

Placed on 1st reading & referred  
to Public Works 3/18/19; 2nd  
reading on 4/1/19

Anderson, Bullock, George, Litten,  
O'Leary, O'Malley, Rader

ORDINANCE NO. 11-19

BY:

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

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

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

WHEREAS, Cornucopia, Inc., served as the city's concessionaire at Lakewood Park during the 2017 and 2018 seasons with success and without controversy; and

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

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this ordinance is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments, in that the beginning of the 2019 park season is upon us; now, therefore,

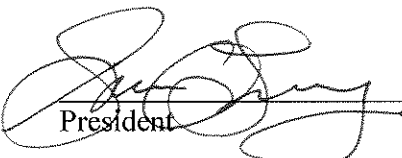
BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

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


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

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

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

Adopted: 4/15/19 \_\_\_\_\_  
President 

Maura M. Bach  
Clerk

Approved 4/17/19 \_\_\_\_\_  
(Acting) Mayor 

**Exhibit A**  
Amendment to Concession Lease Agreement

(See following pages)

EXHIBIT A

**AMENDMENT TO CONCESSION LEASE AND PERMIT**

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

WHEREAS, lessor and lessee wish to extend the term of the original Concession Lease and Permit ("Original Agreement"), which expires April 30, 2019, for another year, maintaining all other aspects of the Original Agreement; now, therefore,

1. **AMENDED TERMS.** The Original Agreement is hereby amended in relevant part to read as follows:

2. **TERM.** The term of this lease shall begin on May 1, 2019 and end on April 30, 2020, and may be renewable on such terms as are approved by the parties.

...

17. **CANCELLATION.**

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

...

(3) Lessee voluntarily abandons operations at the leased premises for a continuous period of ten days between September 1, 2019 and the termination of the ~~original~~ term of this lease;

...

2. **DEFINED TERMS.** Unless specifically defined herein, all capitalized terms used in this Amendment shall have the meaning assigned to them in the Original Agreement.

3. **CONFLICTS.** In the event of a conflict between the provisions of this Amendment and the provisions of the Original Agreement, the provisions of this Amendment shall control.

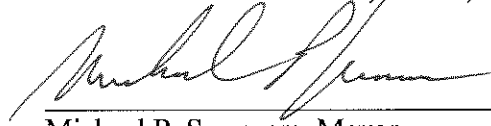
4. **RATIFICATION.** Except as expressly amended or modified herein, all of the terms, covenants and conditions of the Original Agreement shall remain unchanged and in full force and effect; and the Original Agreement, as herein amended and modified, is hereby ratified and confirmed.

5. **COUNTERPARTS.** This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

WITNESS the signatures of the parties this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Attest:

**CITY OF LAKEWOOD, OHIO**, as lessor



\_\_\_\_\_  
Witness

\_\_\_\_\_  
Michael P. Summers, Mayor

**HELP FOUNDATION, INC.**, as lessee

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Tamara Honkala, President and CEO

Approved as to legal form and correctness:

\_\_\_\_\_  
Director of Law

## CONCESSION LEASE AND PERMIT

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

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

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

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

### 4. **UTILITIES AND MAINTENANCE.**

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

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

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

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

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

#### **6. CONDITION OF PREMISES; IMPROVEMENTS AND INSTALLATIONS.**

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

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

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

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

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

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

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

#### **8. HOURS AND STANDARDS OF OPERATION.**

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

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

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

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

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



## 10. PAYMENT OF TAXES.

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

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

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

## 12. INSURANCE.

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

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

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

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

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

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

**13. LOSS OR DAMAGE TO LEASED PREMISES.**

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

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

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

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

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

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

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

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

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

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

17. **CANCELLATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

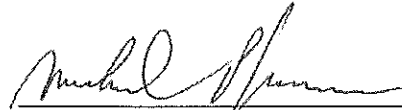
The City waives a default for nonpayment of rent or other charges by accepting full payment for the past due amounts made within sixty days after the due date of the last such past due rent payment or other charge. Waiver of the right to cancel based on a particular occurrence or default does not constitute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

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

WITNESS the signatures of the parties this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Attest:

**CITY OF LAKEWOOD, OHIO, as lessor**



Witness

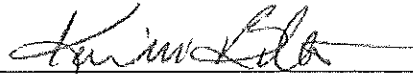
Michael P. Summers, Mayor

**HELP FOUNDATION, INC., as lessee**

Witness

Tamara Honkala, President and CEO

Approved as to legal form and correctness:



Director of Law

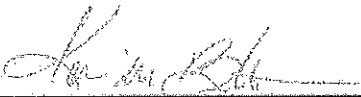
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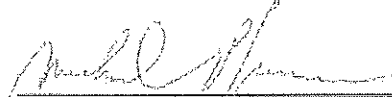
18. **SURRENDER OF PREMISES.** At the end of the term or any renewal term of this lease, or upon termination of this lease by either party or for any cause, lessee shall remove any trade fixtures and equipment, or furniture and furnishings it installed, and surrender possession of the premises to the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


WITNESS the signatures of the parties this 20<sup>th</sup> day of June, 2018.

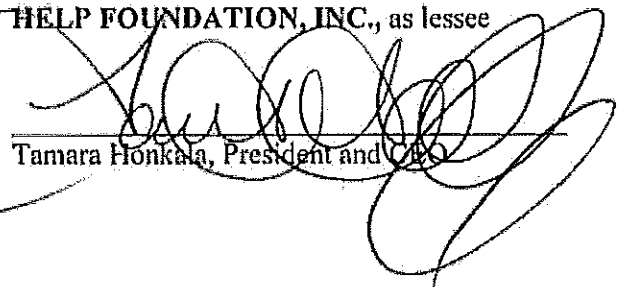
Attest:

**CITY OF LAKEWOOD, OHIO, as lessor**


  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Michael P. Summers, Mayor

  
\_\_\_\_\_  
Witness

**HELP FOUNDATION, INC., as lessee**  
  
\_\_\_\_\_  
Tamara Honkala, President and CEO

Approved as to legal form and correctness:

  
\_\_\_\_\_  
Director of Law