12650 DETROIT AVENUE 44107 216-529-6055
www.lakewoodoh.gov



Issued 03/20/24

# PUBLIC NOTICE – HOUSING, PLANNING & DEVELOPMENT

Housing, Planning & Development Committee will meet Monday March 25, 2024 at 6:00 p.m. in the Auditorium of Lakewood City Hall at 12650 Detroit Avenue. The meeting is open to the public.

Individuals with disabilities who require accommodations for participation in meetings must request accommodations at least 3 business days ahead of the scheduled meeting. Contact Michelle Nochta at (216) 529-5906 michelle.nochta@lakewoodoh.net.

The meeting will be livestreamed on the City's website at the following link:

**www.lakewoodoh.gov/councilvideos**

**PUBLIC COMMENT PROTOCOL (Updated 6/21)**
**The public is invited to comment on agenda items in person or by submitting a written comment in advance of the meeting using the eComment platform available HERE. New users must create an eComment account.**

## *The agenda is as follows:*

Approval of the minutes of the March 18, 2024 meeting of the Housing, Planning & Development Committee.

**ORDINANCE 03-2024 -** AN ORDINANCE authorizing a development agreement with LDC Warren LTD, LLC in connection with the redevelopment of certain real property in the City of Lakewood, Ohio as part of a tax increment financing program under Ohio Revised Code Section 5709.41. *(1st read & referred to HPD 3/4/2024; 2nd reading 3/18/24)*

**ORDINANCE 04-2024 -** AN ORDINANCE to take effect immediately provided it receives the vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, authorizing the City of Lakewood, Ohio to accept title to certain real property located within the City and immediately transfer title back to the current owner for the purpose of implementing tax

increment finance pursuant to Ohio Revised Code Section 5709.41. *(1st read & referred to HPD 3/4/2024; 2nd reading 3/18/24)*

**S. ORDINANCE 05-2024 -** AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing and directing the Director of Planning and Development or the Mayor to enter into an agreement with a licensed real estate broker to market for sale various real properties, pursuant to Section 155.07 of the Codified Ordinances. *(1st read & referred to HPD 3/4/2024; 2nd reading 3/18/24)*

Tom Bullock, Chair
Jason Shachner, Kyle Baker; Members
**HOUSING, PLANNING & DEVELOPMENT COMMITEE**

1st read & referred to HPD
3/4/2024

ORDINANCE NO. 03-2024 BY:

AN ORDINANCE authorizing a development agreement with LDC Warren LTD, LLC in connection with the redevelopment of certain real property in the City of Lakewood, Ohio as part of a tax increment financing program under Ohio Revised Code Section 5709.41.

WHEREAS, LDC Warren LTD, LLC is an Ohio limited liability company (the "Developer") actively pursuing the redevelopment of certain real property located in the City of Lakewood, Ohio (the "City"), which real property is identified on Exhibit A attached hereto (the "Property"); and

WHEREAS, the Developer desires to develop and redevelop the Property for a mixed-use development for commercial and residential purposes (collectively, the "Project"), in accordance with the terms, conditions, covenants and warranties in the Development Agreement that has been negotiated by the Developer and City attached hereto as Exhibit B; and

WHEREAS, the Project will be in furtherance of the City's urban redevelopment activities, and accordingly the City anticipates providing project-based tax increment financing for the Project, to be authorized by a separate ordinance pursuant to Ohio Revised Code ("R.C.") Section 5709.41; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that it is in the public interest and proper public purpose for the City to support economic development and improve the economic and general well-being of the people of the City to create or preserve jobs and employment opportunities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That the Development Agreement, substantially in the form attached hereto as Exhibit B, which Development Agreement specifies, among other things, that (A) the plans for the Project be prepared and submitted to the City for approval in accordance with all customary City requirements, and (B) the Developer obtain all building permits, zoning approvals, and other governmental approvals required for the Project, is hereby authorized and approved, together with such revisions or additions thereto as approved by the Mayor and Law Director as are consistent with the objectives and requirements of this Ordinance and not otherwise materially adverse to the City. The Mayor, for and in the name of the City, with the approval of the Law Director, is hereby authorized to execute the Development Agreement and any amendments thereto deemed by the Mayor to be necessary. The approval of changes or amendments by the Mayor, and the character of the changes or amendments as not being inconsistent with this Ordinance and not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof by the Mayor, with the approval of the Law Director.

Section 2. That this Council authorizes the Mayor and the Director of Planning and Development and all proper City officials to take actions necessary to fulfill the terms of this

Ordinance and the Development Agreement, including the execution of any and all documents or amendments, necessary to enter into, implement, and administer the Development Agreement.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were passed in an open meeting of this Council, and that all 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 including R.C. Section 121.22.

Adopted:_____

_____
Sarah Kepple, President of Council

_____
Maureen M. Bach, Clerk of Council

Approved:_____

_____
Meghan F. George, Mayor

**EXHIBIT A**

**PROPERTY**

The Property is the real estate situated in the City of Lakewood, Cuyahoga County, Ohio consisting of the following tax year 2024 parcel numbers and depicted below:

| Parcel Number | Address |
|---|---|
| 314-04-064 | 1456 Warren Road |
| 314-04-065 | 1470 Warren Road |

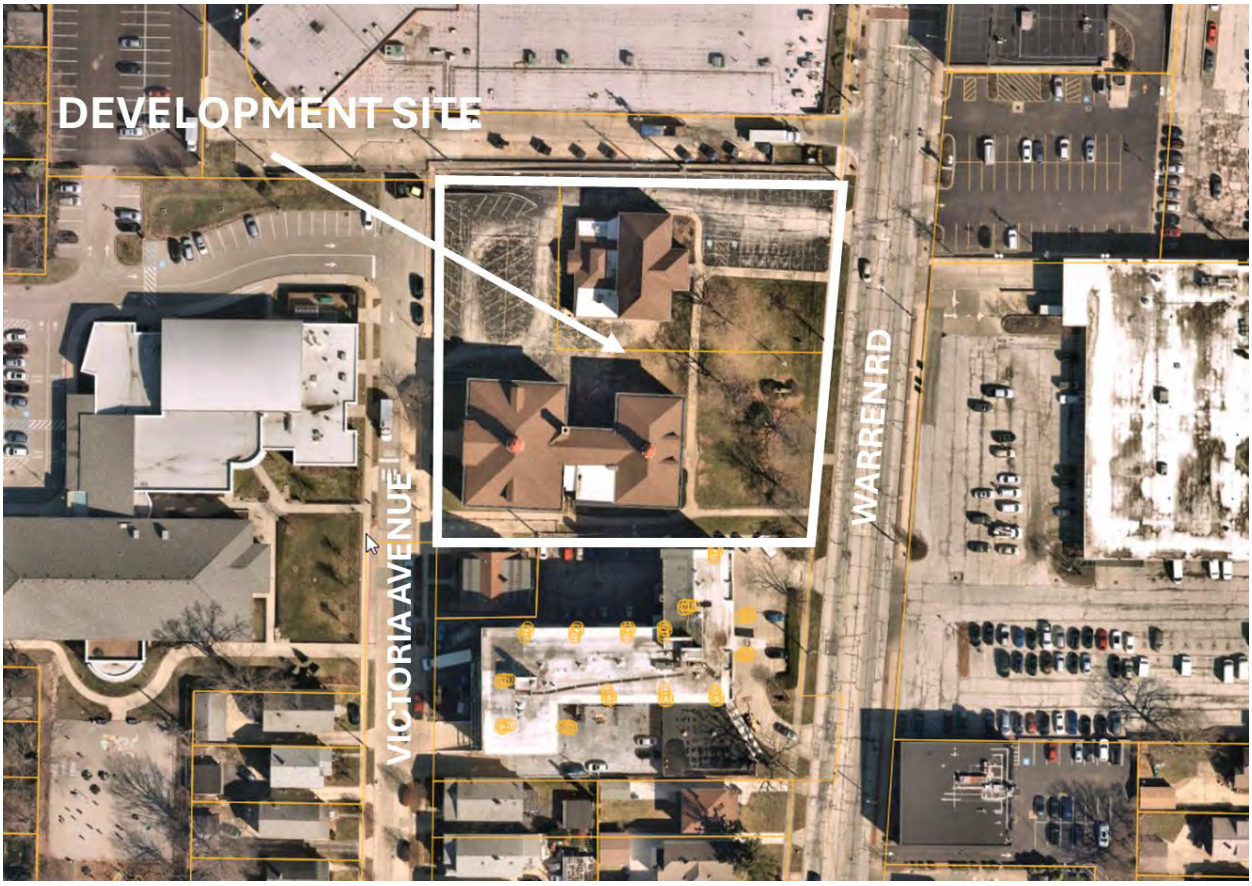

**EXHIBIT B**

**DEVELOPMENT AGREEMENT**

(See Attached)

# DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "*Agreement*") is entered into as of January [___], 2024 by and between the CITY OF LAKEWOOD (the "*City*"), a municipal corporation duly organized and validly existing under the laws of the State of Ohio, having an address 12650 Detroit Ave., Lakewood, OH 44107, and LDC Warren LTD, LLC, an Ohio limited liability company with its principal offices at 28045 Ranney Parkway, Suite E, Westlake, OH 44145 (the "*Developer*"). The City and Developer are collectively referenced as the "*Parties*."

WHEREAS, the Developer is pursuing the redevelopment of an approximately 1.65-acre site currently identified as 1456 Warren Road (Parcel ID 314-04-064) (the "*East Rockport School*") constructed in 1879, and 1470 Warren Road (Parcel ID 314-04-065) (the "*Grant School*"), constructed in 1899, both located in the City of Lakewood, County of Cuyahoga, and State of Ohio, and more particularly described in Exhibit A, attached hereto and made a part hereof (collectively, the "*Development Site*"); and

WHEREAS, the Developer has already taken critical steps to the ensure these historic properties are preserved by locally designating the building as Historic Properties, placing both buildings on the National Register of Historic Places and securing both State and Federal historic tax credits for the buildings; and

WHEREAS, the Developer intends to develop the Development Site for commercial and residential purposes in accordance with the Development Plan (as defined herein), and the redeveloped Development Site will be known as Liberty Common (the "*Development*"); and

WHEREAS, certain infrastructure improvements are necessary in order to ensure the success of the Development, including, without limitation, the construction of the infrastructure improvements described in Exhibit B attached hereto and made a part hereof (the "*Infrastructure Improvements*" and, together with the East Rockport School and Grant School, the "*Project*"); and

WHEREAS, Developer intends to prioritize completion of the East Rockport School construction portion of the Project ("*Phase One*") over the completion of the Grant School portion of the Project ("*Phase Two*"); and

WHEREAS, the City has determined that the construction of the Project, the creation of jobs at the Development Site in connection with the Development and the mutual fulfillment of this Agreement are all in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and regulation; and

WHEREAS, the City intends to propose the establishment of a tax increment financing program pursuant to Ohio Revised Code Section 5709.41 with respect to the Development Site (the "*TIF*"). The proposed TIF shall be a non-school TIF and run for 30 years and provide a 100% exemption on the increase in assessed value of the Development Site. The City intends to submit for Council approval the legislation establishing the TIF (the "*TIF Ordinance*") no later than forty-five (45) days after the effective date of this Agreement. As described herein, the provision of TIF revenue to the Developer hereunder will be dependent on the continued material compliance by the Developer and the Development with this Agreement; and

WHEREAS, in order to create a TIF for the Project under R.C. 5709.41, the City must have held fee title to the Development Site prior to the enactment of the TIF Ordinance. Accordingly, the current owners will convey fee title to the Development Site to the City for $1.00 on the date following the full execution of this Agreement, and the City will re-convey the Development Site to the current owners thereafter for the same amount, subject to the terms of this Agreement; and

WHEREAS, the City intends to propose the establishment of a Community Reinvestment Area for the Project pursuant to Ohio Revised Code Section 3735.65 (the "*CRA*"). The proposed CRA shall grant a 15-year, 100% abatement on the improved value for the residential portion of the Project, and a 15-year 75% abatement on the improved value of the commercial portion of the Project. The City intends to submit for Council approval the legislation establishing the CRA (the "*CRA Ordinance*") no later than forty-five (45) days after the effective date of this Agreement; and

WHEREAS, the City intends to further support the Project with a grant of $200,000.00 directed toward energy efficiency enhancements to the buildings (the "*Grant*"), and a loan of $300,000 directed toward the rehabilitation, restoration, and preservation of historic features (the "*Loan*", and collectively with, without limitation, the TIF, and CRA, and the Grant, the "*Incentives*"); and

WHEREAS, the Developer has represented and agreed, and the City's support for the Project is predicated on the understanding that, the Project will comply with the terms and provisions of this Agreement; and

WHEREAS, the City, by adoption of Ordinance No. [_____], duly adopted by City Council [_____] (the "*Implementing Ordinance*"), has authorized the Mayor to enter into this Agreement for the development of the Development Site; and

WHEREAS, the Parties desire to place of record against the 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 premises and the mutual covenants and promises herein contained, the sufficiency of which are acknowledged by the Parties hereto, the City and the Developer hereby agree as follows:

## I. INCORPORATION OF RECITALS; INTERPRETATION

A. The recitals and "Whereas" clauses set forth above are fully incorporated in this Agreement and specifically made a part hereof, as if fully restated here.

B. Any reference herein to the City or the City Council, or to any officer thereof, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

C. Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the City, the Developer, or any other party under this Agreement or any other instrument or document entered into in connection with any of the foregoing.

D. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms "hereof," "hereby," "herein," "hereto," "hereunder," "hereinafter" and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the date of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

## II. DEVELOPER COVENANTS AND REPRESENTATIONS

A. The Developer shall develop the Project in accordance with the plan and schedule set forth in the plan attached hereto as Exhibit C (the "*Development Plan*"), the material modification of which may be approved by the City consistent with and in compliance with the current rules and regulations of the City. Buildings constructed on the Development Site shall be of the general design as shown in the Development Plan.

B. The Developer agrees that the Project will be constructed in a manner which is consistent with generally accepted construction industry standards and guidelines applicable to similar projects and in conformity with installation guidelines as may be recommended by various manufacturers of the building materials. If any portion of the

Project does not meet the material requirements of the City's zoning regulations, then the Developer must obtain the applicable City approvals for the portion(s) of the Project through the appropriate reviewing body or reconstruct the noncomplying portion of the Project.

C. The Developer, and any successors and assigns who subsequently become subject to this Agreement in accordance with Section XXIX(D) hereof (an "*Assignee*"), shall materially comply with all regulations and provisions set forth in the City's zoning code, subject to any now existing or hereafter applicable variances. The Developer, and any Assignee, shall also materially comply with any applicable Federal, State and local regulations in addition to any of the requirements set forth in the zoning code.

D. Developer hereby further represents and warrants to the City that:

(1) It is authorized to do business under the laws of the State of Ohio and is fully qualified to transact its business in the State of Ohio;

(2) It is not in material violation of or in conflict with any provisions of the laws of the United States of America or the State applicable to the Developer that would impair its ability to carry out its obligations contained in this Agreement;

(3) This Agreement has, by proper action, been duly authorized, executed and delivered by the Developer, and all steps necessary to be taken by the Developer, have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein and therein, are valid and binding obligations of the Developer, enforceable in accordance with their terms;

(4) It has full power and authority to execute, deliver and perform this Agreement;

(5) To the best of Developer's knowledge, the execution, delivery and performance of this Agreement do not, and will not, violate any provision of law applicable to the Developer or the Developer' organizational or operating agreements, and neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by the Developer of any contract, agreement, understanding or instrument to which the Developer are a party or by which the Developer are subject or bound, or of any judgment, order, writ, injunction or decree issued against or imposed upon them as of the time of execution hereof, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;

(6) To the best of Developer's knowledge, there is no pending litigation, investigation or claim which materially and adversely affects or which might materially and adversely affect the Developer's performance of this Agreement and to the best of the Developer's knowledge, there is no threatened litigation, investigation or claim that materially and adversely affects or that might materially and adversely affect the Developer's performance of this Agreement; and

(7) The representations and agreements of the Developer made in this Agreement are as of the date of the execution of this Agreement and such representations made by the Developer are made with the knowledge and expectation that such representations are to be treated as material to the City entering into this Agreement, and the Developer further represents that to its knowledge, as of the date of this Agreement, no representation set forth in this Agreement contains any untrue statement of material fact.

E. Developer does hereby warrant, except as disclosed in writing to the City, that it has not employed or retained any company or person other than a bona fide employee working solely for the Developer to solicit or secure this Agreement, and that the Developer has not paid or has not agreed to pay any fee, commission, percentage, brokerage fee, or other consideration contingent upon or resulting from the award or making of this Agreement. Developer does hereby warrant that it is not prohibited from contracting with the City by any provision of the Ohio Revised Code relating to conflicts of interest, illegal interest in government contracts, or any other ethical prohibition, and for breach or violation of this warranty, the City shall have the right to annul this Agreement with no further obligation or penalty.

## III. CITY COVENANTS AND REPRESENTATIONS

The City represents and warrants to the Developer as follows:

A. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by the City of any contract, agreement, understanding or instrument to which the City is a party, or by which the City is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority.

B. To the best of the City's knowledge, there is no pending or, threatened litigation, investigation or claim which affects or which might affect the anticipated TIF and/or CRA Ordinances or other planned Incentives, or the City's performance of this Agreement.

C. Except for actions contemplated by this Agreement, as of the date of the execution of this Agreement, the City has no information or knowledge of any change contemplated in the applicable laws, ordinances or restrictions or any judicial or administrative action

that would prevent, limit or impede the Developer' undertaking of the Development or the City's performance under, or the applicability and enforceability of, the anticipated TIF and or CRA Ordinance or other planned Incentives.

D. The representations and agreements by the City made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as continuing representations and agreements and such representations made by the City are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the Developer (except as expressly stated in this Agreement), the Developer is placing reliance thereon in accordance with this Agreement and that such representations are to be treated as material to the Developer in entering into this Agreement.

## IV. COVENANTS OF DEVELOPER

Upon the City's passage of the TIF Ordinance and CRA Ordinance as set forth in this Agreement:

A. A mutually-agreeable short-form Memorandum of Understanding ("MOU") identifying the use restrictions for the Development Site agreed to by the Parties pursuant hereto (as set forth more fully on Exhibit D attached hereto and incoporated herein by reference), shall be recorded and shall be a covenant running with the land and shall be binding upon and inure to the benefit of the Parties and any successors and assigns of the Parties, including any future owners of the Development Site, who shall be subject to the provisions of such MOU; and

B. Developer futher covenenants and agrees that, for so long as any Incentives remain outstanding and/or are subject to revocation in accordance with their respective terms, as applicable, Developer will: (i) advise any and all prospective third-party purchaser(s) of all or part of the Project of the existance of this Agreement and associated documentation; (ii) provide any such prospective purchaser(s) with copies of this Agreement and associated documentation; and (iii) advise such prospective purchaser(s) of any terms thereof that shall be binding on such prospective purchaser(s). In addition, Developer covenenants and agrees that it will provide written notice to the City upon the execution of any purchase agreement(s) with one or more unaffiliated third-parties for the purchase of part or all of the Project. Notwithstanding the foregoing, other than the MOU discussed in Subsection IV(A) above, the Parties agree that this Agreement shall not be recorded.

## V. DESCRIPTION OF THE PROJECT

A. Developer shall construct, or cause to be constructed, The East Rockport School and Grant School renovations on the Development Site. The Project shall be generally consistent with the site plan attached hereto as Exhibit E (the "*Site Plan*") and include the following components:

1. East Rockport School will be developed into an approximately 10,000 gross square feet (GSF) office building (as further described and/or shown on Exhibit E); and

2. Grant School will be developed into an approximately 25,000 GSF residential building with the potential for minor office use on the ground floor (as further described and/or shown on Exhibit E).

Developer acknowledges that any material revisions or changes to the aforementioned components of the Site Plan / Project shall be subject to the City's reasonable approval.

B. Unless specifically stated otherwise, Developer will be responsible for the entire cost associated with developing the Project, including, but not limited to, real estate acquisition, engineering, construction, fees and deposits.

## VI. TIF ORDINANCE

The City and Developer agree that the implementing Ordinance in support of, without limitation, the TIF and related legislation (the "*TIF Ordinance*"), shall be submitted for City Council consideration and approval as soon as practicable, but, in any event, by no later than March 31, 2024.

## VII. CONVEYANCE OF THE DEVELOPMENT SITE

Transfer by Developer (or, if applicable, the current fee title owner (the "*Existing Owner*") of the title to the Development Site to the City (the "*Initial Conveyance*") shall take place on a date the parties may agree upon (the "*Initial Conveyance Date*"); provided, however that the Initial Conveyance shall occur prior to the passage of the TIF Ordinance. On the Initial Conveyance Date, Developer shall convey or cause the Existing Owner to convey the Development Site to the City for $1.00, by Limited Warranty Deed. Developer shall pay all customary closing costs relating to the Initial Conveyance, including but not limited to recording fees. The City agrees to neither make, nor permit to be made, any material changes to the condition of the Development Site during the period in which it owns the Development Site. During the period in which City owns the Development Site, Developer, its employees and agents are permitted to enter upon the Development Site for the purpose of conducting activities associated with the Project at no cost to the City, provided that such entry shall be at the sole risk of Developer, and its employees and agents, and provided, further that the activities described in this Section are subject to the indemnification provision of Section XXV of this Agreement.

On the Initial Conveyance Date, or as early as is practicable following the Initial Conveyance Date, but in any event no later than two business days following the Initial Conveyance Date, the City shall re-convey the Development Site to Developer or the Existing Owner, as applicable (the "*Re-conveyance*"), for $1.00, by Quitclaim Deed. Developer shall pay all customary closing costs relating to the Re-conveyance.

## VIII. CRA ORDINANCE

The City and Developer agree that the implementing Ordinance in support of, without limitation, the Community Reinvestment Area *("CRA")* and related legislation (the *"CRA Ordinance"*), shall be submitted for City Council consideration and approval as soon as practicable, but, in any event, by no later than March 31, 2024. The Developer will submit a CRA application in accordance with the CRA Ordinance and, upon receipt, the City and Developer will negotiate in good faith a CRA Agreement outlining the terms of the CRA, which shall be substantially as outlined herein. The CRA Agreement will outline, among other things, circumstances under which an agreement may be revoked by the City for noncompliance and the manner by which already-received benefits may be recovered, as outlined by R.C. 3735.671.

## IX. LOAN AGREEMENT

The City and the Developer agree that the Loan will be for an amount not less than Three Hundred Thousand and No/100 Dollars ($300,000.00), and shall be disbursed to Developer in-full upon execution of mutually-agreeable loan documents with the following terms: (i) the Loan shall accrue 0% interest; (ii) shall be fully-amortized over a 30-year repayment term; and (iii) shall be non-recourse.

## X. GRANT AGREEMENT

The City and the Developer agree that Grant shall be on a reimbursement basis for pre-approved energy efficiency improvements for the Project to be negotiated and agreed by the Parties. The City further agrees to reimburse the Developer for all qualifying expenditures within thirty (30) days of Developer's written request therefore and the submission of receipts, cancelled checks, and/or other reasonably requested documentation/substantiation.

## XI. CONTINGENCIES FOR INCENTIVES

The obligation of the City to provide the Project Incentives is contingent upon the satisfaction or waiver of all of the contingencies with respect to the Project set forth herein below. The Developer agrees to submit to the City for review all plans, documents, requested modifications, zoning, or any other item which concerns the Project in accordance with the City's current and generally applicable regulations. Each of the items required to be submitted to the City to satisfy the City shall be in form and substance reasonably acceptable to the City.

A. Plans. The Project shall have been approved by the State Historic Preservation Office and meet the Secretary of the Interior Standards for Historic Preservation. The Developer will submit any plans necssary for the review and approval by the Planning Commission of a Conditional Use Permit for the residential portion of the Project. Addiitonally, the Developer will secure all necessary permits for the renovation of the buildings and pay the standard fees for permits and plan review.

B. Historic Building Requirements. The Developer shall have consulted and materially followed the Secretary of the Interior's Standards for Rehabilitation and receive a Certificate of Appropriateness from the City regarding the rehabilitation of historic structures that are part of the Project.

C. Environmental. Developer shall have submitted such environmental reports for the Development Site to the City as are reasonably requested by the Developer's lender for the Project and evidencing that there are no hazardous materials located on the Development Site or violations of environmental laws that would prevent development of the Development Site in accordance with the Project Plans or if environmental issues are identified in the environmental reports, evidence that such environmental issues will be remediated or otherwise properly resolved to the City's satisfaction in the City's reasonable discretion. Developer shall have delivered a reliance letter from the preparer of the environmental reports authorizing reliance on those reports by the City.

D. Landscaping. The Developer shall submit a final landscape plan, which shall be subject to reasonable written approval by the City. The Developer is required to maintain and preserve that landscape plan.

E. Utilities. To the extent that utility improvements are necessary to service the Project, the Developer, at its cost, shall have completed any reasonably required construction, reconstruction or installation of utility improvements (including any underground utilities), including, but not limited to, storm and sanitary sewers (including necessary site grading therefore) and water lines.

F. Service Agreement. The Service Agreement (as defined below) shall be effective and shall also have been recorded against the Project Site.

The Parties will proceed diligently and in good faith to pursue the satisfaction of these items in a timely and coordinated manner intended to result in the timely development of the Project in accordance with the Development Plan.

## XII. CONSTRUCTION OF PROJECT

In order to claim the benefit of the Incentives pursuant to this Agreement, the Developer will apply for all necessary building permits, including, but not limited to, permits for construction of buildings, site development, exterior signage, infrastructure on public property and on property of others, utility and storm sewer construction (collectively, the "*Building Permits*").

Developer shall apply for all necessary Building Permits as soon as feasibly possible. Developer shall commence construction for Phase One on or before July 1, 2024 and for Phase Two on or before January 1, 2025, Notwithstanding anything to contrary herein, and subject to Force Majeure (as defined herein) and any approved extensions (as set forth below), the Developer shall have caused material portions of the Project to be substantially completed and ready for final inspection by no later than August 31, 2024 for Phase One and December 31st, 2025 for Phase

Two. At such time as Developer shall have obtained all building permits, zoning approvals, historic conservation approvals to the extent applicable, and other governmental approvals required for that phase of the Project, Developer shall promptly commence and thereafter complete the construction of the Project as reflected in the Project Plans, in material compliance with all applicable laws, and in accordance with the terms set forth in the applicable construction agreement(s). Developer shall be responsible for acquiring and paying for all State, local, or Federal permits required for the Project.

The time for performance indicated above is subject to, without limitation, any approved extensions by the City for delays beyond the reasonable control of the Developer that prevent the Developer from timely performing its obligations under this Agreement, including, but not limited to, any statewide public health emergency, as formally declared by the State of Ohio. A request for extension must be in writing and will be granted, if, within the City's reasonable determination, delays are beyond the reasonable control of the Developer.

At all times during construction of the Project, the Developer shall have available and made known to the City a competent representative who is knowledgeable and familiar with the Project. The representative shall be capable of reading plans and specifications and shall have the authority to address any questions raised by the City with respect to such plans and specifications.

## XIII. USE AND DESIGN RESTRICTIONS

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 D attached hereto and incorporated herein (collectively, the "*Prohibited Uses*").

In addition to the Prohibited Uses, the City's Fair Housing Marketing Policy shall apply, a copy of which is attached as Exhibit F.

Without intending to restrict the provisions of this Section, it is intended and agreed that the City and its successors, shall be deemed beneficiaries of the agreements, covenants, and restrictions provided in this Section 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.

## XIV. TIF REIMBURSEMENT

The Developer will pay the statutory service payments generated from the Project (the "*Project TIF Revenue*") to the Cuyahoga County Treasurer, pursuant to a service payment agreement entered into by and between the City and the Developer dated as of [ ] (the "*Service Agreement*"), in the same manner and amount as if the TIF with respect to the Property had not been established in accordance with the Service Agreement. The Project TIF Revenue will be distributed by the Cuyahoga County Treasurer to an urban redevelopment tax increment equivalent fund (the "*TIF Fund*"). Subject to the conditions hereof, the City shall distribute amounts on deposit in the TIF Fund to the Developer in accordance with the process set forth in the Service Agreement. The Developer shall pay all reasonable third-party costs of the City in establishing the TIF and this Agreement, including, but not limited to, legal fees, closing costs and other costs associated with the required property transfer within a reasonable time, not to exceed thirty (30) calendar days after City provides an invoice to Developer detailing the expenses incurred by City eligible for reimbursement under this section; provided, however that such costs shall not exceed Twenty Thousand and No/100 Dollars ($25,000.00) in the aggregate (the *"Cost Cap"*). Notwithstanding the foregoing, the parties agree that any fees and costs reimbursanble to the City pursuant to this Agreement shall only be deemed earned and payable by Developer upon the City's passage of the TIF Ordinance and CRA Ordinance as set forth in this Agreement; and provided further that such costs and fees shall not exceed the Cost Cap.

## XV. MAINTENANCE

Developer shall maintain the Project in a first-class manner, consistent with other high quality mixed-use developments of similar age in Northeast Ohio, including necessary building and site maintenance.

## XVI. DEFAULT; REMEDIES

A. Developer Defaults. Any one or more of the following shall constitute a "*Developer Default*":

1. Default by the Developer in the due and punctual payment, performance, or observance of income or real property taxes or any other material obligation of the Developer under this Agreement or any other written agreement by and between the City and the Developer with respect to the initial construction of the Project, including but not limited to any grant or loan agreement (each a "*Project Agreement*") as to which default the City has given a Default Notice (as defined below) to the Developer, which such default the Developer does not cure within the period of time specified in the Default Notice (provided that the foregoing cure right shall not apply to the construction deadlines set forth in Section XII hereunder);

2. Any representation or warranty made by Developer in this Agreement or in any other Project Agreement is proved to be false or misleading in any material respect

as of the time made as a result of the gross negligence or willful misconduct of the Developer;

3. Any report, certificate, or other document furnished by the Developer to the City pursuant to this Agreement or any other Project Agreement is false or misleading in any material respect as of the time furnished due to the gross negligence or willful misconduct of the Developer and has been relied upon by the City to its material detriment prior to correction by the Developer;

4. Prior to the completion of the initial construction of the Project, the filing by the Developer of a petition for the appointment of a receiver or trustee;

5. Prior to the completion of the initial construction of the Project, the making by the Developer of a general assignment for the benefit of creditors;

6. Prior to the completion of the initial construction of the Project, the entry of an order for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with the Developer as debtor;

7. Prior to the completion of the initial construction of the Project, the filing by the Developer of an insolvency proceeding with respect to the Developer or any similar proceeding with respect to the Developer for compromise, adjustment, or other relief under the laws of any country or state relating to the relief of debtors; or

8. Prior to the completion of the initial construction of the Project, the occurrence of a material default by the Developer under any of its construction loan documents or equity investment documents that results in either (a) the construction lender exercising its remedies to either (i) accelerate the loan, (ii) foreclose on the Development Site, or (iii) otherwise dispossess Developer from the Project, as applicable

9. The Developer fails to adhere to the requirements of the CRA Ordinance, or is in default with respect to the CRA or CRA Agreement (beyond applicable notice and cure periods).

10. Demolition of the East Rockport School or Grant School, or the Developer fails to maintain the Development Site in accordance with City ordinances and in compliance with the Certificate of Appropriateness from the City regarding the rehabilitation of historic structures that are part of the Project.

B. Remedies for Developer Default. At any time as of which a Developer Default exists, the City, at its option, may, but shall not be obligated to, exercise any one or more of the following remedies:

1. By written notice to the Developer, cease disbursements of proceeds from the TIF Fund until such Developer's Default has been cured, if applicable;

2. (i) recover from the Developer any sum of money that are then due and payable by the Developer to or for the benefit of the City under this Agreement; or (ii) commence an action for specific performance or other equitable relief against the Developer with respect to the defaulted obligations as provided in Section XVI(G); and (iii) exercise the City's rights under Section XVI(H) with respect to the Developer's Default; and

3. Enforce, or avail themselves of, any other remedies available to the City at law or in equity.

Furthermore, in the event of a Developer's Default that extends beyond the applicable cure period, and if no cure period is provided, six (6) months after receiving notice, without a cure by Developer (the "Extended Default Period"), then the City may at its option, may, but shall not be obligated to, by written notice to the Developer, terminate this Agreement provided that such termination shall not affect the obligations of the Developer that have accrued, including any indemnification requirements of the Developer.

C. Remedies Specific to Breaches of Representations and Warranties. Notwithstanding any provision of this Agreement to the contrary, in the event of any Developer's Default, pursuant to Section XVI(A) (b) or (c), the City's remedy shall be limited to recovery of any actual damages incurred by the City as a result of its reliance on such false or misleading representation or warranty, report or certificate; except, however in the event that such false or misleading information was provided by Developer fraudulently or with the intent to intentionally mislead the City, in which event all remedies under Section XVI(B) shall be available to the City.

D. City Default. Any one or more of the following shall constitute a "*City Default*":

1. Default by City in the due and punctual payment, performance or observance of any obligation of City under this Agreement or any other Project Agreement, as to which the Developer has given a Default Notice, as defined herein, to the City, which default the City do not cure within the period of time specified for cure in the Default Notice;

2. Any representation or warranty made by City in this Agreement or any other Project Agreement which, due to gross negligence or willful misconduct, is false or misleading in any material respect as of the time made and has been relied upon by the recipient to its material detriment prior to correction by City; or

3. Any report, certificate or other document furnished by City to the Developer pursuant to this Agreement or any other Project Agreement which, due to gross

negligence or willful misconduct, is false or misleading in any material respect as of the time made and has been relied upon by the recipient to its material detriment prior to correction by City.

E. Remedies for City Default. At any time as of which a City Default exists, the Developer, at its option, may, but shall not be obligated to, exercise any one of more of the following remedies;

1. By written notice to the City, terminate this Agreement, provided that such termination shall not affect the obligations of the City that have then accrued;

2. (i) recover from the City any sum of money that are then due and payable by the City to or for the benefit of the Developer under this Agreement, and/or commence an action for specific performance or other equitable relief against City with respect to the defaulted obligations; and (ii) exercise the Developer' rights under Sections XVI(G) and (H) with respect to the City Default, provided that any City payment obligations shall be limited to the Incentives, as defined herein; and

3. Enforce, or avail itself of, any other remedies available to it at law or in equity.

F. Default Notices. At any time when there exists a default by the Developer in the due and punctual payment, performance or observance of any obligation of the Developer under this Agreement or any other Project Agreement, City shall give the Developer a written notice, indicated as being a "Default Notice" under this Section, identifying the default and specifying a period of time for the cure of the default. At any time when there exists a default by City in the due and punctual payment, performance or observance of any obligation of City under this Agreement or any other Project Agreement, the Developer shall give the City a written notice, indicated as being a "Default Notice" under this Section, identifying such default and specifying a period of time for the cure of the default. Any notice given in accordance with this Section is called a "*Default Notice*." The period of time for cure to be set forth in any Default Notice may be not shorter than such period of time as is reasonable in light of the nature of the default and the time reasonably required to cure the default. Notwithstanding any provision hereof or in any other Project Agreement to the contrary, in no event will the cure period set forth in any Default Notice be less than (i) ten (10) business days to cure any monetary payment default, or (ii) thirty (30) days with respect to any non-monetary default, and, during the construction period, to the extent such non-monetary default cannot reasonably be cured in thirty (30) days, then the period for cure shall be extended for so long as is reasonable, provided that the Developer commences to cure within such initial thirty (30) day period and thereafter diligently continues to pursue such cure; provided, however, that in no event shall the cure period for non-monetary defaults be extended for longer than ninety (90) days total.

G. Enforcement. As the remedy at law for the breach of any of the terms of this Agreement may be inadequate, each enforcing Party has a right of temporary and

permanent injunction, specific performance, and other equitable relief that may be granted in any proceeding brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy.

H. Interest. Except as otherwise expressly provided herein, amounts that are due and payable under this Agreement will bear interest if not paid when due, until paid, (a) at the prime rate published in the "Money Rates" section of the Wall Street Journal from time to time for the first 30 days after due and (b) at the higher of the rate provided for in clause (a) or 8% per annum beyond the first 30 days after due.

I. Costs of Enforcement. If an action is brought by either party for the enforcement of any provision of this Agreement, the non-prevailing party, to the extent that such non-prevailing party is found to be in default or breach of this Agreement or another Project Agreement, will pay to the prevailing party all costs and other expenses that become payable as a result thereof, including without limitation, reasonable attorneys' fees and expenses.

J. Lender Priority and Cure Rights. The City acknowledges and agrees that the Project may be financed, initially pursuant to a construction loan, and thereafter potentially with term financing. In the event the Developer furnishes the City, in writing, the identity and contact information for the Developer's lender, then the City agrees to fully subordinate its rights and remedies under this Agreement to the rights and remedies of such lender, including, without limitation, executing such subordination agreement(s), inter-creditor agreement(s), and/or similar documents requested by such lender, and will provide copies of any Default Notice to the Developer's lender concurrently with providing such Default Notice to the Developer. The City further agrees that the Developer's lender shall have the right to cause such Developer Default to be cured, with or without formally foreclosing on the Developer's right, title and interest in the Development Site or taking an assignment of this Agreement; provided, however if such lender does exercise rights under its loan documents to forelose or otherwise assume ownership of the Project and/or designate a new owner or contractor, then the same will be Permitted Assignment without the need for consent from the City. The Lender or its nominee (i) shall be considered an Assignee under this section, (ii) shall enter into an assignment and assumption agreement reasonably satisfactory to the City assigning Developer's rights and assuming Developer' obligations under this Agreement, and (iii) shall be bound by the terms and the conditions of this Agreement. If the Developer's Default is of a nature that cure cannot be reasonably effectuated by the lender without taking possession, control or ownership of the Project Site and the lender notifies the City of its intention to exercise its rights to do so, then the City agrees that it will not seek to terminate this Agreement while the lender is proceding in its efforts to enforce its rights under the applicable loan documents. For the avoidance of doubt, the foregoing will not limit the City's right to pursue any claims against the Developer (or its successor pursuant to a Permitted Assignment) for a Developer Default.

Notwithstanding any other provision of this Agreement, the above-described notification and cure provisions shall not apply when (i) the City's Building Official issues a stop work order for local, county or state code violations related to construction defects, or (ii) the City Engineer issues a stop work order for local, county or state construction code violations.

## XVII. MINORITY BUSINESS ENTERPRISES, FEMALE/WOMAN BUSINESS ENTERPRISES, DISADVANTAGED BUSINESS ENTERPRISES AND SMALL BUSINESS ENTERPRISES REQUIREMENTS

The City of Lakewood supports diversity and inclusion and encourages the utilization of Minority Business Enterprises, Female/Woman Business Enterprises, Disadvantaged Business Enterprises and Small Business Enterprises as prime and subcontractors, and the utilization of women and minority workers on construction projects. The Developer acknowledges that it will undertake commercially reasonable measures to adhere to and require 25% participation by these enterprises, provided that such participation is subject to availability of qualifying laborers and contractors in the Cleveland-Elyria Metropolitan Statistical Area. It is understood and acknowledged by the City that depending on market conditions, such participation may not be attainable for all elements of the Project. The Developer shall provide the City with documentation that reasonably demonstrates the efforts of the Developer, its affiliates, and all contractors and subcontractors to comply with the terms of this Section.

## XVIII. BUILDING TRADES

Developer recognizes the value of including building trades in the Project and will use commercially reasonable efforts to work with the Cleveland Building and Construction Trades Council and/or directly with its affiliate members in connection with the Project.

## XIX. WAGE REQUIREMENT

The Developer, and any party with whom Developer directly contracts related to the construction of the Project, will use commercially reasonable efforts to ensure that laborers and mechanics employed on the Project are paid at the prevailing rates of wages of laborers and mechanics for the class of work called for with respect to that work (determined in accordance with ORC Chapter 4115 requirements for such determinations).

## XX. REPORTING

Following the first whole month after which construction commences through the *earlier of* (i) the issuance of a certificate of occupancy ("COO") for the Project, or (ii) the distribution of all Incentives called for under this Agreement, the Developer shall provide a monthly status reports to the City using the standard form to be negotiated and mutually-agreed by the Parties and attached hereto as Exhibit G, which such form shall include reasonable levels of information regarding Minority Business Enterprises, Female/Woman Business Enterprises, Disadvantaged Business Enterprises, Developer agrees to provide the City with any reasonably requested information necessary related to the construction of the Project to facilitate tracking of Project

related construction workers on a quarterly basis to assure payment of appropriate income taxes due to the City from such employment.

## XXI. EQUAL OPPORTUNITY EMPLOYMENT

In accordance with Ohio Revised Code Section 5709.832, the Developer hereby states that no Owner shall deny any individual employment based on considerations of race, religion, sex, disability, color, national origin or ancestry. In addition, no Owner shall deny any individual employment based on considerations of sexual orientation, gender identity and expression, age, or veteran status.

## XXII. CITY LEGAL FEES PAID BY DEVELOPER

Upon the City's passage of the TIF Ordinance and CRA Ordinance as set forth in this Agreement, the Developer shall reimburse the City's reasonable fees for outside legal counsel incurred in connection with this Agreement and the planning and documenting of the Project; provided, however that such fees shall not exceed the Cost Cap. Upon the City's passage of the TIF Ordinance and CRA Ordinance, the City shall provide an invoice and, if applicable a cancelled check demonstrating payment,to the Developer for fees incurred through such date. Such reimbursed amounts shall be paid by Developer within 30 calendar days of receipt of any invoice presented by the City. Thereafter, the City shall provide additional invoices to the Developer for costs incurred hereunder no more frequently than quarterly. The Developer shall additionally reimburse the City for reasonable costs of outside legal counsel incurred in connection with the Agreement after the execution of this Agreement, if applicable, including particularly with respect to the establishment of the CRA and TIF and documentation of the Service Agreement; provided, however, that such reimbursable costs shall not exceed the Cost Cap.

## XXIII. INSURANCE

During construction and until completion of the improvements on that portion of the Development Site being developed by it, Developer shall maintain insurance in such amounts and for such events as may be required by its lender or reasonably required by the City's existing rules and regulations applicable to all development and construction in the City, and as may be commonly maintained in connection with a development of the size and nature of the Project. The Developer agrees, on behalf of itself and its agents, subcontractors, and subconsultants that the insurance policies required herein (excluding the professional liability insurance) shall require the insurer to name the City as an additional insured, and to provide the City with 30 days' prior written notice before the cancellation of a policy. All insurance shall be effected by valid enforceable policies issued by insurers authorized to do business in the State of Ohio.

Upon request, the Developer shall provide copies of all insurance certificates to the City.

## XXIV. WARRANTY

The Developer warrants that all Infrastructure Improvements, if any, constructed by Developer in connection with the Project will be in material conformity with the Development Plans and free from material defects in workmanship, materials and equipment, commencing on the date of the City Council's formal acceptance of the dedication of the Infrastructure Improvements for a period of eight years. The warranty provided in this Section shall be in addition to, and not in limitation of, any other warranty or remedy provided by law.

Should defects in the Infrastructure Improvements become apparent, the City Engineer shall promptly notify the Developer and provide a copy of said notice to the Finance Director. Within ten (10) business days of receipt of said notice, the Developer shall visit the Development in the company of the City Engineer to determine the extent of all defects and shall promptly repair or replace the defective work, including all adjacent work damaged as a result of such defects or as a result of remedying the defects, whether or not such adjacent work was originally provided by the Developer.

If the defective work is reasonably considered by the City Engineer to be an emergency, the City Engineer may require the Developer to visit the Development within three (3) days of receipt of said notice. The Developer shall be responsible for the cost of temporary materials or equipment required during the repair or replacement of the defective work.

If the Developer does not promptly repair or replace defective work, the City may repair or replace such defective work and charge the cost thereof to the Developer or the Developer's surety. Defective work that is repaired or replaced by the Developer shall be inspected by the City Engineer. The repaired or replaced work and shall be warrantied by the Developer pursuant to the terms of this Section.

## XXV. INDEMNIFICATION

A. General Indemnity. Developer shall, at its cost and expense, indemnify and hold the City and any officials, employees, agents and representatives of the City, its successors and assigns (collectively the "*Indemnified Parties*" and each an "*Indemnified Party*"), harmless from and against, and shall reimburse the Indemnified Party for, any and all third-party claims for loss, cost, claim, liability, damage, judgment, penalty, injunctive relief, expense or action (collectively the "*Liabilities*" and each a "*Liability*"), other than Excluded Liabilities, as defined below, whether or not the Indemnified Party shall also be indemnified as to any such claim by any other person, the basis of which claim (a) was caused by or results from the willful or grossly negligent misconduct of Developer or its authorized affiliates, agents, employees, contractors, subcontractors and material suppliers while in possession or control of the Project; (b) relates to fraud, misapplication of funds, illegal acts, or willful misconduct on the part of Developer or its affiliates, or (c) relates to the bankruptcy or insolvency of the Developer or its affiliates. The indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any remedy under any Project Agreement.

"*Excluded Liability*" means each Liability to the extent it is attributable to the gross negligence or willful misconduct of any Indemnified Party or the failure of any Indemnified Party that is a third-party beneficiary of this Agreement to perform any obligation required to be performed by the Indemnified Party as a condition to being indemnified hereunder, including without limitation, the settlement of any Liability without the consent of the Developer, or, to the extent the Developer's ability to defend a Liability is prejudiced materially, the failure of an Indemnified Party to give timely written notice to the Developer of the assertion of a Liability.

Upon notice of the assertion of any Liability, the Indemnified Party shall give prompt written notice of the same to the Developer. Upon receipt of written notice of the assertion of a Liability, the Developer shall have the option to assume the defense thereof, with power and authority to litigate, compromise or settle the same; provided that, the Indemnified Party shall have the right to approve any obligations imposed upon it by compromise or settlement of any Liability or in which it otherwise has a material interest, which approval may be withheld in its sole discretion. Developer's decision whether or not to assume the defense of the Liability shall not relieve Developer of its duty to provide indemnity to the Indemnified Parties as set forth herein.

B. Environmental Indemnity. The Developer hereby agrees to release, hold harmless, defend and indemnify the Indemnified Parties from, for and against all actual or threatened claims, out-of-pocket costs (including but not limited to the cost of investigation, removal, remediation and other clean-up of Hazardous Substances, and reasonable fees of external attorneys and other external professionals, experts and consultants retained by the Indemnified Parties) demands, orders, losses, lawsuits, liabilities, damages (including without limitation all consequential damages) and out-of-pocket expenses whether brought collectively or individually by the Developer, a governmental authority or any other third party (all the foregoing hereinafter collectively referred to as "*Losses*") arising from or related to any of the following:

1. The past, present or future Release, threatened Release, Storage, Treatment, accumulation, generation, utilization, Disposal, transportation or other handling or migration of any Hazardous Substance on, in, onto, or from the Project.

2. The violation or alleged violation of Environmental Laws occurring on or related to the Project.

3. Any action taken by the Indemnified Parties in accordance with this Agreement to eliminate, prevent, or mitigate the potential adverse impact on the Project or the Indemnified Parties as a result of or in anticipation of any actual, suspected or threatened violation of Environmental Laws or Release or threatened Release of a Hazardous Substance on, in or from or otherwise affecting the Project.

4. The costs of any required or necessary repair, investigation, monitoring, cleanup or detoxification of the Project and the preparation and implementation of any closure, remedial or other required plans, in each case limited to environmental matters.

The foregoing clauses are hereinafter referred to collectively as "*Environmental Matters*."

5. The Developer hereby agrees that the Indemnified Parties shall be reimbursed directly by the Developer, or if a sale of all or part of the Project occurs, from the Project or proceeds thereof for any Losses suffered or sustained by the Indemnified Parties as a result of Environmental Matters, until such time as the Indemnified Parties have been reimbursed in full.

6. The Developer hereby acknowledges that, as of the date hereof, the Indemnified Parties have not created, caused or contributed to the presence, Release or threatened Release of Hazardous Substances on, in or from the Project and further that the Indemnified Parties shall not function as an owner or operator of the Project notwithstanding any conflicting or contradictory provisions contained in the Agreements. The Developer further acknowledges that the release, hold harmless and indemnity as provided to the Indemnified Parties herein, are being provided in exchange for good and valuable consideration, including but not limited to the Indemnified Parties' providing financial accommodations to the Developer or its affiliates.

## XXVI. PROPERTY VALUE CONTESTS

The City and the Developer acknowledge that Cuyahoga County, like all other counties in Ohio, has an established process by which property owners, school districts and certain other parties can challenge the value of their property for property tax purposes. Developer intends to consider the effect of changes in property values for all affected parties when participating in valuation challenges related to the Project, as either a complainant or a counter-complainant.

## XXVII. CONFIDENTIALITY

To the extent provided to the City, and unless otherwise directed by court order, City will treat the loan documents, the equity investment documents, the commitments of any tenants or purchasers to the Project, the expected or actual tenant and ownership mix of the Project, any proformas, and any other information provided to the City and clearly marked "trade secret" as trade secrets and not as public records or information, and will not disclose such documents or information to any third party without the written consent of the Developer. The City will promptly notify the Developer of (a) any public records request made to it that seeks disclosure of such documents or information and (b) any court action filed against it to compel the disclosure of such documents or information. The City will reasonably cooperate with the Developer in defending any such court action. The Developer will defend City against any third party claim arising from the Developer's designation of certain records as exempt from public disclosure, and will hold harmless the City for any liability or award to a plaintiff for damages, costs and reasonable attorney's fees, incurred by the City by reason of such claim; provided, however, that the City has first provided prompt written notice to Developer of any such claim or potential claim, and Developer has not agreed to waive the prior designation of confidentiality with respect to the records in question within five (5) business days of Developer's receipt of such notice.

## XXVIII. ESTOPPEL CERTIFICATES; CERTIFICATE OF COMPLIANCE

Within thirty (30) days after a request from the Developer or any successor-in-interest to the Developer under this Agreement, the City shall execute and deliver to the Developer, any successor-in-interest to the Developer, or any proposed purchaser, mortgagee or lessee of the Project, a certificate in a form mutually-acceptable to the City and the Developer stating that, if the same is true: (i) this Agreement is in full force and effect; (ii) the requesting Developer or successor is not in default under any of the terms, covenants or conditions of this Agreement, or, if the Developer or successor are in default, specifying same; and (iii) such other matters as the Developer or successor reasonably requests. Additionally, following completion of initial construction of the Project (i.e., after the final certificate of occupancy has been issued), upon request by the Developer, the City will provide a written certificate of compliance confirming, the Developer have complied with the requirements set forth in Sections II(A) and (B), V, VII, VIII, XIII, and XIV hereof (subject to the Developer providing reasonable backup documentation to confirm same).

## XXIX. MISCELLANEOUS

A. Any notice of communication required or permitted to be given under this Agreement by either Party to the other shall be deemed sufficiently given if personally delivered, or mailed by certified United States mail, postage prepaid, and addressed as follows:

(1) Notice to City:

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

with a copy to:

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

(2) Notice to Developer:

LDC Warren LTD, LLC
Attn: Tom Kuluris / Dru Siley
28045 Ranney Parkway, Unit E
Westlake, OH 44145

with a copy to:

Matthew J. McCracken, Esq.
Kaufman, Drozdowski & Grendell, LLC
29525 Chagrin Blvd., Ste. 250
Pepper Pike, OH 44122

Either Party may change its address for notice purposes by providing written notice of such change to the other Party.

B. Entire Agreement/No Third-Party Beneficiary. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the Project and the Development Site to be completed in connection therewith, and contains all of the covenants, agreements, and other terms and conditions between the Parties hereto with respect to the same. No waivers, alterations or modifications of this Agreement or any agreements in connection therewith shall be valid unless in writing and duly executed by all Parties hereto.

Nothing contained in this Agreement shall be construed so as to confer upon any other person the rights of a third-party beneficiary.

C. Amendment.

1. Recognizing the likelihood of changing conditions (such as demand and supply factors; changes in tenants that are in (or likely to be in) the northeastern Ohio regional market area; and other needs and concerns of the City and the Developer), the Parties agree to review and consider amendments to this Agreement, as necessary. Any amendments to this Agreement shall be valid and enforceable only if in writing and executed by the Parties.

2. The City and the Developer acknowledge and agree that in the event either Party requests further amendment and/or modification of this Agreement, the affected Parties shall thereafter engage in good-faith discussion and negotiation, undertaking all efforts to resolve and address such issues as the Parties may then raise in connection with this Agreement and such further amendment and modification thereof.

3. The Parties further acknowledge and agree that this Agreement, as initially executed, is intended to outline the goals and objectives of the Project, as among the Developer and the City, and governs the obligations of the Parties. All prior discussions and agreements of the Parties relating to the subject-matter of this Agreement are hereby incorporated into this Agreement, which shall supersede any such prior discussions and agreements, all of which are integrated herein.

D. Assignment. This Agreement shall be binding on the Parties hereto and their respective successors and assigns. Except as otherwise discussed below, this Agreement may not be assigned by any party hereto without the written consent of the other party, not to be unreasonably withheld. Notwithstanding the foregoing, the Developer may, upon notice to the City, and without the prior written consent of the City, assign this Agreement to (i) a lender or its designee in connection with financing obtained for the Project (as described in Section XIV(J). Assignments conducted pursuant to the foregoing sentence shall be referred to herein as "Permitted Assignments". The Developer shall provide written notice to the City of any Permitted Assignments no later than thirty (30) days prior to the execution of such assignment. All representations and warranties of the Developer and the City herein shall survive the execution and delivery of this Agreement. Notwithstanding the foregoing, the consent of the City shall be required for any assignment to (i) a party (or an affiliate) who has been involved in litigation or a material dispute opposite the City, (ii) a party (or an affiliate) that has had any contract with the City cancelled as a result of a default by such proposed Assignee (or its affiliates), or (iii) a party (or an affiliate) who owns commercial real estate or multi-family property in the City and who has on multiple occasions been subject to any action, including fines and material notices, as a result of building code, zoning or property management violations.

E. Exhibits. The Exhibits to this Agreement constitute an integral part of and are hereby incorporated by reference into this Agreement.

F. Counterparts/ Execution. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument anyone or more such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. Electronically transmitted "PDF" signatures shall be treated as originals.

G. Severability. The invalidity or unenforceability of anyone or more phrases, sentences, clauses, or sections in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof, and this Agreement shall be deemed amended to the extent required to make the provisions hereof lawful, valid and enforceable, giving maximum effect to the intent of the Parties as

evidenced in this Agreement. The Parties agree to enter into a written instrument to evidence any such amendment.

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

I. Captions. The captions of the Articles and Sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or in any manner limit or define the terms of this Agreement.

J. Force Majeure. Except as expressly provided herein, if either Party is delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder, as a result of any cause or circumstance beyond the reasonable control of such Party, including, but not limited to, strikes, lockouts, pandemics, epidemics, shortages of labor, fuel or materials, acts of God, enemy act, riot, insurrection or other civil commotion, fire or other casualty or any orders of any governmental agency, court, or tribunal with jurisdiction over the Project, Developer or the City, then the time for performance of such covenant or obligation shall be extended by a reasonable time to accommodate such delay or hindrance (as applicable, a "Force Majeure"). The Party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such delay, notify the other Party thereof in writing, and the cause thereof, and provide information concerning the projected term of the delay.

K. Conflicts of Interest / No Individual Liablility. No official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of the City or the Developer shall be personally liable to the Developer or the City, as applicable, or any successor-in-interest, in the event of any default or breach by the City or the Developer or for any amount or amounts which may become due to the City or the Developer or any successor to the City or the Developer or on any obligations under the terms and conditions of this Agreement.

L. Survival. The provisions of this Agreement shall survive any expiration or earlier termination of the Agreement to the extent necessary to carry out the intent and expectations of the Parties.

M. Non-Waiver. Failure of City or Developer to complain of any act or omission on the part of the other Party, however long the same may continue, shall not be deemed to be a waiver by said Party of any of its rights hereunder. No waiver by City or Developer at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision.

N. Approvals by City. Any provision of this Agreement requiring the approval of the City, the satisfaction or evidence of satisfaction of the City, certificate or certification by the City or the opinion of the City shall be interpreted as requiring action by the Mayor of the City (or such other official as the Mayor of the City may from time to time designate) granting, authorizing or expressing such approval, satisfaction, certification or opinion, as the case may be, unless such provision expressly provides otherwise.

O. Municipal Power. Nothing in this Agreement shall be construed to be in derogation of the powers granted to the municipal corporations by Article XVIII of the Ohio Constitution, including the right to protect the health, safety and welfare of its citizens.

P. Further Assurances. The parties shall take or cause to be taken any and all other or further actions necessary or required of such party in order to effectuate any of the terms and provisions herein.

Q. Good Faith. Whenever in this Agreement any Party is required or permitted to grant approval or consent, take any action or request any other Party to take any action, make decisions or otherwise exercise judgment as to a particular matter, arrangement or term, the Party granting such approval or consent, taking or requesting such action, making decisions or otherwise exercising judgment shall act reasonably and in good faith and, in the case of approvals or consents, shall act with all deliberate speed in making its determination of whether or not to approve or consent to any particular matter and shall not impose conditions on the granting of such approval or consent that the approving or consenting Party does not believe are necessary in connection with such approval or consent.

(Signature Page Follows)

**IN WITNESS WHEREOF,** the City and Developer, each by a duly authorized representative, have caused this Agreement to be executed on this __ day of _____, 2024.

CITY OF LAKEWOOD

By:_____
Meghan F. George, Mayor

LDC WARREN LTD., LLC, an Ohio limited liability company

By:_____
Tom Kuluris, President

Approved as to Form:

_____
Ernie Vargo, Director of Law

STATE OF OHIO )
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared the above named CITY OF LAKEWOOD by MEGHAN F. GEORGE, its Mayor, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and who acknowledged that she did sign the foregoing instrument and that the same is the free act and deed of said city, and the free act and deed of her personally and as such Mayor.

This is an acknowledgement certificate. No oath of affirmation was administered to the signer in connection with this notarial act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this _____ day of _____, 2024.

_____
Notary Public

STATE OF OHIO )
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared the above named CITY OF LAKEWOOD by ERNIE VARGO, its Director of Law, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said city, and the free act and deed of him personally and as such Director of Law.

This is an acknowledgement certificate. No oath of affirmation was administered to the signer in connection with this notarial act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this _____ day of _____, 2024.

_____
Notary Public

STATE OF OHIO )
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared the above named LDC WARREN LTD., LLC, by TOM KULURIS, its President, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said limited liability company, and the free act and deed of him personally and as such President.

This is an acknowledgement certificate. No oath of affirmation was administered to the signer in connection with this notarial act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, _____, this _____ day of _____, 2024.

_____
Notary Public

Exhibit A

**Legal Description**

[To be attached]

Exhibit B

**Infrastructure Improvements**

All improvements required under the Development Plan within the public right-of-way and to be conveyed at completion or otherwise owned by the City or another public entity, including but not limited to sidewalk construction and repair.

Exhibit C

**Development Site**

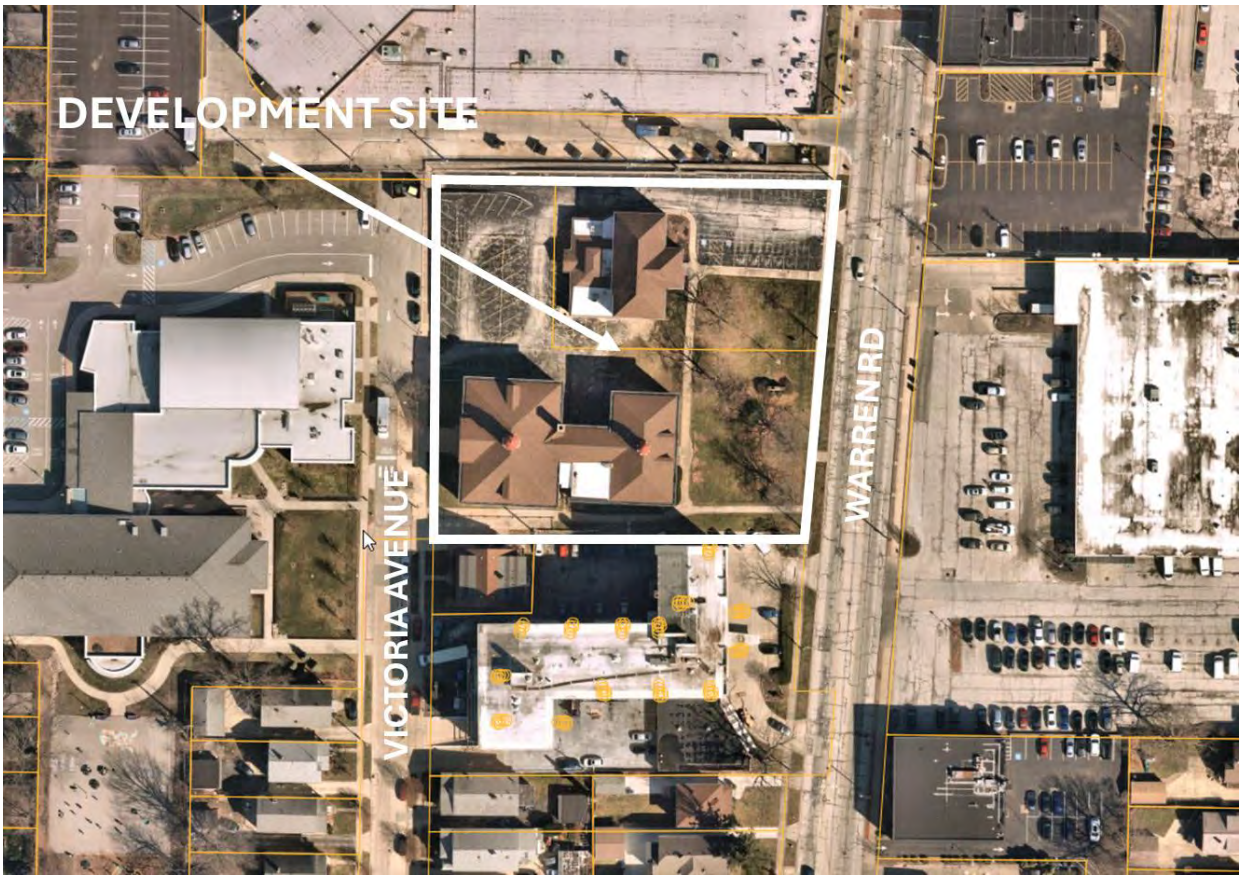

Exhibit D

**Form of MOU**

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[SPACE ABOVE FOR RECORDER'S USE]

**MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING, made effective the _____ day of _____, 2024, by and between the CITY OF LAKEWOOD (the "City"), a municipal corporation duly organized and validly existing under the laws of the State of Ohio, having an address 12650 Detroit Ave., Lakewood, OH 44107, and LDC Warren LTD, LLC, an Ohio limited liability company with its principal offices at 28045 Ranney Parkway, Suite E, Westlake, OH 44145 (the "Owner"). The City and Owner are collectively referenced as the "Parties."

RECITALS:

WHEREAS, Owner is the owner of an approximately 1.65-acre site currently identified as 1456 Warren Road (Parcel ID 314-04-064) (the "East Rockport School"), and 1470 Warren Road (Parcel ID 314-04-065) (the "Grant School"), both located in the City of Lakewood, County of Cuyahoga, and State of Ohio, and more particularly described in Exhibit A, attached hereto and made a part hereof (collectively, the "Development Site"); and

WHEREAS, in connection with Owner's development of the Development Site, Owner and the City have entered into that certain Development Agreement dated _____, 2024 (the "Development Agreement"); and

WHEREAS, pursuant to the terms of the Development Agreement, the Owner and the City have agreed that, upon the occurrence of certain conditions precedent set forth in the Development Agreement, the Parties will record this Memorandum of Understanding (the "MOU") with the Cuyahoga County Recorder's Office with respect to the Development Property.

NOW, THEREFORE, intending to be legally bound, Owner and the City hereby set forth the following information with respect to the Development Property:

Agreements:

1. Prohibited Uses. Owner and the City each acknowledge and agree that the Development Property shall be, from and after the date hereof, subject to a deed restriction providing that neither Owner, nor any current or future owners, tenants, successors, assignees, or other transferees of all or any part of the Development Property shall operate, sell, lease or allow the operation, sale or lease of the Development Property as or for any of the following uses (collectively, the "Prohibited Uses"):

   a. Any establishment which stocks, displays, sells, rents, distributes, or offers for sale or rent any x-rated, pornographic, lewd, obscene or so-called "adult" newspaper, book, magazine, film, picture, video tape, video disc, material or other similar representation or merchandise of any kind;

b. Any establishment which stocks, displays, sells, rents, distributes, or offers for sale or rent any tobacco products (including but not limited to hookah or "vaping" products) or paraphernalia commonly used in the use or ingestion of marijuana or illicit drugs; or any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous drug or other controlled substance, including without limitation, any hashish pipe, waterpipe, bong, pipe screens, rolling papers, rolling devices, coke spoons or roach clips. This restriction shall not prohibit the inclusion of a medical marijuana dispensary.

c. Any "second-hand" store whose business is selling used merchandise such as thrift shops, salvation army type stores, "goodwill" type stores, and similar businesses. This restriction shall not prohibit regional or national brand name businesses (e.g. Gap's Old Navy) from selling quality used clothing and related merchandise which do not accept free donations of goods for resale.

d. Any slaughterhouse.

e. Any mobile home park, trailer court, labor camp, junk yard, or stock yard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance).

f. Any car wash.

g. Any business selling gasoline or diesel fuel unless such fuel is never stored, maintained, or delivered on site.

h. Any "adult" entertainment or any operation selling or displaying any nudity (including but not limited to partially clothed dancers or wait staff) or any establishment where the overt sexual allure of naked or scantily dressed persons is an important component of the goods or services being offered.

i. Any bathhouse.

j. Any church, school, or related religious or educational facility, religious reading room or place of religious worship.

k. Any establishment providing the sale, distribution, or display of items for pawn loans, or establishments that offer payday loans, title loans, check cashing services or similar establishments.

l. Any establishment conducting games of chance or permitting gambling of any kind, including but not limited to, an off-track sports betting establishment or bingo parlor.

m. Any flea market.

n. Any fire, going out of business, relocation, bankruptcy or similar sales (unless pursuant to court order).

o. Any central laundry, dry cleaning plant, or laundromat; provided, however, this restriction shall not apply to any dry cleaning facility providing on-site service oriented to pickup and delivery by the ultimate consumer, including, nominal supporting facilities.

p. Any operation for the sale, distribution, or display of firearms or ammunition.

q. Any funeral home, crematorium or mortuary.

r. Any operation whose principal use is a massage parlor; provided this shall not prohibit massages in connection with a beauty salon or health club or athletic facility or regional/national brand name massage service providers not exceeding 5,000 square feet.

s. Any recycling facility or stockyard.

t. Any carnivals, fairs or auctions.

u. Any industrial, factory or manufacturing warehouse operation (excluding any warehousing incidental to the operation of permitted retail uses).

v. Any dumping, disposing, incinerating, or reducing of garbage (exclusive of dumpsters for the temporary storage of garbage and any garbage compactors, in each case which are regularly emptied so as to minimize offensive odors) or other garbage or scrap dump or processing operating.

w. "For sale" residential property; provided, however, multi-family and/or other residential rental property shall be a permitted use.

2. Survival. Subject to applicable law, including, without limitation, the rule against perpetuities (and any similar laws then in effect and applicable to the Development Property), the Prohibited Uses shall be a covenant running with the land, and shall be binding upon and inure to the benefit of the Parties and any successors and assigns of the Parties, including any future owners of the Development Property.

[Signature pages immediately follow]

**IN WITNESS WHEREOF,** the City and Owner, each by a duly authorized representative, have caused this Memorandum of Understanding to be executed on this ___ day of _____, 2024.

CITY OF LAKEWOOD

By:_____
Meghan F. George, Mayor

LDC WARREN LTD., LLC, an Ohio limited liability company

By:_____
Tom Kuluris, President

Approved as to Form:

_____
Ernie Vargo, Director of Law

STATE OF OHIO )
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared the above named CITY OF LAKEWOOD by MEGHAN F. GEORGE, its Mayor, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and who acknowledged that she did sign the foregoing instrument and that the same is the free act and deed of said city, and the free act and deed of her personally and as such Mayor.

This is an acknowledgement certificate. No oath of affirmation was administered to the signer in connection with this notarial act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this _____ day of _____, 2024.

_____
Notary Public

STATE OF OHIO )
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared the above named CITY OF LAKEWOOD by ERNIE VARGO, its Director of Law, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said city, and the free act and deed of him personally and as such Director of Law.

This is an acknowledgement certificate. No oath of affirmation was administered to the signer in connection with this notarial act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this _____ day of _____, 2024.

_____
Notary Public

STATE OF OHIO )
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared the above named LDC WARREN LTD., LLC, by TOM KULURIS, its President, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said limited liability company, and the free act and deed of him personally and as such President.

This is an acknowledgement certificate. No oath of affirmation was administered to the signer in connection with this notarial act.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, _____, this _____ day of _____, 2024.

_____
Notary Public

Exhibit E

**Site Plan**

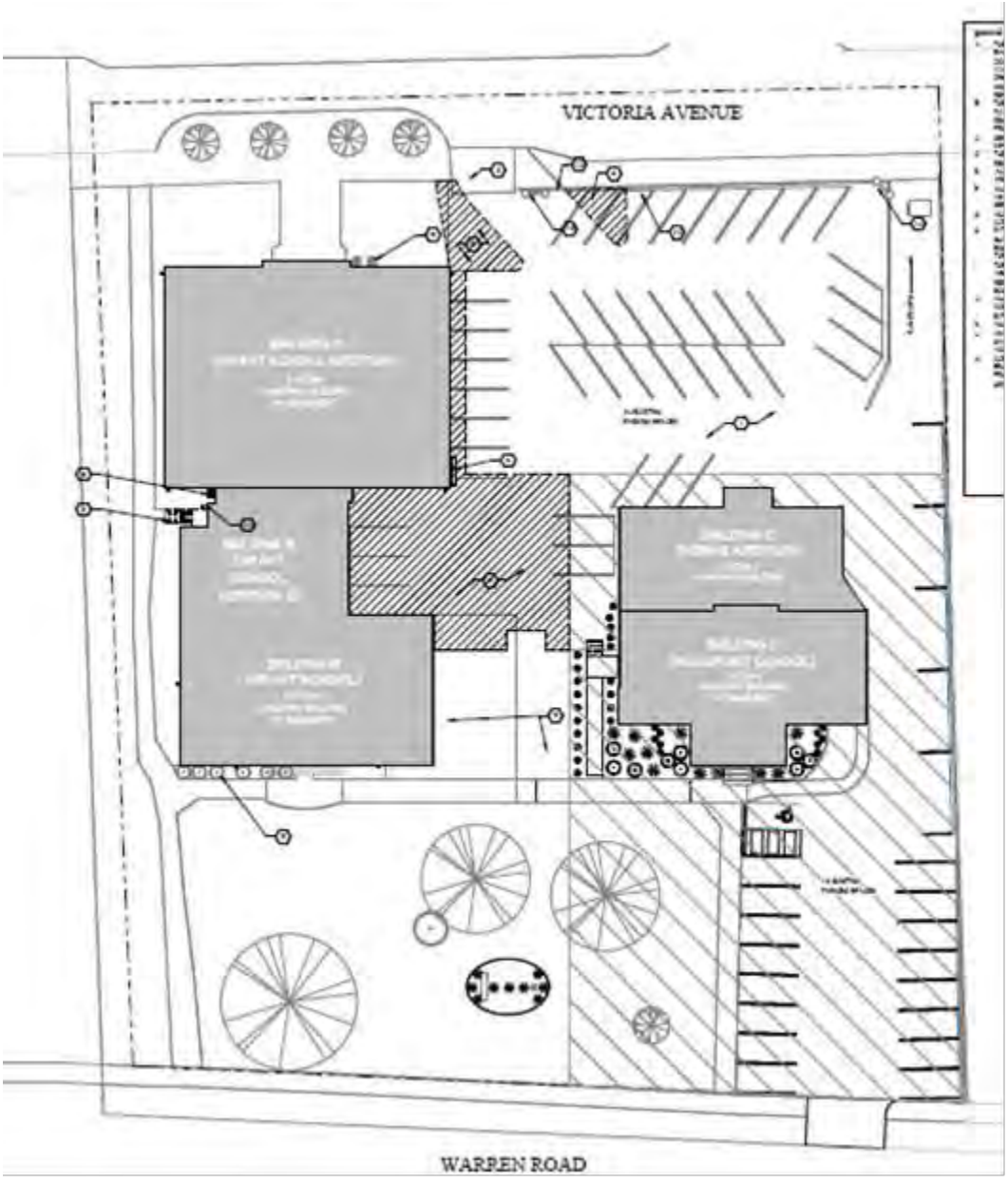


Exhibit E

City's Fair Housing Marketing Policy

**Affirmative Fair Housing Marketing Principles, Policies & Practices**
**Lakewood, OH**

## *Affirmative Fair Housing Marketing Principles*

- Protect and safeguard the right and opportunity of all persons to be free from all forms of discrimination including discrimination based on age, race, color, creed, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic.
- Vigorously protect the right of all citizens to equal housing opportunities regardless of characteristics protected by fair housing law.
- Affirmatively further fair housing choice in its operations and promote the value of fair housing in its approach to marketing, community outreach and resident selection.
- Take all necessary and proper actions to create and sustain conditions in which individuals of similar income levels in the same housing market area have available to them a like range of housing choices regardless of characteristics protected by fair housing law.

## *Affirmative Fair Housing Marketing Policies & Practices*

- City owned and assisted projects must make special efforts to attract racial or ethnic groups "least likely to apply" when marketing housing opportunities.
- Special efforts must be made to market city owned and assisted housing opportunities to historically disadvantaged, marginalized, and underrepresented groups including but not limited to publicizing the availability of housing opportunities in media typically accessed by these groups.
- A non-discriminatory hiring policy for all employees including those involved in property sales or rental.
- Housing sales and management staff must review and understand the purpose and objectives of fair housing law.
- HUD's Equal Housing Opportunity logo must appear on all signs, ads, brochures, and written communications associated with city-owned and assisted housing opportunities.
- HUD's fair housing poster must be displayed in rental offices and locations where potential tenants of city-owned and funded housing are likely to apply for occupancy.
- A sign displaying the HUD Equal Housing Opportunity logo, slogan, or statement must be displayed at all city-sanctioned housing project sites.
- A fair, unbiased, clearly defined, and documented selection process must be utilized to screen prospective buyers and tenants of city-owned and assisted housing.
- Provide agents and employees marketing city owned and assisted housing with education and training oportunities regardingon fair housing law, policies, and procedures.

# Exhibit G

## Reporting Format

**Union/MBE/FBE Tracker - Liberty Common Development**

| Division | Description | Subcontractor | Contract Value | MBE/FBE | Union | Prev. Wage | Sub Phone | Subcontractor Address |
|---|---|---|---|---|---|---|---|---|
| 1 | Demolition | | | | | | | |
| 2 | Asbestos Abatement | | | | | | | |
| 3 | Masonry | | | | | | | |
| 4 | Rough Carpentry | | | | | | | |
| 5 | Finish Carpentry | | | | | | | |
| 6 | Countertops | | | | | | | |
| 7 | Millwork | | | | | | | |
| 8 | Fire Escape | | | | | | | |
| 9 | Waterproofing | | | | | | | |
| 10 | Insulation | | | | | | | |
| 11 | Roofing & Gutters | | | | | | | |
| 12 | Caulking and Joint Sealants | | | | | | | |
| 13 | Doors, Frames & Hardware | | | | | | | |
| 14 | Storefronts and Entrances | | | | | | | |
| 15 | Windows | | | | | | | |
| 16 | Metal Framing, Drywall, Ceilings | | | | | | | |
| 17 | Carpet & Tile | | | | | | | |
| 18 | Painting | | | | | | | |
| 19 | Bathroom Accessories | | | | | | | |
| 20 | Fire Extinguishers | | | | | | | |
| 21 | Window Treatments | | | | | | | |
| 22 | Elevators | | | | | | | |
| 23 | Smoke & Heat Detectors | | | | | | | |
| 24 | Plumbing | | | | | | | |
| 25 | HVAC | | | | | | | |
| 26 | Electrical | | | | | | | |
| 27 | Sitework | | | | | | | |
| 28 | Asphalt Pavement | | | | | | | |
| 29 | Site Concrete | | | | | | | |
| | | TOTAL | $ - | | | | | |

1st read & referred to HPD
3/4/2024

ORDINANCE NO. 04-2024 BY:

AN ORDINANCE to take effect immediately provided it receives the vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, authorizing the City of Lakewood, Ohio to accept title to certain real property located within the City and immediately transfer title back to the current owner for the purpose of implementing tax increment finance pursuant to Ohio Revised Code Section 5709.41.

WHEREAS, the City of Lakewood, Ohio (the "City") is desirous of encouraging economic development within the City to create jobs and housing opportunities for its residents and to increase the City's tax base; and

WHEREAS, in furtherance of those efforts, the City has implemented several planning initiatives, including, but not limited to, the Gold Coast Master Plan, the Lakewood Park Master Plan, the Parks System Strategic Plan, the Detroit Avenue Streetscape Plan, the Kaufman Park Master Plan, the Active Transportation Plan, the Safe Streets for All Action Plan, and various Parking Studies (collectively, the "Development Plans"); and

WHEREAS, as evidenced by the Development Plans, the City is "engaged in urban redevelopment" as provided in Ohio Revised Code ("R.C.") Section 5709.41; and

WHEREAS, pursuant to R.C. Sections 5709.41, 5709.42 and 5709.43, the City is authorized to enact an ordinance (the "TIF Ordinance") to declare "Improvement" (as defined in R.C. Section 5709.41) to be a public purpose and exempt from real property taxation so long as (1) the City held fee title to such real property prior to the adoption of the TIF Ordinance, and (2) such real property is leased or conveyed to any person either before or after the adoption of the TIF Ordinance; and

WHEREAS, LDC Warren LTD, LLC (the "Developer") desires to construct or cause to be constructed a mixed-use commercial and residential development (the "Project") on certain parcels of real property described and depicted on Exhibit A attached hereto (the "Property") within the City; and

WHEREAS, the City desires to support the project through the passage of the TIF Ordinance pursuant to R.C. Section 5709.41; and

WHEREAS, in order to pass the TIF Ordinance, the City is required to accept fee title to the Property and transfer fee title to the Property back to the current owner;

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 this agreement should be executed as soon as possible to facilitate the project; now, therefore

`

BE IT ORDAINED BY THE CITY OF LAKEWOOD:

Section 1. The Mayor or any other officer of the City is hereby authorized to (1) accept title to the Property, as described and depicted on **Exhibit A** attached hereto, via limited warranty deed, for $1.00 and to immediately transfer title to the Property back to the current owners via quitclaim deed for the same amount, and (2) to take any and all other actions required to effectuate the transfer of the property, including, but not limited to, recording the deeds with the Cuyahoga County Treasurer.

Section 2. That the Property is not needed for a municipal purpose.

Section 3. That waiving competitive bidding in connection with the City's conveyance of the Property to the current owner is justified and reasonable because the property conveyances are necessary for the Project and to fulfill the City's urban redevelopment plan with respect to the same and Council has approved the terms of the purchase and sale contained in the Development Agreement on file in the Clerk of Council's office pursuant to Lakewood Codified Ordinance Section 111.04(a)(4).

Section 4. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were passed in an open meeting of this Council, and that all 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 including R.C. Section 121.22.

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 the members of Council this ordinance shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted:_____

_____
Sarah Kepple, President of Council

_____
Maureen M. Bach, Clerk of Council

Approved:_____

_____
Meghan F. George, Mayor

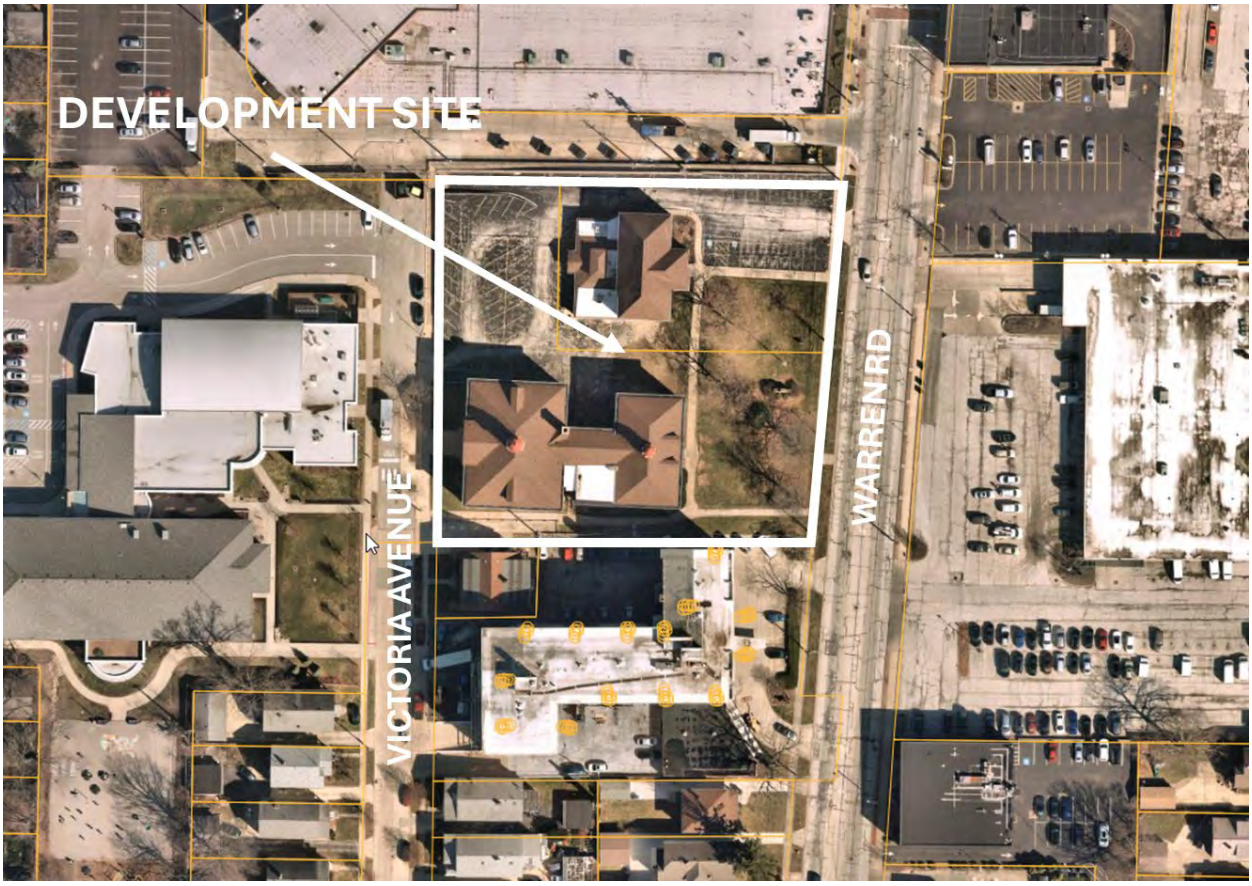
`

## EXHIBIT A

## PROPERTY

The Property is the real estate situated in the City of Lakewood, Cuyahoga County, Ohio consisting of the following tax year 2024 parcel numbers and depicted below:

| Parcel Number | Address |
|---|---|
| 314-04-064 | 1456 Warren Road |
| 314-04-065 | 1470 Warren Road |



ORDINANCE NO. 05-2024 BY:

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing and directing the Director of Planning and Development or the Mayor to enter into an agreement with a licensed real estate broker to market for sale various real properties, pursuant to Section 155.07 of the Codified Ordinances.

WHEREAS, the City is the owner of various properties located in Lakewood; and

WHEREAS, this Council has determined it is in the best interest of the City to sell said real property and that such sale shall further the interest of the City and its residents; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this ordinance is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments, in that these properties should be marketed for sale as soon as is reasonably possible to encourage owner occupancy of the properties; now, therefore,

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The Director of Planning and Development ("Director") or Mayor is hereby authorized and directed, on behalf of the City, to solicit proposals from licensed real estate brokers and to enter into an agreement with the broker deemed most responsive determined by the Director, to market the real properties, pursuant to Section 155.07 of the Codified Ordinances, as detailed below:

| Address | Permanent Parcel Number |
|---|---|
| 12984 Lake, Lakewood, OH | 312-08-017 |
| 12518 Clifton, Lakewood, OH | 312-28-010 |
| 16016-16024 Madison, Lakewood, OH | 312-24-~~023~~**024** |
| 16021 Madison, Lakewood, OH | 313-14-007 |
| 1450 Belle Avenue, Lakewood, OH | 314-04-062 |

Section 2. Recognizing the ~~property~~**properties** listed below ~~is~~**are** not buildable by the standards of the Codified Ordinances, the Director or Mayor is hereby authorized and directed, on behalf of the City, to directly solicit an offer from the adjacent property ~~owner~~**owners** pursuant to Section 155.07 of the Codified Ordinances:

| Address | Permanent Parcel Number |
|---|---|
| NW Olive & Delaware, Lakewood, OH (lot) | 313-15-060 |
| **NE Olive & Delaware, Lakewood, OH (lot)** | **313-15-097** |

Section 3. Either the Director, Mayor, the Director of Law or their designee is hereby authorized and directed to enter into agreements and execute all ancillary and related instruments for the sale of said real property upon presentation of an acceptable offer as determined by the Director.

Section 4. The Director specifically is authorized to negotiate and or make counterproposals to any offer to purchase said real property, and shall, upon the close of the transaction, report to Council the details of the sale.

Section 5. The Director shall make no representations or warranties concerning the conditions of the property, including, but not limited to the property's environmental condition, mechanical systems, dry basements, foundations, structural integrity or compliance with code, zoning or building requirements.

Section 6. 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 7. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this ordinance, and provided it receives the affirmative vote of at least two thirds of the members of Council, this ordinance shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted:_____

_____
Sarah Kepple, President of Council

_____
Maureen M. Bach, Clerk of Council

Approved:_____

_____
Meghan F. George, Mayor