

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

EDWARD GRAHAM  
1286 Chase Avenue  
Lakewood, Ohio 44107

MARGUERITE HARKNESS  
1585 Riverside Drive  
Lakewood, Ohio 44107

WILLIAM GRULICH  
1596 Onondaga Avenue  
Lakewood, Ohio 44107

DEBORAH MECKES  
1596 Onondaga Avenue  
Lakewood, Ohio 44107

AMY DILZELL  
1276 French Avenue  
Lakewood, Ohio 44107

and

STATE OF OHIO,  
CITY OF LAKEWOOD,  
ex rel. EDWARD GRAHAM

Plaintiffs

v.

CITY OF LAKEWOOD  
c/o Its Law Director Kevin Butler  
Lakewood City Hall  
12650 Detroit Avenue  
Lakewood, Ohio 44107

MAYOR MICHAEL SUMMERS  
1456 Wilbert Road  
Lakewood, Ohio 44107

THE CLEVELAND CLINIC FOUNDATION  
(Ohio Entity No. 95560)  
c/o Its Statutory Agent  
CT Corporation System  
1300 E. 9<sup>th</sup> Street  
Cleveland, Ohio 44114

CASE NO.

JUDGE

**VERIFIED COMPLAINT FOR  
TAXPAYERS SUIT,  
BREACH OF CONTRACT  
(THIRD PARTY BENEFICIARY),  
BREACH OF FIDUCIARY DUTY,  
BREACH OF EXPRESS TRUST,  
BREACH OF CONSTRUCTIVE TRUST,  
DECLARATORY JUDGMENT,  
INJUNCTION (TRO & PERMANENT),  
WRIT OF MANDAMUS,  
AN ACCOUNTING,  
UNJUST ENRICHMENT,  
PROMISSORY ESTOPPEL,  
FRAUD, AND CONSPIRACY**

**(Jury Demand Endorsed Hereon)**

**(Monetary Relief Requested)**

DELOS "TOBY" COSGROVE, M.D.  
Chief Executive Officer & President of CCF  
34115 Fairmount Blvd.  
Hunting Valley, Ohio 44022

LAKEWOOD HOSPITAL ASSOCIATION  
(Ohio Entity No. 691247)  
c/o Its Statutory Agent  
CT Corporation System  
1300 E. 9<sup>th</sup> Street  
Cleveland, Ohio 44114

THOMAS GABLE  
Chairman of Lakewood Hospital Association  
21765 Gatehouse Lane  
Rocky River, Ohio 44116

LAKEWOOD HOSPITAL FOUNDATION,  
INC. (Ohio Entity No. 253349)  
c/o Its Statutory Agent  
Kenneth Haber  
14601 Detroit Avenue, Suite 240  
Lakewood, Ohio 44107

KENNETH HABER  
President of Lakewood Hospital  
Foundation, Inc.  
17897 Lake Road  
Lakewood, Ohio 44107

SUBSIDIUM HEALTHCARE, LLC  
(Georgia Entity No. 4040230)  
c/o Its Statutory Agent  
CT Corporation System  
1201 Peachtree Street NE  
Atlanta, Georgia 30361

and

THE OHIO ATTORNEY GENERAL  
MIKE DeWINE  
30 E. Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215

Defendants

The above Plaintiffs, through undersigned counsel **Morganstern, MacAdams & DeVito Co., L.P.A.**, set forth their complaint against all the Defendants, jointly and severally, as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiffs Edward Graham, Marguerite Harkness, William Grulich, Deborah Meckes, and Amy Dilzell are all residents and taxpayers of the City of Lakewood, reside at their above home addresses within Cuyahoga County, and shall collectively be referred to as the “Plaintiffs” or “Taxpayers” within this Complaint. Plaintiffs also bring this action on behalf of the employees of Lakewood Hospital through Amy Dilzell, an employee and representative of this protected class. Plaintiffs also bring this action as petitioners, in the name of the state, and verified by the affidavit of Relator Edward Graham.
2. Defendant City of Lakewood (“City”) is a municipal corporation bound by its Second Amended Charter, the Ohio Revised Code (“R.C.”)—including R.C. 733.59 for taxpayers suits, and Ohio common law. The City's current Law Director is Mr. Kevin Butler. The City's current elected official as Mayor is Defendant Michael Summers who resides at his above home address within Cuyahoga County. The Defendants City and its Mayor Michael Summers will be collectively referred to as “City” in this Complaint. The City has over 52,000 residents and is the third largest municipality in Cuyahoga County behind only Cleveland and Parma.
3. The Cleveland Clinic Foundation (Ohio Entity No. 95560) (“CCF”) is a non-profit, tax-exempt, Ohio corporation which provides medical and hospital care throughout Cuyahoga County and primarily from its main campus facility located at 9500 Euclid Avenue, Mail Code NA4, Cleveland, Ohio 44195. CCF currently has Defendant Delos “Toby” Cosgrove, M.D. as its Chief Executive Officer (“CEO”) and President, who resides at 34115 Fairmount Boulevard, Hunting Valley, Ohio 44022 in Cuyahoga County.

The Defendants CCF and its CEO and President Delos Cosgrove, M.D. will collectively be referred to as “CCF” in this Complaint.

4. Defendant Lakewood Hospital Association (Ohio Entity No. 691247) (“LHA”) is a non-profit corporation which primarily conducts its hospital management operations from 14519 Detroit Road, Lakewood, Ohio 44107. LHA currently has Defendant Thomas Gable as its Chairman, who resides at 21765 Gatehouse Lane, Rocky River, Ohio 44116 in Cuyahoga County. The Defendants LHA and its Chairman Thomas Gable will collectively be referred to as “LHA” in this Complaint.
5. Defendant Lakewood Hospital Foundation, Inc. (Ohio Entity No. 253349) (“LHF”) is a non-profit charitable trust corporation which primarily conducts its business to support Lakewood Hospital from 14601 Detroit Avenue, Suite 240, Lakewood, Ohio 44107 in Cuyahoga County. LHF currently has Defendant Kenneth Haber as its President. The Defendants LHF and its President Kenneth Haber will collectively be referred to as “LHF” in this Complaint.
6. Defendant Subsidiary Healthcare, LLC (Georgia Entity No. 4040230) (“Subsidiary”) is a for-profit entity incorporated in the State of Georgia, has its principal office address at 200 Corporate Road, Lafayette, Louisiana 70508, and provides consultation services in Cuyahoga County to certain of the above named Defendants regarding Lakewood Hospital, including CCF and LHA.
7. Defendant Mike DeWine is the Attorney General for the State of Ohio and his office is located in Franklin County, Ohio. He has been made a party to the Complaint pursuant to R.C. 109.25 for purposes of notification where the terms of a charitable trust are being construed, the charitable trust may be terminated or its assets distributed, the charitable

trust is departing from the object or purpose intended, and the public's interest in public assets will be affected.

8. Jurisdiction is appropriate in the State of Ohio because all individual Defendants are Ohio residents and all corporate and/or municipal Defendants are Ohio entities or conducted activity in Ohio; this matter involves the Ohio Revised Code statutory causes of action for taxpayers suits (R.C. 733.59), declaratory judgment (R.C. 2721.03), mandamus (R.C. 2731.02), and the remaining civil claims pursuant to R.C. 2305.01.
9. Venue is proper in Cuyahoga County pursuant to Civil Rule of Procedure 3(B)(1)-(6) because it is the county in which the individual Defendants reside; the county in which the corporate Defendants and/or municipal Defendant has its principal place of business; the county in which the Defendants conducted activity that gave rise to the claim for relief; the county in which a public officer maintains his or her principal office; the county in which the property is situated and is the subject of this action; and the county in which all or part of the claim for relief arose.

### **STATEMENT OF FACTS**

#### **Gross Mismanagement of Lakewood Hospital**

10. Taxpayers are concerned citizens who live in the City and are required to file the within Complaint to maintain the City-owned Lakewood Hospital's inpatient, acute care, and medical/surgical health care services for residents, employees, and the public benefit. The Defendants' nonfeasance, malfeasance, misfeasance, and negligence have all but destroyed the valuable community asset of Lakewood Hospital. The City is also failing to enforce valuable contractual rights and remedies regarding (A) a thirty (30) year land, hospital building, and medical equipment lease ("Lease") and (B) a thirty (30) year medical services contract through a Definitive Agreement ("DA") for the operation of

Lakewood Hospital by LHA (the sole member being CCF) and CCF through the year 2026. This matter also involves over \$30 million of non-profit donations to the charitable trust LHF intended to assist in the continued operation of Lakewood Hospital for indigent and insured City residents' inpatient, acute care, and medical/surgical health care needs. Lakewood Hospital is an invaluable community asset to Taxpayers and all City residents providing high quality, accessible, and cost effective health care services and the largest economic stimulus providing jobs, spending, and taxes estimated at over \$294 million per year.

11. CCF, LHA, LHF, and the City leadership continue to tell their story that changes in health care have resulted in declining patient volumes and are causing Lakewood Hospital's demise—all the while CCF's wholly-owned Fairview Hospital shows annual revenues well in excess of \$50 million and CCF's new \$143 million Avon Hospital rises from the ground 12 miles further to the west on Cleveland Clinic Boulevard.
12. The financial crisis currently being endured by Lakewood Hospital is very simply, and nothing more than, a carefully and purposefully “created reality” manufactured by CCF for the sole purpose of pursuing its strategic plan to close Lakewood Hospital and build the Xanadu called Avon Hospital to the detriment of the Taxpayers (residents and employees), City, LHA, LHF, and the public.

### **100 Years of Service to the Community**

13. Founded by Dr. C. Lee Graber, Lakewood Hospital opened its doors on Detroit Avenue in the first ring suburb of Lakewood, Ohio in 1907. It was the first hospital opened in the Cleveland suburbs. During the Great Depression in 1930, the City took ownership of Lakewood Hospital as the residents of the City sought to ensure access to public health and jobs for the employees. (Ex. 1, City Ordinances 907.01 to 907.03). In 1956 LHF was

established to encourage and raise funds exclusively for Lakewood Hospital's continued operation as an inpatient and acute care medical/surgical hospital. In 1987 LHA was established as a private, non-profit, tax-exempt corporation to lease and operate Lakewood Hospital, including the land, hospital building, and medical equipment. (Ex. 1, City Ordinance Chapter 907 and Ordinance 63-86, passed January 5, 1987).

14. In 1987 Lakewood Hospital changed its status from a public hospital being operated by the City to leasing Lakewood Hospital to the non-profit LHA to manage and operate upon the land, hospital building, and medical equipment for the Taxpayers, employees, and public benefit. Lakewood Hospital has served the City for more than 100 years as an invaluable public asset, serving any and all residents' health needs (taxpayers and non-taxpayers alike) with the goal of providing the highest quality of care, regardless of the patient's ability to pay. Lakewood Hospital is also the largest employer in the City and 1,100 employees are protected by the Second Amended Charter of Lakewood because of their vital necessity to the economic well-being of the City. (Ex. 2, Second Amended City Charter Article XV, Section 4). Lakewood Hospital is of equal importance as the City's other public services such as the police department, fire department, EMS, and public education system.
15. The City's Second Amended Charter at Article XV sets forth the leasing requirements between the City as lessor and LHA as lessee. Article XV of the City's Second Amended Charter provides in Section 4: "Each lease entered into pursuant to this Section shall place the control, operation and management of the hospital in the lessee and shall include such terms and provisions as Council reasonably believes necessary to provide for the health and welfare of the residents of the City, [and] the protection of the

employees of the hospital [. . .].” (*Id.*) (Emphasis added). The intended beneficiaries of the Lease are Taxpayers, residents, and Lakewood Hospital employees.

16. Further, City Ordinance Chapter 907.01 provides: “Council hereby declares it necessary and conducive to the public health and general welfare to establish a municipal hospital of the City to be known as The Lakewood Hospital of Lakewood, Ohio [. . .].” (Ex. 1, City Ordinance, Chapter 907) (Emphasis added). City Ordinance Chapter 907.03 also provides: “Council hereby declares it necessary and conducive to the public health and general welfare to establish and it hereby does establish a municipal hospital of the City to be known as The Lakewood Hospital.” (*Id.*). The public is also an intended beneficiary of Lakewood Hospital.

#### **Beginning of the End**

17. In 1996 CCF became the sole member of LHA through the DA, which amended LHA's Code of Regulations and amended the existing lease between the City and LHA. (Ex. 3, DA). Sitting on LHA's Board of Trustees were and still are ex-officio members of the City's government. The Mayor and two City council members, currently serving as LHA Board Members, are the liaisons between the City and the LHA and obligated to protect the City's interests. (City Ordinance 63-86, Section 5). The LHA and CCF entered into the DA in which, under Section 2.1.3, CCF has the right to assume management of the day-to-day operations of Lakewood Hospital. (Ex. 3, DA, p. 8).
18. In 1996 the City authorized an Amended and Restated Lease (“Lease”) with LHA and CCF. (Ex. 4, Ordinance 51-96). Since 1996 Lakewood Hospital has been recognized as a Cleveland Clinic Hospital, although City-owned. The City's Lease with LHA and CCF has a term of 30 years, ending in 2026, and CCF is bound by the terms of the Lease through the DA. (Ex.3, DA, p. 7) (Ex. 5, Lease, p. 2). Hence, in 1996, CCF made a long-



term commitment to the City, LHA, LHF, and Taxpayers to provide the highest quality health care services and employment with Lakewood Hospital at the centerpiece of that commitment. Section 14.1 of the Lease provides: “Upon the expiration of the Lease Term or the termination of this Lease, the Lessee [LHA and CCF] covenants and agrees to surrender the Leased Premises to the City [ . . . ], together with all appurtenances thereto and all assets and obligations of the Lessee including movable equipment, furnishings and other personal property in or on the Leased Premises, in as good condition as prevailed at the time the Lessee was put in full possession thereof; provided that, there is excepted from the foregoing covenants, agreements and obligations, any loss by fire or other casualty covered by insurance, ordinary wear and tear, obsolescence, removals and replacements in accordance herewith, and acts of God [ . . . ].” (Ex. 5, Lease, p. 50) (Emphasis added).

19. CCF committed in the Recitals of the Lease that LHA and CCF would “continue to provide health care services in accordance with this Lease to residents of the City without regard to their ability to pay.” (Ex. 5, Lease, p. 3). Moreover, LHA and CCF are “to continue to provide residents of the City from facilities located within the City acute care medical/surgical services (including for children and adolescents), obstetrical/gynecological services, 24-hour-a-day emergency room providing trauma services, intensive care services and rescue squad/paramedic services as required by this Lease.” (*Id.*) (Emphasis added).
20. Section 6.2(a) of the Lease provides that “[LHA and CCF] covenants and agrees that the suitability taken as a whole of the Leased Premises to provide the Required Services will not be impaired.” (Ex. 5, Lease, p. 23). The Lease defines Required Services as “(i) obstetrical/gynecological services, (ii) 24-hour-a-day emergency room providing trauma

services, (iii) rescue squad/paramedic services, (iv) intensive care services and (v) acute care medical/surgical services (including, without limitation, care for children and adolescents) [ . . . ].” (Ex. 5, Lease, p. 11).

21. Section 9.11(b) of the Lease provides that “[LHA and CCF] covenants that it shall [ . . . ] faithfully and efficiently administer, operate and maintain as Hospital Facilities so much of the Leased Premises as from time to time are Hospital Facilities rendering the Required Services [ . . . ] to patients who are residents of the City and all members of the general public.” (Ex. 5, Lease, p. 35) (Emphasis added). Further, Section 9.11(c) provides that LHA agrees to “open to the public all meetings of its Governing board to assure full disclosure of the operations of [LHA] except when the Governing Board by motion adopted by it determines that public discussion or action of the Governing Board would be detrimental to the interests of the patients of [LHA], the welfare of the residents of the City or [LHA].” (*Id.*).
22. The DA between LHA and CCF incorporates by reference the Lease and provides the City the right to enforce the Lease duties against CCF. (Ex. 3, DA Section 1.2, p. 5). Further, the DA requires that CCF operate Lakewood Hospital “in a fiscally prudent manner, consistent with Lakewood’s [LHA] charitable purpose and Lakewood’s [LHA] obligations under the lease . . . in order to preserve the operation of Lakewood [LHA] as a going concern, as defined under generally accepted accounting principles.” (Ex. 3, DA Section 1.1.4, p. 5) (Emphasis added).
23. From 1997 to 2008 Lakewood Hospital enjoyed great success under the operation and management of CCF, oversight of LHA, and with the help of funding from LHF. In 2002, Lakewood Hospital expanded and opened a renovated emergency room. From 2008 through 2014, over \$84.3 million has been used for providing indigent care,

providing services to those residents who cannot afford to pay for health care services provided by Lakewood Hospital. As recently as five years ago, \$2.5 million was spent to open a state-of-the-art cardiac catheterization lab at Lakewood Hospital. Additionally, a review of the Ernst & Young, L.L.P. audits of Lakewood Hospital's financial statements<sup>1</sup> reveals that it has been given a clean audit opinion year after year, even throughout and after the most recent economic recession.

### **CCF's Strategic Plan to Close Lakewood Hospital**

24. Lakewood Hospital began to see a financial stagnation or decline as annual patient admissions dropped from roughly 12,300 to 8,400 during a five-year period from 2008 to 2012, a roughly 32% decrease. However, the net patient service revenue from 2008 to 2012 only declined by 12.5%. The smaller decrease in net patient service revenue is due, in part, to an expanded Medicaid coverage in Ohio. In fact, Lakewood Hospital's Earnings Before Interest, Depreciation, and Amortization ("EBIDA") from 2011 through 2014 have all been positive and total \$23,240,000.
25. On February 11, 2010, the LHA Board's Executive Committee adopted a plan that in part affirmed Lakewood Hospital's *Vision for Tomorrow* plan, which was a multi-year strategic plan adopted in 2008 by the LHA Board and alleged to better meet the changing needs of the City community. CCF's proposal to LHA would make Lakewood Hospital a center of excellence in four (4) medical specialties (i.e. "centers of excellence") in exchange for transferring pediatric and trauma medical services to other CCF wholly-owned hospitals in close proximity.
26. In a letter from CCF to then City Mayor Ed Fitzgerald, CCF wrote: "Lakewood Hospital is committed to the Lakewood community and will continue to maintain its status as the

---

<sup>1</sup> See [www.onelakewood.com/wellness](http://www.onelakewood.com/wellness) and links for Lakewood Hospital Association Audited Financial Statements.

city's major employer. [. . .] The Plan will address the sustainability of Lakewood Hospital, while simultaneously making available the finest services typically provided by hospitals in communities similar to Lakewood.” (Ex. 6, CCF Letter Committing to Community and Lakewood Hospital, April 6, 2010) (Emphasis added). However, the April 6, 2010, letter also provided: “We believe our pediatric patients will be best served just 3.5 miles away at Fairview Hospital for inpatient care.” (*Id.*). This is a breach of the DA and Lease required services at Lakewood Hospital for Taxpayers and the public.

27. In a letter to Kevin Butler, then the president of City council, former president of Fairview and Lakewood Hospitals Jan Murphy included representations made by LHA and CCF in response to City council questions, which included: “We remain committed to the Lakewood community and to the patients who entrust us each and every day to provide the best care possible to them.” (Ex. 7, CCF to City Letter Responding to Council Questions Regarding Lakewood Hospital, May 24, 2010). CCF also made oral representations on May 24, 2010, to the LHA Task Force regarding the City's rights to these new centers of excellence without having to amend the existing Lease.
28. Based upon the above three (3) and other CCF promises and representations, on June 10, 2010, the City passed Resolution No. 8429-10 supporting CCF's and LHA's *Vision for Tomorrow* plan and its focus on centers of excellence at Lakewood Hospital. The resolution provides that the City and CCF both aspire and commit to provide appropriate services suitable for the City community and to maintain the near- and long-term viability of Lakewood Hospital. Moreover, the resolution promised City residents, through their elected officials, *assurances of continued, active participation in key decisions impacting the plan and Lakewood Hospital for the duration of the Lease*. Under this plan, the City, LHA, and CCF all agreed to change some Lakewood Hospital services to adapt to an

allegedly evolving health care industry and market to meet the needs of City residents. The City's position on this plan was to protect residents' interests and to have a viable Lakewood Hospital for the duration of the Lease until 2026. At the time the plan was devised, the City and representatives of LHA and CCF all stressed the importance of their strong commitment to the community and long-term viability of Lakewood Hospital for residents' health care needs and economic benefit to the City.

### **The Slow Demise at the Hands of CCF**

29. With the dawn of new plans to help Lakewood Hospital adapt to alleged changes in health care, a series of events contrary to the best interests of Lakewood Hospital occurred, consisting of the slashing of vital Lakewood Hospital medical services, questionable financial practices, and the disappearance of full and transparent communication between LHA, CCF, LHF, and the City community. Upon information and belief, certain of Lakewood Hospital medical services, pursuant to CCF's strategic plan, were gradually and purposefully diminished to nothing, reports of Lakewood Hospital turning away patients or sending them to other CCF wholly-owned hospitals emerged, and regional private ambulatory and public EMS services reportedly had been directed to transport patients to Fairview Hospital instead of Lakewood Hospital.
30. While all of this has occurred, CCF and LHA have stuck to their story that these actions have resulted from Lakewood Hospital's declining business because of the market and healthcare reform, and not due to the actions of the Defendants. In stark reality, Lakewood Hospital's lack of financial stability, because of declining patient volumes and worsening financial picture, is a "created reality" manufactured by CCF for the sole purpose of pursuing its self-serving strategic plan to support its wholly-owned hospitals, including its new Avon Hospital and existing Fairview Hospital and Lutheran Hospital.

Further, a proper accounting and disgorgement of improper expenses by CCF (i.e. Administrative Services) results in a profitably operating Lakewood Hospital.

31. Between 2005 and today, CCF has already terminated (i.e. completely removed or reduced to an immaterial amount) services offered by Lakewood Hospital with or without contractually required notice to the City. Many of these terminated or transferred (i.e. Fairview Hospital and Lutheran Hospital) services are expressly referenced in Section 1.2, Definitions of the Lease [as] the “Required Services.” Upon information and belief, these terminated or transferred services include: (1) coronary intervention; (2) care of acute heart attack; (3) electro physiology and complex pacemakers; (4) pediatrics; (5) trauma; (6) pain management clinic; (7) inpatient psychiatric; (8) 21 skilled nursing beds were sold; (9) preadmission testing; (10) The Grace Hospital LTAC; (11) orthopedics; (12) OB/GYN (turning away patients now saying they will close it soon); (13) gastrointestinal lab; (14) thoracic surgery (lungs); (15) interventional radiology; (16) neurology program; (17) physician precertification program; (18) oncology; (19) no frozen section in pathology; (20) open heart surgery; and (21) interventional cardiology (stents).
32. By terminating these services, CCF has been able to pursue its strategy of crippling Lakewood Hospital to the point that CCF would have leverage when bargaining with the City to close Lakewood Hospital, prematurely exit its DA and Lease obligations, and build a new hospital in Avon, Ohio of which CCF will have complete ownership and control. Simply put, CCF does not want to be stuck in the DA and Lease with Lakewood Hospital, including its many duties and financial obligations to the City, because Lakewood Hospital simply does not fit into CCF’s long-term corporate strategy. Moreover, CCF does not want to give up this territory in the City and allow a competitor to enter this market and steal away market share from CCF. By diluting City assets to

hurt Lakewood Hospital and convincing the LHA and LHF that it is in the City's best interest to hand ownership of this real estate (and other Lakewood Hospital land at 850 Columbia Road in Westlake, Ohio) over to CCF, CCF is employing a scheme to maintain a regional monopoly or oligopoly at little to no cost to itself. Despite these many medical services being terminated or transferred, CCF and LHA have repeatedly made assurances to the City that CCF was committed to making Lakewood Hospital operational, sustainable, and profitable until the end of the Lease in 2026.

33. There is no reason to close and demolish Lakewood Hospital. Numerous facility upgrades made in recent past, including an atrium, orthopedic unit, rehab unit, emergency room, intensive care unit, cardiovascular care unit, radiology department, and geriatric psychiatry have positioned it to be viable with effective management and operation. Contrary to reality, CCF is on a public relations campaign to convince City leadership and its residents that Lakewood Hospital is no longer viable—all the while CCF's wholly-owned Fairview Hospital and Lutheran Hospital flourish and its new Avon Hospital is rising like a phoenix 12 miles west on Cleveland Clinic Boulevard. Upon information and belief, CCF has also embarked on a public relations campaign to undermine Taxpayers and all other individuals who oppose the closing of Lakewood Hospital because it violates contract terms, City Ordinances, and the economic facts.
34. Moreover, there has been an unexplained increase in “administrative services” expenses by CCF in the operation of Lakewood Hospital from \$14,864,000 in 2008 to over \$23 million in each year 2011 through 2014. This is money charged to Lakewood Hospital and paid to CCF, diluting Lakewood Hospital's balance sheet and operating statement. CCF's 64% increase in administrative services fees, terminating services, and redirecting patients to its wholly-owned facilities is unjustifiable. The fact that CCF has failed to

provide a detailed accounting and explanation for these increased expenses, as compared to Lakewood Hospital's only 20% decrease in net patient service revenues (i.e. \$148,236,000 in 2008 to \$118,127,000 in 2014), is very disingenuous. From 2008 through 2014, CCF has billed and collected from LHA administrative services fees of \$146,270,000 without any itemization or explanation. A proper accounting, adjustment, and disgorgement of those mysterious charges by CCF would demonstrate Lakewood Hospital is financially viable and even profitable.

### **CCF's Plan for Market Domination**

35. In November 2012 the LHA Board of Trustees agreed to establish a Select Committee, which was charged to identify and recommend a qualified, independent health care consultant for the purpose of evaluating strategic options and identifying the best strategy to consider for planning Lakewood Hospital's future. Initially, a budget of \$200,000 was set aside by LHA to cover the fees and expenses of the consultant.
36. In 2013 the Select Committee formed by LHA and the City engaged the medical consultant Subsidium to assist in planning for the future of Lakewood Hospital. Subsidium received proposals from two hospitals, CCF and MetroHealth (in consultation with Premier Physicians) for the purpose of selecting a future partnership with the City to maintain and ensure a sustainable and viable Lakewood Hospital.
37. LHA's Request for Proposal ("RFP") sent to bidders provided in part: "The following criteria reflect the **minimum elements that the Hospital considers essential** to this Transaction. [ . . . ] Proposal must set forth the Respondent's operational plan and strategic vision for the Hospital following the completion of the Transaction, **including the Respondent's overall plan to meet the condition that the Hospital continue to be operated as an acute care hospital** [ . . . ]." (Emphasis added).



38. In 2015 Subsidium released its overview report concerning the future of Lakewood Hospital and outlined its considerations of CCF's and MetroHealth's proposals. Page 65 of that overview indicates that the CCF proposal will build a family health center while closing Lakewood Hospital and inpatient services whereas the MetroHealth proposal planned to keep Lakewood Hospital, including inpatient care. In other words, CCF's proposal **failed** to meet Subsidium's minimum requirements outlined in the RFP whereas MetroHealth's proposal **agreed** to meet those requirements. However, page 52 of the Subsidium overview falsely states that "CCF, Metro and Premier expressed interest in Lakewood, but all expressed interest in outpatient services only." That is far from accurate. MetroHealth agreed to maintain inpatient care, acute care, and abide by the existing Lease terms and DA conditions currently obligating CCF's operation of Lakewood Hospital to the City and LHA.
39. At a confidential special meeting of the LHA Board on January 14, 2015, Subsidium discussed and assisted in the refinement of CCF's proposal to the RFP. Not surprisingly, Subsidium then selected CCF's proposal, despite the fact that it did not meet the RFP's minimum elements to maintain inpatient medical care at an acute care hospital. Subsidium's recommendation put CCF in the position to control City-owned property, close and demolish Lakewood Hospital—at LHA's expense—and open a family health center, which would not include inpatient services, but rather would refer patients to other CCF wholly-owned hospitals outside of the City, and prohibit any other health care provider from providing medical services on the Lease property—in simple terms, is a "non-compete."
40. Page 14 of Subsidium's overview provides that "the [Lakewood H]ospital facilities would require major upgrades, costing approximately \$100 million. [. . .] Is this the best

use of your money for a healthier Lakewood?” Despite this statement, Subsidium was ultimately paid at least \$500,000 rather than the originally budgeted \$200,000. In essence, Subsidium was overpaid, using money that could have been invested in Lakewood Hospital, so that the consultant could help CCF write its own bid, which Subsidium later accepted as the best option for the City. The City has maintained that the MetroHealth proposal did not succeed because MetroHealth withdrew its bid. In reality, MetroHealth “withdrew its bid” because it became clear that the City and LHA were ignoring them and had already cut a deal with CCF.

41. Subsidium’s overview further provides on page 61: “We don’t currently have a definitive legal opinion about whether CCF would remain obligated to fund any operating losses and negative cash flow throughout the remainder of the lease.” However, per Section 2.1.1 of the DA, CCF is obligated at least to fund LHA in order to maintain a cash-to-debt ratio of 1:1 until the year 2026. (Ex. 3, DA, p. 7). Subsidium estimates the potential obligations of CCF to the City to cover operating losses until 2026 to be \$214 million, which does not include the \$3 billion economic impact of maintaining the 1,100 employees of Lakewood Hospital. CCF admits to the negative economic impact on the City in the Letter of Intent by stating it will request the City of Avon to share taxes from its new Avon Hospital with the City.
42. It is important to note that CCF has commenced construction on a new \$143 million hospital to open in Avon in 2016, which it will wholly-own and operate. There are 1,000 people per square mile in Avon as compared to 9,000 people per square mile in Lakewood. CCF admits that future loss of Lakewood Hospital patient volumes will occur due to diversion to its Avon Hospital. Subsidium’s report overview confirms this fact. One potential threat to Lakewood Hospital, as emphasized on page 9 of

Subsidium's overview, is that the "[n]ew Avon hospital will likely cannibalize significant inpatient volumes from [Lakewood Hospital]." Moreover, page 57 of that overview reads: "[r]evenue loss from Avon is based on estimates of changes in physician referral patterns." These statements demonstrate that CCF is responsible for any decline in Lakewood Hospital patient volumes and that the motivation for CCF's proposed closing of Lakewood Hospital is to refer patients to other hospitals, such as its new wholly-owned Avon Hospital. These facts demonstrate CCF's self-dealing to support its wholly-owned hospital facilities (including Fairview and Lutheran Hospitals now and Avon Hospital in 2016) to the detriment of CCF's obligations to the City, LHA, Taxpayers, and employees.

43. Due to lack of oversight by LHA and City trustees, and after winning over Subsidium and the City with its proposal in a lopsided contest, CCF had the traction it needed to proceed with its plans of eliminating inpatient services and closing Lakewood Hospital. On January 14, 2015, CCF issued a Letter of Intent ("LOI") to the City proposing this transition. Both the LOI and Subsidium's overview provide that the Mayor shall publicly support this transition with CCF. The Mayor and City council trustees of LHA have fully supported Subsidium's recommendations and CCF's plans. They have done so despite the City's best interests, the Mayor and LHA's fiduciary duties to the City, the outcry of the citizens, and contractual obligations of the DA and Lease that ensure Lakewood Hospital's financial viability and operation through 2026 at CCF's expense for the public's benefit.
44. Section 3.11 of the LHA Code of Regulations, as amended and then adopted as an exhibit to the DA, provides that "[a] Trustee having a conflict of interest or conflict of

responsibility on any matter involving [LHA] and any other business entity or person shall disclose such conflict and shall refrain from voting on such matter.”

45. Article Five of LHA’s Articles of Incorporation also provides that “[n]o substantial part of the activities of [LHA] shall be the carrying on of propaganda, or otherwise attempting to influence legislation [. . .].” The LOI violates LHA’s Code of Regulations and Articles of Incorporation prohibition by requiring the Mayor to support the closure of Lakewood Hospital.
46. Under Article XXIII, Section 3 of Lakewood’s Second Amended Charter, it reads: “This Section shall not prohibit the Mayor, members of Council and the directors of departments and other officials or employees of the City from serving as a member or an official in any other nonprofit corporation where their service is in the capacity of representing the City.” City Ordinance 63-86 also requires the Mayor and Council members in the LHA Board to serve “in their official capacity . . . and instructed to represent the city and its interests . . .” while on the LHA Board.
47. The Mayor, Council members, and the City have failed their constituents by not representing the City and enforcing the DA and Lease rights, but rather by favoring the CCF, LHA, and LHF proposal to close Lakewood Hospital. The Mayor and Council members are also improperly ignoring City Ordinances requiring the operation of Lakewood Hospital for the “health and welfare of the people of this City and by enhancing the availability, efficiency and the economy of [Lakewood] hospital facilities and the services rendered . . .” .
48. The LOI also proposes terms and conditions that waste Lakewood Hospital's assets to the detriment of the City and Taxpayers, but rather provide huge benefits only to CCF. For example, the LOI at Section II.E. proposes to sell the Lakewood Hospital land and

building known as 850 Columbia Road to CCF for \$8.2 million, without any appraisal or competitive bidding. However, the Cuyahoga County Fiscal Office has valued the land and building at \$13,726,200. CCF would be improperly obtaining City assets \$5.5 million **WELL BELOW** fair market value.

49. The LOI contains other provisions harmful to the City and Taxpayers, all of which violate CCF's existing promises and obligations under the DA and Lease. For example, the LOI requires that LHA (with LHF funds) “will bear all costs of terminating and winding down its patient and other operations and all costs of demolition to prepare the land for construction” by CCF and then sell at least 2.5 acres of the land to CCF. However, the City, LHA, and LHF should not be subsidizing CCF's proposed demolition for new construction because it violates City Ordinances and Articles of Incorporation requiring money to be used to continue hospital operations, not wind down and demolish Lakewood Hospital.

### **Summary**

50. The nature of this case can be summed up by the following facts. First, CCF, the sole member of LHA, wants to close Lakewood Hospital in breach of its DA and Lease with the City and LHA. Second, CCF has been terminating or redirecting high margin medical services for years with the intended effect of crippling Lakewood Hospital's financial viability and moving these services to its wholly-owned hospitals (i.e. Fairview Hospital, Lutheran Hospital, and Avon Hospital). Third, CCF wants ownership of the City-owned Lakewood Hospital property at below fair market value and to box-out competitors to maintain a regional market monopoly. Fourth, it is clear that CCF values only paying patients first and truly does not believe in its motto that every life deserves world-class care. CCF has instead pursued the course of “corporatizing” health care,

behaving as a for-profit capital predator masquerading as a non-profit health care system. CCF's recent public documents admit to an EBIDA of \$965,919,000 and over \$467 million in operating profit for 2014.<sup>2</sup> Fifth, CCF is breaching its promises in the DA and breaching its duties in the Lease to operate Lakewood Hospital through 2026 as a full service acute care community hospital and ensure the financial viability of inpatient medical care and jobs for Taxpayers and the public through the term of the Lease in 2026. Sixth, CCF is breaching the Lease in not surrendering Lakewood Hospital and all of its assets in good condition as a going concern per Section 14.1 of the Lease. (Ex. 5, Lease, p. 50).

51. The DA and Lease have created an unusual and complex business love triangle among CCF, LHA, and the City with LHA at the center between two competing interests that were supposed to share power and work together for the intended beneficiaries (i.e. Taxpayers, employees, and City residents). The DA and Lease created an express and constructive trust with CCF and LHA as trustees for the Taxpayers, employees, and public as intended beneficiaries. Under these agreements and in their respective official capacities, the City has failed to adequately represent the best interests of the City and the general public by enforcing its rights to maintain Lakewood Hospital as an acute care community hospital in good working order and to prohibit the closure of Lakewood Hospital.
52. Finally, on April 10, 2015, John Vacha wrote an article published in the *Plain Dealer* titled "Clinic Forcing Urban Sprawl by Closing Lakewood Hospital, Opening Avon Site." Vacha wrote, regarding CCF's opening of the new Avon Hospital in a more affluent neighborhood while closing Lakewood Hospital in a poorer community: "Of course, only

---

2 <http://my.clevelandclinic.org/ccf/media/Files/About/financial-statements/audited-consolidated-financial-statements-13-and-14.pdf>

those from upper income brackets will be able to afford the move, leaving behind an inner-ring suburb that much closer to poverty.” CCF views the City market as unprofitable not merely because inpatient care is declining, which evidence would suggest is a result of CCF’s own actions, but also because the level of poverty is increasing in the City which means more patients cannot afford to pay for most health care services offered by Lakewood Hospital, which is supposed to be a non-profit hospital. This begs the question: does CCF truly believe that every life deserves world class care? Apparently, NO in the City of Lakewood, but YES in the City of Avon.

### **CAUSES OF ACTION**

#### **COUNT 1 – TAXPAYERS SUIT**

#### **COUNT 1A – STATUTORY CLAIM PURSUANT TO R.C. 733.59**

53. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
54. The City has engaged in a series of improper activities that constitute abuse of corporate powers regarding the execution or performance of contracts related to Lakewood Hospital and the existing contractual rights the City established through the DA and Lease governing LHA and CCF's requirement to operate Lakewood Hospital's medical facility for the Taxpayers, employees, and public's benefit through the year 2026.
55. Plaintiffs are residents and taxpayers of the City of Lakewood, Cuyahoga County, Ohio (“City”) at all relevant times. City is a municipal corporation organized and existing as a city under the laws of the State of Ohio, including R.C. 733.56 through 733.61.
56. Pursuant to R.C. 733.59, Plaintiffs bring the within action as taxpayers of the City in their own name, on behalf of the City, its residents, and employees of Lakewood Hospital.
57. This taxpayer action is brought to enforce a right of action on behalf of and for the benefit of the public regarding the DA and Lease authorized by the City’s various

Ordinances (Ex. 1) and the Second Amended Charter of Lakewood (Ex. 2).

58. Pursuant to R.C. 733.59, Plaintiffs have deposited with the Cuyahoga Clerk of Court payment of the required court costs for filing and an additional \$100 as the security for this proceeding. Taxpayers request that this amount be sufficient and according to law or that the security requirement of R.C. 733.59 be waived by the Court. *Fisher v. City of Cleveland*, 109 Ohio St.3d 33, 2006-Ohio-1827, 845 N.E.2d 500, ¶¶ 44-45 and *Badgett v. Mullen*, 177 Ohio App. 3d 27, 2008-Ohio-2373, 893 N.E.2d 870, ¶¶ 59-62.
59. Pursuant to R.C. 733.59, Plaintiffs, through undersigned counsel, gave written notice and request as Taxpayers to the City, through its Law Director Kevin Butler, to take certain actions and pursue an injunction to enjoin abuses of corporate power, specific performance regarding express rights and public duties stated in the Lease between the City and LHA and the DA between LHA and CCF, which reaffirmed the City's rights under the Lease and obligated CCF to the Lease terms; and a writ of mandamus to compel the City officials to perform their duties and obligations to establish and maintain Lakewood Hospital's operation, as expressly required by City Ordinance No. 907.03 and City Ordinance No. 51-96, to prevent irreparable harm.
60. The April 14, 2015, Taxpayers demand letter is attached hereto and incorporated herein as Exhibit 8 to the Complaint.
61. The City, through its Law Director Kevin Butler, responded on May 1, 2015, and refused to pursue a taxpayers suit for any of the relief requested by the Plaintiffs.
62. The City's written refusal to prevent the abuse of corporate power and enforce its express rights is attached hereto and incorporated herein as Exhibit 9 to the Complaint.
63. Under the authority of Article XV of the Second Amended Charter of Lakewood and through adoption of Ordinance No. 907.03 of the Codified Ordinances, the City's Council



has declared “it necessary and conducive to the public health and general welfare to establish and it hereby does establish a municipal hospital of the city to be known as the Lakewood Hospital.” (Ex. 2, Second Amended City Charter, Article XV) (Ex. 1, City Ordinance, Chapter 907).

64. As authorized by Ordinance No. 51-96, the City and LHA entered into the Lease provided for in the DA between LHA and CCF pertaining to the operation of Lakewood Hospital for the intended benefit of the Taxpayers, employees, and the public. (Ex. 4, Ordinance No. 51-96, December 17, 1996).
65. The obligations and duties under the DA and Lease, as authorized by Ordinance No. 51-96, have been and are currently being evaded and/or violated. This includes, but is not limited to the following: Lakewood Hospital facilities are not being maintained; medical services have been significantly diminished or eliminated; LHA (in conjunction with its sole member CCF) has assented to the referral and diversion of patients to other hospital facilities wholly-owned and operated by CCF, which has undermined the financial viability of Lakewood Hospital; LHA, CCF, and LHF have entered into a LOI to close Lakewood Hospital for inpatient and acute medical care and prohibit competitive bidding while the LOI is in place and a second definitive agreement is being drafted; the LOI and proposed second definitive agreement is facially deficient and legally invalid because it fails to provide inpatient hospital care for an acute medical/surgical care hospital as required by the DA and Lease; the LOI and proposed second definitive agreement also violate LHA’s RFP, through Subsidium, for maintaining and operating Lakewood Hospital with inpatient care, as a minimum requirement and as set forth in the 2014 RFP on behalf of LHA and the City; wasting of City assets through the sale of land and buildings \$5.5 million **well below** fair market value, without any appraisal or competitive

bidding process; and other nonfeasance, misfeasance, malfeasance, and negligence regarding various other duties and obligations under the Lease and DA, including over \$11 million in future rent payments and ensuring a cash-to-debt ratio of 1:1 through the year 2026, when Lakewood Hospital is required to be returned to the City as a going concern.

66. Taxpayers demand relief under R.C. 733.56 for a temporary and permanent injunction to enjoin the abuses of corporate powers by the City and prohibit the execution or performance of any resolution or contract in contravention of the existing DA and Lease, which requires maintaining Lakewood Hospital operations for the benefit of the Taxpayers, employees, and the public through LHA and CCF until the year 2026.
67. Pursuant to R.C. 733.57, Taxpayers seek the specific performance pursuant to the Lease between the City and LHA dated December 23, 1996, and as authorized by Ordinance No. 51-96 and the DA by and between LHA and CCF dated December 17, 1996, which includes, but is not limited to: maintaining Lakewood Hospital's required services until the conclusion of the Lease terms in the year 2026; providing of indigent health care, which has been over \$84.3 million since 2008; CCF's obligation to maintain a cash-to-debt ratio of 1:1 through 2026, which has been estimated to be in the present value sum of approximately \$214 million; paying rent from 2017 through 2026, which would total \$11,500,000; providing of an itemization and accounting of any and all administrative services expenses from 1996 to the present; disgorgement of any improper or excessive administration expenses or other charges; and Taxpayers reserve the right to enforce additional rights and obligations by the City upon LHA and CCF to operate Lakewood Hospital, according to various agreements and City laws that have been enacted and

authorized for the intended beneficiaries the Taxpayers, Lakewood Hospital employees, and for the public's benefit of health and general welfare.

68. Pursuant to R.C. 733.58, Taxpayers seek a writ of mandamus to compel the City to perform their official duties according to the Second Amended Charter of Lakewood and various City Ordinances to ensure the preservation and operation of Lakewood Hospital for the benefit of the public, employees, and Taxpayers through the minimum thirty (30) year Lease term to 2026 with LHA and CCF and conditions of the DA to maintain and then return Lakewood Hospital to the City and conditions of the DA to maintain and then return Lakewood Hospital to the City.
69. Pursuant to R.C. 733.61 and Section 13.5 of the Lease, Taxpayers seek all costs and reasonable attorney fees for having to commence this matter and further request attorney fees according to any and all common law and equitable principles to provide compensation for protecting the public benefit of Lakewood Hospital through this Complaint.

#### **COUNT 1 – TAXPAYERS SUIT**

##### **COUNT 1B – MUNICIPAL CLAIM PURSUANT TO CITY CHARTER**

70. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
71. The City has engaged in a series of improper activities that constitute abuse of corporate powers regarding the execution or performance of contracts related to Lakewood Hospital and the existing contractual rights the City established through the DA and Lease governing LHA and CCF's requirement to operate Lakewood Hospital's medical facility for the Taxpayers, employees, and public's benefit through the year 2026.
72. Plaintiffs are residents and taxpayers of the City at all relevant times. City is a municipal corporation organized and existing as a city under the laws of the State of Ohio and the

Second Amended Charter of Lakewood, including Article VII, Section 1(D) through 1(G). Article VII Section 1(G) of the Second Amended Charter of Lakewood provides: “In case the Director of Law, upon request of any taxpayer of the City, fails to make any application provided for in [Sections 1(D) through 1(F)] such taxpayer may institute suit or proceedings for such purpose in his own name o behalf of the City. No such suit or proceeding shall be entertained by any court until the request of the Director of Law shall first have been made in writing, nor until the taxpayer shall have given security for the costs of the proceeding.”

73. Pursuant to the Second Amended Charter of Lakewood Article VII Section 1(G), Plaintiffs bring the within action as taxpayers of the City in their own name, on behalf of the City, its residents, and Lakewood Hospital employees.
74. This Taxpayer action is brought to enforce a right of action on behalf of and for the benefit of the public regarding the DA and Lease authorized by the Second Amended Charter of Lakewood and various City Ordinances.
75. Pursuant to the Second Amended Charter of Lakewood, Article VII, Section 1(G), Plaintiffs have deposited with the Cuyahoga Clerk of Court payment of the required court costs for filing and an additional \$100 as security for this proceeding. Taxpayers request that this amount be sufficient and according to law or that the security requirement of Section 1(G) be waived by the Court.
76. Pursuant to the Second Amended Charter of Lakewood, Plaintiffs, through undersigned counsel, gave written notice and request as Taxpayers to the City, through its Law Director Kevin Butler, to take certain actions and pursue an injunction to enjoin abuses of corporate power, specific performance regarding express rights and public duties stated in the Lease between the City and LHA and the DA between LHA and CCF, which

reaffirmed the City's rights under the Lease and obligated CCF to the Lease terms; and a writ of mandamus to compel the City officials to perform their duties and obligations to establish and maintain Lakewood Hospital's operation, as expressly required by City Ordinance No. 907.03 and City Ordinance No. 51-96, to prevent irreparable harm.

77. The April 14, 2015, Taxpayers demand letter is attached hereto and incorporated herein as Exhibit 8 to the Complaint.
78. The City, through its Law Director Kevin Butler, responded on May 1, 2015, and refused to pursue a taxpayers suit for any of the relief requested by the Plaintiffs.
79. The City's written refusal to prevent the abuse of corporate power and enforce its express rights is attached hereto and incorporated herein as Exhibit 9 to the Complaint.
80. Under the authority of Article XV of the Second Amended Charter of Lakewood and through adoption of Ordinance No. 907.03 of the Codified Ordinances, the City's Council has declared "it necessary and conducive to the public health and general welfare to establish and it hereby does establish a municipal hospital of the city to be known as the Lakewood Hospital." (Ex. 2, Second Amended City Charter, Article XV) (Ex. 1, City Ordinance, Chapter 907).
81. As authorized by Ordinance No. 51-96, the City and LHA entered into the Lease provided for in the DA between LHA and CCF pertaining to the operation of Lakewood Hospital for the intended benefit of the Taxpayers, employees, and the public through the year 2026. (Ex. 4, Ordinance No. 51-96, December 19, 1996).
82. The obligations and duties under the DA and Lease, as authorized by Ordinance No. 51-96, have been and are currently being evaded and/or violated. This includes, but is not limited to the following: Lakewood Hospital facilities are not being maintained; medical services have been significantly diminished or eliminated; LHA (in conjunction with its

sole member CCF) has assented to the referral and diversion of patients to other hospital facilities wholly-owned and operated by CCF, which has undermined the financial viability of Lakewood Hospital; LHA, CCF, and LHF have entered into a LOI to close Lakewood Hospital for inpatient care and acute medical care and prohibit competitive bidding while the LOI is in place and a second definitive agreement is being drafted; the LOI and proposed second definitive agreement is facially deficient and legally invalid because it fails to provide inpatient hospital care for an acute medical/surgical care hospital as required by the DA and Lease; the LOI and proposed second definitive agreement also violate the LHA RFP, through Subsidiary, for maintaining and operating Lakewood Hospital with inpatient care, as a minimum requirement and as set forth in the 2014 RFP on behalf of LHA and the City; wasting of City assets through the sale of land and buildings \$5.5 million **well below** fair market value, without any appraisal or competitive bidding process; and other nonfeasance, misfeasance, malfeasance, and negligence regarding various other duties and obligations under the DA and Lease, including over \$11 million in future rent payments and ensuring a cash-to-debt ratio of 1:1 through the year 2026, when Lakewood Hospital is required to be returned to the City as a going concern.

83. Taxpayers demand relief under the Second Amended Charter of Lakewood Article VII Section 1(D) for a temporary and permanent injunction to enjoin the abuses of corporate powers by the City and prohibit the execution or performance of any resolution or contract in contravention of the existing DA and Lease, which requires maintaining Lakewood Hospital operations for the benefit of the Taxpayers through LHA and CCF through the year 2026. Article VII Section 1(D) of the Second Amended Charter of Lakewood provides: “The Director of Law shall apply, in the name of the City to a court

of competent jurisdiction for an order of injunction to restrain the misapplication of funds of the City, or the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the City in contravention of law, or which was procured by fraud or corruption.”

84. Pursuant to the Second Amended Charter of Lakewood Article VII Section 1(E), Taxpayers seek the specific performance pursuant to the Lease between the City and LHA dated December 23, 1996, and as authorized by Ordinance No. 51-96 and the DA by and between LHA and CCF dated December 17, 1996, which includes, but is not limited to: maintaining Lakewood Hospital services until the conclusion of the Lease terms in the year 2026; providing of indigent health care, which has been over \$84.3 million since 2008; CCF’s obligation to maintain a cash-to-debt ratio of 1:1 through 2026, which has been estimated to be in the present value sum of approximately \$214 million; paying rent from 2017 through 2026, which would total \$11,500,000; providing of an itemization and accounting of any and all administrative services expenses from 1996 to the present; and Taxpayers reserve the right to enforce additional rights and obligations by the City upon LHA and CCF to operate Lakewood Hospital, according to various agreements and City laws that have been enacted and authorized for the intended beneficiaries the Taxpayers and for the public’s benefit. The Second Amended Charter of Lakewood Article VII Section 1(E) provides: “When an obligation or contract made on behalf of the City granting a right or easement, or creating a public duty, is being evaded or violated, the Director of Law shall likewise apply for the forfeiture or the specific performance thereof as the nature of the case requires.”

85. Pursuant to the Second Amended Charter of Lakewood Article VII Section 1(F), Taxpayers seek a writ of mandamus to compel the City to perform their official duties

according to the Second Amended Charter of Lakewood and various City Ordinances to ensure the preservation and operation of Lakewood Hospital for the benefit of the public, employees, and Taxpayers through the minimum thirty (30) year Lease term to 2026 with LHA and CCF. The Second Amended Charter of Lakewood Article VII Section 1(F) provides: “In case any officer, board or commission fails to perform any duty required by law, the Director of Law shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of such duty.”

86. Pursuant to Section 13.5 of the Lease, Taxpayers seek all costs and reasonable attorney fees for having to commence this matter and further request attorney fees according to any and all common law and equitable principles to provide compensation for protecting the public benefit of Lakewood Hospital through this Complaint.

**COUNT 1 – TAXPAYERS SUIT**  
**COUNT 1C – COMMON LAW CLAIM**

87. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
88. The City has engaged in a series of improper activities that constitute abuse of corporate powers regarding the execution or performance of contracts related to Lakewood Hospital and the existing contractual rights the City established through the DA and Lease governing LHA and CCF’s requirement to operate Lakewood Hospital’s medical facility for the Taxpayers and the public’s benefit until the year 2026.
89. Plaintiffs are residents and taxpayers of the City at all relevant times. City is a municipal corporation organized and existing as a city under the laws of the State of Ohio.
90. Pursuant to the common law of the State of Ohio, Plaintiffs bring the within action as taxpayers of the City in their own name, on behalf of the City and its residents. *Bonnell v.*



*East Liverpool City School Dist. Bd. of Edn.*, 2006 WL 1851717 at \*5, ¶ 32 and *Citizens for a Better Portsmouth v. Sydnor* (1991), 61 Ohio St.3d 49, 572 N.E.2d 649.

91. This taxpayer action is brought to enforce a right of action on behalf of and for the benefit of the public regarding the DA and Lease authorized by the City Charter and various City Ordinances.
92. Pursuant to the common law of the State of Ohio, Plaintiffs, through undersigned counsel, gave written notice and request as Taxpayers to the City, through its Law Director Kevin Butler, to take certain actions and pursue an injunction to enjoin abuses of corporate power, specific performance regarding express rights and public duties stated in the Lease between the City and LHA and the DA between LHA and CCF, which reaffirmed the City's rights under the Lease and obligated CCF to the Lease terms; and a writ of mandamus to compel the City officials to perform their duties and obligations to establish and maintain Lakewood Hospital's operation, as expressly required by City Ordinance No. 907.03 and City Ordinance No. 51-96, to prevent irreparable harm.
93. The April 14, 2015, Taxpayers demand letter is attached hereto and incorporated herein as Exhibit 8 to the Complaint.
94. The City, through its Law Director Kevin Butler, responded on May 1, 2015, and refused to pursue a taxpayers suit for any of the relief requested by the Plaintiffs.
95. The City's written refusal to prevent the abuse of corporate power and enforce its express rights is attached hereto and incorporated herein as Exhibit 9 to the Complaint.
96. Under the authority of Article XV of the Second Amended Charter of Lakewood and through adoption of Ordinance No. 907.03 of the Codified Ordinances, the City's Council has declared "it necessary and conducive to the public health and general welfare to establish and it hereby does establish a municipal hospital of the city to be known as the

Lakewood Hospital.” (Ex. 2, Second Amended City Charter, Article XV) (Ex. 1, City Ordinance, Chapter 907).

97. As authorized by Ordinance No. 51-96, the City and LHA entered into the Lease provided for in the DA between LHA and CCF pertaining to the operation of Lakewood Hospital for the intended benefit of the Taxpayers, employees, and the public. (Ex. 4, Ordinance No. 51-96, December 19, 1996).
98. The obligations and duties under the DA and Lease, as authorized by Ordinance No. 51-96, have been and are currently being evaded and/or violated. This includes, but is not limited to the following: Lakewood Hospital facilities are not being maintained; medical services have been significantly diminished or eliminated; LHA (in conjunction with its sole member CCF) has assented to the referral and diversion of patients to other hospital facilities wholly-owned and operated by CCF, which has undermined the financial viability of Lakewood Hospital; LHA, CCF, and LHF have entered into a LOI to close Lakewood Hospital for inpatient and acute medical care and prohibit competitive bidding while the LOI is in place and a second definitive agreement is being drafted; the LOI and proposed second definitive agreement is facially deficient and legally invalid because it fails to provide inpatient hospital care for an acute medical/surgical care hospital as required by the DA and Lease; the LOI and proposed second definitive agreement also violate the LHA RFP through Subsidium, for maintaining and operating Lakewood Hospital with inpatient care, as a minimum requirement and as set forth in the 2014 RFP on behalf of LHA and the City; wasting of City assets through the sale of land and buildings for \$5.5 million **well below** fair market value, without any appraisal or competitive bidding process; and other nonfeasance, misfeasance, malfeasance, and negligence regarding various other duties and obligations under the DA and Lease,

including over \$11 million of future rent payments and ensuring a cash-to-debt ratio of 1:1 through the year 2026, when Lakewood Hospital is required to be returned to the City as a going concern.

99. Taxpayers demand relief under the common law of the State of Ohio for a temporary and permanent injunction to enjoin the abuses of corporate powers by the City and prohibit the execution or performance of any resolution or contract in contravention of the existing DA and Lease, which requires maintaining Lakewood Hospital operations for the benefit of the Taxpayers through LHA and CCF through the year 2026.
100. Pursuant to the common law of the State of Ohio, Taxpayers seek the specific performance pursuant to the Lease between the City and LHA dated December 23, 1996, and as authorized by Ordinance No. 51-96 and the DA by and between LHA and CCF dated December 17, 1996, which includes, but is not limited to: maintaining Lakewood Hospital services until the conclusion of the Lease terms in the year 2026; providing indigent health care, which has been over \$84.3 million since 2008; CCF's obligations to maintain a cash-to-debt ratio of 1:1 through 2026, which has been estimated to be in the sum of approximately \$214 million; paying rent from 2017 through 2026, which would total \$11,500,000; providing of an itemization and accounting of any and all administrative services expenses from 1996 to the present; and Taxpayers reserve the right to enforce additional rights and obligations by the City upon LHA and CCF to operate Lakewood Hospital, according to various agreements and City laws that have been enacted and authorized for the intended beneficiaries the Taxpayers, employees, and for the public's benefit.
101. Pursuant to the common law of the State of Ohio, Taxpayers seek a writ of mandamus to compel the City to perform their official duties according to the Second Amended Charter

of Lakewood and various City Ordinances to ensure the preservation and operation of Lakewood Hospital for the benefit of the public and Taxpayers through the minimum thirty (30) year Lease term to 2026 with LHA and CCF.

102. Pursuant to the common law of the State of Ohio and Section 13.5 of the Lease, Taxpayers seek all costs for having to commence this matter according to any and all common law and equitable principles to provide compensation for protecting the public benefit of Lakewood Hospital through this Complaint.

**COUNT 2 – BREACH OF CONTRACT**  
**(INTENDED THIRD PARTY BENEFICIARY)**

103. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
104. Promises have been made by Defendants LHA and CCF in the Lease, (i.e. the purpose of the Lease is) to continue health care services to residents of the City and develop new programs. (Ex. 5, Lease, p. 1). Moreover, similar promises have been made by Defendants LHA and CCF in the DA (i.e. the purpose of the DA is) to find ways to best serve the health care needs of the residents of the communities served by CCF and the City. (Ex. 3, DA, p. 1). Such promises and purposes have not been fulfilled by LHA and CCF to the City.
105. The Taxpayers were not parties to the DA or the Lease, but were identified in said agreements as the parties to whom the benefit of Lakewood Hospital services were to be rendered, including Lakewood Hospital's employees.
106. The Taxpayers are intended third-party beneficiaries to the DA and the Lease, and these Taxpayers have also used the services of Lakewood Hospital and one is an employee of Lakewood Hospital.

107. LHA and CCF have contractual duties and obligations to the City to (a) provide inpatient and outpatient services to City residents and the community in general, (b) cut administrative costs and fund any deficits, (c) provide indigent care, (d) perform maintenance on the building and equipment; and (e) sustain current Lakewood Hospital services offered for the promotion of health and wellness from within the City through the year 2026. These duties and obligations have not been fulfilled.
108. The Taxpayers made demand upon the City trustees of the LHA Board (i.e. Mayor and two council persons sitting as ex-officio) to return Lakewood Hospital to its original capacity, with all required medical services and equipment, in accordance with LHA's obligations under DA and Lease, and enforce the Lease duties through its term of 2026.
109. LHA and CCF refused to return Lakewood Hospital to its agreed upon medical services, citing national market trends as the reason why Lakewood Hospital's business has declined and being in denial of the fact that CCF purposely has been draining Lakewood Hospital of its assets and diverting them to other CCF wholly-owned hospitals outside of the City for the purpose of closing and razing Lakewood Hospital and building the new Avon Hospital.
110. These breaches of contract have caused damage and injury to the intended third-party beneficiaries, Taxpayers, and employees, which are continuing and irreparable.
111. The Taxpayers have made demand upon the City that LHA and CCF fulfill their contractual obligations or else be in breach of the DA and Lease agreements.
112. The Taxpayers stand ready, willing, and able to accept return of title and possession of Lakewood Hospital assets and pursue monetary damages to operate Lakewood Hospital.
113. The Court should order LHA and CCF to specifically perform the DA and Lease by rejuvenating the terminated, diminished, and diverted medical services to Lakewood

Hospital and requiring continual operation through the Lease term of 2026, including deferred maintenance.

114. Money damages should also be awarded for the damage and depreciation to Lakewood Hospital assets already caused by LHA and CCF from 1996 to the present, including the excessive administrative services expenses, deferred maintenance due, reduced patient revenues, etc.
115. The Taxpayers are also entitled to monetary damages equal to the amount of tax dollars lost due to reduced employment by the City's largest employer (i.e. economic impact), lost rental income, lost indigent care services, fair market value of Lakewood Hospital's building, medical equipment, and the 850 Columbia Road land and building, which has been estimated at over \$3 billion, and negative economic impact, if specific performance is not ordered.
116. Additionally, the Lease provides for the payment of attorney fees and costs for breaches.
117. A trust by operation of law has arisen against LHA and CCF because they, by commission of a wrong and against equity and good conscience, have caused Lakewood Hospital to lose money due to the cutting of required services under the Lease, not using raised funds to treat indigent patients, and diverting patients and thus money to other CCF wholly-owned hospitals, the benefit of which they ought not, in equity and good conscience, hold and enjoy otherwise LHA and CCF will be unjustly enriched.
118. The Lakewood Hospital assets are therefore held by LHA and CCF in constructive trust for the Taxpayers pending their return by order of specific performance.
119. The Court should order title to and possession of Lakewood Hospital assets be transferred to the City and the Taxpayers pursuant to the mandates of the DA and Lease and declare a

constructive trust over Lakewood Hospital assets for all times the assets have been unlawfully diverted or withheld by CCF.

### **COUNT 3 – BREACH OF FIDUCIARY DUTY**

120. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.

121. A fiduciary relationship by and between LHA and CCF with the Taxpayers as beneficiaries has arisen and remains with respect to Lakewood Hospital assets as a result of the above described agreements, trusts, and special relationships where a special trust and confidence has been reposed and is understood to exist by both LHA and CCF to the Taxpayers and Lakewood Hospital employees. LHA and CCF owe heightened duties of care, loyalty, full disclosure of information, impartiality, conflict and self-dealing avoidance, and other heightened responsibilities to the Taxpayers, employees, and the City community.

122. LHA and CCF have intentionally, or at least recklessly, failed to observe those duties by certain of their actions, including, but not limited to:

- a. cutting inpatient and acute medical/surgical care and other required health care services under the Lease and DA;
- b. manipulating financial statements, costs, expenses, and revenues for Lakewood Hospital to provide a pretext for the closure of inpatient and acute medical care services at Lakewood Hospital and closure of its use as an inpatient and acute surgical medical care hospital;
- c. manipulating facility use away from Lakewood Hospital to other CCF wholly-owned hospitals outside of the City including, but not limited to, Fairview Hospital, Lutheran Hospital, and Avon Hospital;
- d. failing to provide the City and Taxpayers requested information related to Lakewood Hospital assets and their use;
- e. failing to disclose conflicts of interest and failing to abstain from voting on matters where a conflict of interest existed;

- f. removing certain Lakewood Hospital assets from the Lakewood Hospital grounds in favor of other CCF wholly-owned hospitals; and
  - g. utilizing the above mentioned methods to enrich LHA and CCF at the expense of the City and Taxpayers.
123. Additionally, a fiduciary relationship by and between LHF and the Taxpayers has arisen and remains with respect to Lakewood Hospital assets as a result of the LHF Articles of Incorporation, trusts, and special relationships where a special trust and confidence has been reposed and is understood to exist by both LHF and the Taxpayers. LHF owes heightened duties of care, loyalty, full disclosure of information, impartiality, conflict and self-dealing avoidance, and other heightened responsibilities to the Taxpayers and the City community.
124. LHF has intentionally, or at least recklessly, failed to observe those duties by certain of their actions including, but not limited to:
- a. LHF putting Lakewood Hospital assets further at risk by Ken Haber's signing of CCF's LOI to wind down and raze the facility;
  - b. failing to disclose conflicts of interest and failing to abstain from voting on matters where a conflict of interest existed, i.e. Ken Haber, the president of the LHF Board of Trustees also sits on LHA's Board of Trustees and is the LHA Board's chair of the finance and audit committee; Mr. Haber signed CCF's LOI; and
  - c. agreeing in the LOI to use LHF assets in direct contravention of the purpose and intended use of the charitable funds to maintain and operate Lakewood Hospital.
125. The breach of these fiduciary duties has proximately caused injury to Lakewood Hospital assets, the City, Taxpayers, residents, employees, and the general public that LHA and CCF represent in the community.
126. The Defendants' breach of their fiduciary duties have been conducted with malice and/or reckless disregard of the rights and interests of the trust beneficiary, i.e. the Taxpayers,



employees, the City, and the people it represents in the community, all to the damage of the City, the residents, Taxpayers, and employees it represents.

**COUNT 4 – BREACH OF EXPRESS TRUST**

127. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
128. The City had and has capacity to create a trust.
129. While it owned Lakewood Hospital assets and operated Lakewood Hospital, the City caused the assets to be operated for the charitable purposes of maintaining a hospital for the promotion of health and welfare of the City and surrounding communities and for other charitable purposes, the achievement of which were beneficial to the City and general public.
130. The Lease and LHA Articles of Incorporation, along with the facts, circumstances, and relationships of parties surrounding the transfer under lease of substantial Lakewood Hospital assets by the City to LHA manifested and established a clear intention by the City to create and did create an express charitable trust under R.C. 109.23 with LHA (including CCF), acting as trustee(s) and in whom title to Lakewood Hospital assets as the trust *res* was vested for the benefit of the City, Taxpayers, employees, and residents of this community area.
131. The City acted as the settlor of the trust. Its overriding intention was for the charitable purposes for which Lakewood Hospital itself was created; namely, the provision and maintenance of community hospital services for the Taxpayer, employees, and residents within the City. The City intended the community and Taxpayers to benefit from LHA's and CCF's affiliation with Lakewood Hospital, their use of Lakewood Hospital in the continued operation of it as an inpatient and acute medical care hospital, using the

economic efficiencies, brand-name, capital funds, and experience CCF promised to bring to its relationship with the City and LHA.

132. In reliance on the promise of these benefits to the City and the manifestation of a trust and attendant fiduciary duties, the City leased the substantial Lakewood Hospital assets in trust to LHA and CCF.
133. LHA and CCF have duties as trustees and lessees of Lakewood Hospital assets to operate and use them as a hospital for the benefit of the City for the City community and Lakewood Hospital employees.
134. The facts and circumstances described above create a fiduciary relationship with respect to Lakewood Hospital assets arising under the law of Ohio as a result of a manifestation of intention to create a charitable trust, and subjects LHA and CCF to fiduciary duties to deal with Lakewood Hospital assets within Ohio for the charitable purposes of operating a community inpatient and acute medical care hospital located in the City and otherwise following the requirements of the trust so created, including the 1,100 employees.
135. The express trust so created is a charitable trust under Ohio law and is so afforded the benefit of the liberal principles of equity jurisprudence under Ohio law.
136. While LHA and CCF are the trustees of the trust, they are not the intended beneficiaries of the express trust. As shown above, the City reserved to the Taxpayers, employees, and residents, by and through itself, the beneficial interest of Lakewood Hospital assets and did not transfer to LHA and CCF full or sole beneficial ownership rights. The trust has not merged because there are diverse identities of trustees and beneficiaries.
137. Failing the purposes for which Lakewood Hospital assets were leased in trust to LHA and CCF and upon the conditions as expressly stated, LHA and CCF were and are required to return possession of Lakewood Hospital assets to the City pursuant to the terms of the

DA, Lease, LHA's Articles of Incorporation, Ohio trust law, and other applicable Ohio common and statutory law.

138. LHA and CCF are in breach of trust for, among other things, failing and refusing to return possession of Lakewood Hospital assets to the City as they are required to do under the DA, Lease, LHA's Articles of Incorporation, Ohio trust law, and other applicable Ohio law because the condition precedents as above stated have occurred.
139. LHA and CCF are in further breach of the express trust by their actions meant to prevent the City from making productive use, as agreed upon, of Lakewood Hospital assets on behalf of the City community, including, but not limited to, their failure to disclose pertinent information related to Lakewood Hospital assets necessary for the City to market Lakewood Hospital assets to another health care organization capable of operating Lakewood Hospital (e.g. MetroHealth). At the same time CCF has been fortifying its competitive position in the City, all as previously described, to the detriment of the beneficiary of the express trust, the City, Taxpayers, employees, and residents.
140. LHA and CCF are further in breach of the express trust for violations of their fiduciary duties owed to the City community, Taxpayers, and employees by and through the City as stated in COUNT 3 of this Complaint.
141. LHA and CCF's destruction of Lakewood Hospital's assets and provided services and intended closure and razing of Lakewood Hospital, their withholding of Lakewood Hospital assets related thereto, while at the same time fortifying their competitive position in the City, has caused depreciation, waste, and damage to Lakewood Hospital assets and has otherwise damaged the City, its Taxpayers, employees, and residents.
142. Said actions of LHA and CCF were and are in conflict with the interests of the City, were and are not in good faith, were and are meant for the sole benefit of CCF to the exclusion

and detriment of the City, Taxpayers, employees, and residents and said breach was and is intentional and conducted with malice and/or reckless disregard for the rights and interests of the City, Taxpayers, employees, and the people in the City community.

143. The Taxpayers are entitled to all remedies available under R.C. 5810 and Ohio Common Law in order to be made whole.

**COUNT 5 – BREACH OF CONSTRUCTIVE TRUST**

144. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
145. The constructive trust sought as one of the remedies for breach of contract above is a charitable trust under Ohio law and is so afforded the benefit of the liberal principles of equity jurisprudence under Ohio law.
146. LHA and CCF are in breach of trust, as trustees of the constructive trust, for failing and refusing to return possession of Lakewood Hospital assets to the City as they are required to do under the DA, Lease, LHA's Articles of Incorporation, Ohio trust law, and other applicable Ohio common and statutory law.
147. LHA and CCF are in further breach of the constructive trust by their actions meant to prevent the City from making full productive use of Lakewood Hospital assets as originally agreed on behalf of the City community, including, but not limited to, their failure to disclose pertinent information related to Lakewood Hospital assets necessary for the City to market Lakewood Hospital assets to another health care organization capable of operating a hospital (e.g. MetroHealth). At the same time CCF has been fortifying its competitive position in the City, all as previously described, and to the detriment of the beneficiary of the constructive trust, the City, Taxpayers, employees, and residents.

148. LHA and CCF are further in breach of the constructive trust for violations of their fiduciary duties owed to the City community by and through the City as stated in COUNT 3 of this Complaint.
149. LHA and CCF's destruction of Lakewood Hospital's assets and provided services and intended closure and razing of Lakewood Hospital, their withholding of Lakewood Hospital assets related thereto, while at the same time fortifying their competitive position in the City, has caused depreciation, waste, and damage to Lakewood Hospital assets and has otherwise damaged the City, Taxpayers, employees, and residents.
150. Said actions of LHA and CCF were and are not in good faith, were and are meant for the sole benefit of CCF to the exclusion and detriment of the City, Taxpayers, employees, and its residents and said breach of the constructive trust by LHA and CCF was and is intentional and conducted with malice and/or reckless disregard of the rights of the City, Taxpayers, employees, and the people in the City community.
151. The Taxpayers are entitled to all remedies available under R.C. 5810 and Ohio Common Law in order to be made whole.

#### **COUNT 6 – DECARATORY JUDGMENT**

152. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
153. To the extent required for full and complete relief, the Taxpayers hereby request the Court to declare certain legal rights and relations that are contested between the parties to this litigation.
154. The Taxpayers contend that there is an express and/or constructive trust that has been created by the facts, circumstances, relationships, and/or the DA and Lease all as alleged above in the Complaint.

155. The City, CCF, LHA, and LHF have contended in public statements that it is in the City's best interests to institute a plan, which is and will continue to endanger public assets and the express and/or constructive trust(s).
156. The above referenced disputes are actual controversies, the resolution of which will confer certain rights or status upon the litigants in this case.
157. Speedy relief is required because LHA and CCF continue to use most of Lakewood Hospital assets in a manner that is not for the benefit of the City and are not using Lakewood Hospital assets in the agreed-upon operation of a hospital for the City and surrounding areas. The Taxpayers and residents of the City, and in particular, indigent residents or residents who cannot afford transportation, do not have available to them convenient hospital services.
158. Additionally, as time passes by, Lakewood Hospital assets continue to depreciate and waste making it ever more difficult for the City to use the same on behalf of the community as a full service hospital and retain employees to avoid irreparable economic harm.
159. The controversy is justiciable and ripe for a determination.
160. The controversy directly involves certain matters for which declaratory judgments have been statutorily authorized to decide including, but not limited to, the direction of trustees to do or abstain from doing any particular act in their fiduciary capacity and to determine any question arising in the administration of a trust including the determination of the construction of such trusts by express contract terms.
161. The Taxpayers hereby request the Court to declare the existence of the express trust and/or constructive trust and declare the rights and obligations of the parties to the trusts as alleged above, including, but not limited to, the right of the City and Taxpayers to

receive the information and records related to Lakewood Hospital assets necessary to enable it to market the same to another healthcare organization interested in operating Lakewood Hospital assets under lease in a full service hospital upon Lakewood Hospital grounds; require LHA and CCF to abide by the terms and conditions of the DA and Lease contract terms to operate Lakewood Hospital with inpatient and acute surgical/medical health care through 2026; and return Lakewood Hospital as a going concern with all Required Services and with a cash-to-debt ratio of 1:1 now and at the Lease termination in 2026, after providing all required maintenance, operation, and covering any losses.

**COUNT 7 – INJUNCTION (TEMPORARY AND PERMANENT)**

162. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
163. Taxpayers are entitled to an injunction to prohibit the City in its official capacity and as ex-officio trustees of the LHA from entering into agreements with LHA and CCF to terminate or redirect required services at Lakewood Hospital, to restore such services, and to refrain from any further discussions with CCF in planning to close and raze Lakewood Hospital.
164. Further, Taxpayers are entitled to an injunction to prohibit LHA and CCF from terminating or redirecting required services at Lakewood Hospital, to restore such services, to refrain from diverting Lakewood Hospital patients and potential patients to other CCF wholly-owned hospitals outside of the City, and to refrain from any further plans to close and raze Lakewood Hospital in favor of building a new, lesser outpatient family health center with fewer employees.
165. In requesting a preliminary injunction and in conjunction with the facts herein, Taxpayers have shown that there is a substantial likelihood that they will prevail on the merits, that they will suffer irreparable injury if the injunction is not granted, that no third parties will

be unjustifiably harmed if the injunction is granted (contrarily, any third parties would benefit from the injunction), and that the public interest, i.e. the interest of City Taxpayers and residents who are or have been patients at Lakewood Hospital and City employees of Lakewood Hospital, will be served by the injunction. *Proctor & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260, 267, 747 N.E.2d 268.

#### **COUNT 8 – WRIT OF MANDAMUS**

166. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
167. Pursuant to R.C. 2731.01, Taxpayers seek a writ of mandamus compelling the City to take action and enforce its rights, duties, and obligations in the best interests of the City, its Taxpayers, residents, employees, and the public by abiding by the Second Amended Charter of Lakewood, City Ordinances, the Ohio Revised Code, Ohio common law, and pursuing its rights under the DA and Lease.
168. Further, pursuant to R.C. 2731.01, Taxpayers seek a writ of mandamus enjoining LHA, LHF, and CCF from anticipatorily breaching the DA, Lease, and LHF's and LHA's respective Articles of Incorporation and ensuring the ongoing operation and maintenance of Lakewood Hospital through the term of the Lease ending in 2026, in full compliance with the DA, Lease, and all applicable laws for the benefit of the City, Taxpayers, residents, employees, and the public.

#### **COUNT 9 – AN ACCOUNTING**

169. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
170. Taxpayers are entitled to a full accounting and disclosure from CCF and LHA of all administrative expenses and other damages from 1996 to the present by CCF pursuant to the DA, Lease, and Ohio common law.



171. Taxpayers seek a Court order requiring CCF and LHA to produce said accounting according to law and for the public's benefit.

172. Taxpayers also seek disgorgement of any excessive or unnecessary expenses charged by CCF to Lakewood Hospital.

#### **COUNT 10 – UNJUST ENRICHMENT**

173. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.

174. The City (1) conferred a benefit on LHA and CCF; (2) LHA and CCF have knowledge of such benefit; and (3) LHA and CCF have retained the benefit of Lakewood Hospital assets and will continue to do so until there is nothing left under circumstances where it would be unjust to do so without payment for or return of all or substantially all Lakewood Hospital assets.

175. Taxpayers seek equitable and monetary relief requiring CCF and LHA to return all Lakewood Hospital assets to the City and to pay all damages for the negligent and/or intended enrichment through the termination and redirection of patients to CCF wholly-owned hospitals from 1996 to the present.

#### **COUNT 11 – PROMISSORY ESTOPPEL**

176. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.

177. As set forth and specified above, LHA and CCF repeatedly made firm and specific promises to the City and Taxpayers about providing high quality, sustainable inpatient and acute health care services at Lakewood Hospital for the benefit and general health and welfare of the Taxpayers, employees, and the City community through the duration of the Lease. The City relied on those promises by leasing Lakewood Hospital and all related property to LHA and CCF. The City's reliance upon LHA's and CCF's promises

was reasonable, substantial, and to its detriment. LHA and CCF were fully aware of the City's reliance upon their promises.

178. In 2010, when CCF began to develop its *Vision for Tomorrow* plan, it represented to the City that it was transitioning into other health care services in order to adapt to allegedly changing market trends, but that the sustainability and viability of Lakewood Hospital's inpatient and acute medical care services was of utmost importance to LHA and CCF and would remain intact. (Ex. 6, April 6, 2010, CCF letter to City). CCF repeated these promises in a letter to then Council President Kevin Butler. (Ex. 7, May 24, 2010, Letter).
179. Just five years later, LHA and CCF proved that these promises are empty by diverting Lakewood Hospital patients to other CCF wholly-owned facilities outside of the City, cutting and diminishing required inpatient and acute medical care services, and planning for the closure and razing of Lakewood Hospital to pave the way for a CCF wholly-owned outpatient family health center, benefiting CCF and no one else.
180. LHA and CCF have breached their promises as a result of which the City, its community, and Taxpayers have suffered compensatory damages far in excess of \$400 million for which LHA and CCF are liable.

#### **COUNT 12 – FRAUD**

181. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
182. CCF and LHA made representations and, where there was a duty to disclose, concealed facts, which were material to the transaction at hand. CCF and LHA made representations and concealed facts falsely, with knowledge of their falsity, or with such utter disregard and recklessness as to whether they were true or false that knowledge may be inferred, and with the intent of misleading the City into relying upon them. The City made justifiable reliance upon those representations and concealments, resulting in injury to the

City proximately caused by the reliance. *See Williams v. Aetna Fin. Co.* (1998), 83 Ohio St.3d 464, 475, 700 N.E.2d 859.

183. At a May 24, 2010, LHA Board meeting, Senior General Counsel of CCF's regional hospitals, Michael Meehan, stated that the Hospital Administration [CCF] did not believe that it was necessary to amend the Lease or to provide additional documentation granting the City new enforceable rights because the DA and Lease already provided protections for the City from changing the nature of Lakewood Hospital from that envisioned by the documents.
184. Further, CCF represented to the LHA Board and the City as part of its *Vision for Tomorrow* plan that in return for eliminating certain of the Required Services under the Lease, such as inpatient pediatrics and trauma, CCF would replace those services with its four (4) centers of clinical excellence, including: (1) neurosciences, (2) orthopedics, (3) diabetes, and (4) geriatrics. In reality, CCF has not added all four of these centers of excellence, or added them then later terminated these services after the City already relied upon CCF's promises for the future sustainability and viability of Lakewood Hospital. Now, CCF wants to forego all Required Services and its four centers of clinical excellence in favor of closing and razing Lakewood Hospital altogether.
185. In justifying its termination of required services, supposedly adding its four centers of clinical excellence, and ultimately closing Lakewood Hospital, CCF has pinned blame on national health care market trends and the fundamental change in the way health care is delivered to patients. However, CCF concealed the fact that it has been diverting patients and services to other CCF wholly-owned hospitals, such as Lutheran Hospital, Fairview Hospital, and Avon Hospital, which are all outside of the City. Moreover, CCF claims Lakewood Hospital is unprofitable the way it is currently (hence how CCF is convincing

others it is the best option to close Lakewood Hospital), yet if CCF had not increased its mysterious administrative services expenses drastically over the past six years while paying exorbitant amounts to Subsidium, Lakewood Hospital would actually show a net profit.

186. As as direct and proximate result of Defendants' actions, Plaintiffs are entitled to compensatory and exemplary damages, including the payment of reasonable attorney fees, litigation expenses, and costs.

### **COUNT 13 – CONSPIRACY**

187. Plaintiffs incorporate all of the above paragraphs as if fully restated herein.
188. An agreement or malicious combination was made among LHA, CCF, and Subsidium in the form of bid rigging, causing injury to the City, its Taxpayers, employees, residents, and the property of Lakewood Hospital. CCF and Subsidium worked together to favor CCF's proposal over MetroHealth's proposal, even though CCF's proposal did not meet the minimum requirements of LHA's RFP, about which LHA never did anything to cure the deficiency. Further, there was an unlawful act independent from the conspiracy itself to close Lakewood Hospital, including but not limited to fraud and tortious interference. *See Dixon v. Huntington Natl. Bank* (2014), 2014 WL 4656798 at \*4; *Agic v. Natl. Union Fire Ins. Co. of Pittsburgh* (2014), 2014 WL 4748436 at \*6; *Syed v. Poulos* (2013), 2013 WL 6857979 at \*3, ¶ 14; *Ghaster v. Rocky River* (2013), 2013 WL 6730925 at \*4; *U.S. Bank v. Amir* (2012), 2012 WL 2355620 at \*7, ¶ 39.
189. An agreement or malicious combination was made among CCF, LHA, and LHF in violating and interfering with the DA, Lease, respective articles of incorporation, City Ordinances, and the Second Amended Charter of Lakewood. These violations and interferences of contract and law constitute unlawful acts independent from the

conspiracy itself to strip Lakewood Hospital of its assets and ultimately close and raze Lakewood Hospital, resulting in injury to the City, its Taxpayers and residents, and City-owned property.

190. As a direct and proximate result of Defendants' civil conspiracy, all Defendants are jointly and severally liable for compensatory and exemplary damages, including reasonable attorney fees, litigation expenses, and costs.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally on all applicable monetary causes of action, in the amount in excess of \$400,000,000.00, plus reasonable attorney fees, litigation expenses, and costs. Plaintiffs also demand judgment against Defendants, jointly and severally on applicable causes of action, exemplary damages to be determined by a jury, plus reasonable attorney fees, litigation expenses, and costs. Plaintiffs further demand all other relief that the Court deems just and equitable and in order to make the Plaintiffs whole in this matter, including but not limited to, specific performance, injunctive relief, declaratory judgment, and mandamus.

Respectfully submitted,

/s/ Christopher M. DeVito

Christopher M. DeVito (0047118)

**Morganstern, MacAdams & DeVito Co., L.P.A.**

623 West Saint Clair Avenue

Cleveland, OH 44113-1204

216-687-1212 or 216-621-4244 – Office

216-621-2951 – Facsimile

[ChrisMDeVito@gmail.com](mailto:ChrisMDeVito@gmail.com)

*Attorney for Plaintiffs*

### **JURY DEMAND**

A trial by jury with the maximum number of jurors permitted under Ohio law is hereby requested on all applicable causes of action.

Respectfully submitted,

/s/ Christopher M. DeVito

Christopher M. DeVito

### **INSTRUCTIONS FOR SERVICE**

The Plaintiffs hereby request and instruct the Clerk of Court of Cuyahoga County, pursuant to Civil Rule 4, to serve via certified mail, return receipt requested (or other approved forms of delivery), the enclosed **Complaint (With Jury Demand Endorsed Hereon) (Monetary Relief Requested)** upon the Defendants at the addresses identified in the caption of the Complaint.

**NOTE TO CLERK:** If the exhibits are too voluminous to attach with the electronic pdf filing, then they will be filed immediately after the Complaint is accepted by the Clerk's office.

Respectfully submitted,

/s/ Christopher M. DeVito

Christopher M. DeVito (0047118)

**Morganstern, MacAdams & DeVito Co., L.P.A.**

623 West Saint Clair Avenue

Cleveland, OH 44113-1204

216-687-1212 or 216-621-4244 – Office

216-621-2951 – Facsimile

ChrisMDeVito@gmail.com

*Attorney for Plaintiffs*

STATE OF OHIO

COUNTY OF CUYAHOGA

)

)

)

SS: **AFFIDAVIT VERIFYING COMPLAINT  
FOR MANDAMUS AND TAXPAYERS SUIT**

I, **Edward Graham**, having been duly cautioned of the penalties of perjury and competent to testify from my own personal knowledge state as follows:

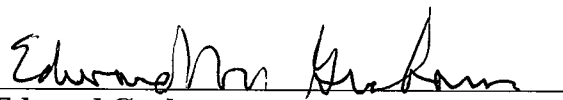
1. I am one of the plaintiffs and taxpayer in the within Complaint filed in Cuyahoga Common Pleas Court.

2. The facts set forth in the foregoing verified complaint for mandamus, taxpayers suit, and other claims are true and correct to the best of my knowledge, information, and belief.


3. Appended hereto as Complaint Exhibits 1 through 9 are true and exact copies of the City of Lakewood ("City") Ordinances, Second Amended Charter, Definitive Agreement ("DA"), Amended and Restated Lease ("Lease"), and various public records involving communications to and from the City with Cleveland Clinic Foundation ("CCF") and Taxpayers.

4. A writ for mandamus, with or without notice to Defendants, is warranted to prevent further, irreparable harm and command the City's performance of acts, required by law pursuant to the DA and Lease, resulting from its office, station, and public trust involving Lakewood Hospital's inpatient acute/surgical medical services and employees.

FURTHER AFFIANT SAYETH NAUGHT.

  
Edward Graham

SWORN TO BEFORE ME, and subscribed in my presence, this 27<sup>th</sup> day of May, 2015.

  
Notary Public

L:\CLIENTS-CMD\LakewoodHospital\2015.05.22.2.Affidavit Verifying Complaint.Graham.docx

**CHRISTOPHER M. DeVITO, Attorney at Law**  
**NOTARY PUBLIC — STATE OF OHIO**  
**My commission has no expiration date**  
**Pursuant to O.R.C. 147.03**