DEVELOPMENT AND USE AGREEMENT

THIS DEVELOPMENT AND USE AGREEMENT (this "Agreement") is entered into as of November 7, 2018 (the "Effective Date"), by and between THE CITY OF LAKEWOOD, a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio (the "City"), and acting by authority of Ordinance No. 27-18, enacted on May 8, 2018 (the "Development Agreement Ordinance"), and CARNEGIE MANAGEMENT AND DEVELOPMENT CORPORATION, an Ohio corporation, its successors and/or assigns permitted under Article XI ("Developer").

RECITALS

A. The City is the owner of certain real property located in the City of Lakewood, as more particularly described on Exhibit A attached hereto (the "Development Site").

B. The City has determined that the development of the Development Site is in the best interest of the City and the health, safety and welfare of its residents, and is necessary for the purpose of the creation of jobs and employment opportunities in the City and to improve the economic welfare of City residents.

C. After extensive analysis, deliberation and review, the City formulated a strategy for development of the Development Site that embodies a compelling vision for the future of the City and its residents.

D. The Council of the City of Lakewood, by the Development Agreement Ordinance, has authorized the sale of the Development Site to Developer upon the terms and conditions provided herein, which Development Agreement Ordinance is attached hereto as Exhibit B and incorporated herein.

E. As a condition to the sale of the Development Site to Developer, the parties have agreed that the Development Site shall be developed in accordance with a plan and schedule of development.

F. The parties desire to place of record against Development Site this Agreement and the agreed upon plan and schedule of development, including restrictions on use of the Development Site, with the intent that same shall be construed as covenants binding on the parties and their successors in interest, and benefitting and running with the land, enforceable by the parties hereto in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements, and considerations set forth herein and for other good and valuable consideration, the City and Developer hereby covenant and agree as follows:

ARTICLE I
DESCRIPTION OF THE PROJECT

Developer shall construct, or cause to be constructed, a new multi-story mixed use office, retail and residential development to be known as One Lakewood Place on the Development Site, as more fully described in this Article I (the "Project"). The Project shall be generally consistent with the site plan attached hereto as Exhibit C (the "Site Plan") and include the following components:

Section 1.1 Office and Retail Components. The Project will include a minimum of 100,000 square feet, combined, of office and retail space (the "Minimum Combined Commercial Component"), consisting of not less than 35,000 square feet of office space (the "Minimum Office Component") and 25,000 square feet of retail space (the "Minimum Retail Component"). Developer may convert up to 40,000 square feet of the Minimum Combined Commercial Component to residential use in response to market conditions, provided the Project still includes the Minimum Office Component and the Minimum Retail Component. The Minimum Retail Component shall reflect a mix of uses that is responsive to community demand and additive to the retail base in the City of Lakewood. In the event that Developer exercises its right to convert any square feet of the Minimum Combined Commercial Component under this Section 1.1, any decrease in the Minimum Combined Commercial Component as a result of such conversion shall (a) increase the minimum square feet of the Minimum Residential Component (as defined in Section 1.2) by an equal number of square feet, and (b) increase the minimum number of residential units by one (1) unit for each additional nine hundred fifty (950) square feet that the minimum square feet in the Minimum Residential Component increases.

Section 1.2 Residential Component. The Project will include a minimum of the lesser of (a) 140 residential units and (b) 100,000 square feet of residential space (the "Minimum Residential Component"). Developer shall use commercially reasonable efforts to include the lesser of (i) 15 "for sale" units and (ii) 15,000 square feet of "for sale" residential space in the Minimum Residential Component. The Project's residential units shall be (x) reflective of current and anticipated market conditions, (y) respectful and sensitive to the scale and character of surrounding single family neighbors, and (z) responsive to the changing dynamics of housing demand and availability within the City of Lakewood. If Developer elects to engage a controlling general partner in or assign sole management and control responsibility for the Minimum Residential Component to an unaffiliated third party (the "Unaffiliated Residential

Development Partner"), such Unaffiliated Residential Development Partner shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, and any such Unaffiliated Residential Development Partner shall be required to acknowledge in writing its obligations under this Agreement for the benefit of the City prior to undertaking any work contemplated herein, a copy of which shall be delivered to the City promptly after such assignment. For the avoidance of doubt, the approval by the City of assignment of Developer's obligations relating to the Minimum Residential Component shall not be required if Developer or one of its Affiliates (as defined in Section 11.1) continues to have or shares management authority or control of the Minimum Residential Component, provided any such Affiliate acknowledges in writing its obligations under this Agreement for the benefit of the City prior to undertaking any work contemplated herein, a copy of which shall be delivered to the City promptly after such assignment. In the event that Developer engages an Unaffiliated Residential Development Partner that is approved by the City hereunder, Developer shall be forever released from any further obligations or liabilities hereunder with respect to the Minimum Residential Component of the Project.

Section 1.3 Preservation of the Curtis Block. The Project shall include the building identified as "Curtis Block" on the Site Plan (the "Curtis Block Building"). Developer acknowledges and agrees that the Curtis Block Building has been designated as an historic structure pursuant to Chapter 1134 of the City's Zoning Code. In connection with the incorporation of the Curtis Block Building into the Project, Developer will:

(a) secure a certificate of appropriateness for the exterior of the Curtis Block Building from the Architectural Board of Review ("ABR") which confirms that proposed design plans for the building are in accordance with Chapter 1134 of the City's Zoning Code;

(b) retain the Curtis Block Building's key exterior architectural features, and implement measures to preserve the existing form, integrity and materials of the building when economically feasible, which may include a west end addition to facilitate the compatibility and transition of architectural styles between existing and new construction; and

(c) collaborate with the City to jointly explore the highest and best use of the Curtis Block Building, including considering tenant and use options that support community initiatives, organizations, goals and/or programs.

Section 1.4 Public Space and Public Improvements. The Project shall include a public plaza (the "Public Plaza"). The Public Plaza shall be a first-class, multi-functional community gathering space dedicated to public use (the "Public Plaza Purpose"), as more particularly described in Section 7.1 below and the Restrictive Covenant (as defined in Section 7.4 below). The Public Plaza shall be designed, developed and maintained in a first class manner and utilize quality materials. The Public Plaza shall be no less than one half of one (0.5) acre and be located at the corner of Detroit Avenue and Belle Avenue, as generally depicted on the Site Plan (the "Required Public Plaza Attributes").

Section 1.5 Parking.

(a) On site, adjacent, and proximate parking is critical to the success of the Project. Specific parking requirements for the Project will be determined pursuant to the rezoning process described in Section 4.1 below based upon the Project size and occupant mix and will be satisfied through (i) a structured parking garage located on the Development Site and owned (or leased under a long-term capital lease) by Developer or one of its Affiliates (the "Parking Garage") and (ii) existing public parking/shared parking proximate to the Development Site. Not less than 100 parking spaces located in the Parking Garage shall be made available for use by the public on terms similar to downtown municipal parking lots (e.g. first 30 minutes are free) (the "Public Parking Spaces"). For the avoidance of doubt, these Public Parking Spaces shall be available to all downtown visitors and shall not be limited to patrons of the Project.

(b) Developer acknowledges that, pursuant to that certain Master Agreement, dated as of December 21, 2015 among the City, The Cleveland Clinic Foundation (the "Clinic") and Lakewood Hospital Association (the "Master Agreement"), the Clinic has a right to obligate the City to enter into a parking lease for a portion of the Development Site (the "Parking Lease"). The form of the Parking Lease has not yet been negotiated by the City and the Clinic. The City will endeavor in good faith to negotiate and execute the Parking Lease with the Clinic, in a form acceptable to Developer, within sixty (60) days after the Effective Date (the "Parking Lease Deadline"). Developer shall have a right to extend the Parking Lease Deadline by sixty (60) days by delivery of written notice to the City. The City agrees to cooperate with Developer in negotiating the Parking Lease prior to the Parking Lease Deadline and the City agrees to keep Developer reasonably apprised of the status and progress of such negotiations. Notwithstanding the foregoing, the City shall have a right to enter into the Parking Lease in a form that fulfills its obligations under the Master Agreement. Subject to any mutual agreement of the City and Developer to the contrary, (i) if the Parking Lease is not negotiated and executed by the Parking Lease Deadline (as the same may have been extended), or (ii) if the Parking Lease negotiated and executed by the City and the Clinic is not acceptable to Developer in its sole discretion, Developer shall have a right, exercisable by delivery of written notice to the City within five (5) business days after the Parking Lease Deadline (as the same may have been extended) to terminate this Agreement, whereupon this Agreement shall terminate and be of no further force and effect, except for those obligations that expressly survive the termination of this Agreement. In the case of (i) above, if Developer did not exercise its termination right under this Section 1.5(b), the City shall have a right to enter into the Parking Lease in a form that fulfills its obligations under the Master Agreement without the Developer's approval prior to Closing. At Closing, Developer will assume the Parking Lease and all lessor obligations thereunder, and the Development Site shall be subject to the Parking Lease.

Section 1.6 Historical Significance. The City and Developer acknowledge the historical significance to the Lakewood community of the hospital building currently located on the Development Site. To the extent economically feasible, Developer shall make an effort to honor such history by considering utilizing similar architectural elements of the hospital building into the design and/or programming of the Project.

ARTICLE II
CONVEYANCE OF THE DEVELOPMENT SITE

Section 2.1 Inspection Period; Indemnification. Developer shall have 270 days following the Effective Date (the "Inspection Period") to conduct, at Developer's sole cost and expense, any inspections of the Development Site that Developer deems necessary or desirable to confirm the feasibility of the Project and the condition of the Development Site, in Developer's sole and absolute discretion, including, without limitation, physical inspections, environmental inspections, tests and surveys, soil borings, geotechnical testing, surveys and title searches, and marketing studies; provided, however, Developer may extend the Inspection Period for an additional 90 days by written notice to the City prior to the expiration of the initial Inspection Period so long as Developer is working in good faith to determine the feasibility of the Project. Developer shall provide the City, upon request, at no additional cost to the City or Developer, copies of all inspections or reports obtained by Developer in connection with its inspection of the Development Site, without representation or warranty regarding the content thereof or explanation of the suitability of the results for the Project. Developer shall have the right, at any time prior to the expiration of the Inspection Period (as may be extended as provided in this Section 2.1), to terminate this Agreement, on written notice to the City, if the Development Site is unacceptable to Developer for any reason (or no reason) in Developer's sole determination and, upon such termination, the parties' obligations under this Agreement shall terminate, except for those obligations that expressly survive the termination of this Agreement. Any conditions disclosed during the Inspection Period as a result of any test, examination, inspection or survey and not objected to by Developer during the Inspection Period or that are accepted by Developer shall be deemed approved by Developer for purposes of this Agreement. Developer hereby indemnifies and agrees to defend and hold harmless the City from and against all liability, loss, damage and expense (including attorneys' fees) arising from any damage to persons or property caused by the inspection of the Development Site by Developer or its agents or consultants. Developer shall maintain commercial general liability insurance with a reputable insurer licensed in the State of Ohio, with a Best's rating of A10 or better, providing minimum limits of liability of One Million Dollars ($1,000,000) per occurrence, Two Million Dollars ($2,000,000) aggregate, with an umbrella excess liability policy in minimum amount of Five Million Dollars ($5,000,000) per occurrence bodily injury/property and Five Million Dollars ($5,000,000) aggregate damage/occurrence, naming the City as an additional insured, and will furnish to the City, prior to entry onto the Development Site, a certificate of insurance in form satisfactory to the City. The indemnities contained in this Section 2.1 shall survive the Closing or any termination of this Agreement without a Closing for a period of one hundred eighty (180) days after Closing or termination, and shall not merge with the Deed (defined below) or any other document to be delivered at Closing.

Section 2.2 Condition of the Development Site. Developer acknowledges and agrees that (a) except as expressly provided herein, the City has made no representation or warranty whatsoever, express or implied, as to the condition, quantity or quality of the Development Site, or any portion thereof, and (b) Developer agrees to accept the Development Site and all portions thereof in "AS IS" condition as of the date of Closing. EXCEPT AS EXPRESSLY SET FORTH

IN THIS AGREEMENT, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS SELLING AND DEVELOPER IS PURCHASING THE DEVELOPMENT SITE ON AN "AS IS" "WHERE IS" AND "WITH ALL FAULTS" BASIS IN ITS CURRENT CONDITION, AND THE CITY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE DEVELOPMENT SITE, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY THE CITY IN THIS AGREEMENT. EXCEPT FOR LIABILITY ARISING FROM BREACH OF SUCH REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY THE CITY IN THIS AGREEMENT, DEVELOPER HEREBY RELEASES THE CITY FROM ANY AND ALL LIABILITY RELATING TO THE PRESENT CONDITION OF THE DEVELOPMENT SITE, INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL CONDITIONS. Except as otherwise expressly provided herein, Developer hereby acknowledges, agrees, represents and warrants to the City that various factual matters unknown to Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses and other claims and liabilities that are currently unknown and unanticipated to or by Developer, and Developer further acknowledges, agrees, represents and warrants to the City that the waivers and releases given herein have been negotiated by the parties and agreed to by Developer notwithstanding any such lack of knowledge of or anticipation by Developer, and that Developer nevertheless hereby releases, discharges and acquits, the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses and other claims and liabilities, except to the extent arising from the gross negligence or intentional misconduct of the City or its representatives, employees or agents. The provisions of this Section 2.2 shall survive, without time limitation, the Closing or any termination of this Agreement without a Closing, and shall not merge with the Deed or any other document to be delivered at Closing.

Section 2.3 Closing.

(a) The closing of the transactions contemplated by this Article II (the "Closing") shall take place in escrow on a date mutually agreeable to the City and Developer not later than 30 days following the expiration of the Inspection Period (as may be extended), or on such other date as may be established in accordance with the provisions of this Agreement or otherwise agreed to by the parties in writing (the date of Closing, as the same may be so adjusted or extended, is herein referred to as the "Closing Date"). The City and Developer hereby appoint Providence Title Agency, located at 27540 Detroit Road, Suite 106, Westlake, Ohio 44145, attention: Jeanne M. Inman (the "Escrow Agent") to act as escrow agent for the Closing of this transaction. A signed counterpart of this Agreement shall serve as the escrow instructions to the Escrow Agent.

(b) On the Closing Date, and provided that Developer simultaneously performs its obligations under this Article II, the City shall deliver to Escrow Agent (i) a limited warranty deed, including the Reversionary Right described below (the "Deed"), conveying fee title to the

Development Site to Developer or its nominee(s) (to the extent permitted by this Agreement), subject to: (A) real estate taxes and assessments which are a lien but not yet due and payable, (B) building and zoning ordinances and regulations, (C) any easements, restrictions and other conditions set forth in the title commitment issued by Escrow Agent for the issuance of an ALTA Owner's Policy of Title Insurance (2006 Form) (the "Title Policy") that are not objected to in writing by Developer during the Inspection Period, (D) the Restrictive Covenant and (E) the Parking Lease (collectively, the "Permitted Exceptions"); (ii) an executed counterpart of assignment of the City's rights and obligations as lessor under the Parking Lease (the "Parking Lease Assignment"); and (iii) any affidavit reasonably required by the Escrow Agent to cause the Escrow Agent to delete the so-called "standard exceptions" from the Title Policy. On the Closing Date, and provided that the City simultaneously performs its obligations under this Article II, Developer shall deliver to Escrow Agent (1) the purchase price of $1.00 (the "Purchase Price"); (2) an executed counterpart of the Parking Lease Assignment; and (2) a real property conveyance fee statement.

(c) On the Closing Date, Escrow Agent shall complete the transaction described in this Article II by (i) causing the Deed and Restrictive Covenant to be filed for record with the Cuyahoga County Recorder; (ii) issuing the Title Policy to Developer; and (iii) disbursing the Purchase Price to the City, after deducting any sums, charges and prorations as required hereunder.

(d) On the Closing Date, the City shall cause to be paid any real estate taxes and assessments, both general and special ("Taxes") relating to the Project Site which are then due and payable. Taxes relating to the period prior to the Closing Date which are not due and payable until after the Closing Date shall be finally prorated between the parties by the Escrow Agent as of the Closing Date, based upon the latest available tax bill; any taxes paid in advance for any period following the Closing Date shall also be prorated by the Escrow Agent based upon actual Taxes paid.

(e) Developer and the City will each pay one-half (1/2) of any fees charged by the Escrow Agent in connection with the consummation of the Closing at the time of the Closing. The City shall pay all local or state real estate transfer taxes, revenue or documentary stamps and Developer will pay for the recording fees for recording the Deed. Developer and the City will each pay one-half (1/2) of the Title Policy premium, and Developer shall pay the cost of any endorsements and any loan policy premiums. All other costs and expenses of closing the sale of the Development Site to Developer shall be borne in accordance with local custom. Each party shall bear its own legal expenses incurred in connection with the negotiation, documentation and Closing of the sale of the Development Site.

Section 2.4 City Conditions to Closing.

(a) The obligations of the City under this Article II to sell the Development Site and consummate the transaction contemplated hereby shall be subject to the satisfaction of the following conditions on or before the Closing Date, except to the extent that the City waives any of such conditions in writing at or prior to Closing:

(i) Developer has obtained executed commitment letters from one or more lenders sufficient for financing at least the construction of the Public Plaza, Minimum Combined Commercial Component, Minimum Office Component, Minimum Retail Component, and Parking Garage (collectively, the "Initial Project"), and such financing will close simultaneously with the Closing;

(ii) Developer and the City have commenced negotiation of the O&M Plan (defined below);

(iii) Developer has obtained the necessary rezoning and any required lot splits or consolidations contemplated by Section 4.1 below;

(iv) ABR and City Planning Commission have approved the Plans and Specifications (defined below) for the Initial Project as contemplated by Section 4.2 below;

(v) Developer confirms in writing that the representations and warranties set forth in Section 3.1 continue to be true and correct as of the Closing Date in all material respects;

(vi) Developer shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed and complied with by Developer on or before the Closing Date;

(vii) The City shall have received each of the items to be delivered to it or for its benefit under this Agreement prior to the Closing Date; and

(viii) Between the Effective Date and the Closing Date, no written order shall have been entered and be in effect by any court of competent jurisdiction, and no law shall have been promulgated or enacted and be in effect, that restrains, enjoins or invalidates the transactions contemplated hereby.

(b) If the conditions to transfer of the Development Site set forth in Section 2.4(a) are not satisfied within three hundred sixty five (365) days after the expiration of the Inspection Period (as the same may be extended) (the "Outside Closing Date"), the City shall have the option of terminating this Agreement by notifying Developer of such election in writing, which writing shall specifically state the condition(s) that Developer has failed to satisfy, and (i) Developer shall have a period of thirty (30) days following receipt of such notice in which to satisfy the specified condition(s) and (ii) the Outside Closing Date shall be extended automatically to allow the running of such thirty (30)-day cure period. Notwithstanding the foregoing, Developer shall have a right, exercisable by Developer in its sole discretion by delivery of written notice to the City at least fifteen (15) days prior to the expiration of the Outside Closing Date, to extend the Outside Closing Date for a reasonable time, but in no event more than three hundred sixty five (365) days, provided Developer is diligently pursuing satisfaction of any remaining conditions. Upon any termination by the City pursuant to this

Section 2.4, the parties will have no further rights or obligations under this Agreement except for provisions of this Agreement that expressly survive termination. In the event that the City terminates this Agreement pursuant to this Section 2.4(b) due to a failure of a condition set forth in Section 2.4(a)(v) through (vii), then Developer shall reimburse the City for all documented out-of-pocket expenses incurred by the City in connection with this Agreement through the termination date up to a maximum limit of $500,000.00.

(c) The City agrees to act in good faith and use commercially reasonable efforts to cooperate with Developer to satisfy each of the conditions set forth in Section 2.4(a)(ii) through (iv), provided that (i) Developer properly follows established processes for obtaining any required approvals and (ii) the City shall not be obligated to waive, amend or modify any legal requirements or established processes for obtaining any required approvals, and the City may not rely on the failure of any condition set forth in Section 2.4(a)(ii) through (iv) to be satisfied to terminate this Agreement pursuant to Section 2.4(b) if such failure was caused by the City's noncompliance with this Section 2.4(c).

Section 2.5 Developer Conditions to Closing.

(a) The obligations of the Developer under this Article II to acquire the Development Site and consummate the transaction contemplated hereby shall be subject to the satisfaction of the following conditions on or before the Closing Date, except to the extent that Developer waives any of such conditions in writing at or prior to Closing:

(i) The City has completed certain hazardous material abatement and demolition and site preparation work on the Development Site in accordance with the specifications set forth in the bid package posted by the City on September 27, 2018 for Project No. 18-016. In the alternative, the parties may mutually agree that Developer will complete such site preparation work or a portion hereof. If the parties so agree, they will enter into an amendment to this Agreement confirming the scope of Developer's responsibility, the City's financial contribution to the completion of such work and disbursement requirements for such financial contribution. For the avoidance of doubt, if Developer assumes the responsibility for completing such work, this Section 2.5(a)(i) shall be deleted with regard to the portion of the work that the parties agree will be completed by Developer and completion of such work shall not be a condition to Developer's obligation to consummate the transaction contemplated by this Agreement;

(ii) Developer and City have commenced negotiation of the O&M Plan;

(iii) Developer, with assistance and support from the City, has obtained the necessary rezoning and any required lot splits or consolidations contemplated by Section 4.1 below;

(iv) The applicable City Review Bodies (defined below) have approved the Plans and Specifications for the Initial Project as contemplated in Section 4.2 below;

(v) The City confirms in writing that the representations and warranties set forth in Section 3.2 continue to be true and correct as of the Closing Date in all material respects;

(vi) The City shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed and complied with by the City on or before the Closing Date;

(vii) Developer shall have received each of the items to be delivered to it or for its benefit under this Agreement prior to the Closing Date;

(viii) Between the Effective Date and the Closing Date, no written order shall have been entered and be in effect by any court of competent jurisdiction, and no law shall have been promulgated or enacted and be in effect, that restrains, enjoins or invalidates the transactions contemplated hereby; and

(b) If the conditions to transfer of the Development Site set forth in Section 2.5(a) are not satisfied by the Closing Date (as the same may have been extended), but in no event earlier than three hundred ninety-five (395) days after the Effective Date, Developer shall have the option of terminating this Agreement by notifying the City of such election in writing, which writing shall specifically state the condition(s) that the City has failed to satisfy, and (i) the City shall have a period of thirty (30) days following receipt of such notice in which to satisfy the specified condition(s) and (ii) the Closing Date shall be extended automatically to allow the running of such thirty (30)-day cure period. For the avoidance of doubt, pursuant to this Section 2.5(b), the City shall have a right to extend the Closing Date up to the date that is three hundred ninety-five (395) days after the Effective Date solely for the purpose of allowing the conditions set forth in Section 2.5(a) to be met and, if such conditions shall have been met sooner, the parties shall promptly proceed to Closing. Upon termination by Developer pursuant to this Section 2.5(b), the parties will have no further rights or obligations under this Agreement except for provisions of this Agreement that expressly survive termination. In the event that Developer terminates this Agreement pursuant to this Section 2.5(b) due to a failure of a condition set forth in Section 2.5(a)(i), (ii), or (iv) through (vii), then the City shall reimburse Developer for all documented out-of-pocket expenses incurred through the termination date by Developer in connection with this Agreement up to a maximum limit of $500,000.00.

(c) Developer agrees to act in good faith and use commercially reasonable efforts to cooperate with the City to satisfy each of the conditions set forth in Section 2.5(a)(ii) through (iv), and Developer may not rely on the failure of any condition set forth in Section 2.5(a)(ii) through (iv) to be satisfied to terminate this Agreement pursuant to Section 2.5(b) if such failure was caused by Developer’s noncompliance with this Section 2.5(c).

Section 2.6 Reversion of Residential Component.

(a) Notwithstanding anything contained herein to the contrary, the City shall retain and the Deed shall include a reversionary right terminable as set forth in this Section 2.6 (the "Reversionary Right") in that portion of the Development Site on which the Minimum Residential Component will be constructed, which portion shall be more particularly described in the Deed (the "Residential Development Site"), which may be exercised in the event Developer fails to demonstrate to the City's reasonable satisfaction that the following conditions have been fulfilled on or before the dates set forth below, subject in all cases to Unavoidable Delays (as defined in Section 5.5) (collectively, the "Reversionary Conditions"):

(i) Within 18 months after the Closing Date, Developer has obtained executed commitment letters from one or more lenders or other financing parties sufficient for financing the construction of the Minimum Residential Component, together with confirmation from such lender(s) that such lender(s) are or will be prepared to close the financing on or before the date set forth in Section 2.6(a)(iii).

(ii) Within 18 months after the Closing Date, the City has approved the Unaffiliated Residential Development Partner, if any, in accordance with Section 1.2, if applicable;

(iii) By February 8, 2022, Developer shall have commenced re-grading of the Development Site in preparation for construction of the Minimum Residential Component of the Project; and

(iv) By August 8, 2022, Developer shall have commenced construction of the Minimum Residential Component as evidenced by commencing the pouring of the foundations for the Residential Component (the "Residential Commencement Event").

(b) In the event Developer shall fail to meet any of the Reversionary Conditions on or before the respective deadlines, the City shall have the right, but not the obligation, to exercise its Reversionary Right by providing written notice to Developer within 90 days after the failure of such Reversionary Condition (the "Reversionary Notice"), time being of the essence. The City's failure to exercise its Reversionary Right within such 90-day time period shall be deemed a waiver by the City of its right to exercise the Reversionary Right with respect to such failure. If the City elects to exercise its Reversionary Right, within 120 days after receipt of the City's written notice (unless Developer shall have subsequently satisfied the Reversionary Condition that triggered the Reversionary Right with such 120-day period), Developer shall (i) convey fee ownership of the Residential Development Site to the City by limited warranty deed (the "Reconveyance Deed") in substantially the same form as the Deed, free and clear of all liens and other encumbrances, other than those liens and encumbrances that were in effect immediately prior to the Closing Date and any mutually acceptable reciprocal easement agreement that be necessary for the continued use and development of the other portions of the Project, and (ii) indemnify the City against any changes in the environmental condition of the Residential Development Site arising after the Closing Date but prior to the date of the reconveyance, which indemnification shall survive termination of this Agreement and shall not merge with the Reconveyance Deed.

(c) Prior to the Closing, Developer agrees to obtain an appraisal for the entirety of the Development Site (the "Pre-Closing Appraisal") from an independent appraiser selected by Developer and approved by the City (the "Accepted Appraiser"), with such approval not to be unreasonably withheld, conditioned or delayed by the City. The Pre-Closing Appraisal shall provide the then fair market value of each parcel or portion of the Development Site associated with a component of the Project (e.g., the parcels associated with the Minimum Office Component, the Minimum Retail Component, the Public Plaza, the Curtis Block Building and the Residential Development Site) (the "Pre-Closing Appraised Values"). Promptly after sending the Reversionary Notice, the City shall obtain an updated appraisal for the Residential Development Site from the Accepted Appraiser (the "Updated Residential Appraisal"), which shall determine the then fair market value of the Residential Development Site (the "Post-Closing Residential Development Site Appraised Value"). In connection with the conveyance to the City pursuant to the Reconveyance Deed, the City shall pay Developer an amount equal to any increase in value from the Pre-Closing Appraised Value for the Residential Development Site and the Post-Closing Residential Development Site Value. Notwithstanding anything herein to the contrary, the City shall have the right to revoke the Reversionary Notice at any time up until thirty (30) days after the City's receipt of the Accepted Appraiser's written determination of the Post-Closing Residential Development Site Appraised Value, by delivery of written notice to Developer. The cost of the Pre-Closing Appraisal and the Updated Residential Appraisal shall be borne equally by Developer and the City.

(d) In the event that each Reversionary Condition has been satisfied or expressly waived by the City by the dates set forth in Section 2.6(a) or deemed waived by the City's failure to exercise the Reversionary Right by the outside date set forth in Section 2.6(b), then the Reversionary Right shall automatically terminate without any further action by either party.

ARTICLE III
<u>REPRESENTATIONS AND WARRANTIES</u>

Section 3.1 <u>Developer Representations and Warranties</u>. Developer represents and warrants to the City as follows as of the Effective Date:

(a) Developer is a corporation duly organized and validly existing and in good standing under the laws of Ohio. Developer has the necessary power and authority to enter into this Agreement, and this Agreement constitutes the valid and binding obligation of Developer in accordance with its terms. This Agreement and the transactions contemplated hereby has been approved by the board of directors of Developer;

(b) Developer is not, and will not become, a person or entity with whom U.S. persons are restricted from doing business under the regulations of the Office of Foreign Asset

Control ("OFAC"), the Department of Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), the USA Patriot Act, or other governmental action;

(c) Developer is in compliance with the State of Ohio campaign financing laws set forth in Ohio Revised Code ("ORC") Chapter 3517;

(d) Developer is in compliance with ORC Section 2921.42, to the extent applicable; and

(e) Developer has no knowledge of any finding having been issued against it by the Auditor of the State of Ohio that is "unresolved".

Section 3.2 City Representations and Warranties. The City hereby represents and warrants to Developer as follows as of the Effective Date:

(a) The City has the necessary power and authority to enter into this Agreement, and this Agreement constitutes the valid and binding obligation of the City in accordance with its terms.

(b) The execution and delivery of this Agreement by the City, and the consummation of the transactions contemplated hereby and the performance by the City of its obligations hereunder, have been duly authorized and do not violate any provision of any municipal, state or federal law, statutory or otherwise, to which the City or the Development Site is subject.

(c) There is no litigation, proceeding or action pending or, to the best knowledge of the Law Director, the Mayor, the Finance Director or the Planning Director of the City, threatened in writing against or relating to the Development Site, before any federal, state or local court or regulatory agency, or other governmental authority, which could reasonably be expected to have a materially adverse effect on the Development Site, and no written notice of any of the above has been received by the Law Director, the Mayor, the Finance Director or the Planning Director of the City.

(d) There are no condemnation actions threatened or pending regarding the Development Site and no notice of any has been received by the Law Director, the Mayor, the Finance Director or the Planning Director of the City.

(e) The City has not entered into any purchase contracts, rights of refusal, options or other agreements of any kind whereby any person or entity other than the City has acquired any right, title or interest in, or right to possession, use, enjoyment or proceeds of all or any portion of the Development Site and there are no leases, tenancies or other possessory interests in the Development Site which will continue after the Closing Date, other than the Parking Lease.

(f) No representation or warranty of the City contained in this Agreement, and no written statement made by or on behalf of the City to Developer pursuant to this Agreement, contains an untrue statement of a material fact.

ARTICLE IV
REZONING; LOT SPLIT AND CONSOLIDATION; APPROVAL OF PLANS

Section 4.1 Rezoning; Lot Split and Consolidation. In connection with the Project, the Development Site will need to be rezoned as a "Planned Development", as more particularly described in Chapter 1156 of the Lakewood Zoning Code. Such rezoning process will include the approval of the design of the Public Plaza and the proposed rules and regulations governing its use. The parties will work together to commence the rezoning process as soon as possible after the Effective Date. Developer shall engage a surveyor to undertake a lot consolidation and any lot splits required by Developer for the development of the Project. If the rezoning process is delayed due to reasons outside of Developer's reasonable control, the City will agree to an extension of the Inspection Period sufficient to allow for the completion of the rezoning process. All costs of rezoning and any lots splits or consolidations shall be borne by Developer.

Section 4.2 Approval of Plans and Specifications. Plans and specifications of the Project, including the Public Plaza, as necessary to comply with ABR requirements (the "Plans and Specifications") shall be prepared by a registered civil engineer, registered architect and registered landscape architect/land planner, as applicable, in accordance with this Agreement and all applicable State and local laws and regulations, and shall be submitted to City Planning Commission and ABR and/or such additional City departments or commissions as may be required to comply with all applicable City laws, rules and/or regulations (collectively, the "City Review Bodies") for approval. The Plans and Specifications shall reflect a commitment to high quality design and construction. Such Plans and Specifications shall be reviewed, and if acceptable, approved by the applicable City Review Bodies according to all applicable City laws, rules and/or regulations, except as may be specifically modified by this Agreement. Upon approval, the Plans and Specifications shall be used as the basis upon which construction documents will be prepared for the purpose of constructing the Project and obtaining building permits from the City for the Project. In addition to the formal approvals described in this Article IV, Developer will coordinate with the City Architect and Planning Director on all aspects of the Project, including, in particular, on the design of the Public Plaza and any other public spaces. The cost of obtaining all required approvals from the City Review Bodies shall be borne by Developer.

Section 4.3 Other Information; Responsibility for Costs. Developer shall promptly submit all other legally required documentation necessary to develop the Project in accordance with the Plans and Specifications to the applicable City Review Bodies. Developer shall be solely responsible for obtaining and paying for all requisite City approvals and permits and complying with all City laws, rules and/or regulations in connection with the construction of the Project. The City's execution of this Agreement does not indicate or imply that any such approvals have been or must be approved by the City Review Bodies. Notwithstanding anything contained in this Section 4.3 to the contrary, the City will cooperate with Developer in obtaining all approvals required pursuant to this Article IV as contemplated by Section 2.4(c) hereof.

ARTICLE V
CONSTRUCTION OF THE PROJECT

Section 5.1 Construction of the Project. The various components of the Project will be constructed in accordance with the Commercial Design Guidelines and the Development Objectives (copies of which are available at www.onelakewood.com/DowtownRFO), the approved Plans and Specifications and all applicable City approvals and permits. In addition, the Project will be constructed of high quality materials. "High quality materials" shall mean durable and authentic materials containing thoughtful detailing. The Project will reflect a "four-sided" design that is aesthetically pleasing from all building elevations. The Project will seamlessly integrate with the design, massing and materials of existing commercial buildings in the City of Lakewood. In particular, Developer will cooperate with the City to arrive at a mutually acceptable and appropriate transitioning of the massing and height of south building(s) to integrate with the existing houses located on Belle Avenue and Marlowe Avenue, as determined by Developer, ABR and City Planning Commission.

Section 5.2 Timing Requirements.

(a) The anticipated timeline and master schedule for the Project is attached hereto as Exhibit E (the "Master Schedule") and Developer shall use commercially reasonable efforts to cause the Project to be constructed in accordance with such Master Schedule. The Master Schedule may be amended from time to time by Developer as development of the Project progresses, in Developer's discretion, but with prior written notice to the City, but not its prior written approval. Notwithstanding the foregoing, the outside commencement date set forth on the Master Schedule and the Outside Completion Dates (as defined in Section 5.2(b) below) may only be extended by Developer in Developer's discretion for a period of up to sixty (60) days ("Developer's Extension Right"), or as a result of Unavoidable Delays in accordance with Section 5.5. Developer anticipates commencing construction of one or more components of the Project no later than ninety (90) days after the Closing Date and anticipates completing construction of the entire Project not later than sixty (60) months after the expiration of the Closing Date, subject to Unavoidable Delays.

(b) Notwithstanding the foregoing, subject to any extension resulting from Developer's Extension Right or any extension resulting from Unavoidable Delays in accordance with Section 5.5:

(i) Developer shall complete construction of the Minimum Combined Commercial Component no later than May 9, 2023, as evidenced by a certificate of substantial completion executed by Developer's architect confirming that the Minimum Combined Commercial Component is eligible to receive all applicable City approvals necessary to obtain a certificate of occupancy upon completion of any tenant-specific work ("Substantial Completion - Commercial");

(ii) Developer shall complete construction of the Public Plaza and Parking Garage components of the Project no later than May 9, 2023, as evidenced by sufficient completion to make such components ready for public use ("Substantial Completion – Public Components");

(iii) Developer shall complete (or caused to be completed) renovation of the Curtis Block Building no later than May 9, 2022, to the point of Substantial Completion – Commercial ("Substantial Completion – Curtis Block"); and

(iv) Developer or the Unaffiliated Residential Development Partner, as applicable, shall substantially complete construction of the Minimum Residential Component no later than May 9, 2024, as evidenced by (i) a certificate of substantial completion executed by Developer's architect of the "for rent" portion of the Residential Component along with a certificate of occupancy with respect thereto, and (ii) a certificate of substantial completion executed by Developer's architect confirming that the majority of any "for sale" portion of the Residential Component is sufficiently complete so that it is eligible to receive a certificate of occupancy upon installation of appliances and other finishes once selected by the end purchaser (as applicable, "Substantial Completion – Residential").

For the purpose of this Agreement, the dates set forth above in subsections (i)-(iv) for Substantial Completion – Commercial, Substantial Completion – Public Components, Substantial Completion – Curtis Block and Substantial Completion – Residential are each an "Outside Completion Date".

Section 5.3 Compliance with Plan and Specifications. All work with respect to the construction of improvements and site development of the Project, if applicable, shall be in conformity in all material respects with this Agreement, the final approved Plans and Specification and any changes thereto approved by the City (if such approval is required hereunder) or pursuant to applicable City laws, rules and/or regulations.

Section 5.4 Project Funding. Except as otherwise set forth in this Agreement, Developer is solely responsible for funding the Project, whether through equity, conventional financing, or otherwise. The City will cooperate with and provide support to Developer in its efforts to identify and apply for additional available city, county, state and federal funding for the Project and will consider providing, without being obligated to provide, additional incentives related to securing long-term tenants and improving the economic viability of the Project.

Section 5.5 Unavoidable Delays. Except as otherwise provided herein, Developer shall not be considered in default of its obligations to be performed under this Agreement if delay in the performance of such obligations is due to acts of God, acts of public enemies, orders or restraints of any kind of the government of the United States of America or of the State of Ohio or any of their departments, agencies, or officials, or any civil or military authority, riots, landslides, earthquakes, hurricanes, tornados, floods, the actions of the City or failures of the City to perform its obligations hereunder, the failure of the City and the City Review Bodies to timely review and approve the Project or any component thereof in accordance with the Master Schedule, including but not limited to the rezoning, the Plans and Specifications or any other matter relating to the Project requiring approval hereunder or other cause similar in nature to the foregoing beyond its control and without its fault or negligence ("Unavoidable Delays"), but not including lack of financing or financial capacity by the Developer. In the event of the occurrence of any Unavoidable Delays, the time or times for performance of such obligations shall be extended for the period of the enforced delay up to a maximum period of 180 days; provided, however, that Developer shall within a reasonable time after the beginning of any such Unavoidable Delays, notify the City in writing thereof and of the cause thereof and of the duration thereof, or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within a reasonable time after the end of the delay, notify the City of the actual duration of the delay. In addition, the term "Unavoidable Delays" shall include delays in the issuance of any permits necessary to construct the Project, unless such delay is due solely to Developer's failure to deliver such documentation or information necessary to issue such permit.

Section 5.6 Quality of Work; Minimization of Interference. Developer will use commercially reasonable efforts to ensure that all work done in connection with the construction of the Project or any renovation, rehabilitation, restoration or repair thereto shall be done in a good and workmanlike manner, free from faults and defects and in compliance with the applicable building and zoning laws and will comply with all laws, ordinances, order and requirements of all governmental authorities. Prior to commencing construction, Developer, with input from the City, shall develop a plan to minimize the impact of construction activities on adjacent residents, including addressing contractor parking, truck circulation, permitted construction hours and construction phasing.

Section 5.7 Bonds.

(a) Prior to commencing construction on any component of the Initial Project, Developer shall cause to be delivered to the City a performance bond and labor and material payment bond (collectively, a "Payment and Performance Bond"), covering the work of Developer's general contractor issued by a surety company licensed to do business in the State of Ohio as surety, covering such component of the Initial Project for which construction is about to begin. The aforementioned Payment and Performance Bond shall include a multiple obligees rider that adds the City as an additional obligee of the Payment and Performance Bond.

(b) Prior to commencing renovations to the Curtis Block Building, Developer shall cause to be delivered to the City a Payment and Performance Bond, covering the work of Developer's (or lessee's) general contractor issued by a surety company licensed to do business in the State of Ohio as surety, covering such renovations. The aforementioned Payment and Performance Bond shall include a multiple obligees rider that adds the City as an additional obligee of the Payment and Performance Bond.

(c) Prior to commencing construction of the Minimum Residential Development, Developer (or the Unaffiliated Residential Development Partner) shall cause to be delivered to the City a Payment and Performance Bond, covering the work of Developer's (or the Unaffiliated Residential Development Partner's) general contractor issued by a surety company licensed to do business in the State of Ohio as a surety, covering the Minimum Residential Component. The aforementioned Payment and Performance Bond shall include a multiple obligees rider that adds the City as an additional obligee of the Payment and Performance Bond.

Section 5.8 Insurance. Developer shall obtain and/or cause its contractors to maintain all policies of insurance as required by this Section 5.8:

(a) *Builders Risk Insurance*. During construction and subsequent reconstruction, restoration, renovation or rehabilitation of the Project, Developer shall procure and maintain, and/or cause its contractors or agents to procure and maintain all builders' risk and fire insurance with extended coverage upon the Project improvements then to be constructed in the amount of one hundred percent (100%) of the replacement cost thereof.

(b) *Public Liability Insurance*. During construction and until completion of the construction of the Project improvements, Developer shall insure against all claims for personal injury or death or property damage occurring in or about the Development Site, with a reputable insurer licensed in the State of Ohio, with a Best's rating of A10 or better, with minimum limits of liability of One Million Dollars ($1,000,000) per occurrence, Two Million Dollars ($2,000,000) aggregate, with an umbrella excess liability policy in minimum amount of Five Million Dollars ($5,000,000) per occurrence bodily injury/property and Five Million Dollars ($5,000,000) aggregate damage/occurrence, naming the City as an additional insured. Developer will deliver to the City a certificate of insurance in form satisfactory to the City at least one (1) week prior to the commencement of construction and certificates for replacement policies will be delivered at least 15 days prior to the expiration of the applicable policy(ies). All such policies shall contain agreements by the insurers that the policies shall not be cancelled except on 30 days prior written notice to Developer and the City; Developer shall promptly forward to the City a copy of such notice of cancellation.

Section 5.9 Sustainability.

(a) Developer must comply with the minimum requirements of Section 1339 of the City of Lakewood Municipal Code, which address storm water management.

(b) In addition to complying with the requirements of Section 1339, Developer currently intends to incorporate other environmental and sustainability elements consistent with Green Globe and Leadership in Energy and Environmental Design (LEED) principles in the design and construction of the Project. Developer in good faith will explore design options for the Project that prioritize renewable energy, alternative transportation and green infrastructure, which may include, to the extent economically feasible in Developer's sole discretion, the following elements:

(i) On-site renewable energy (examples may include installation of solar panels and/or geothermal energy systems) and/or a smart grid system with advanced energy metering; and

(ii) A car and/or bicycle share program, ample bicycle facilities, including dedicated, secure storage areas, and electric vehicle charging stations, or other alternative transportation options.

In the event that the aforementioned design options require additional studies, approvals or permits, Developer and the City agree to share associated costs, to the extent mutually agreeable. To the extent any of the foregoing elements will add additional costs to the Project, the City agrees to work in good faith to help Developer identify and pursue funding for such additional expenses.

ARTICLE VI
USE AND DESIGN RESTRICTIONS

Section 6.1 Restrictions on Use and Design.

(a) Developer, for itself and its successors and assigns, and every successor in interest to any portion of the Development Site, agrees and covenants that Developer and its successors and assigns shall not permit the use of any portion of the Development Site for any of the uses set forth on Exhibit F attached hereto and incorporated herein (the “Prohibited Uses”).

(b) In addition to the Prohibited Uses, the following restrictions shall apply to the Public Plaza:

(i) The Public Plaza shall satisfy the Public Plaza Purpose, as more particularly described in this Agreement and the O&M Plan.

(ii) The initial design of the Public Plaza shall be subject to review and approval by the City Review Bodies in accordance with ABR and City Planning Commission requirements as part of the “Planned Development” rezoning process. Any subsequent material changes to the design of the Public Plaza will be subject to approval by the City and may also require approval from the City Review Bodies in accordance with applicable City laws, rules and/or regulations.

(iii) The Public Plaza shall meet the Required Public Plaza Attributes; provided, however, the City Review Bodies may agree to modifications to the Required Public Plaza Attributes so long as such modifications are consistent with a first-class multi-functional community gathering space dedicated to public use. Exclusive outdoor seating/patio areas supporting tenants in buildings adjacent to the Public Plaza shall not materially encroach upon the acreage aspect of the Required Public Plaza Attributes.

(iv) The Public Plaza may not be encumbered or developed with permanent improvements, except for such permanent improvements that are consistent with the Public Plaza Purpose, such as landscaping, water features, planters, retaining walls, benches and other public seating, kiosks, bandstands and gazebos. Other than the foregoing, permanent building structures, such as a restaurant or cafe, shall be prohibited without the approval of the City Review Bodies. Temporary installments used in connection with events being held on the Public Plaza, such as, without limitation, ice skating rinks, markets, festivals, stages, risers and pavilions shall be permitted, subject to compliance with applicable City laws, rules and/or regulations.

Section 6.2 Covenants Binding Upon Successors/Period of Duration. It is intended and agreed that the agreements, covenants, and restrictions provided in this Article VI, shall be covenants running with the land in perpetuity and, without regard to technical classification or designation, legal or otherwise, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of the City, its successors and assigns, and any successor in interest to the Development Site, or any part thereof, and against Developer, its successors and assigns, and every successor in interest to the Development Site or any part thereof or any interest therein, and any party in possession or occupancy of the Development Site or any part thereof.

Section 6.3 City's Right to Enforce. Without intending to restrict the provisions of this Article VI, it is intended and agreed that the City and its successors, shall be deemed beneficiaries of the agreements, covenants, and restrictions provided in this Article VI both for and in their own right and also for the purposes of protecting the interests of the community. Such agreements, covenants, and restrictions shall run in favor of the City and its successors for the entire period during which same remain in effect, without regard to whether the City and its successors have at any time been, remain, or are an owner of any portion of the Development Site or interest therein to or in favor of which such agreements, covenants, and restrictions relate. The City and its successors shall have the right, in the event of any breach of any such agreement, covenant, or restriction, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce such agreements, covenants, and restrictions and to enforce the curing of any breach thereof.

ARTICLE VII
MAINTENANCE AND PROGRAMMING; ACCESS TO THE PUBLIC PLAZA

Section 7.1 Availability of the Public Plaza to Lakewood Residents. The Public Plaza will be privately owned and maintained space designated for use by the general public. Developer shall develop and administer a set of rules and regulations for use of the Public Plaza and a permitting process for third party events, keeping in mind community needs and priorities, each of which shall be incorporated in the O&M Plan.

Section 7.2 City Programs on the Public Plaza. Developer agrees that the Public Plaza shall be available to the City, without rental or other similar charges, for a maximum of fifteen (15) City-sponsored community events each year; provided, however, the City will be responsible for any costs related to routine maintenance and repairs resulting from such City event, all utilities used during such events, any damage caused by or resulting from such City event, and all other incidental costs related to such events, including security and any set-up or preparation work. The City and Developer will mutually agree on a schedule of City-sponsored events on an annual basis no later than October 1st of each calendar year. In the event the City does not utilize all fifteen (15) of its events in such annual schedule, the City shall have the right to schedule other City-sponsored events during the year upon not less than 90 days prior written notice to Developer up to the fifteen (15) event maximum, provided the Public Plaza has not already been reserved by Developer or a third party for such date(s). During all City-sponsored community events, the City agrees to maintain commercial general liability and liquor liability insurance (if applicable) with commercially reasonable deductibles and limits of no less than One Million Dollars ($1,000,000) per occurrence bodily injury/property and Two Million Dollars ($2,000,000) aggregate damage/occurrence and fire and extended coverage policy of insurance covering loss or damage against "all risk" of physical loss for fixtures, equipment, inventory and other personal property to be located on the Public Plaza, in each case, naming Developer, the owner of the Public Plaza, any Mortgagee, any management company or any other party reasonably requested by Developer as additional insureds or loss payees, as applicable, and consistent with requirements for other third party events held on the Public Plaza. Prior to on-site preparation for any City-sponsored community event, the City will furnish to Developer certificates of insurance in form reasonably satisfactory to Developer.

Section 7.3 Maintenance. Developer will maintain the Project in a first class manner, consistent with other high quality mixed use developments in Northeast Ohio, including necessary mulching, grass cutting, pruning and watering, and will comply with an operations and maintenance plan for the Project, including the Public Plaza (the "O&M Plan"). The City and Developer will use good faith efforts to reach agreement on a mutually agreeable O&M Plan as soon as reasonably practical after Closing, but no later than 120 days prior to Substantial Completion – Public Components.

Section 7.4 Restrictive Covenant. Prior to conveying the Development Site to Developer, the City shall record against the portion of the Development Site constituting the Public Plaza, a restrictive covenant in the form attached hereto as Exhibit G (the "Restrictive Covenant"), reflecting the provisions of Section 6.1(b), this Article VII and other restrictions and requirements set forth therein relating to the use and operation of the Public Plaza.

ARTICLE VIII
FINANCING; MORTGAGEE PROTECTIONS

Section 8.1 Mortgagee Protections. Except as expressly set forth herein, the City acknowledges and agrees that this Agreement neither prevents nor limits the Developer from encumbering all or any portion of the Development Site or improvement thereon by any mortgage or other security device securing financing with respect to the Project and the Development Site (any mortgagee of any mortgage encumbering all or any portion of the Development Site or improvement thereon is referred to herein as "Mortgagee" and, collectively, as “Mortgagees”). The City acknowledges that such Mortgagee(s) may require certain Agreement interpretations or execution of financing documents and agrees upon request, time being of the essence, to meet with Developer and representatives of such Mortgagee(s) to negotiate in good faith any such request for interpretation and execution of any documents reasonably required by such Mortgagee(s) to evidence the same. Notwithstanding anything herein to the contrary, (i) in the event of a default by Developer where a Mortgagee elects to complete construction of any component of the Project on Developer’s behalf, such Mortgagee shall be obligated to abide by the terms and conditions of this Agreement to insure such component(s) of the Project is/are completed as contemplated herein, and (ii) all Mortgagees shall be entitled to the following rights and privileges:

(a) Except as expressly set forth herein, neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Development Site or any portion thereof or any improvement thereon made in good faith and for value;

(b) A Mortgagee that has submitted a request in writing to the City in the manner specified herein for giving notices is entitled to receive written notification from the City of any default by Developer within ten days of sending notice of such default to Developer;

(c) Upon a Mortgagee’s receipt of notice of Developer’s default from the City, such Mortgagee shall have the right, but not the obligation, to cure the default during any cure period remaining under this Agreement in lieu of Developer in the event that Developer is not diligently pursuing the same, but in no event less than 30 days, except that as to a default requiring title or possession of all or any portion of the Development Site or improvement thereon to effectuate a cure, if the Mortgagee timely cures all defaults which do not require possession to effectuate a cure and commences foreclosure proceedings to acquire title to all or any portion of the Development Site or improvement thereon within 90 days after receipt from the City of the written notice of default and thereafter diligently and continuously prosecutes such foreclosure to completion, the Mortgagee shall be entitled to cure such default after obtaining title or possession provided that such Mortgagee does so promptly and diligently after obtaining title or possession; and

(d) Any Mortgagee who comes into possession of all or any portion of the Development Site or improvement thereon pursuant to foreclosure of the mortgage or deed in lieu of foreclosure takes possession subject to the terms of this Agreement; provided, however, that the restrictions on assignments in Section 11.1 and transfers set forth in Section 11.2 shall not apply to any Mortgagee or its successors and/or assigns who take possession of the Development Site, whether by foreclosure, deed-in-lieu of foreclosure or otherwise.

ARTICLE IX
DEFAULT; REMEDIES

Section 9.1 In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, within 30 days after receipt of such notice, or in the event the default or breach cannot be cured within thirty (30) days, such longer period of time as may be reasonable, but in no event longer than 180 days after receipt of the notice. If such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time after such written notice, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

Section 9.2 Bankruptcy. Without limiting the generality of Section 9.1, it also shall be an event of default hereunder if Developer shall:

(a) make any assignment of its property for the benefit of creditors;

(b) permit the appointment of a receiver, trustee or assignee with respect to all or substantially all of its assets;

(c) declare bankruptcy or insolvency; or

(d) have any bankruptcy proceedings commenced by or against it, provided, however, the commencement of an involuntary proceeding against Developer shall not be an event of default if dismissed within 60 days following commencement.

Section 9.3 Failure to Complete Construction of the Project.

(a) Without limiting the generality of this Article IX or any other remedies the City may have in connection with Developer's default or breach of this Agreement, if Developer or its Mortgagee fails to complete construction of any component of the Project by the applicable Outside Completion Date, subject to any extension as a result of Developer's Extension Right, any extension as a result of Unavoidable Delays, and any applicable notice or cure period, the City shall have the right (but not the obligation) to repurchase (the "Repurchase Right") the component of the Project for which construction is required to be, but is not yet complete, by delivery of written notice to Developer and its Mortgagee (the "Repurchase Notice"). Within 90 days after receipt of the Repurchase Notice, unless Developer cures the applicable defaults within such 90-day period, Developer shall (i) convey fee ownership of the applicable component of the Project to the City by limited warranty deed (the "Repurchase Deed") in substantially the same form as the Deed, free and clear of all liens and other encumbrances, other than (A) those liens and encumbrances that were in effect immediately prior to the Closing Date, (B) those liens associated with any security instruments associated with the financing of the Project encumbering the component of the Project at issue as of the date of receipt of the Repurchase Notice (collectively, the "Secured Liens"), and (C) any mutually acceptable reciprocal easement agreement that be necessary for the continued use and development of the other portions of the Project, and (ii) indemnify the City against any changes in the environmental condition of the applicable component of the Project arising after the Closing

Date but prior to the date of the reconveyance, which indemnification shall survive any termination of this Agreement and shall not merge with the Repurchase Deed.

(b) Promptly after sending the Repurchase Notice, the City shall obtain an updated appraisal (the "Updated Appraisal") for the component of the Project at issue (the "Post-Closing Appraised Value"). In connection with the conveyance to the City pursuant to the Repurchase Deed, the City shall pay Developer an amount equal to any increase in value from the Pre-Closing Appraised Value for the component at issue to the Post-Closing Appraised Value for the component at issue, less any sums required to payoff and release in full the Secured Liens. Notwithstanding anything herein to the contrary, the City shall have the right to revoke the Repurchase Notice at any time up until thirty (30) days after receipt of the Accepted Appraiser's written determination of the Post-Closing Appraised Value, by delivery of written notice to Developer. The cost of the Updated Appraisal shall be borne equally by Developer and the City.

Section 9.4 Other Rights and Remedies; No Waiver by Delay. The City and Developer shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Article, provided, that any delay by the City or Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights or to deprive it of or limit such right in any way (it being the intent of this provision that the City or Developer should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Article because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved), nor shall any waiver in fact made by the City or Developer with respect to any specific default by the City or Developer under this Article be considered or treated as a waiver of the rights of the City or Developer with respect to any other defaults by the City or Developer under this Article or with respect to the particular default except to the extent specifically waived in writing.

Section 9.5 Reports and Materials. If this Agreement is terminated pursuant to this Article IX, within five (5) Business Days (defined below) after such termination, Developer shall deliver to the City a complete set of all surveys, title reports, environmental reports, soil studies and all other written materials, records or other documents related to the Project that are in Developer's possession or under its control.

ARTICLE X
COMMUNITY ENGAGEMENT AND REPORTING

Section 10.1 Community Engagement. Developer acknowledges that community engagement is a critical component of the Project and will cooperate with the City as part of the planning and approval process to gather and consider input from the Lakewood community and will specifically engage with property and business owners and organizations in the Downtown Lakewood district, as well as residents on residential streets surrounding the Development Site. Developer shall maintain a social media presence for the Project throughout construction and utilize social media as one of many vehicles to provide communications to the community about the Project.

Section 10.2 Reporting. Developer and the City will agree to a mutually acceptable schedule of status updates and meetings throughout the design and construction of the Project as well as a communication plan that has been incorporated into the Master Schedule.

ARTICLE XI
RESTRICTIONS ON ASSIGNMENT OR TRANSFER

Section 11.1 Assignment by Developer. Developer may not assign this Agreement or any of the Developer's rights thereunder without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that (a) Developer's obligations relating to the Minimum Residential Component may be assigned to the Unaffiliated Residential Development Partner without the City's consent, provided the City has approved such Unaffiliated Residential Development Partner pursuant to Section 1.2, and (b) Developer may assign all or a portion of its rights and obligations under this Agreement and its right and interest in and to the Project and Development Site to an Affiliate without the City's consent, so long as such Affiliate acknowledges in writing its obligations under this Agreement for the benefit of the City prior to undertaking any work contemplated herein, a copy of which shall be delivered to the City concurrently with such assignment. For the purposes hereof, the term "Affiliate" of Developer means an entity which controls, is controlled by, or is under common control with, Developer, whether by ownership of equity interests or voting power.

Section 11.2 Transfer of Membership Interests in the Developer. Developer acknowledges that the identity of the persons who have ownership of the interests in and control of Developer are important considerations to the City in entering into this Agreement with Developer. Developer represents and agrees for itself and its shareholders, and for any successor in interest to itself and its shareholders, that it will not convey or otherwise transfer any component of the Project to an unaffiliated third party for a period of three (3) years after such component has achieved Substantial Completion – Commercial, Substantial Completion – Public Components, Substantial Completion – Curtis Block or Substantial Completion – Residential, as applicable, without the City's written approval, which approval will not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, the restrictions set forth in this Section 11.2 include voluntary transfers of ownership interests in Developer to unaffiliated third parties that would result in a change of Control of Developer. Involuntary transfers (whether due to death, disability, divorce, incapacity or otherwise) and transfers to Affiliates, other current direct and indirect equity holders of Developer or to trusts for the benefit of current direct and indirect equity holders of Developer and/or their immediate family members and descendants shall not be subject to this Section 11.2. For the purposes hereof, "Control" means possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management policies of Developer, whether through the ownership of voting securities, as a general partner, as a manager of a manager-managed limited liability company, as the member of a member-managed limited liability company, by contract, or otherwise. A person or entity shall not be deemed to exercise "Control" of another person or entity solely because such person or entity has the direct or indirect right to consent to major decisions. Transfer of the Residential Development Site to an Unaffiliated Residential Development Partner (provided such Unaffiliated Residential Development Partner has been approved by the City pursuant to Section 1.2) shall not be deemed to be a breach of this Section 11.2, but any further transfer of the Residential Development Site shall be subject to the provisions of this Section 11.2.

ARTICLE XII
MBE AND FBE GOALS; BUILDING TRADES

Section 12.1 MBE and FBE Goals. Developer will cause its contractor(s) constructing the Project to use commercially reasonable efforts to meet the following targets for minority and female business participation:

(a) MBE: 12%

(b) FBE: 8%

Section 12.2 Building Trades. Developer recognizes the value of including building trades in the Project and will make good faith efforts to work with the building trades in connection with the Project.

ARTICLE XIII
MISCELLANEOUS

Section 13.1 Notices. Any notice or communication between the parties required or permitted to be given under this Agreement shall be deemed sufficiently given if delivered personally, if mailed by U.S. registered or certified mail or if by Federal Express or other overnight courier service, and addressed as follows:

If to the City: City of Lakewood
12650 Detroit Ave.
Lakewood, Ohio 44107
Attn: Mayor
Email: Mayor@lakewoodoh.net

With a copy to:	City of Lakewood 12650 Detroit Ave. Lakewood, Ohio 44107 Attention: Law Director Email: Law@lakewoodoh.net
If to the Developer:	Carnegie Management and Development Corporation 27500 Detroit Rd., Suite 300 Westlake, Ohio 44054 Attention: Dr. Rustom R. Khouri Email: DrK@carnegiecorp.com
With a copy to:	Carnegie Management and Development Corporation 27500 Detroit Rd., Suite 300 Westlake, Ohio 44054 Attention: George Papandreas Email: gpapandreas@carnegiecorp.com

Any notices and other communications to be delivered by either party to the other pursuant to this Agreement shall be in writing and shall be deemed delivered as follows, except as otherwise specifically provided in this Agreement: (a) when hand delivered; (b) one (1) Business Day after mailing by Federal Express or other overnight courier service; or (c) three (3) Business Days after deposit in the United States mail by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to be charged with notice at the above-recited address or such other address as either party from time to time may designate by notice delivered to the other; provided, however, that no notice of change of address shall be deemed given until received by the party to be notified. Notwithstanding anything contained herein to the contrary, a notice given by either party's attorney shall be deemed to be properly delivered under the provisions of this Section 13.1

Section 13.2 Estoppel Certificates. Each party to this Agreement (a "Responding Party") will, from time to time, within fifteen Business Days after written request by another party hereto (a "Requesting Party"), execute and deliver to the Requesting Party and/or any third party designated by the Requesting Party, a statement in writing certifying (a) that (except as may be otherwise specified by the Responding Party) (i) this Agreement is in full force and effect and unmodified, (ii) the Responding Party is not in default in the performance or observance of its obligations under this Agreement, and (iii) to the Responding Party's actual knowledge, the Requesting Party is not in default in the performance or observance of the Requesting Party's obligations under this Agreement, and (b) as to any other factual matters as the Requesting Party may reasonably request about this Agreement, the status of any matter relevant to this Agreement.

Section 13.3 Entire Agreement. This Agreement and the exhibits referred to herein, all of which are attached hereto and made a part hereof, embody and constitute the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, by and between the City and the Developer, are superseded and merged into this instrument, and shall be null, void and of no further force and effect from and after the Effective Date.

Section 13.4 Modification/Amendment. None of the provisions hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument.

Section 13.5 Governing Law. This Agreement shall be governed by the laws of the State of Ohio.

Section 13.6 Time. Time is of the essence in the performance of each and every term, condition and covenant contained in this Agreement.

Section 13.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and both of which together shall form a single instrument.

Section 13.8 Construction. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that each of the City and Developer have contributed substantially and materially to the preparation of this Agreement.

Section 13.9 Severability. If any one or more of the provisions hereof shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 13.10 Further Assurances. Subject to the express terms and conditions of this Agreement, each party shall take such actions and provide to the other such assurances as may be reasonably requested to consummate the transactions contemplated hereby, including providing such further documents or instruments reasonably requested by the other party as may be reasonably necessary to effect the purpose of this Agreement and carry out its provisions. The provisions of this Section shall not operate to expand or enlarge the specific obligations of either the City or Developer expressly set forth in this Agreement.

Section 13.11 Limitation of Liability. No member, official or employee of the City shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement. No shareholder, member, officer, director or employee of Developer or its Affiliates shall be personally liable to the City, in the event of any default or breach by Developer or its Affiliates or for any amount which may become due to the City or on any obligation under the terms of this Agreement. Developer's and its Affiliates' liability under this Agreement shall be limited to the interest of Developer and its Affiliates in the Development Site and the interests of direct and indirect transferees thereof, rights arising under this Agreement and design and other work product associated with the Project.

Section 13.12 Recording. Prior to Closing, the Agreement shall be recorded in the land records of Cuyahoga County, Ohio.

Section 13.13 Agreement Runs with the Land. All of the provisions, rights, terms covenants, and obligations contained in this Agreement shall run with the land and be binding upon the parties and their respective heirs, successors and assignees.

Section 13.14 Provisions Not Merged With Deed. None of the provisions of the Agreement are intended to or shall be merged by reason of any deed transferring title from the City to the Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 13.15 City Approvals. Any provision of the Agreement requiring the approval of the City, satisfaction or evidence of satisfaction of the City, or certification or opinion of the City, shall be interpreted as requiring action by the Mayor of the City or his/her designee granting, authorizing or expressing such approval, satisfaction certificate, certification or opinion, as the case may be, unless such provision expressly provides otherwise, or unless authorization for such approval is required by the City Council of the City under applicable law.

Section 13.16 No Partnership. This Agreement does not and may not be construed to create a partnership or joint venture between the City and the Developer.

Section 13.17 Interpretation. All Section headings and other titles and captions herein are for convenience only, do not form a substantive part of this Agreement and shall not restrict or enlarge any substantive provisions hereof or thereof. The term "including," when used in this Agreement, means "including, without limitation," and shall be construed as a term of illustration, and not a term of limitation. Whenever reference is made to a number of "days" in the computation of time hereunder, such reference shall mean "calendar days" unless otherwise indicated. Wherever any period of time is specified herein for the taking of any action or the giving of any notice, the period shall be computed by excluding the day upon which the period is specified to commence and including the last day of the period specified. Whenever the time for performance of an obligation occurs or expires on a day other than a Business Day, the time for performance thereof shall be extended to the next Business Day. For the purposes hereof, the term "Business Day" means all days, excluding (a) Saturday and Sunday, and (b) any day that is a national holiday in the United States or a state holiday in the State of Ohio.

Section 13.18 Incorporation of Exhibits. All Exhibits attached hereto are incorporated into this Agreement and are made a part hereof by this reference.

[Signature pages follow]

This Agreement is entered into as of the Effective Date.

City:

THE CITY OF LAKEWOOD

By: ______________________________
Michael P. Summers, Mayor

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this ____ day of ____________________, 2018, by Michael P. Summers, the Mayor of THE CITY OF LAKEWOOD.

____
Notary Public

The legal form and correctness of this instrument is hereby approved:

By:________________________________
Kevin M. Butler, Director of Law

Developer:

CARNEGIE MANAGEMENT AND
DEVELOPMENT CORPORATION

By: ______________________________________
Name: ____________________________________
Title: ____________________________________

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this ____ day of _________________, 2018, by _____________________, the ___________________ of CARNEGIE MANAGEMENT AND DEVELOPMENT CORPORATION.

____
Notary Public

This instrument prepared by:

Robyn Minter Smyers, Esq.
Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114

List of Exhibits

Exhibit A

Description of Development Site

Parcel 1:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being part of Original Rockport Township Section No. 22, and bounded and described as follows:

Beginning at the intersection of the Westerly line of land conveyed to Joseph Hall, by deed recorded in Volume 31, page 686 of Cuyahoga County Records, with the Southerly line of Detroit Street;

Thence Southerly along said Westerly line, 200 feet; Thence Westerly parallel with Detroit Street, 100 feet;

Thence Northerly parallel with the Westerly line of land so conveyed to Hall, 200 feet to the Southerly line of Detroit Street;

Thence Easterly along the Southerly line of Detroit Street, 100 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel 2:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being part of Original Rockport Township Section No. 22, and bounded and described as follows:

Beginning on the Southerly line of Detroit Avenue at the Northwesterly corner of land conveyed to C. Lee Graber by Adam J. Knopf and Nellie Knopf, husband and wife, by deed recorded in Volume 1116, page 267 of the Cuyahoga County Records;

Thence Southerly along the Westerly line of land so conveyed to Graber, 155 feet to the Northeasterly corner of Sublot No. 132 of the Belle Avenue Allotment as shown by the recorded plat in Volume 41 of Maps, page 23 of Cuyahoga County Records;

Thence Westerly along the Northerly line of said Sublot No. 132, about 74-16/100 feet to the Easterly line of Belle Avenue;

Thence Northerly along said Easterly line of Belle Avenue, about 148-37/100 feet to the Southerly line of Detroit Avenue;

Thence Easterly along the Southerly line of Detroit Avenue, about 75-9/100 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel 3:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being all of Sublots Numbers One Hundred Thirty (130), One Hundred Thirty-one (131), and One Hundred Thirty-two (132) in the Belle Avenue Allotment of part of Original Rockport Township, Section No. 22, as shown by the recorded plat in Volume 41, page 23 of Cuyahoga County Records of Maps.

Parcel 4:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 129 in Belle Avenue Allotment of part of Original Rockport Township Section No. 22, as shown by the recorded plat in Volume 41 of Maps, page 23 of Cuyahoga County Records, and being 45 feet front on the Easterly side of Belle Avenue, 188-55/100 feet deep on the Northerly line, 188-45/100 feet deep on the Southerly line, and 45 feet in the rear, as appears by said plat, be the same more or less but subject to all legal highways.

Parcel 5:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sub-Lot No. 239 in The Genck Realty Company's Lakewood Subdivision of part of Section No. 22, Rockport Township, as shown by the recorded plat in Volume 35 of Maps, page 26 of Cuyahoga County Records, and being 45 feet front of the Westerly side of Marlow Avenue (formerly West 137th Street), and extending back 114.86 feet deep on the Northerly line, 115.54 feet deep on the Southerly line, and having a rear line of 45.01 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 6:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 240, in the Genck Realty Company's Lakewood Subdivision, of a part of Section No. 22 in Original Rockport Township, as shown by the recorded plat in Volume 35, page 26, Cuyahoga County Map Records, and being a parcel of land on the West side of Marlowe Avenue, 44.20 feet wide, and extending West on the North line 114.18 feet, and 114.86 feet on the South line, be the same more or less, but subject to all legal highways.

Parcel 7:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 128 in the Belle Avenue Allotment, of a part of Section No. 22, Original Rockport Township, as shown by the recorded plat in Volume 41, page 23, Cuyahoga County Map Records, and being a parcel of land on the East side of Belle Avenue, 45 feet wide, and extending East on the North Line 188.45 feet, and 188.35 feet on the South line, and being the same premises conveyed to Della McFadden by deed recorded in said County Record of Deeds, Volume 130, page 316-17-18, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 8:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 238 in the Genck Realty Company's Lakewood Subdivision, of a part of Section No. 22, Original Rockport Township, as shown by the plat recorded in Volume 35, page 26, of Cuyahoga County Records, and being a parcel of land on the West side of Marlowe Avenue, 45 feet wide, and extending West on the North line 115.54 feet, and 116.22 feet on the South line, and 45 feet in the rear, be the same more or less, but subject to all legal highways.

Parcel 9:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 126 in the Belle Avenue Allotment, of a part of Section No. 22, Original Rockport Township, as shown by the plat recorded in Volume 41, page 23, of Cuyahoga County Map Records, and being a parcel of land on the East side of Belle Avenue, 45 feet wide, and extending East on the North line 188.24 feet, and 188.14 feet on the South line, and 45 feet in the rear, be the same more or less, but subject to all legal highways.

Parcel 10:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sub-lot No. 127 in The Belle Avenue Allotment of part of Original Rockport Township Section No. 22, as shown by the recorded plat in Volume 41 of Maps, page 23 of Cuyahoga County Records, and being 45 feet front on the Easterly side of Belle Avenue, 188.35 feet deep on the Northerly line, 188.24 feet deep on the Southerly line, and 45.01 feet wide in the rear, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 11:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 241, in the Genck Realty Company's Lakewood Subdivision, of a part of Section No. 22 in Original Rockport Township, as shown by the plat recorded in Volume 35, page 26, of Cuyahoga County Map Records, and being a parcel of land on the West Side of Marlowe Avenue, 45 feet wide, and extending West on the North line 113.50 feet, and 114.18 feet on the South line, and 45-1/100 feet in the rear, be the same more or less, but subject to all legal highways.

Parcel 12:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 237, in the Genck Realty Company's Lakewood Subdivision, of a part of Section No. 22, in Original Rockport Township, as shown by the plat recorded in Volume 35, page 26, of Cuyahoga County Map Records, and being a parcel of land on the West side of Marlowe Avenue, 45 feet wide, and extending West in the North line 116.22 feet, and 116.90 feet on the South line, and 45.01 feet in the rear, be the same more or less, but subject to all legal highways.

Parcel 13:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And being the Southerly 35 feet of Sublots No. 242 and 243, in the Genck Realty Company's Lakewood Subdivision, of a part of Section No. 22, of Original Rockport Township, as shown by the plat recorded in Volume 35, page 26, of Cuyahoga County Map Records, and being a parcel of land 35 feet wide on the West side of Marlowe Avenue, described as follows:

Beginning at the Southeast corner of Lot No. 242, aforesaid, at a point in the West line of Marlowe Avenue (60 feet wide);

Thence Westerly along the Southerly line of Lots No. 242 and 243, a distance of 113.50 feet to the Southwesterly corner of Lot No. 243;

Thence Northerly in the Westerly line of Lot No. 243, a distance of 35.00 feet to a point;

Thence Easterly parallel to the Southerly line of Lots Nos. 242, and 243, a distance of 112.97 feet to a point on the West line of Marlowe Avenue;

Thence Southerly in the West line of Marlowe Avenue, 35.00 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel 14:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sub-Lot No. 235 in The Genck Realty Company's Lakewood Subdivision of part of Original Rockport Township Section No. 22, as shown by the recorded plat in Volume 35 of Maps, page 26, of Cuyahoga County Records, and being 45 feet front on the Westerly side of Marlowe Avenue, 117.58 feet deep on the Northerly line, 118.26 feet deep on the Southerly line, and 45.01 feet wide in the rear, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 15:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 124 in the Belle Avenue Allotment of part of Original Rockport Township Section No. 22, as shown by the recorded plat in Volume 41 of Maps, page 23, of Cuyahoga County Records, and being 45 feet front on the Easterly side of Belle Avenue, and extending back 187.93 feet deep on the Southerly line, 188.04 feet deep on the Northerly line, and having a rear line of 45 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 16:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 125 in Belle Avenue Allotment of part of Original Rockport Township Section No. 22, as shown by the recorded plat in volume 41 of Maps, page 23 of Cuyahoga County Records, and being 45 feet front on the Easterly side of Belle Avenue, and extending back 188.14 feet deep on the Northerly line, 188.04 feet deep on the Southerly line, and 45 feet in the rear, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 17:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sub Lot No. 234, and the Northerly 5 feet from front to rear, of Sub Lot No. 233 in The Genck Realty Company's Lakewood Subdivision of part of Original Rockport Township Section No. 22, as shown by the recorded plat in Volume 35 of Maps, page 26, of Cuyahoga County Records, and together forming a parcel of land having a frontage of 50 feet on the Westerly side of Marlowe Avenue, and extending back 118.26 feet on the Northerly line, about 119.01 feet on the Southerly line, and having a rear line of 50 feet as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 18:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being the Northerly 39 feet of the Southerly 40 feet of Sublot No. 233 in The Genck Realty Company's Subdivision of a part of Original Rockport Township, Section No. 22, as shown by the recorded plat of said Subdivision in Volume 35 of Maps, page 26, of Cuyahoga County Records, said part of Sublot No. 233 has a frontage of 39 feet on the Westerly side of Marlowe Avenue, and extends back between parallel lines 119-15/1000 feet on the Northerly line, 119-605/1000 feet on the Southerly line, and has a rear line of about 39-1/100 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 19:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being all of Sub Lot No. 232, and the Southerly 1 foot of Sub Lot No. 233, in the Genck Realty Company's Lakewood Subdivision, as shown by the recorded plat in Volume 35 of Maps, page 26, of Cuyahoga County Records, together forming a parcel of land 46.0 feet front on the Westerly side of Marlowe Avenue, and extending back 119.625 feet on the Northerly line, 120.30 feet on the Southerly line, and having a rear line of 46.0 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 20:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 123 in the Belle Avenue Allotment of part of Original Rockport Township Section No. 22, as shown by the recorded plat in Volume 41, page 23, of Cuyahoga County Records, and being 45 feet front on the Easterly side of Belle Avenue, 187- 93/100 feet deep on the Northerly line, 187-83/100 feet deep on the Southerly line, as 45 feet in the rear, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 21:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 231 in the Genck Realty Company's Lakewood Subdivision of part of Original Rockport Township, Section No. 22 as shown by the recorded plat in Volume 35 of Maps, page 26, of Cuyahoga County Records, and being 45 feet front on the Westerly side of Marlowe Avenue, 60 feet wide, 120.99 feet on the Southerly line, 120.30 feet on the Northerly line, and 45.01 feet on the rear, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 22:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And being known as Sublot No. 122 in the Belle Avenue Allotment of part of Original Rockport Township Section No. 22 as shown by the recorded plat in Volume 41 of Maps, page 23, of Cuyahoga County Records, and being 45 feet front on the Easterly side of Belle Avenue (60 feet wide), 187.72 feet deep on the Southerly line, 187.83 feet deep on the Northerly line, and 45 feet in the rear, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 23:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 118 in Belle Avenue Allotment of part of Original Rockport Township Section No. 22, as shown by the recorded plat in Volume 41 of Maps, page 23, of Cuyahoga County Records, and being 45 feet front on the Easterly side of Belle Avenue, 187.41 feet deep on the Northerly line, 187.31 feet deep on the Southerly line, and 45 feet in the rear, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 24:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 121 in Belle Avenue Allotment of part of Original Rockport Township, Section 22, as shown by the recorded plat of said allotment in Volume 41 of Maps, page 23, of Cuyahoga County Records, said Sublot 121 has a frontage of 45.00 feet on the Easterly side of Belle Avenue, and extends back 187.72 feet on the Northerly line, 187.62 feet on the Southerly line, and has a rear line of 45.00 feet as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 25:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 119 in the Belle Avenue Allotment of part of Original Rockport Township, Section No. 22, as shown by the recorded plat in Volume 41 of Maps, page 23, of Cuyahoga County Records, and being 45 feet front on the Easterly side of Belle Avenue, and extending back 187.52 feet on the Northerly line, 187.41 feet on the Southerly line, and being 45 feet wide in the rear, as appears by said plat.

Parcel 26:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 120 in The Belle Avenue Allotment of part of Original Rockport Township Section No. 22, as shown by the recorded plat in Volume 41 of Maps, page 23, of Cuyahoga County Records, and being 45 feet front on the Easterly side of Belle Avenue, 187.52 feet on the Southerly line, 187.62 feet on the Northerly line, and 45 feet wide in the rear, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 27:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 229 in the Genck Realty Company's Lakewood Subdivision of part of Original Rockport Township Section No. 22, as shown by the recorded plat in Volume 35 of Maps, page 26, of Cuyahoga County Records, and being 45 feet front on the Westerly side of Marlowe Avenue, and extending back 121.67 feet on the Northerly line, 122.35 feet on the Southerly line, and having a rear line of 45.01 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 28:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublot No. 230 in Genck Realty Company's Lakewood Subdivision of part of Original Rockport Township Section No. 22, as shown by the recorded plat in Volume 35 of Maps, page 26, of Cuyahoga County Records, and being 45 feet front on the Westerly side of Marlowe Avenue, and extending back 120.99 feet on the Northerly line, 121.67 feet on the Southerly line, and having a rear line of 45 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel 29:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio:

And known as being Sublots Nos. 242 and 243 in Genck Realty Co.'s Lakewood Subdivision of part of Rockport Township Section No. 22, recorded in Volume 35 of Maps, page 26, of Cuyahoga County Records of Maps. Sublot No. 242 has a frontage of 56.92 feet on the Southerly side of Detroit Avenue, and extends back between parallel lines, 179.14 feet deep on the Westerly line, 183.51 feet deep on the Easterly line, and is 56.75 feet wide in the rear. Sublot No. 243 has a frontage of 54.26 feet on the Southerly side of Detroit Avenue, and extends back between parallel lines, 175.00 feet on the Westerly line, and 179.14 feet on the Easterly line, and is 56.76 feet wide in the rear, be the same more or less, but subject to all legal highways.

Excepting therefrom, the Southerly 35 feet conveyed to The City of Lakewood by deed recorded July 9, 1948 in Volume 6606, page 88, of Cuyahoga County Records.

Exhibit B

City Ordinance

[see attached]

First Reading April 16, 2018; second reading April 23, 2018; third reading April 30, 2018. Amended April 30, 2018 and deferred.

ORDINANCE NO. 27-18

BY: Anderson, Bullock, Litten, O'Leary, O'Malley.

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 the execution and delivery of an agreement by and between the City of Lakewood, Ohio, a municipal corporation and political subdivision in and of the State of Ohio (the "City"), and Carnegie Management and Development Corporation, an Ohio corporation ("Carnegie"), related to the development of City-owned property at the southeast corner of Detroit Avenue and Belle Avenue; and authorizing and approving related matters.

WHEREAS, after an extensive period of due diligence and public input, the City has engaged in a process for identifying an appropriate developer and development plan for the City-owned property at the southeast corner of Detroit Avenue and Belle Avenue, known as the Lakewood Hospital site, and following that process has identified Carnegie as the most appropriate partner for such development; and

WHEREAS, the City administration and Carnegie have arrived at a shared vision to invest in the development of the Lakewood Hospital site, to be known as "One Lakewood Place," in a way that is beneficial to the citizens of Lakewood, including by providing a mix of office, retail and residential space, structured parking, a multi-functional outdoor public space, and a rehabilitation of the historic Curtis Block building; and

WHEREAS, pursuant to the Constitution of the State of Ohio, the Ohio Revised Code and the Third Amended Charter of the City of Lakewood, municipalities have the power to enact laws that are for the health, safety, welfare, comfort and peace of the citizens of the municipality, and to provide for local self-government; 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 development agreement must become effective in order for the parties to take advantage of the 2018 construction season; now, therefore

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The City authorizes the execution and delivery of the non-binding term sheet recommended by and between the City and Carnegie in substantially the same form attached hereto as Exhibit 1 ("Term Sheet"), as approved by the Director of Law, related to the development of City-owned property at the Lakewood Hospital site.

Section 2. The Mayor is hereby authorized and directed to execute the Term Sheet, and any and all among the Mayor, President of Council, Director of Finance, Director of Law and Director of Planning and Development are hereby authorized and directed to execute such other related and ancillary documents, including a development agreement, instruments of conveyance and those documents related to closing, and to take such other actions as are necessary and appropriate to give effect to the Term Sheet, the development agreement and any other related and ancillary documents; provided, however that the development agreement shall be delivered to Council prior to its execution by the Mayor in order for Council to hold at least one public hearing on its terms.

Section 3. All provisions of Chapters 111 and 155 of the Codified Ordinances, including but not limited to Sections 111.04 and 155.07, with respect to contracts for the purchase, sale or lease of City-owned property are deemed to have been met or superseded by this ordinance inasmuch as that chapter may apply to the real property transactions contemplated under the terms of the Term Sheet and subsequent development agreement.

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 the preamble to this ordinance, and provided it receives the affirmative vote of at least two thirds of its members of Council this ordinance shall take effect and be in force immediately, or otherwise shall take effect and be in force after the earliest period allowed by law.

Adopted: May 7, 2018

PRESIDENT

Mary T. Hagan
CLERK

Approved: May 8 2018

MAYOR

EXHIBIT 1

Recommended Term Sheet

(See following pages)

EXHIBIT

1

April 2, 2018

Carnegie Management and Development Corporation
27500 Detroit Road, Suite 300
Westlake, Ohio 44145
Attention: Mr. George J. Papandreas, E.V.P.

RE: Term Sheet for One Lakewood Place (the "Project")

Dear Mr. Papandreas:

This letter summarizes the material terms and conditions for a potential transaction between the City of Lakewood (the "City") and Carnegie Management and Development Corporation ("Developer") relating to the above-referenced Project. The terms and conditions under consideration are:

1. **Project Description.**

   The Project will consist of a multi-story mixed use office/retail/residential development located on approximately 5.7 acres of City-owned real property bounded by Detroit Avenue, Belle Avenue and Marlowe Avenue in the City of Lakewood (the "Project Site"), as generally depicted on the site plan attached hereto as Exhibit A. Developer submitted the Project as part of the Request for Qualifications (RFQ) issued by the City on February 6, 2017, and as presented in response to the Request for Proposals (RFP) issued by the City on May 8, 2017.

   The Project will include a mix of office, retail and residential space, structured parking, a multi-functional outdoor public space, and a rehabilitation of the historic Curtis Block building.

   The Project will demonstrate high quality design and architecture; it will include a balanced and thoughtful mix of uses, incorporate economically feasible sustainable development practices, create a first class multi-functional outdoor community gathering space, and be supported by the Community Vision, the Development Objectives, and the Commercial Design Guidelines (copies of which are available at www.onelakewood.com/DowtownRFQ).

2. **Project Requirements.**

   a. **Office and Retail Development Requirements**. The Project will include a mix of retail and office users. Except as otherwise provided in this letter, the Project will include a minimum of 100,000 square feet, combined, of office and retail space (the "Minimum Combined Commercial Development"), consisting of at least 35,000 square feet of office space and 25,000 square feet of retail space.

      If Developer has committed to proceed with the Residential Component (defined below), Developer may convert up to 40,000 square feet of the

Minimum Combined Commercial Development to residential use in response to market conditions, provided Developer still meets the individual minimum requirements for office space and retail space set forth above.

Developer will submit a summary of anticipated retail tenant categories for the City's review, which tenant mix will be generally consistent with the product mix concept submitted by Developer in response to the RFP.

b. **Residential Development Requirements**. The Project will include a minimum of the lesser of either (i) 140 residential units or (ii) 100,000 square feet (the "Residential Component"). The residential units will be (i) reflective of current and anticipated market conditions, (ii) respectful of and sensitive to the scale and character of the surrounding single family neighbors, and (iii) responsive to the changing dynamics of housing demand and availability within the City of Lakewood. Developer shall strive to include at least 15 "for sale" units or 15,000 square feet of "for sale" residential space, whichever is less.

If Developer elects to engage a partner in (or assign responsibility for) the Residential Component to a third party, such partner or assignee shall be subject to the City's approval, which approval will not be unreasonably withheld, conditioned or delayed.

c. **Preservation of Curtis Block**. The Curtis Block building has been designated as an historic structure pursuant to Chapter 1134 of the City's Zoning Code. Developer's incorporation of the Curtis Block into the Project will include the following:

i. Developer will secure a certificate of appropriateness for the exterior of the Curtis Block building from the Architectural Board of Review ("ABR") which confirms that proposed design plans for the building are in accordance with Chapter 1134.

ii. Developer will retain the building's key architectural features, and implement measures to preserve the existing form, integrity and materials of the building when economically feasible.

iii. Developer will collaborate with the City to jointly explore the highest and best use of the Curtis Block, including considering tenant and use options that support community initiatives, organizations, goals and/or programs.

d. **Public Space/Improvements**. The Project shall include no less than .5 acres located at the corner of Detroit Avenue and Belle Avenue dedicated to public use (the "Public Plaza"). Ownership of the Public Plaza will be transferred to Developer in a manner more particularly described in the Development and Use Agreement (defined below). The

Public Plaza will be improved in a first class manner with quality materials in service of the objective of being a first class multi-functional community gathering space. Developer shall be responsible for maintaining and programming the Public Plaza consistent with Sections 3(b) and 7 of this letter.

e. **Historical Significance.** The City and Developer acknowledge the historical significance of the Project Site to the Lakewood community. To the extent economically feasible, Developer shall make an effort to honor such history and incorporate it into the design and/or programming of the Project Site.

f. **Parking Requirements.** On site, adjacent, and proximate parking is critical to the success of the Project. Parking requirements for the Project will be determined primarily by the final Project size and occupant mix and will be satisfied through (i) on-site structured parking owned by Developer and (ii) existing public parking/shared parking proximate to the Project. A portion of the parking spaces within the Project shall be made available for use by the public on terms similar to downtown municipal parking lots (e.g. first 30 minutes are free). For the avoidance of doubt, the "public" spaces shall be available to all downtown visitors and shall not be limited to patrons of the Project.

Developer has been advised that the City has certain parking obligations related to the Project Site under Section 2.2(b) and (c) of that certain Master Agreement among the City, Lakewood Hospital Association and the Cleveland Clinic Foundation, dated December 21, 2015. The City will continue to explore a mutually acceptable alternative approach to satisfying these obligations prior to execution of the Development and Use Agreement.

3. **Property Conveyance.**

a. **Due Diligence Period.** Developer will have a period of nine months following the execution of a development, use and sale agreement mutually agreed upon by the City and Developer (the "Development and Use Agreement"), which period may be extended for an additional three-month period, provided Developer is working in good faith to determine the feasibility of the Project (the "Due Diligence Period") in which to conduct, at Developer's sole cost and expense, any inspections of the Project Site Developer deems necessary or desirable to confirm the feasibility of the Project and the condition of the Project Site, including, without limitation, physical inspections, environmental inspections, tests and surveys, soil borings, geotechnical testing, surveys and title searches. Developer will provide the City with copies of any such inspections and reports, regardless of whether Developer elects to proceed with the acquisition of the Project Site. Prior to the expiration of the Due Diligence

Period, Developer may elect to terminate the Development and Use Agreement in writing, for any reason, and upon such termination, Developer will have no further rights or obligations under the Development and Use Agreement except for provisions of the Development and Use Agreement that expressly survive termination.

b. **Public Plaza.** In consideration of the transfer of the Public Plaza, the Development and Use Agreement will provide for: (i) City review and approval of the plans and specifications for the Public Plaza in accordance with its normal ABR and Planning Commission process; (ii) continuing Developer responsibility for maintaining the Public Plaza in a first class condition; (iii) continuing Developer responsibility for programming of the Public Plaza; and (iv) City access to and use of the Public Plaza for community events, the cost, terms, frequency and schedule for which is based on a mutually agreed number of days as will be more particularly addressed in the Development and Use Agreement.

c. **Conditions to Closing.** If Developer does not elect to terminate the Development and Use Agreement as provided herein, the City will convey fee title to the Project Site to Developer via limited warranty deed. In consideration of (i) Developer's commitment to construct the Project in a first-class manner and in accordance with the Development Objectives, including the Public Plaza and other components described in this letter, (ii) inclusion of sustainability features, as more particularly described in Section 4(c) below, and (iii) the other economic benefits that are anticipated to be realized by the construction of the Project, and as part of the City's investment in the Project, the City will convey the Project Site to Developer for nominal consideration (the "Purchase Price").

i. **Conveyance of Project Site:** Conveyance of the Project Site (including the Residential Component) to Developer shall be subject to Developer demonstrating to the City's reasonable satisfaction that it has satisfied the following conditions: (A) Developer has obtained executed commitment letters from one or more lenders sufficient for financing at least the construction of the Public Plaza, the office and retail components of the Project and the parking garage, together with confirmation from such lender(s) that they are prepared to close the financing; (B) Developer and the City have commenced negotiating a mutually acceptable operations and maintenance plan for the Public Plaza; (C) Developer, with assistance and support from the City, has obtained the necessary rezoning and any required lot splits or consolidations contemplated by Section 4(a) below; (D) ABR and the Planning Commission have approved the plans and specifications for the Project as contemplated by Section 4(b) below; and (E) such other customary closing conditions to be more particularly described in the Development and Use Agreement. If the foregoing conditions to transfer of the Project Site are not satisfied within twelve (12) months after the expiration of the Due Diligence Period, the City shall have the option of terminating the Development and Use Agreement, and upon such termination, the parties will have no further rights or obligations under the Development and Use Agreement except for provisions of the Development and Use Agreement that expressly survive termination; provided, that Developer shall have the right to extend such period so long as Developer is diligently pursuing satisfaction of any remaining conditions.

ii. **Reversion of the Residential Component**: The City shall retain a reversionary right in the Residential Component of the Project Site in the event the Developer fails to demonstrate (to the City's reasonable satisfaction, not to be unreasonably withheld) that it has fulfilled the following conditions: (A) within eighteen (18) months after conveyance of the Project Site, Developer has obtained executed commitment letters from one or more lenders sufficient for financing the construction of the Residential Component, together with confirmation from such lender(s) that they are prepared to close the financing; (B) within eighteen (18) months after conveyance of the Project Site, the City has approved the proposed partner or assignee (if other than Developer) for the Residential Component in accordance with the proposed requirements set forth in Section 2(b), if applicable; (C) by October 1, 2021, Developer shall have commenced re-grading of the Project Site in preparation for development; and (D) by April 1, 2022, Developer shall have commenced construction of the Residential Component as evidenced by commencing the pouring of the foundations for the Residential Component (all of the foregoing collectively referred to as the "Reversionary Conditions"). In the event of a failure of fulfilling any of the Reversionary Conditions, Developer shall convey fee ownership of the Residential Component to the City in a manner consistent with this Section 3(c)(ii) and otherwise mutually acceptable to the parties. If the City exercises its reversionary right described in this Section 3(c)(ii), (1) Developer shall reconvey the Residential Component of the Project Site to the City free and clear of all liens and other encumbrances, other than those liens and encumbrances that were in effect on the date the City conveyed the Project Site to Developer, and (2) Developer shall indemnify the City against any changes in the environmental condition of the Residential Component of the Project Site arising after the date of the City's original conveyance.

4. **Design and Construction Guidelines.** The Project will be constructed in accordance with the Commercial Design Guidelines and the Development Objectives. In addition, the Project will be constructed of high quality materials in accordance with the plans and specifications approved by the ABR and the Planning Commission. "High quality material" shall mean durable and authentic materials containing thoughtful detailing. The Project will reflect a "four-sided" design that is aesthetically pleasing from all building elevations. The Project will seamlessly integrate with the design, massing and materials of existing commercial buildings in Lakewood. In particular, Developer will cooperate with the City to arrive at a mutually acceptable and appropriate transitioning of the massing and height of south building(s) to integrate with the existing houses located on Belle Avenue and Marlowe Avenue, as determined by Developer, ABR and the Planning Commission.

In addition to the formal approvals described below, Developer will coordinate with the City Architect and Planning Director on all aspects of the Project, including, in particular, on the design of the public space. Developer will prepare and submit to the City for approval its plans for the exterior configuration, appearance, orientation, and permitted uses of the Project. The City will cooperate with Developer in obtaining all such approvals.

a. **Rezoning/Lot Split and Consolidation**. In connection with the Project, the Project Site will need to be rezoned as a Planned Development, as more particularly described in Chapter 1156 of the Lakewood Zoning Code. The parties will work together to commence the rezoning process as soon as possible after the execution of the Development and Use Agreement. In light of Developer of obtaining a survey of the Project Site in connection with its due diligence, Developer also shall engage such surveyor to undertake a lot consolidation and any lot splits required by Developer for the development of the Project. If the rezoning process is delayed due to reasons outside of Developer's reasonable control, the City will agree to an extension of the Due Diligence Period sufficient to allow for the completion of the rezoning process.

b. **ABR and Planning Commission Approvals.** The plans and specifications for the Project will be subject to review and approval by the ABR and the Planning Commission. Any material deviation from the final approved plans will be subject to City approval. These approvals (including the rezoning) are anticipated to require 6 - 10 months and are required to be complete prior to the transfer of the Project Site as described in Section 3(c).

c. **Sustainability**. In addition to meeting the Development Objectives relating to sustainability, Developer in good faith will explore design options for the Project that prioritize renewable energy, alternative transportation and green infrastructure, which may include, to the extent economically feasible, the following elements:

i. On-site renewable energy (examples may include installation of solar panels and/or geothermal energy systems) and/or a smart grid system with advanced energy metering; and

ii. A car and/or bicycle share program, ample bicycle facilities, including dedicated, secure storage areas, and electric vehicle charging stations, or other alternative transportation options.

In the event that the aforementioned design options require additional studies, approvals or permits, Developer and the City agree to share associated costs, to the extent mutually agreeable.

In addition to the foregoing, Developer must comply with the requirements of Section 1339 of the municipal code, which address storm water management.

5. **Timing Requirements.**

a. Developer anticipates commencing construction of the Project no later than three months after the expiration of the Due Diligence Period and anticipates completing construction of the entire Project not later than 48 months after the expiration of the Due Diligence Period, subject to "Uncontrollable Delays" (the definition for which shall include customary force majeure concepts, permit delays of no longer than 180 days and other mutually agreed upon permissible delays in the Development and Use Agreement), as evidenced by delivery of certificates of occupancy for each component of the Project.

b. Notwithstanding the anticipated schedule reflected in Section 5(a) above, and subject to Uncontrollable Delays, in all events:

i. Developer shall complete construction of the office and retail components of the Project no later than December 31, 2022, as evidenced by a certificate of completion executed by Developer's architect and evidence that such component of the Project has received all applicable City approvals necessary to obtain a certificate of occupancy upon completion of any tenant-specific work ("Substantial Completion - Commercial");

ii. Developer shall complete construction of the Public Plaza and structured parking components of the Project no later than December 31, 2022, as evidenced by sufficient completion to make such components ready for public use ("Substantial Completion – Public Components");

iii. Developer shall complete renovation of the Curtis Block building no later than December 31, 2021, to the point of Substantial Completion - Commercial; and

iv. Developer shall complete construction of the Residential Component no later than December 31, 2023, as evidenced by (A) delivery of certificates of occupancy for the "for rent" portion of the Residential Component and (B) sufficient completion to permit the issuance of a certificate of occupancy upon installation of appliances and other finishes to be selected by the end purchaser (as applicable "Substantial Completion – Residential"). In the event that the Developer has not commenced construction of the Residential Component on or before an agreed upon outside date than the portion of the Project Site comprising the Residential Component may be re-conveyed to the City on the terms and subject to the conditions set forth in the Development and Use Agreement.

c. Developer will submit a detailed timeline and master schedule for Project milestones for the City's review within 60 days after execution of this letter, which timeline will be incorporated into the Development and Use Agreement. Such master schedule may be subject to amendment from time to time as development of the Project progresses, without the City's approval, except where the outside commencement date or outside completion dates in Section 5(b) are changed, in which event the Developer shall seek approval of the City not to be unreasonably conditioned, withheld, or delayed.

d. The parties agree to revisit the outside completion dates set forth in this Section 5(b) in the event the Development and Use Agreement is not executed by both parties by July 1, 2018.

6. Community Engagement and Reporting Requirements.

a. Developer acknowledges that community engagement is a critical component of the Project and will cooperate with the City during the planning stages of the Project to gather and incorporate input from the Lakewood community and will specifically engage with property and business owners and organizations in the Downtown Lakewood district, as well as residents on residential streets surrounding the Project Site.

b. Developer and the City will agree to a mutually acceptable schedule of status updates and meetings throughout the design and construction of the Project as well as a communication plan to be incorporated into the master schedule.

7. Maintenance and Programming.

Developer will maintain the Project in a first class manner, consistent with the operations and maintenance plan submitted in response to the RFP and other high quality mixed use developments in Northeast Ohio, including necessary mulching, grass cutting, pruning, watering, etc., and will comply with an operations and maintenance plan for the Project to be mutually agreed upon by the City and Developer.

8. **Use Restrictions.** The Project will be subject to usual and customary use restrictions, including prohibitions against noxious uses, as set forth on Exhibit B attached hereto.

9. **Transfer Restrictions.** Developer will not convey any component of the Project to a third party for a period of three (3) years after such component achieves Substantial Completion – Commercial, Substantial Completion – Public Components or Substantial Completion – Residential, as applicable, without the City's written approval, which approval will not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, the restrictions set forth in this Section 9 include transfers of membership interests in Developer that would result in a "change of control" (the definition of which shall be mutually agreed upon in the Development and Use Agreement). Notwithstanding the foregoing, Developer shall be permitted to convey the Residential Component to a party approved by the City pursuant to Section 2(b) without the City's consent; provided, however, following such transfer the restrictions set forth in this Section 9 shall apply to any further transfer of the Residential Component.

10. **Demolition and Hazardous Materials Abatement.** As soon as reasonably practicable following the execution of the Development and Use Agreement, the City will complete the hazardous material abatement and demolition work necessary to deliver the Project Site in a "Development and Pad Ready" condition in accordance with the specifications and by an outside delivery date to be agreed upon and attached to the Development and Use Agreement.

11. **Financing.**

    a. Except as otherwise expressly provided herein, Developer will be solely responsible for funding development of the Project, whether through equity, conventional financing or otherwise.

    b. The City will cooperate with and provide support to Developer in its efforts to identify and apply for additional available county, state and federal funding for the Project and will consider providing additional incentives related to securing long-term tenants and improving the economic viability of the Project.

12. **Bonds.** Developer will provide payment and performance bonds sufficient to ensure the completion of the Project in form and substance customary for projects similar to the Project.

13. **City Repurchase Right.** In addition to other remedies to be more particularly described in the Development and Use Agreement, if Developer defaults in its obligations under the Development and Use Agreement prior to completion of

construction of any component of the Project (as evidenced by a certificate of occupancy for such component) and fails to cure such default within any applicable notice or cure period, the City will have the option to repurchase the Project Site under terms and conditions to be mutually agreed upon in the Development and Use Agreement.

14. **MBE/FBE Goals.** Developer will use commercially reasonable efforts to meet the MBE and FBE goals mutually agreed upon by the City and Developer and included in the Development and Use Agreement.

15. **Building Trades.** Developer recognizes the value of including building trades in the Project and will make good faith efforts to work with the building trades in connection with the Project.

16. **Miscellaneous.**

    a. The parties acknowledge and agree that the scope, components and tenant mix of the Project as currently contemplated may need to be adjusted based upon additional underwriting and analysis to be completed following the execution of this Term Sheet. The Project scope, components and tenant mix may be adjusted following the execution of this Term Sheet based upon such underwriting and analysis and the mutual determination of the City and Developer that the anticipated scope, certain components of the Project and/or the tenant mix may not be economically feasible as initially envisioned.

    b. Other than any costs that the City agrees to share pursuant to Section 4(c) above, Developer shall be responsible for its legal fees, its due diligence costs, the costs for any studies or reports ordered by Developer and any permit or approval fees required in connection with the Project. The City shall be responsible for any costs the City agrees to share pursuant to Section 4(c), its legal fees, and its due diligence costs associated with the demolition and hazardous material abatement work contemplated by Section 10. Except as set forth above or in the Development and Use Agreement, the sharing of costs associated with the Project shall require the mutual agreement of the parties.

    c. Developer will require that its general contractor and all subcontractors make all required local income tax payments due in connection with the construction of the Project.

Both parties acknowledge and agree that this letter is not a legally binding instrument and that additional material terms must be negotiated before a legally binding agreement is reached. The potential transaction reflected in this letter is specifically conditioned upon (i) the preparation, negotiation and execution of a mutually acceptable Development and Use Agreement, and (ii) the approval of Lakewood City Council of the Development and Use Agreement. Neither party hereto will have any obligation or liability to the other whatsoever at law or in equity (including any claims for detrimental reliance, partial performance, good faith or promissory estoppel or other similar types of claims) unless and until such time as both parties will have executed and delivered a formal Development and Use Agreement. Notwithstanding anything herein to the contrary, this paragraph supersedes all other conflicting verbal understandings or agreements or language set forth in the herein. The parties acknowledge a desire to complete negotiation of a mutually acceptable Development and Use Agreement within 90 days after execution of this letter.

We look forward to your response.

Sincerely,

Mayor Michael P. Summers

AGREED AND ACCEPTED:

Carnegie Management and Development Corporation

By: George J. Papandreas 4.2.18

George J. Papandreas, Esq. R.A.,

Its: Executive Vice President and Project Executive

Exhibit A

Site Plan

[to be attached]

Exhibit B

Prohibited Uses

(a) An adult or pornographic bookshop, video store or movie theater (materials shall be considered "adult" or "pornographic" if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality);

(b) A strip club, massage parlor, "head shop" or other store selling drug paraphernalia, tattoo parlor, bingo hall, or off-track betting parlor; provided, however, the prohibition against massage parlors shall not be deemed to prohibit massage services by a doctor, chiropractor or by a nurse or massage services offered by a licensed massage therapist in connection with the operation of a nail salon, hair salon, day spa, barber shop, health club or health spa;

(c) A check-cashing or pawn shop;

(d) A State liquor or packaged beverage store, except incidental to a supermarket, restaurant, prepared food shop, or cafe; provided, however, a high-end wine store that includes ancillary liquor sales shall be permitted;

(e) A "second-hand" store whose principal business is selling used merchandise, thrift shop, "Salvation Army" or "Goodwill" type store, flea market or bazaar, except a high-end specialty re-sale shop is not prohibited;

(f) A funeral parlor;

(g) A business or use involving the sale of firearms;

(h) A business or use that creates strong, unusual or offensive odors, fumes, dust or vapors, except for restaurants with adequate venting and odor-control facilities, or creates unusual fire, explosives or other hazards;

(i) Off track betting club, internet sweepstakes cafes;

(j) Fast food restaurants;

(k) Manufacturing operation, factory, lumberyard, Industrial usage, except for use incidental to a retail operation, i.e. producing a small product on the premises for sale or to provide services on the premises to patrons of the location on the premises only, such as, but not limited to, eye glasses, dry cleaning and tailoring operations, provided such use does not cause noise or odors materially detectable outside the premises and is otherwise in compliance with the City's zoning code.

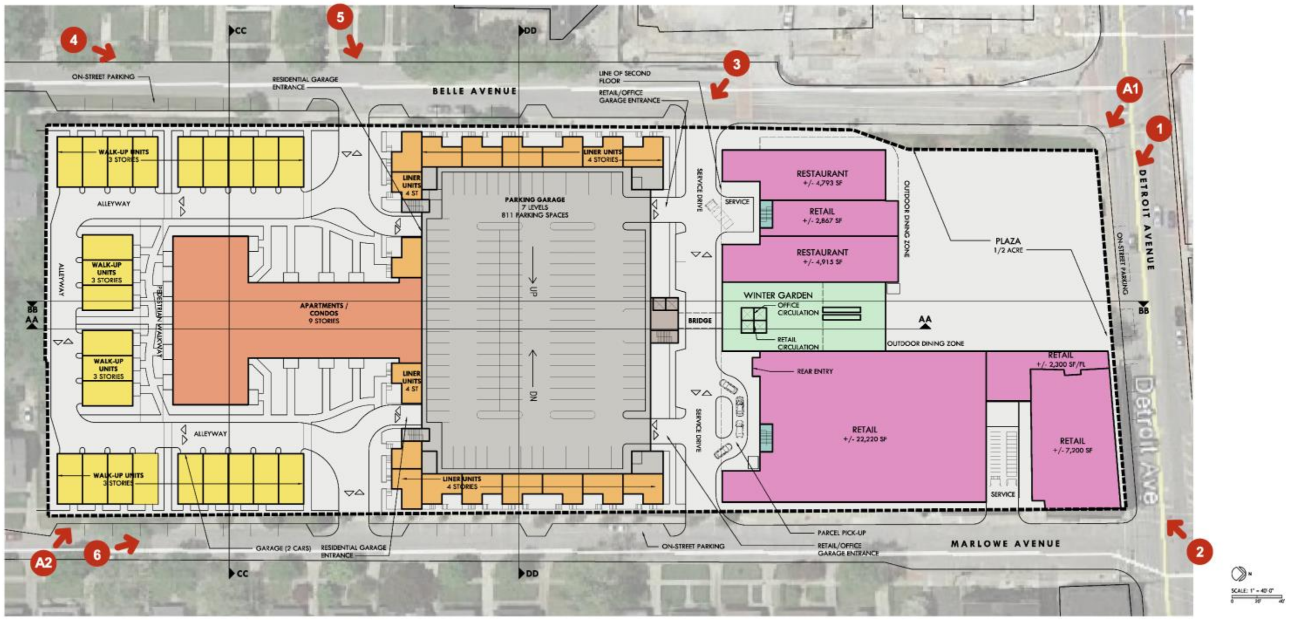
(l) Warehouse, processing or rendering plant;

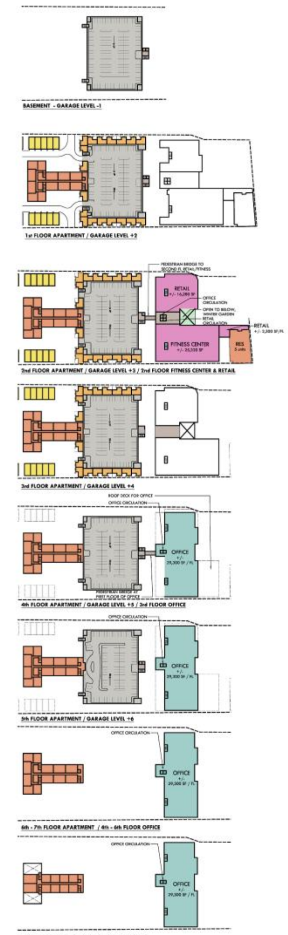
(m) Establishment selling cars (new or used), trailers, mobile homes, motorcycles, motor vehicles, boats;

Exhibit C

Site Plan

[see attached]





SUMMARY

RESIDENTIAL

- APARTMENT LINER UNITS: 18 BUILDINGS, 4 FLRS : 54 UNITS
- APARTMENT/CONDO UNITS: 1 BUILDING, 9 FLRS : 96 UNITS
- WALK-UP BUILDINGS: 24 BUILDINGS, 3 FLRS : 48 UNITS + 5 UNITS IN CURTIS BLOCK

TOTAL: 203 UNITS

COMMERCIAL

- RETAIL/RESTAURANTS/FITNESS CENTER 88,195 SF
- OFFICE 117,200 SF
- WINTER GARDEN

PARKING

811 GARAGE SPACES
44 ON-STREET SPACES
48 PRIVATE GARAGE SPACES FOR THE WALK-UPS

TOTAL: 903 SPACES

203 RESIDENTIAL UNITS x 1.25 SPACES/DU = 254 SPACES
88,195 SF OF RETAIL @ 2.5 SPACES/1,000 SF = 221 SPACES
117,200 SF OF OFFICE @ 2 SPACES/1,000 SF = 235 SPACES
CLEVELAND CLINIC PARKING = 75 SPACES
785 SPACES REQUIRED

SHEET 2 OF 11 09.06.2018 RDLA 18068C

ONE LAKEWOOD PLACE | LAKEWOOD, OHIO | CONCEPTUAL SITE PLAN

CARNEGIE MANAGEMENT & DEVELOPMENT CORP.

RDL ARCHITECTS

<u>Exhibit D</u>

[Reserved]

Exhibit E

Master Schedule

One Lakewood Place: A Mixed-Use Development

Project Lead: City of Lakewood & Carnegie Management & Development

10/1/2018

WBS	Task Name	Baseline Duration	Start	Finish	Duration	Percent Complete
1	**DOWNTOWN LAKEWOOD DEVELOPMENT**		**Fri 05-Oct-18**	**Sun 31-Mar-24**	2,004	
2	**Development agreement**		Tue 01-May-18	Fri 05-Oct-18	157	
3	**Planned Development (PD)**		Mon 16-Jul-18	Mon 15-Apr-19	273	
4	*City Council*		Mon 16-Jul-18	Mon 15-Apr-19	273	
5	City Council Introduce PD legislation - rezoning		Mon 16-Jul-18	Mon 16-Jul-18	0	100%
6	City Council Approve Final PD		Wed 16-Jan-19	Mon 15-Apr-19	89	0%
7	*Planning Commission*		Thu 06-Sep-18	Thu 14-Feb-19	161	
8	PC Preliminary plan review and approval		Thu 06-Sep-18	Thu 06-Dec-18	91	10%
9	Parking Plan review and approval		Tue 02-Oct-18	Thu 14-Feb-19	135	0%
10	PC Final plan review and approval		Thu 01-Nov-18	Thu 07-Feb-19	98	0%
11	*Architectural Board of Review*		Thu 13-Sep-18	Thu 14-Feb-19	154	
12	ABR Preliminary design review and approval		Thu 13-Sep-18	Thu 13-Dec-18	91	10%
13	ABR Final design review and approval		Thu 08-Nov-18	Thu 14-Feb-19	98	0%
14	**Community Meetings**		Wed 19-Sep-18	Thu 14-Feb-19	148	
15	**Hazardous materials abatement and demolition**		Mon 12-Nov-18	Mon 08-Jul-19	238	
16	Utilities coordination		Tue 01-May-18	Sun 14-Oct-18	166	10%
17	Anticipated notice of commencement		Mon 12-Nov-18	Mon 12-Nov-18	0	0%
18	Hazardous materials abatement		Mon 12-Nov-18	Fri 01-Feb-19	81	0%
19	Demolition and Structure foundations		Wed 02-Jan-19	Mon 01-Apr-19	89	0%
20	Development and Pad Ready Sitework **		Mon 01-Apr-19	Mon 08-Jul-19	98	0%
21	**Construction Documents**		Mon 01-Oct-18	Sun 31-Mar-24	2,008	
22	50% DD - RDL		Mon 01-Oct-18	Wed 14-Nov-18	44	0%
23	100% DD - RDL		Thu 15-Nov-18	Tue 01-Jan-19	47	0%
24	100% LANGAN DD		Sun 30-Sep-18	Thu 15-Nov-18	46	0%
25	50% CD - LANGAN		Thu 15-Nov-18	Fri 21-Dec-18	36	0%
26	100% CD - LANGAN PERMIT		Fri 21-Dec-18	Thu 31-Jan-19	41	0%
27	Lease Negoitation and Execution		Mon 01-Oct-18	Tue 15-Oct-19	379	0%
28	50% CD - RDL		Tue 01-Jan-19	Mon 01-Apr-19	90	0%
29	100% CD - RDL PERMIT		Tue 02-Apr-19	Mon 01-Jul-19	90	0%
30	Internal city review of construction documents (Building, Fire, Engineering, Planning)		Mon 17-Jun-19	Sun 31-Mar-24	1,749	0%
37	**Other Developer Studies/Documents**		Mon 01-Oct-18	Fri 01-Nov-19	396	
38	Inspection Period ***		Mon 01-Oct-18	Mon 01-Jul-19	273	0%
39	Parking Plan (can be introduced at Prelim PD and finalized at Final PD)		Tue 02-Oct-18	Thu 14-Feb-19	135	0%
40	Traffic Study (can be introduced at Prelim PD and finalized at Final PD)		Tue 02-Oct-18	Thu 14-Feb-19	135	0%
41	Stormwater Management Plan		Tue 02-Oct-18	Fri 01-Mar-19	150	0%
42	Hydraulics & Hydrology Report		Tue 02-Oct-18	Fri 01-Feb-19	122	0%
43	CLOSING DATE ****		Mon 15-Jul-19	Fri 01-Nov-19	109	0%
44	**Construction**		Mon 15-Apr-19	Sun 31-Mar-24	1,812	
45	Target Break Ground (up to 90 days post-closing)		Mon 15-Jul-19	Tue 15-Oct-19	92	0%
46	Outside Commencement Date (required by contract; 90 days after closing)		Sun 13-Oct-19	Thu 30-Jan-20	109	0%
47	Negoitate and Execute O&M Plan		Mon 15-Apr-19	Fri 31-Dec-21	991	0%
48	Construction of Commerical component & Garage		Fri 01-May-20	Sat 01-Apr-23	1,065	0%
49	Construction of Public Plaza		Fri 01-May-20	Sat 01-Apr-23	1,065	0%
50	Construction of Curtis Block Building (need to review obligation relative to user timline)		Wed 15-Jul-20	Fri 01-Apr-22	625	0%
51	Construction of Residential component		Thu 15-Jul-21	Sun 31-Mar-24	990	0%

* Assumes a 10-01-2018 execution of DUA. Every day not executed extends live items day for day

** Assumes the City will be performing the work. IF CMDC does the dates should be: 7/15/2019 - 10/01/2019

***May be extended 90 days to 10/1/2019

****Possible closing date subject to Inspection Period and additional closing extensions

Exhibit F

Prohibited Uses

An adult or pornographic bookshop, video store or movie theater (materials shall be considered “adult” or “pornographic” if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality);

(b) A strip club, massage parlor, “head shop” or other store selling drug paraphernalia, tattoo parlor, bingo hall, or off-track betting parlor; provided, however, the prohibition against massage parlors shall not be deemed to prohibit massage services by a doctor, chiropractor or by a nurse or massage services offered by a licensed massage therapist in connection with the operation of a nail salon, hair salon, day spa, barber shop, health club or health spa;

(c) A check-cashing or pawn shop;

(d) A State liquor or packaged beverage store, except incidental to a supermarket, restaurant, prepared food shop, or cafe; provided, however, a high-end wine store that includes ancillary liquor sales shall be permitted;

(e) A “second-hand” store whose principal business is selling used merchandise, thrift shop, “Salvation Army” or “Goodwill” type store, flea market or bazaar, except a high-end specialty re-sale shop is not prohibited;

(f) A funeral parlor;

(g) A business or use involving the sale of firearms;

(h) A business or use that creates strong, unusual or offensive odors, fumes, dust or vapors, except for restaurants with adequate venting and odor-control facilities, or creates unusual fire, explosives or other hazards;

(i) Off track betting club, internet sweepstakes cafes;

(j) Fast food restaurants;

(k) Manufacturing operation, factory, lumberyard, Industrial usage, except for use incidental to a retail operation, i.e. producing a small product on the premises for sale or to provide services on the premises to patrons of the location on the premises only, such as, but not limited to, eye glasses, dry cleaning and tailoring operations, provided such use does not cause noise or odors materially detectable outside the premises and is otherwise in compliance with the City’s zoning code.

(l) Warehouse, processing or rendering plant;

(m) Establishment selling cars (new or used), trailers, mobile homes, motorcycles, motor vehicles, boats;

(n) Gas station, car wash or car repair;

(o) Disco, night club or adult entertainment as a primary use;

(p) Stores selling auto parts – exclusively or primarily;

(q) "Vape" shops;

(r) The Project will not be operated as an "off price" center (i.e. will not be held out by Developer as a "discount center" as such term is recognized in the industry) and will not contain discount stores, including, but not limited to so-called "dollar stores" such as Family Dollar, Dollar General, etc.

Exhibit G

Restrictive Covenant

[see attached]

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (this "Covenant") is made as of ___________________, 20___ by THE CITY OF LAKEWOOD, a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio ("Declarant"), whose address is 12650 Detroit Avenue, Lakewood, Ohio 44107.

RECITALS

A. Declarant owns certain real property located in Cuyahoga County, Ohio, as more particularly described on Exhibit A (the "Public Plaza Property");

B. Pursuant to that certain Development and Use Agreement (the "Development Agreement"), dated as of _________________, 2018, by and between Declarant and Carnegie Management and Development Corporation, an Ohio corporation, and its successors and assigns ("Carnegie"), Declarant has agreed to convey to Carnegie the Public Plaza Property and other adjacent property more particularly described in the Development Agreement (the "Development Site"); and

C. As a condition to the conveyance, Declarant wishes to impose certain restrictions on the use and operation of the Public Plaza Property, as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and recitals and the following conditions and agreements, Declarant does hereby impose the following restrictions on the ownership, use and enjoyment of the Public Plaza Property in accordance with the following terms and conditions, and any successor, assign, transferee or grantee or lessee of any interest in the Public Plaza Property, or any portion thereof (whether by acceptance of a deed, a lease, a mortgage or any other instrument) shall be subject to the same.

1. <u>Public Use</u>. The Public Plaza Property shall be improved and maintained as a first-class multi-functional community gathering space dedicated to public use (the "Public Plaza Purpose") in accordance with the Development Agreement and the O&M Plan (as defined in the Development Agreement).

2. <u>Location, Layout and Design</u>. The Public Plaza Property shall be no less than one-half acre and be located at the corner of Detroit Avenue and Belle Avenue, as generally depicted on the site plan attached hereto as Exhibit B (the "Required Public Plaza Attributes"). There shall be no material change to the Required Public Plaza Attributes; provided, however, the City Review Bodies may agree to material modifications to the Required Public Plaza Attributes so long as such modifications are consistent with a first-class multi-functional community gathering space dedicated to public use. Any material changes to the design of the Public Plaza Property will be subject to approval by the City Review Bodies in accordance with applicable City laws, rules and/or regulations (collectively, "City Laws"). For the purposes hereof, the term "City Review Bodies" shall mean City Planning Commission, the Architectural Board of Review and any

additional City of Lakewood departments or commissions as may be required to comply with City Laws or the successors to any such entities as provided by City Laws.

3. Improvements. The Public Plaza Property may not be encumbered or developed with permanent improvements, except for such permanent improvements that are consistent with the Public Plaza Purpose, such as landscaping, water features, planters, retaining walls, benches and other public seating, kiosks, bandstands and gazebos. Other than the foregoing, it shall be understood that permanent building structures, such as a restaurant or cafe, shall be prohibited without the approval of the City Review Bodies. Temporary installments used in connection with events being held on the Public Plaza, such as ice skating rinks, markets, festivals, stages, risers and pavilions shall be permitted, subject to compliance with City Laws. Exclusive outdoor seating/patio areas supporting tenants in buildings adjacent to the Public Plaza Property ("Restaurant Seating") shall not materially encroach upon the Public Plaza Property; provided, however, if the Public Plaza Property is larger than .5 acres, Restaurant Seating may be located on the portion of the Public Plaza Property that exceeds the .5 acre minimum.

4. No Waiver. Failure of Declarant to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.

5. Remedies and Enforcement. Declarant shall be entitled to enforce the restrictions contained in this Covenant and to seek relief by injunction or all other available legal and equitable remedies in connection therewith.

6. Binding Effect. The terms of this Covenant shall constitute covenants running with the land and shall inure to the benefit of and be binding upon Declarant and Carnegie, and their respective heirs, successors in title or interest to all or part of the Public Plaza Property, as applicable, assigns, devisees, administrators, representatives and tenants, whether by operation of law or in any manner whatsoever.

7. Severability. Invalidation of any of the provisions contained in this Covenant, or of the application thereof to any person by judgment or court order, shall in a no way effect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

8. Cancellation or Amendment. This Covenant may be modified, amended or terminated at any time only by an amendment in writing, executed and acknowledged by Declarant and the owner of the Public Plaza Property and recorded with the Cuyahoga County Recorder.

9. Governing Law. This Covenant shall be governed, construed, applied and enforced in accordance with the laws of the State of Ohio.

10. Entire Agreement. This Covenant, including the exhibits hereto, sets forth the entire understanding and agreement regarding the above matters; all courses of dealing, usage of trade

and all prior representations, promises, understandings and agreements, whether oral or written, are suspended by and merged into this Covenant.

11. Restrictions Run with Land. Unless canceled, altered or amended under the provisions of this Covenant, these restrictions are to run with the land and shall be binding on the owner of the Public Plaza Property and its successors, heirs and assigns. Declarant hereby declares that the Public Plaza Property shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to the restrictions set forth herein, each and all of which is and are for, and shall inure to the benefit of Declarant, and shall apply to and bind the heirs, assignees and successors in interest of the owner of the Public Plaza Property.

[Signatures appear on following page]

Declarant:

THE CITY OF LAKEWOOD

By: ________________________________
Michael P. Summers, Mayor

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this ____ day of ____________________, 20___, by Michael P. Summers, the Mayor of THE CITY OF LAKEWOOD.

____
Notary Public

The legal form and correctness of this instrument is hereby approved:

By:__________________________________
Kevin M. Butler, Director of Law

This instrument prepared by:

Robyn Minter Smyers, Esq.
Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114

Exhibit A

Description of the Public Plaza Property

[To be inserted upon confirmation of the legal description of the Public Plaza Property]