests of the public. In any such case, the City shall be reimbursed by lessee for the cost of curing the default. In addition, in the event the City incurs any expense by reason of any default by lessee under this lease, regardless of whether the City elects to cure the same, the City shall be

reimbursed by lessee for such expense. At the City's option, any such cost or expense, together with interest and penalties, if any, may be added to one or more monthly rental payments, and shall thereby become part of, and be payable the same as other rent.

6. CONDITION OF PREMISES; IMPROVEMENTS AND INSTALLATIONS.

(A) Condition of premises. At the commencement of the original term, the leased premises are constructed, finished, and equipped as known to lessee as of April 2018, and include two commercial-grade refrigerators, counter space, a sink, retractable windows at the service counters, and electrical and heating facilities. Lessee has inspected the premises and acknowledges that they are in good and usable condition.

(B) Work that may be done by lessee. Lessee, at its own expense, may install additional lighting, trade fixtures and equipment, furniture and furnishings, and otherwise construct, remodel, decorate and equip the leased premises as necessary for the efficient and successful operation of a food service concession in a public park.

(C) Approval of plans and specifications; inspection. Before commencing any construction, remodeling, alteration, decoration or installation, whether at the commencement of the term or thereafter, lessee shall submit detailed plans and specifications to the lessor's Director of Public Works for approval. The City reserves the right to reject any design proposals which the Director of Public Works determines to be unsuitable. Lessee shall obtain all necessary permits required under federal or state law or regulations, or under ordinances and regulations of the City. During construction, all materials, installations and workmanship are subject to inspection and approval by Director of Public Works or his or her authorized representatives. Lessee and its contractors and subcontractors shall give 30 days' advance notice to the Director of Public Works before commencing any new work, and shall afford the City's representatives all reasonable and necessary facilities for inspection. All work shall be according to the approved plans and specifications.

(D) Ownership of improvements and fixtures. Title to all leasehold improvements constructed as an integral part of the building, including without limitation lighting, plumbing, heating and air conditioning, vests in the City upon installation. Lessee shall retain title to trade fixtures and equipment, furniture and furnishings provided they are installed by lessee, and shall remove the same at its expense on termination of the lease.

7. USE OF PREMISES; PERMIT FOR USE OF LAKEWOOD PARK. Lessee is entitled to the exclusive use of the leased premises for the purpose of operating a food service concession stand, and for such other lawful purposes as may be authorized by the Director of Public Works upon written request by lessee. Furthermore, this agreement shall operate as a permit entitling lessee to engage in mobile food concession sales throughout Lakewood Park at regular or special events (for example, at the Solstice Steps and during community movie nights) from a cart or other commercially reasonable, safe and park-appropriate equipment. No motorized vehicles shall be permitted except on publicly accessible roadways within Lakewood Park. Lessee shall not be permitted to conduct sales outside the leased premises and within the enclosed Foster Pool area except by permission of the Lakewood Board of Education, and shall not be permitted to conduct

sales outside the leased premises within areas of Lakewood Park to the detriment of persons or organizations reserving those areas for exclusive use (including, for example, ballfields, the Women's Club Pavilion, the Kiwanis Pavilion, and the bandstand) without their permission.

Lessor reserves the right to approve of or prohibit the sales or serving of particular products, including but not limited to name brands of particular products and types of products. At the time of this lease, alcoholic beverages, tobacco products, alternative nicotine products and non-food or -beverage products (except natural sun block and chap stick, natural bug spray, natural wet wipes/sanitizing wipes, or other products specifically approved by the Mayor of the City) are expressly prohibited.

8. HOURS AND STANDARDS OF OPERATION.

(A) Hours of operation. Lessee shall operate the concession and offer to the public goods or services commensurate with the purposes for which the premises are to be used under this lease, during pool open-swim hours, and other hours during which the park is open to the public at lessee's discretion, seven days a week, except that upon lessee's written request, the Mayor of the City may permit reduced hours of operation on such conditions as he or she may impose in the interests of serving the public convenience and needs, and except during any inclement-weather events.

(B) Operations; merchandise and services. Lessee's operations shall meet or exceed the standards usual in the trade for first class operations of a similar type. Lessee shall not provide, sell or offer for sale food, merchandise or services of inferior quality. Lessee shall not offer food, services or merchandise which are, or are offered in a way which is, in bad taste or offensive to the public.

(C) Personnel. Lessee shall provide sufficient personnel and give them adequate training and supervision to operate the concession to a standard comparable to similar park concessions in the region. Lessee shall at all times exercise proper control over the conduct of its employees. It shall require them to be clean and neat in appearance, and to be courteous and helpful in dealing with the public. Upon written notice from lessor, lessee shall discipline or terminate any employee whose conduct is detrimental to the best interests of the park or the public.

(D) Nondiscrimination. Lessee shall refrain from discrimination on the grounds of a person's race, color, creed, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic in its employment practices, in its occupancy and operation of the leased premises, and in offering and providing goods and services to the public.

9. COMPLIANCE WITH LAWS AND REGULATIONS. Lessee shall comply at all times with applicable federal and state laws and regulations, and with ordinances and regulations of the City, including without limitation statutes, ordinances and regulations applying to the premises or their use, or to lessee's operation of the concession, except to the extent the ordinances materially conflict with the provisions of this lease.

10. PAYMENT OF TAXES.

(A) In general. Because the leased premises are in a public park and will not generate rent to the lessor or income to a for-profit entity, it is not anticipated that any real property taxes or assessments will be levied on the leased premises. In light of the foregoing, lessee and lessor shall cooperate with one another in any proceedings or actions challenging the imposition of real property taxes or assessments levied or to be levied on the leased premises, and shall pay all their own costs and expenses in those proceedings or actions. Lessee is entitled to contest the amount or validity of such taxes or assessments in its own name or in the city of the City, or both. In the event any such proceedings or actions are unsuccessful, lessee or lessor may terminate this lease or otherwise lessee shall pay promptly when due all real property taxes and assessments levied on the leased premises, and personal property taxes, state, federal and municipal income taxes, and social security, workers' compensation and unemployment compensation taxes, and all other taxes and assessments due from lessee and for which a lien is or may be attached to the property or leasehold interest.

(B) Proportionate share of real property taxes and assessments. Upon receipt of a bill for taxes or assessments attributable to the leased premises, the City shall in turn bill lessee therefor. If the tax billing is for an area greater than the leased premises, lessee shall pay the same proportion of the total tax bill as the area of the leased premises bears to the total area of the premises being taxed.

11. **DISCHARGE OF LIENS**. Lessee shall promptly pay and discharge or cause to be cancelled any lien attaching to the leased premises or the leasehold interest, and arising from an act or omission by lessee or its agents or employees, or arising from lessee's use and occupancy of the leased premises, or its operations of the concession, including without limitation judgment liens, mechanics' and materialmen's liens, workers' compensation and unemployment compensation liens, federal tax liens, and other liens.

12. INSURANCE.

(A) In general. Lessee at its sole expense shall purchase and maintain in force, during the life of the lease, policies of insurance as provided in this section. Lessee shall furnish to lessor certificates or policies showing the insurance in force as of commencement of the term.

(B) Minimum limits. Lessee shall procure and maintain until all of its obligations have been discharged insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the services hereunder by lessee, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this lease and in no way limit the indemnity covenants contained in this lease. Lessor in no way warrants that the minimum limits contained herein are sufficient to protect lessee from liabilities that might arise out of the performance of services under this lease by lessee, its agents, representatives, employees or subcontractors, and lessee is free to purchase additional insurance.

Lessee shall provide coverage with limits of liability not less than those stated below.

General Liability	\$1,000,000	Combined Single Limit Per Occurrence
Umbrella Liability	\$2,000,000	
Product Liability	\$1,000,000	Combined Single Limit Per Occurrence
Automobile Liability	\$1,000,000	Combined Single Limit Per Occurrence
Workers' Compensation	Statutory	

The policies, where permitted, shall be endorsed to include the following additional insured language: "The City of Lakewood, its departments, agencies, boards, commissions, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of Cornucopia, Inc." In addition, the City of Lakewood shall be given at least ten (10) days' notice of cancellation of such policies. Policies, where permitted, shall contain a waiver of subrogation against the City, its departments, agencies, boards, commissions, officials, agents, and employees for losses arising from services performed by or on behalf of lessee under this lease.

13. LOSS OR DAMAGE TO LEASED PREMISES.

(A) Assessment of damage. In the event the leased premises are damaged through fire or other casualty, the lessee without delay shall contact claims adjusters, architects, contractors, damage repair specialists or other competent persons to make estimates of needed repairs, including estimates of the time such repairs will reasonably require to effect.

(B) Damage repairable within ninety days. In the event repairs can reasonably be effected and the property restored to usable condition within ninety days from the date of the fire or other casualty, lessee shall proceed promptly to make such repairs. Provided the repairs are prosecuted with diligence, and any delay is not occasioned by lessee's fault, the duty to make rent payments shall be abated until the premises are restored to operating condition.

(C) Damage not repairable within ninety days. In the event repairs cannot reasonably be effected and the property restored to usable condition within ninety days from the date of the fire or other casualty, lessee at its option may terminate the lease by giving written notice of termination, in which case all insurance proceeds covering the loss shall be paid to the City.

14. **INDEMNIFICATION.** Lessee agrees to indemnify and hold the City harmless from any liability for injuries or death to persons or loss or damage to property arising from any act or omission of lessee, or its agents or employees, with respect to its use or occupancy of the leased premises or operations at Lakewood Park. Lessee agrees to give the City prompt notice of any claim or suit which may result in a judgment against the City. Lessee is entitled to compromise, defend or participate in the defense of any such claim or suit to the extent of its interest.

15. **ASSIGNMENT AND SUBLETTING.** Lessee shall not assign this lease or any interest in the lease, or sublet any part of the leased premises, without the written consent of the Mayor of the City, which may be granted or withheld in the Mayor's sole and exclusive discretion.

16. **TAKING OF PREMISES FOR EXPANSION OR DEVELOPMENT.** Although currently there are no plans to do so, the City may recover possession of all or part of the leased premises for purposes of expansion or development of Lakewood Park on ninety days' written notice to lessee. In the event of a taking or partial taking by the City under this section, the lessee may:

(A) Accept other premises offered by the City to replace the leased premises, and continue operations under this lease in the replacement premises. In such case, any rent charged hereunder may be further negotiated by the parties;

(B) Accept other premises offered by the City to replace the part of the leased premises taken, and continue operations under this lease in the leased premises remaining after the taking, augmented by the replacement premises. In such case, any rent charged hereunder may be further negotiated by the parties;

(C) Elect to continue operations under this lease in the leased premises remaining after the taking. In such case, any rent charged hereunder may be further negotiated by the parties; or

(D) Terminate the lease as of the date of taking, by giving written notice at least thirty days prior to termination.

17. **CANCELLATION.**

(A) Termination by the City. In addition to any other right of cancellation under this lease, the City may terminate this lease if any of the following occur:

(1) Lessee fails to pay rent or other charges under this lease within thirty days after the due date;

(2) Lessee assigns the lease or any part of its interest in the lease, or sublets any part of the leased premises, in violation of section 15 of this lease;

(3) Lessee voluntarily abandons operations at the leased premises for a continuous period of ten days between September 1, 2018 and the termination of the original term of this lease;

(4) Lessee is compelled to cease operations at the leased premises for a continuous period of ninety days, by reason of fire or other casualty, a strike, or other calamity beyond lessee's control. This provision does not apply when lessee elects to make repairs under section 13(B) of the lease, even though the work requires longer than ninety days to complete, provided lessee begins repairs without undue delay, diligently prosecutes the work, and renews operations on completion of repairs;

(5) Lessee defaults under any condition of this lease, and the default is not cured within thirty days after written notice of default. If the default is such that it cannot reasonably be corrected within thirty days, it will be considered timely cured if lessee begins corrective measures promptly after notice and diligently prosecutes them to completion, provided the default is fully corrected within a reasonable time;

(6) Lessee makes a general assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for substantially all of its property for the benefit of creditors, or files, under the federal bankruptcy laws, a voluntary petition for bankruptcy, reorganization or financial rehabilitation; or

(7) Lessee is adjudged bankrupt or an order is made for its reorganization or financial rehabilitation under the federal bankruptcy laws, or pursuant to court order a receiver or trustee takes possession of substantially all of lessee's property for the benefit of creditors. The right to cancel under this provision shall be held in abeyance during any period the judgment or order is stayed pending proceedings to contest or appeal the judgment or order.

(B) Termination by lessee. In addition to any other right of cancellation under this lease, lessee may terminate this lease if any of the following occur:

(1) The City defaults under any condition of this lease, and the default is not cured within thirty days after written notice of default. If the default is such that it cannot reasonably be corrected within thirty days after notice, it will be considered timely cured if the City begins corrective measures promptly after notice and diligently prosecutes them to completion, provided the default is fully corrected within a reasonable time;

(2) Lessee is prevented by court order from using a substantial part of the leased premises for a continuous period of ninety days; or

(3) Lessee's ability to conduct operations at the leased premises in the same manner and to the same extent as previously is substantially curtailed for a continuous period of ninety days, by reason of a court order, a change in laws or regulations subsequent to execution of this lease, any governmental action or inaction other than revocation or suspension of a liquor license, a fire or other casualty, or any other cause not due to lessee's fault.

(C) Notice of cancellation; effective date. In order to exercise a right of termination under this section, the party entitled to terminate the lease shall give the other party written notice of cancellation, specifying the reason under division (A) or (B) of this section, and specifying the date termination becomes effective, which shall be not less than thirty nor more than ninety days from the date of the notice. At any time before the effective date of termination specified in the notice, the notice of cancellation may be rescinded in writing by the party giving it, in which case the parties shall be in the same position as if notice of cancellation had not been given.

(D) Waiver of right to terminate. A party waives the right to terminate this lease based on a particular occurrence or default of the other party, by written waiver given at any time, or by failing to give written notice of cancellation within ninety days after the right to cancel accrues.

The City waives a default for nonpayment of rent or other charges by accepting full payment for the past due amounts made within sixty days after the due date of the last such past due rent payment or other charge. Waiver of the right to cancel based on a particular occurrence or default does not constitute a waiver of the right to cancel for subsequent occurrences or defaults of the same kind.

18. SURRENDER OF PREMISES. At the end of the term or any renewal term of this lease, or upon termination of this lease by either party or for any cause, lessee shall remove any trade fixtures and equipment, or furniture and furnishings it installed, and surrender possession of the premises to the City in as good order and condition as at the commencement of the original lease term, reasonable use and fair wear and tear excepted.

WITNESS the signatures of the parties this _____ day of _____, 2018.

Attest:

CITY OF LAKEWOOD, OHIO, as lessor

Witness

Michael P. Summers, Mayor

HELP FOUNDATION, INC., as lessee

Witness

Tamara Honkala, President and CEO

Approved as to legal form and correctness:

Director of Law



**LAW DEPARTMENT
OFFICE OF PROSECUTION**

12650 Detroit Avenue, Lakewood, Ohio 44107
(216) 529-6030 | Fax (216) 228-2514
www.onelakewood.com
law@lakewoodoh.net

Direct dial: (216) 529-6034
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PAMELA L. ROESSNER
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JENNIFER L. SWALLOW
CHIEF ASSISTANT
LAW DIRECTOR

ANDREW N. FLECK
ASSISTANT PROSECUTOR/
ASSISTANT LAW DIRECTOR

May 21, 2018

Lakewood City Council
12650 Detroit Avenue
Lakewood, Ohio 44107

**Re: Ordinance adding finance processes to the Code following passage of
Third Amended Charter**

Dear Members of Council:

The citizens' adoption of the Third Amended Charter of the city on November 7, 2017, obligates Council and the Mayor's administration to consider code additions and changes that would ensure continuity in the manner in which the government conducts its affairs. Following this letter is what is likely the final in a series of ordinances that, if adopted, would carry forward into the code certain requirements found within the Third Amended Charter. These modifications touch on certain financial processes appearing in the Second Amended Charter.

As with the previously introduced similar ordinances, please refer this ordinance to the Rules and Ordinances Committee for further consideration.

Very truly yours,

Kevin M. Butler

ORDINANCE NO.

BY:

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, enacting various sections of the Codified Ordinances of the City of Lakewood in order to codify certain provisions with respect to financial processes in the city.

WHEREAS, on November 7, 2017, the citizens of Lakewood adopted the proposed Third Amended Charter of the City of Lakewood; and

WHEREAS, the Third Amended Charter does not carry forward the provisions found in Article XVIII of the Second Amended Charter related to certain financial processes undertaken by the City; and

WHEREAS, this Council has determined that these provisions shall be established in the Code as a matter of local self-government; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power of local self-government; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power to enact laws that are for the health, safety, welfare, comfort and peace of the citizens of the municipality; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this ordinance is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments, in that the new charter became effective upon the official certification of the November 7, 2017 election in the city; now, therefore

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. New Section 129.62, Appropriations of Balance or Accruing Revenue not Already Appropriated, shall be enacted to read as follows:

**129.62. APPROPRIATIONS OF BALANCE OR ACCRUING REVENUE
NOT ALREADY APPROPRIATED.**

Any accruing revenue of the City not already appropriated, and any balance at any time remaining after the purposes of the appropriation shall have been satis-

fied or abandoned, may from time to time be appropriated by Council to such uses as will not conflict with any uses for which specifically such revenues accrued.

Section 2. New Section 129.63, Unexpended Balances Revert, shall be enacted to read as follows:

129.63. UNEXPENDED BALANCES REVERT.

At the end of each year, all unexpended balances of appropriations shall revert to the respective funds from which the same were appropriated and shall then be subject to future appropriation; but appropriations may be made in furtherance of improvements or other objects or work of the City that will not be completed within the current year.

Section 3. New Section 129.64, Certification of Instruments, shall be enacted to read as follows:

129.64. CERTIFICATION OF INSTRUMENTS.

- (a) Certification. No contract, agreement, or other obligation, involving the expenditure of money, shall be entered into by any officer of the City, nor shall any ordinance, resolution, or order for the expenditure of money be passed by Council, unless the Director of Finance first certifies that the money required for such contract, agreement, obligation, or expenditure, is in the treasury or in the process of collection and is available for such purpose, as provided by general law.
- (b) Funds Subject to Certification. All moneys actually in the treasury to the credit of the fund from which they are to be drawn, and all moneys applicable to the payment of the obligation or appropriation involved, that are anticipated to come into the treasury before the maturity of such contract, agreement or obligation, from taxes or assessments, or from sales of service, products or byproducts or from any City undertakings, fees, charges, accounts and bills receivable or other credits in process of collection; and all moneys applicable to the payment of such obligation or appropriation, which are to be paid into the treasury prior to the maturity thereof, arising from the sale or lease of lands or other property, and moneys to be derived from lawfully authorized bonds, notes or other debt obligations sold and in process of delivery shall be deemed in the treasury and subject to the certification referred to in Section 4 of this Article.
- (c) Failure to Comply. All contracts, agreements, or other obligations and all ordinances, resolutions and orders entered into or passed contrary to the provisions of the preceding Sections shall be void, and no person whatever shall have any claim or demand against the City thereunder, nor shall Council, nor any officer of the City waive or qualify the limits fixed by such ordinance, resolution, or order or fasten upon the City any liability whatever, in excess of such limits, or release any party from compliance with this contract under such ordinance, resolution or order.

Section 4. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and

that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 5. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in its preamble, and provided it receives the affirmative vote of at least two thirds of the members of Council this ordinance shall take effect and be in force immediately, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

PRESIDENT

CLERK

Approved: _____

MAYOR



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May 21, 2018

Lakewood City Council
12650 Detroit Avenue
Lakewood, Ohio 44107

**Re: Resolution adopting Foundation Planning Task Force
recommendations regarding Healthy Lakewood Foundation**

Dear Members of Council:

Please find attached a resolution that, if adopted, would ratify the recommendations of the Foundation Planning Task Force, the first of which are being presented to you tonight, with respect to the creation and governance of the proposed Healthy Lakewood Foundation. This legislation is necessary to carry out the city's obligations under Section 4.1 of the 2015 master agreement governing healthcare in Lakewood, as it would approve the new foundation's governing documents, initial board of directors and tax-exemption application.

Please refer this resolution to an appropriate committee for your further review.

Very truly yours,

Kevin M. Butler

RESOLUTION NO.

BY:

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, adopting the recommendations of the Foundation Planning Task Force for the creation of the Healthy Lakewood Foundation, the appointment of its initial board and the approval of its initial governing documents, all in accordance with the Master Agreement governing healthcare in Lakewood dated December 21, 2015.

WHEREAS, pursuant to the terms of Section 4.1 of the master agreement governing healthcare in Lakewood dated December 21, 2015, the City and Lakewood Hospital Association must (i) jointly agree upon a process for the creation of a new Ohio nonprofit corporation that is formed for the purpose of addressing community health and wellness needs in the City of Lakewood; (ii) develop the new foundation's governing documents; (iii) file articles of incorporation for the new foundation with the Ohio Secretary of State; (iv) select the new foundation's initial board; and (v) cause new foundation to apply for federal tax-exempt status with the Internal Revenue Service; and

WHEREAS, the Foundation Planning Task Force has been appointed to make recommendations to the City for the creation of the new foundation, proposed as the Healthy Lakewood Foundation, and has duly made those recommendations; and

WHEREAS, the Foundation Planning Task Force's recommendations to the City include the Healthy Lakewood Foundation's mission, vision, and guiding principles, articles of incorporation and code of regulations; and

WHEREAS, the Foundation Planning Task Force's recommendations to the City also include the Healthy Lakewood Foundation's initial board members; and

WHEREAS, the Foundation Planning Task Force's recommendations to the City have separately been approved by Lakewood Hospital Association in accordance with Section 4.1 of the master agreement, under a board resolution dated _____, 2018; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this resolution is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments in that the City wishes to ensure its obligations with respect to Section 4.1 of the Master Agreement are fulfilled prior to the occurrence of other events triggering the work of the foundation; now, therefore,

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The City of Lakewood hereby adopts the recommendations of the Foundation Planning Task Force for the creation of the Healthy Lakewood Foundation, the appointment of its initial board and the approval of its initial governing documents, all in accordance with the Master Agreement governing healthcare in Lakewood dated December 21, 2015.

Section 2. Specifically, the City of Lakewood hereby approves of the name of the Healthy Lakewood Foundation and of its mission, vision, and guiding principles; articles of incorporation; and code of regulations, attached to this resolution as **Exhibits A-1, A-2 and A-3**, respectively.

Section 3. Specifically, the City of Lakewood hereby approves of the initial board of the Healthy Lakewood Foundation, the listing of board members being attached to this resolution as **Exhibit B**.

Section 4. The City of Lakewood hereby instructs the Healthy Lakewood Foundation or its incorporators to apply for federal tax-exempt status with the Internal Revenue Service forthwith.

Section 5. In view of the foregoing Sections 1, 2, 3 and 4 of this resolution, the City of Lakewood hereby states and avers that its obligations pursuant to Section 4.1 of the Master Agreement are fulfilled and discharged.

Section 6. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 7. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least two thirds of the members of Council, this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

PRESIDENT

CLERK

Approved: _____

MAYOR

Exhibit A-1

Healthy Lakewood Foundation Vision, Mission and Guiding Principles

(see following page)

Healthy Lakewood Foundation

Vision

Lakewood is a place where all people achieve their fullest health potential

Mission

To advance programs, policies, and practices that inspire a Lakewood community in which health and wellness are reflected in all aspects of life

Guiding Principles

The stewardship of resources is rooted in humility, integrity, and community voice.

Organizational practices should be transparent and informed by authentic dialogue and engagement.

Health and wellness can be promoted in ways that are both innovative and evidence-based.

Opportunities, initiatives, and strategies should leverage new and existing resources that result in sustainable impact.

Positive change is driven by shared priorities, coordinated efforts, and trust.

Exhibit A-2
Healthy Lakewood Foundation Articles of Incorporation
(see following pages)

Form 532B Prescribed by:

JON HUSTED
Ohio Secretary of State



Toll Free: (877) SOS-FILE (877-767-3453)
Central Ohio: (614) 466-3910
www.OhioSecretaryofState.gov
busserv@OhioSecretaryofState.gov
File online or for more information: www.OhioBusinessCentral.com

Mail this form to one of the following:

Regular Filing (non expedite)
P.O. Box 670
Columbus, OH 43216

Expedite Filing (Two business day processing time.
Requires an additional \$100.00)
P.O. Box 1390
Columbus, OH 43216

For screen readers, follow instructions located at this path.

Initial Articles of Incorporation (Nonprofit, Domestic Corporation)

Filing Fee: \$99

(114-ARN)

Form Must Be Typed

Please check the box if this nonprofit corporation is being formed for the following purpose:

- ☐ Community Improvement Corporation (Economic Development or Land Reutilization) - Please see Ohio Revised Code Chapter 1724 or the instructions at the end of this form for more information.

First: Name of Corporation

Second: Location of Principal Office in Ohio

City

State

County

Optional: Effective Date (MM/DD/YYYY)

(The legal existence of the corporation begins upon the filing of the articles or on a later date specified that is not more than ninety days after filing.)

Third: Purpose for which corporation is formed

To advance programs, policies and practices that inspire a Lakewood community in which health and wellness are reflected in all aspects of life and to do whatever is deemed necessary, advisable, or conducive to effectuate the foregoing including the exercise of all other authority and powers permitted to corporations generally by virtue of the provisions of the Ohio Nonprofit Corporation Law and as are permitted by organizations exempt from taxation pursuant to section 501(c)(3) of the IRS Code.

**** Note:** for Nonprofit Corporations: The Secretary of State does not grant tax exempt status. Filing with our office is not sufficient to obtain state or federal tax exemptions. Contact the Ohio Department of Taxation and the Internal Revenue Service to ensure that the nonprofit corporation secures the proper state and federal tax exemptions. These agencies may require that a purpose clause be provided. ******

**** Note:** ORC Chapter 1702 allows for additional provisions to be included in the Articles of Incorporation that are filed with this office. If including any of these additional provisions, please do so by including them in an attachment to this form. ******

Original Appointment of Statutory Agent

The undersigned, being at least a majority of the incorporators of

Healthy Lakewood Foundation

(Name of Corporation)

hereby appoint the following to be Statutory Agent upon whom any process, notice or demand required or permitted by statute to be served upon the corporation may be served. The complete address of the agent is:

Susan O. Scheutzow

(Name of Statutory Agent)

1375 East Ninth Street

(Mailing Address)

Cleveland

(Mailing City)

OH

(Mailing State)

44114

(Mailing ZIP Code)

Must be signed by
the incorporators or
a majority of the
incorporators.

(Signature)

(Signature)

(Signature)

Acceptance of Appointment

The Undersigned, Susan O. Scheutzow, named herein as the
(Name of Statutory Agent)

Statutory agent for Healthy Lakewood Foundation
(Name of Corporation)

hereby acknowledges and accepts the appointment of statutory agent for said corporation.

Statutory Agent Signature

(Individual Agent's Signature / Signature on Behalf of Business Serving as Agent)

By signing and submitting this form to the Ohio Secretary of State, the undersigned hereby certifies that he or she has the requisite authority to execute this document.

Required

Articles and original appointment of agent must be signed by the incorporator(s).

If the incorporator is an individual, then they must sign in the "signature" box and print his/her name in the "Print Name" box.

If the incorporator is a business entity, not an individual, then please print the entity name in the "signature" box, an authorized representative of the business entity must sign in the "By" box and print his/her name and title/authority in the "Print Name" box.

Signature

By (if applicable)

Print Name

Signature

By (if applicable)

Print Name

Signature

By (if applicable)

Print Name

ADDITIONAL ARTICLES TO THE ARTICLES OF INCORPORATION OF HEALTHY LAKEWOOD FOUNDATION

ARTICLE FOURTH. No part of the net earnings of the Corporation shall inure to the benefit of any Incorporator or Director of the Corporation, or any other private individual, except that the Corporation is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article THIRD. No substantial part of the activities of the Corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation, and no activity of the Corporation shall consist of participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

It is intended that the Corporation shall have the status of an organization (i) that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, (ii) to which contributions are deductible for federal income tax purposes under Section 170(c)(2) of the Internal Revenue Code, and (c) to which gifts and bequests are deductible for federal gift tax and federal estate tax purposes under Sections 2522(a)(2) and 2055(a)(2) of the Internal Revenue Code, respectively, for so long as such taxes apply. These Articles of Incorporation shall be construed, and all authority and activities of the Corporation shall be limited, accordingly.

ARTICLE FIFTH. The Corporation may be dissolved upon the adoption of a resolution of dissolution (i) without a meeting, by the written consent of all the Directors, or (ii) at a meeting of the Board of Directors held for that purpose, by the vote of a majority of the full number of Directors. Upon the dissolution of the Corporation, the Directors shall, after paying or making provision for the payment of all liabilities of the Corporation, distribute all of the assets of the Corporation to the City of Lakewood, Ohio, to be used exclusively for public purposes, so long as it then qualifies as a political subdivision described in Section 170(c)(1) of the Internal Revenue Code and/or to such organizations described in Section 501(c)(3) of the Internal Revenue Code, organized and operated for charitable purposes similar to the Corporation's purposes, as may be determined by the Directors, in such amounts as are determined by the Directors.

ARTICLE SIXTH. These Articles of Incorporation may be amended, or new Articles of Incorporation may be adopted (i) without a meeting, by the written consent of all the Directors, or (ii) at a meeting of the Board of Directors held for that purpose, by the vote of a majority of the full number of Directors.

ARTICLE SEVENTH. All references in these Articles of Incorporation to Sections of the Internal Revenue Code shall be considered references to the Internal Revenue Code of 1986, as from time to time amended, and to the corresponding provisions of any similar law subsequently enacted, and to all regulations issued under those Sections and provisions.

Exhibit A-3
Healthy Lakewood Foundation Code of Regulations
(see following pages)

CODE OF REGULATIONS
OF
HEALTHY LAKEWOOD FOUNDATION

Effective as of _____, 2018

CODE OF REGULATIONS
OF
HEALTHY LAKEWOOD FOUNDATION

ARTICLE I
GENERAL

Section 1. Name. The name of the Corporation will be Healthy Lakewood Foundation (the "Corporation").

Section 2. Creation. The Corporation is organized and established as a nonprofit corporation under Chapter 1702, Ohio Revised Code (the "Ohio Nonprofit Corporation Law").

Section 3. Purposes. The Corporation will have such purposes as are now, or may hereafter be, set forth in its Articles of Incorporation, as amended from time to time (the "Articles of Incorporation").

Section 4. Mission. "To advance programs, policies and practices that inspire a Lakewood community in which health and wellness are reflected in all aspects of life."

Section 5. Vision. "Lakewood is a place where all people achieve their fullest health potential."

Section 6. Powers. The Corporation will have those rights and powers, express or implied, as are now, or may hereafter be, granted by the Ohio Nonprofit Corporation Law, its Articles of Incorporation, and this Code of Regulations, each as amended.

Section 7. Office. The principal office of the Corporation will be in the City of Lakewood, County of Cuyahoga, Ohio, as determined from time to time by the Board of Directors.

ARTICLE II
MEMBERS

Section 1. Membership. The Corporation shall have no Members other than the members of the Board of Directors (each, a "Director" and collectively, the "Directors"). For purposes of any statute or rule of law relating to corporations, the Directors shall be considered the Members of the Corporation, and they shall have all the rights and privileges of Members. The Directors, when exercising the rights and privileges of Members at a meeting, shall comply with the provisions of Sections 3

through 12 of Article III below.

ARTICLE III **BOARD OF DIRECTORS**

Section 1. General Powers. All of the business and affairs of the Corporation shall be managed and controlled by the Board of Directors.

Section 2. Number, Election and Tenure.

(a) Number. The Board of Directors shall consist of not less than eleven (11) and not more than seventeen (17) Directors.

(b) Staggered Terms; Term Limits. The Directors named by the Incorporator shall be divided into three (3) approximately equal groups; the individuals named to one group shall be appointed to a term to last until the Annual Meeting in 2020, the individuals appointed to the second group shall be appointed to a term to last until the Annual Meeting in 2021, and the individuals named to the third group shall be appointed to a term to last until the Annual Meeting in 2022. Directors shall serve until their respective successors are duly elected. Thereafter, except for Directors elected to fill a vacancy pursuant to Section 16 below, Directors shall be elected to serve terms of three (3) years or until their successors are duly elected. Directors may be elected for a maximum of three (3) three (3) year terms. All initial terms, even if for one (1) or two (2) years shall be considered a full term for purposes of the limitation of three (3) consecutive terms. Once a Director has served nine (9) years as a Director, such individual shall not be eligible to be reelected to the Board of Directors at any time.

(c) Qualifications.

Cleveland Clinic Directors. The Cleveland Clinic Foundation (“Cleveland Clinic”) shall have the right to appoint two (2) individuals as Directors. Such individuals shall be appointed to two different groups so that their terms will not end at the same time. The Directors appointed by the Cleveland Clinic shall be subject to the same term limits as other Directors. This right of the Cleveland Clinic to appoint two Directors is derived from the agreement made by and between the Cleveland Clinic, the City of Lakewood and Lakewood Hospital Association with an effective date of December 21, 2015 regarding the future of health care services in the Lakewood community (the “Master Agreement”). As is more fully described in Article IV and Section 6.1 of the Master Agreement, this right of the Cleveland Clinic to appoint two Directors shall cease one (1) year after the later of (i) the date the Cleveland Clinic makes its final annual contribution payment to the Corporation; or (ii) the date on which the Cleveland Clinic ceases to own and operate the family health center created pursuant to the Master Agreement (“Appointment Right

Termination Date"). On the Appointment Right Termination Date, the Corporation shall have the right, but not the obligation, to remove the Directors appointed by the Cleveland Clinic; and all rights of the Cleveland Clinic to appoint Directors shall cease. If at any time prior to the Appointment Right Termination Date the Cleveland Clinic fails to appoint any individuals to serve as Directors (including replacing any Directors who have been removed), the two Director positions shall remain unfilled until such time, if any, that the Cleveland Clinic appoints such Directors; however, the unfilled positions shall not be counted for any quorums, voting, or other matters related to the authorized number of Directors.

Lakewood Residents. Two-thirds or more of the number of non-Cleveland Clinic Directors serving at any time shall be residents of the City of Lakewood, Ohio ("Lakewood"). (For example, if the Board has determined the number of Directors is to be 15, there will be 13 non-Cleveland Clinic Directors and at least two-thirds (9) must be individuals residing in the City of Lakewood.) In the event a Director lived in Lakewood when initially elected or appointed but moves out of Lakewood, for purposes of this two-thirds requirement, such individual shall continue to be counted as a Lakewood resident, until the completion of such Director's term but shall not be counted as a Lakewood resident for any renewal terms.

Board Diversity. It is intended that the Board of Directors be diverse with respect to a number of factors which are attached to this Code of Regulations ("Diversity Factors") and made a part hereof. While each Board will not have Directors meeting all of the Diversity Factors, and as is more fully defined in Section 17, there is no requirement that individual Directors be selected based on meeting any diversity criteria, prior to each election of Directors to the Board, the Chair of the Board, or the Chair of the nominating committee, if any, shall review with the Board the diversity on the Board related to the Diversity Factors, which shall be considered by the Board when electing new Directors; however, such Diversity Factors do not need to be the sole criteria for selecting new Directors.

Task Force Members. The initial Directors named by the Incorporator shall include at least two (2) individuals who served on the City of Lakewood Task Force, which provided advice regarding the creation of the Corporation ("Task Force"). Directors who served on the Task Force shall be divided approximately equally across the staggered terms.

Section 3. Annual Meeting. The Annual Meeting of the Board of Directors shall be held at such time after the close of the calendar year as is necessary to permit the Board to receive a report of finances and activity for the prior year, but in no event shall it be after the end of the month of March. (In the event the Board directs the financials of the Corporation to be audited, there is no requirement that such audit be completed prior to the Annual Meeting.) The purpose of the Annual Meeting shall be to elect Directors

and officers, receive annual reports for the previous year, and to transact such other business as may come before the meeting. The Annual Meeting shall be held at the place and time specified in the notice of said Annual Meeting required by Section 7 below.

Section 4. Regular Meeting. There shall be at least three (3) Regular Meetings of the Board of Directors each year in addition to the Annual Meeting. Regular meetings may be held on such days and at such places and times as the Board of Directors specifies from time to time.

Section 5. Special Meetings. Special Meetings of the Board of Directors may be called by the Chair or by any two Directors at such times and places as the person or persons calling such meeting shall specify in the notice of said meeting required by Section 7 below.

Section 6. Location of Meetings. Meetings of the Board of Directors may be held at any place within the State of Ohio as specified in the notice of the Meeting.

Section 7. Notice. The following provisions will govern notice:

- (a) Written notice of the time and place of each meeting of the Board of Directors (the "Notice") shall be delivered to each Director either by personal delivery or by electronic mail, or facsimile telecopy at least two (2) days before the meeting, or by mail at least seven (7) days before the meeting, which notice need not specify the purpose of the meeting.
- (b) Notice of adjournment of a meeting need not be given if the time and place to which it is adjourned are fixed and announced at the meeting.
- (c) If the Notice is mailed, it will be deemed to be delivered when deposited in the United States mail addressed with postage thereon prepaid.
- (d) If the Notice is given by electronic mail, telegram or facsimile telecopy, such notice shall be deemed to be delivered when the electronic mail, telegram or facsimile telecopy is delivered to the receiving facility.
- (e) Any Director may waive notice of any meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 8. Action Without a Meeting. Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting (unless otherwise prohibited by this Code of Regulations or Ohio law) if a consent in writing or by electronic means is obtained from a majority of the Directors entitled to vote. For purposes of taking an action without a meeting, such action may be taken by mail or

electronic vote. The receipt of a vote by a Director shall constitute consent to taking an action by electronic voting, and waiver of any notice requirements.

Section 9. Voting. Each Director will be entitled to one vote.

Section 10. Quorum. A majority of the Directors then in office is necessary to constitute a quorum for a meeting of the Board of Directors. If a quorum is not present, a majority of the Directors present may adjourn and reconvene the meeting from time to time without further notice. The act of a majority of the Directors present at a meeting at which a quorum is present is the act of the Board of Directors, unless such greater number of votes is required in this Code of Regulations.

Section 11. Use of Communications Equipment. Electronic or other communications equipment which satisfies the requirements of Ohio Revised Code Sections 1702.01(Q) and 1702.17 may be used to conduct meetings of the Board of Directors. Participation by a Director in a meeting through the use of any of the means of communication described in this Section 11 constitutes presence in person of that Director at the meeting for purposes of determining a quorum and other purposes.

Section 12. Procedure. The Chair will preside at the meetings of the Board of Directors.

Section 13. Compensation; Expenses. Directors shall not receive any compensation for their services. The Board of Directors may choose to provide reimbursement for out-of-pocket expenses that Directors reasonably incurred in connection with the performance of Directors' duties.

Section 14. Resignation. Any Director of the Corporation may resign at any time, either by oral tender of resignation at any meeting of the Board of Directors or by giving written notice thereof to the Secretary of the Corporation. Such resignation shall take effect at the time specified therefore and, unless otherwise specified with respect thereto, the acceptance of such resignation shall not be necessary to make it effective.

Section 15. Removal. A Director may be removed, with or without cause, at a meeting for which notice is given that the purpose, or one of the purposes, of the meeting is to consider the removal of a Director.

Section 16. Vacancies. Any vacancy occurring in the Board of Directors will be filled by the affirmative vote of a majority of the remaining Directors, except for a vacancy occurring by the resignation of either of the Cleveland Clinic representatives which vacancy shall be filled by the Cleveland Clinic. A Director elected to fill a vacancy occurring in the Board of Directors shall be elected for the unexpired term of his or her predecessor in office.

Section 17. Nominating Process. At least six (6) months prior to the anticipated date for the Annual Meeting at which Directors shall be elected, the Board

shall determine the nominating process for selecting Directors. Such process may be through the use of a nominating committee or other means deemed appropriate by the Board of Directors. It is the intent that there be community involvement in the nominating process and a diverse Board of Directors and as such the process shall include reviewing the diversity of the Board and shall include a method of obtaining names of persons to be considered for nomination from both current Directors and from sources outside of the Corporation. Such process should include, at a minimum, publication in local media, social media, and notification to nonprofit or governmental organizations performing health and wellness services in Lakewood which the Corporation has identified may be able to assist the Corporation in identifying potential Board Members. The process may be different each year depending upon the number and Diversity Factors of Directors sought.

ARTICLE IV **COMMITTEES**

Section 1. Committees. The Board of Directors may from time to time appoint Committees which in its discretion it deems necessary or desirable and which Committees shall consist of no fewer than three (3) persons. The Chair of any such Committee shall be a Director; other Committee Members do not need to be Directors.

ARTICLE V **OFFICERS**

Section 1. Officers. The officers of the Corporation shall consist of a Chair, a Vice-Chair, a Treasurer, and a Secretary, and, if desired, such other officers and assistant officers as may be deemed necessary, each of whom may be designated by such other titles as determined by resolution of the Directors. All officers shall be Directors. Any two (2) or more offices (except for the offices of Chair and Vice-Chair) may be held by the same person, but no officer shall execute, acknowledge, or verify any instrument in more than one capacity if the instrument is required to be executed, acknowledged, or verified by two (2) or more officers.

Section 2. Election and Term of Office. The officers of the Corporation, except for the Chair shall be elected annually by the Board of Directors at its Annual Meeting. The Chair of the Board shall be elected for a three (3) year term, such election to take place every three (3) years at the Annual Meeting of the Directors. Each officer shall hold office until his or her successor has been duly elected and accepted office or until his or her death, resignation or removal (in the manner provided below). The Chair of the Board may not be elected for additional consecutive terms; other officers may be reelected for up to a total of three (3) consecutive terms. In the event a Director is elected Chair for a three (3) year term and serving such three (3) year term shall cause the Director to exceed the maximum number of years the Director is eligible to serve, such Director shall continue to serve as Chair throughout his or her term as Chair. At such time as the Chair's maximum amount of time serving as a Director ends and the person serving as Chair would ordinarily rotate off the Board, the Board of Directors may elect

another person to fill that position and to serve a three (3) year term (and such Director may be reelected as provided for in this Code of Regulations.) The Chair shall nevertheless continue to serve as a Director through his or her term as Chair even if this causes the Board of Directors to have eighteen (18) Directors.

Section 3. Removal. Any officer elected by the Board of Directors may be removed with or without cause by the majority action of the Board of Directors present at a meeting.

Section 4. Vacancies. A vacancy in office because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term. In the event of a vacancy in the office of Chair, the individual filling the vacancy, if filling the vacancy for one (1) year or less, shall be eligible for re-election to a full three (3) year term as Chair. In the event the individual elected to fill a vacancy as Chair serves in that position for more than a year, such individual shall not be eligible to be re-elected to serve a full three (3) year term as Chair.

Section 5. Chair. The following provisions shall govern the office of Chair:

- (a) The Chair shall be elected from among the Directors of the Corporation and shall preside at all meetings of the Board of Directors.
- (b) The Chair shall be an ex officio member of all committees which may be from time to time elected or appointed.
- (c) The Chair may sign, with the Secretary or any other officer of the Corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts or other instruments which have been authorized to be executed, except in cases where the signing and the executions thereof would be expressly delegated by the Board of Directors or by this Code of Regulations or by statute to some other officer or agent of the Corporation; and in general, the Chair shall perform all duties incident to the function of a Chair of the Board and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. Vice-Chair. A Vice-Chair shall be elected from among the Directors and, in the absence of the Chair, the Vice-Chair shall perform the duties of Chair when the office of Chair is vacant or the Chair is unable or unavailable to act.

Section 7. Treasurer. The following provisions will govern the office of Treasurer:

- (a) Subject to the discretion of the Board of Directors, the Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for all monies due and payable to the Corporation from any source whatsoever; deposit all such

monies in the name of the Corporation in the banks, trust companies or other depositories as shall be selected in accordance with the provisions of this Code of Regulations; and in general perform all the duties incident to the office of Treasurer and the other duties as from time to time may be assigned to the Treasurer by the Chair or by the Board of Directors.

- (b) If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in the sum and with the surety as the Board of Directors determines.

Section 8. Secretary. The following provisions will govern the office of Secretary:

- (a) Subject to the discretion of the Chair, the Secretary shall (i) keep the minutes of the meetings of the Board of Directors in one or more books provided for that purpose, (ii) assure that minutes of all meetings of any Committees are prepared and filed with the records of the Corporation, (iii) assure that all notices are given in accordance with the provision of this Code of Regulations or as required by law, (iv) be custodian of the Corporation's records, and (v) perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Chair or the Board of Directors.
- (b) In the absence of the Vice-Chair, the Secretary shall perform the duties of the Chair when the office of Chair is vacant, or the Chair is unable or unavailable to act.

Section 9. Assistant Treasurer and Assistant Secretaries. Any Assistant Treasurer or Assistant Secretary shall perform such duties as shall be assigned to him or her by the Treasurer, the Secretary or the Board of Directors, as the case may be.

ARTICLE VI

COMMUNITY ENGAGEMENT AND ACCOUNTABILITY

The Board of Directors shall strive for broad-based community involvement in the activities of the Corporation through the nomination process for Directors, reports to the community and other activities. At least every three (3) years (starting no later than one (1) year after the first Board of Directors is constituted) the Board of Directors shall develop and adopt a Community Engagement and Accountability Plan which shall specify the methods by which the Corporation shall seek and obtain significant community involvement. Without limiting the foregoing, the Board of Directors shall at a minimum hold at least one (1) public meeting each year which is publicized and to which all interested members of the City of Lakewood community are invited to attend. In addition to the Corporation reporting to the attendees the activities of the Corporation (which reporting shall include the finances of the Corporation including the source and amounts of and any grants received by the Corporation from other entities and the

recipients and amounts of any grants, loans or other assistance provided by the Corporation to other entities), the meeting shall provide an opportunity for the attendees to provide their input to the Directors as to actions taken by the Directors, future actions the attendees wish the Directors to consider and other issues the attendees wish to raise. The Corporation shall make available on its website the report(s) made at any public meetings and shall make such reports available to any person upon request. The Board shall prepare an annual report regarding the community engagement and accountability activities of the previous year. Nothing contained herein shall prohibit the Board from amending the Community Engagement and Accountability Plan prior to the development of the next Community Engagement and Accountability Plan if the Board determines such amendment is necessary to obtain significant community involvement.

ARTICLE VII

EMPLOYEES

The Board of Directors may establish such positions of employment as it deems desirable from time to time and shall fix the salaries and other terms of employment for such positions.

ARTICLE VIII

AGENTS AND REPRESENTATIVES

The Board of Directors may appoint such agents and representatives of the Corporation with such powers and to perform such acts and duties on behalf of the Corporation as the Board of Directors may see fit, so far as may be consistent with the Articles of Incorporation and this Code of Regulations, to the extent authorized or permitted by law.

ARTICLE IX

LIMITATION OF LIABILITY IN DAMAGES AND INDEMNITY

Section 1. Limitation of Liability in Damages of a Director. Other than in connection with an action or suit in which the only liability asserted against a Director is for voting for or assenting to a statutorily prescribed asset distribution or loan, a Director of the Corporation will be liable in damages for any action he or she takes or fails to take as a Director only if it is proved by clear and convincing evidence in a court of competent jurisdiction that his or her action or failure to act involved an act or omission either undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation.

Section 2. Indemnification. The Corporation shall defend, indemnify and save harmless each person, and the heirs, legal representatives, executors and administrators of such person, who is, or was, a Director, Member, officer, advisor, Employee or agent of this Corporation or who is, or was, serving at the request of this Corporation and for the benefit of this Corporation ("Covered Positions") against all costs and expenses (including, but not limited to, attorneys' fees and disbursements, judgments, fines, penalties and amounts paid in settlement) as permitted by Ohio Nonprofit Corporation law; provided, however, that the Corporation shall not indemnify any such person with respect of any claim, suit, issue or matter, brought by or in the right of this Corporation.

Section 3. Insurance. This Corporation shall purchase and maintain insurance, in such amounts and upon such terms as deemed appropriate by the Board of Directors, on behalf of any person who is, or was, serving in a Covered Position against any liability asserted against him or her or incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not this Corporation would have the power to indemnify him or her against such liability under the Ohio Nonprofit Corporation Law.

Section 4. No Mandatory Indemnification of Volunteers. Section 1702.12(E)(5) of the Ohio Nonprofit Corporation Law shall not apply to the Corporation to the extent that it requires the indemnification of volunteers (as that term is defined in Section 1702.01(M) of the Ohio Nonprofit Corporation Law) other than Directors, officers or advisors of the Corporation or directors or officers of another domestic or foreign nonprofit corporation or corporation for profit, or partnership, joint venture, employee benefit plan, trust or other enterprise serving at the request of the Corporation.

ARTICLE X

CONTRACTS AND BANKING

Section 1. Contracts. The Board of Directors may authorize any one or more officers or agents to enter into any contract or execute or deliver any instrument in the name of or on behalf of the Corporation, and the authority may be general or confined to special instances.

Section 2. Deposits. All funds of the Corporation not otherwise employed will be deposited from time to time to the credit of the Corporation in the banks, trust companies, or other depositories as the Board of Directors may select.

Section 3. Checks. All checks, drafts or other orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as from time to time determined by resolution of the Board of Directors.

ARTICLE XI

GIFTS/FUND-RAISING

Section 1. Acceptance of Gifts. The Board of Directors or a Committee appointed for that purpose, may apply for and accept on behalf of the Corporation any gift, grant, bequest, contribution, or devise for the general purposes or any special purpose of the Corporation. The Board of Directors, or a Committee appointed for that purpose, may agree to administer the same in accordance with any conditions that the testator or donor may impose, provided only that the purpose of the devise, bequest or gift is within the powers and purposes of the Corporation.

Section 2. Distributions. The Board of Directors may make outright contributions, grants and gifts of property, both real and personal, to any program fulfilling any of the purposes of the Corporation as are set forth in the Articles of Incorporation, subject to any and all restrictions imposed from time to time upon the grant-making activities of organizations exempt from income tax under Sections 501(a) and 501(c)(3) by the Internal Revenue Code of 1986, as amended.

ARTICLE XII

CONFLICTS OF INTEREST AND

CODE OF CONDUCT

Section 1. Code of Conduct. The Corporation shall develop a Code of Conduct applicable to each Director and any Corporation employees or independent contractors ("Employees"), and shall obtain on an annual basis from each Director, and any such Employees, the acknowledgment that the Director has read the Code of Conduct and agrees to be bound by it. The Code of Conduct shall include, but not be limited to: a prohibition on any Director or Employee seeking any personal benefit or advantage from their association with the Corporation, (other than reasonable compensation for any Employees, and reasonable reimbursement of expenses for anyone so entitled); the requirement of confidentiality for Corporation business intended to be confidential; and the continual disclosure of conflicts of interest and any matter which could be perceived as a conflict of interest.

Section 2. Conflicts of Interest. At least annually all Directors and Corporation personnel shall disclose to the Board of Directors any positions, paid or volunteer, which the Director or Corporation personnel hold in an organization which competes with, contracts with, or which is a grantee of, the Corporation. In the event the Corporation is considering doing business with, or granting funds or other benefits to, to any entity with which the Director or employee holds a position, or with any person with whom the Director or Employee has a business, familial, or close personal relationship (all of which shall be defined in the Code of Conduct), the Director or Employee must immediately disclose such relationship to the Board of Directors. Conflicts of Interest are not inherently illegal, nor do they preclude the Corporation from entering into a transaction in which a Director or Employee has an interest, however, the Corporation shall take additional steps to determine if alternatives are available, and the person with

the Conflict of Interest shall not participate in any decision making regarding the transaction.

Section 3. No Self-Dealing. In no instance shall the Corporation engage in a sale, exchange, or leasing of property, lending of money, or contract for the furnishing of goods or services with any Director or Employee, any Living Relative of a Director or Employee, or any business entity in which a Director or Employee has more than a 35% ownership interest, or if the Director or Employee will benefit directly from the lease, loan, or contract, such as through commissions. "Living Relatives" are spouses and domestic partners; parents, step-parents, grandparents and step-grandparents; siblings, half-siblings and their spouses; children, grandchildren, great-grandchildren and their spouses; and other individuals with whom the Director or Employee has an economic or intimate personal relationship. It shall not be self-dealing for the Corporation to make grants or otherwise provide benefit to entities which may provide services to Directors or Employees or their Living Relatives, or to entities in which Directors or Employees or their Living Relatives are involved, such as being an employee, volunteer or board member; provided, however, that the Directors disclose such information and abstain from voting as provided in Section 2 above.

ARTICLE XIII ACCOUNTING YEAR AND AUDIT

Section 1. Accounting Year. The fiscal year of the Corporation (the "Fiscal Year") shall begin on the first day of January and end on the last day of December of each year.

Section 2. Audit. At the end of each Fiscal Year, the books of the Corporation shall be closed and a financial statement prepared for such Fiscal Year. If directed by the Board of Directors, such financial statement shall be reviewed or certified by an independent firm, the partners of which are certified public accountants. Such financial statement shall be promptly mailed to each Director and shall be submitted to the Board of Directors at the Annual or a Special Meeting.

ARTICLE XIV MISCELLANEOUS

Section 1. Books and Records. The Corporation shall keep correct and complete books and records and minutes of the proceedings of the Board of Directors, and of any Committees which have had activities in connection with the Corporation's business.

Section 2. Loans to Employees, Directors and Officers Prohibited. No loans will be made by the Corporation to its officers, Directors, advisors or Employees.

Section 3. Rules. The Board of Directors may adopt, amend or repeal Rules

(not inconsistent with this Code of Regulations) for the management of the internal affairs of the Corporation and the governance of its officers, advisors, agents, committees and employees.

ARTICLE XV **AMENDMENTS**

This Code of Regulations of the Corporation may be amended, altered, or repealed at any time and a new Code of Regulations adopted at a meeting held for that purpose and for which notice was given that an amendment to this Code of Regulations would be considered, upon the affirmative vote of two-thirds of the total number of Directors entitled to vote.

DIVERSITY FACTORS

The following shall be considered in the nomination of Directors with the intent that the Board of Directors be diverse in their skills, demographics, and areas of knowledge:

Skills:

Finance and Investment
Legal
Marketing and Communications
Health Care and Wellness
Nonprofit Management
Government relations
Philanthropy

Demographics:

Age
Race
Gender and Gender Identity
Education
Ethnicity
Culture
Socioeconomic Status
Disability
LGBTQ

Areas of Knowledge:

Education
Economic Development
Aging
Early Childhood
Immigration/Refugees
Public Health
Faith Based Initiatives

Exhibit B
Healthy Lakewood Foundation Initial Board Members
(to be provided)



DEPARTMENT OF PLANNING & DEVELOPMENT
BRYCE SYLVESTER, DIRECTOR

12650 Detroit Avenue • 44107 • (216) 529-6630
www.onelakewood.com

May 14, 2018

Re: 1375, 1379, & 1381 Fry Avenue Rezoning

Dear Members of Council,

I am writing to let you know that at its meeting on May 3rd, Planning Commission unanimously recommended the approval of the Final Planned Development (PD) Plan for the vacant parcels at 1375, 1379, & 1381 Fry Avenue. The Architectural Board of Review approved the Final PD Plan at their meeting on May 10th. The recommended zoning is PD, Planned Development from C-3, Commercial General. The property will be utilized for nine townhomes called the Mews at Rockport.

The Planned Development rezoning is a multistep process with Council approval as the final action, as listed below.

1. Planning Commission reviews plan for preliminary approval
2. Architectural Board of Review begins review of site plan and elevations
3. Planning Commission recommends final approval of the PD plan
4. Architectural Board of Review approves site plan, elevations and materials
5. City Council approves Planned Development zoning

The Commission has recommended the rezoning of the property back to council for final approval. I look forward to discussing this at a future council meeting.

Please let me know if you have any questions.

Sincerely,

Katelyn Z. Milius

Katelyn Milius, PE
City Planner

READ, REFERRED TO THE PLANNING COMMISSION
3/19/18. SECOND READING 4/2/18.

ORDINANCE NO. 23-18

BY:

AN ORDINANCE to amend Section 1105.02 of the Zoning Code of the Codified Ordinances of the City of Lakewood by changing and revising the Zoning Map of the City with respect to certain property as set forth and described as 1381 Fry Avenue (PPN 312-33-054), 1379 Fry Avenue (PPN 312-33-053), and 1375 Fry Avenue (PPN 312-33-052) from C3 (Commercial, General Business) to PD (Planned Development).

WHEREAS, it is desirable and necessary to rezone the property to allow for the redevelopment of the property into townhomes; and

WHEREAS, the redevelopment meets the spirit and intent of the Planned Development zoning chapter; and

WHEREAS, Article 18, Section 3 of the Constitution of the State of Ohio permits municipalities to exercise all powers of local self-government and to adopt and enforce within their limits such as local police, sanitary and other regulations as are not in conflict with general laws; now, therefore

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. Section 1105.02 of the Zoning Code of the Codified Ordinances of the City of Lakewood be and the same is hereby amended by changing and revising the Zoning Map of the City from C3 (Commercial, General Business District) to PD (Planned Development) for the following property known as 1381 Fry Avenue (PPN 312-33-054), 1379 Fry Avenue (PPN 312-33-053), and 1375 Fry Avenue (PPN 312-33-052):

[See legal description and map attached hereto collectively as **Exhibit A**]

Section 2. The Director of Planning and Development is hereby authorized and directed to make the reclassification change on the zoning map of the City of Lakewood, Ohio, in order to reflect the amendment designated in Section 1 of this ordinance.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Adopted: _____

PRESIDENT

CLERK OF COUNCIL

Approved: _____

MAYOR

Exhibit A
(Legal Description and Map)

As to Parcel No. 312-33-052:

Situated in the City of Lakewood, County of Cuyahoga and State of Ohio:
And known as being part of Original Rockport Township Section No. 21, and bounded and described as follows:
Beginning at a point in the East line of Fry Avenue, distant Northerly from the North line of Detroit Avenue, 197 feet, as measured on said Easterly line of Fry Avenue;
Thence from said beginning, Easterly 100.19 feet to the East line of property formerly owned by William Frutton (said first course being also the North line of land formerly owned by Koch);
Thence Northerly along Frutton's West line, a distance of 40 feet to a stake;
Thence Westerly parallel with the first course, 100.19 feet to the Easterly line of Fry Avenue;
Thence Southerly along the Easterly line of Fry Avenue to the place of beginning, be the same more or less, but subject to all legal highways.

As to Parcel No. 312-33-053:

Situated in the City of Lakewood, County of Cuyahoga and State of Ohio:
And known as being part of Original Rockport Township Section No. 21, bounded and described as follows:
Beginning on the Easterly line of Fry Avenue, distant Northerly, measured along the Easterly line 157 feet from the Northerly line of Detroit Avenue;
Thence Northerly along the Easterly line of Fry Avenue, 40 feet;
Thence Easterly at right angles to the Easterly line of Fry Avenue, 100.19 feet to the Westerly line of land Willed to Elizabeth Harris, by Will recorded in Volume M, Page 464 of Cuyahoga County Probate Court Records;
Thence Southerly along the Westerly line of land so Willed to Elizabeth Harris, 40 feet;
Thence Westerly in a direct line to the place of beginning, and being further known as the Northerly 33 feet of Sublot No. 3, and Southerly 7 feet of Sublot No. 4, in Richard F. Edwards proposed Subdivision, of part of Original Rockport Township Section No. 21, be the same more or less, but subject to all legal highways.

As to Parcel No. 312-33-054:

Situated in the City of Lakewood, County of Cuyahoga and State of Ohio:
And known as being part of Original Rockport Township Section No. 21, and bounded and described as follows:
Beginning in the Easterly line of Fry Avenue, as shown by the dedication plat recorded in Volume 46 of Maps, Page 27 of Cuyahoga County Records, at a point distant 117 feet Northerly measured along said Easterly line from said intersection with the Northerly line of Detroit Avenue;
Thence Northerly along said Easterly line of Fry Avenue, 40 feet;
Thence Easterly at right angles to said Easterly line of Fry Avenue, 100.19 feet to the Westerly line of land conveyed to Alice Kelman by deed dated November 30, 1955, and recorded in Volume 8477, Page 521 of the Cuyahoga County Records;
Thence Southerly along said Westerly line of land so conveyed, 40 feet;
Thence Westerly at right angles, 100.19 feet to the place of beginning, be the same more or less, but subject to all legal highways.

