



CITY OF KETTERING

DONALD E. PATTERSON, MAYOR • ROBERT SCOTT, VICE MAYOR
BRUCE E. DUKE • TONY KLEPACZ • BILL LAUTAR • AMY SCHRIMPF • JOSEPH D. WANAMAKER

KETTERING COUNCIL AGENDA

May 23, 2017

Kettering Government Center – South Building
3600 Shroyer Rd. Kettering, Ohio 45429

6:00 P.M. **WORKSHOP** Kettering Room
7:30 P.M. **REGULAR MEETING** Council Chambers

PLEDGE OF ALLEGIANCE

INVOCATION

APPROVAL OF MINUTES

May 9, 2017- Council Meeting & Workshop Minutes

PROCLAMATIONS, SPECIAL PRESENTATIONS, AWARDS, SPECIAL RESOLUTIONS, APPOINTMENTS TO BOARDS AND COMMISSION

Proclamation Older American Month

PUBLIC HEARINGS

PUBLIC COMMENT ON LEGISLATION

(5 Minute Limit per Speaker)

ORDINANCES IN SECOND READING

RESOLUTIONS

1. Establishing the signature of Marcy K. Bare as an authorized signature for all negotiable instruments, checking accounts, certification of funds, etc., required or made necessary by law as relating to her duties and responsibilities with the Finance Department of the City of Kettering; and rescinding Resolution No. 5562-91.
2. Authorizing the City Manager to purchase the real property commonly known as 3813 Wilmington Pike.
3. Authorizing the City Manager to enter into an agreement for the purchase of light poles for the Government Center Campus Lighting Project.
4. Authorizing the City Manager to enter into one or more agreements with Montgomery County and Millat Industries for an EDGE Program funding award.
5. Authorizing the City Manager to purchase ± 306 acres of real property located in the Miami Valley Research Park.

ORDINANCES IN FIRST READING

CERTIFICATIONS AND PETITIONS

MANAGER'S REPORT/COMMUNITY UPDATE

OTHER BUSINESS NOT ON WRITTEN AGENDA

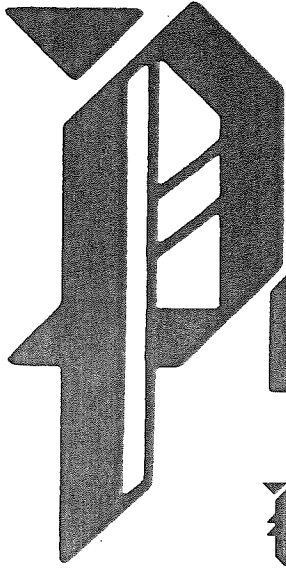
Audience Participation (5 Minute Limit per Speaker)

CITY COUNCIL REPORT/UPDATE

The City of Kettering wishes to make certain that all citizens have the opportunity to actively participate in their local government. If you have a disability and require accommodations to participate in a Council meeting, please contact the Clerk of Council at 296-2416 so that reasonable modifications can be made.

KETTERING CITY CALENDAR 2017

May 22	7:30 p.m.	Sister Cities
May 23	6:00 p.m. 7:30 p.m.	Council Workshop City Council Meeting
May 29	All Day	Government Center Closed- Memorial Day
May 30	6:00 p.m.	Joint School Board Meeting- Fire Headquarters
June 1	4:00 p.m.	Parks, Recreation, and Cultural Arts Advisory Board
June 5	7:00 p.m.	Planning Commission
June 12	7:00 p.m.	Board of Zoning Appeals
June 13	4:00 p.m. 6:00 p.m. 7:30 p.m.	Partners for Healthy Youth Council Workshop City Council Meeting
June 19	7:00 p.m. 7:00 p.m.	Planning Commission Board of Community Relations
June 20	5:00 p.m.	Kettering Arts Council
June 21	8:00 a.m.	Volunteer Advisory Council
June 26	7:00 p.m. 7:30 p.m.	Board of Zoning Appeals Sister Cities
June 27	6:00 p.m. 7:30 p.m.	Council Workshop City Council Meeting



Office of the Mayor

Proclamation

Whereas:

The City of Kettering is a community in which many citizens age 60 and over make their home; and

WHEREAS: *The City of Kettering is committed to valuing all individuals and recognizing their ongoing life achievements; and*

WHEREAS: *The older adults in Kettering play an important role by continuing to contribute experience, knowledge, wisdom, and accomplishments; and*

WHEREAS: *Our older adults are active community members involved in volunteering, mentorship, arts and culture, and civic engagement; and*

WHEREAS: *Recognizing the successes of community elders encourages their ongoing participation and further accomplishments; and*

WHEREAS: *Our community can provide opportunities to allow older citizens to continue to flourish by emphasizing the importance of elders and their leadership by publicly recognizing their continued achievements; presenting opportunities for older Americans to share their wisdom, experience, and skills and recognizing the older adults as a valuable asset in strengthening American communities.*

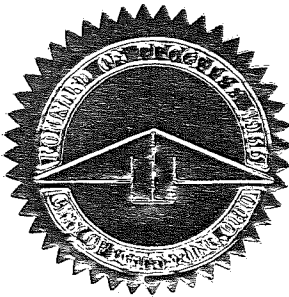
NOW, THEREFORE, I, Donald E. Patterson, Mayor of the City of Kettering, Ohio, do hereby proclaim

MAY 2017

to be

OLDER AMERICANS MONTH

in the City of Kettering, Ohio and urge everyone to take time this May to honor our older adults and the professionals, family members, and citizens who care for them.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Kettering, Ohio, to be affixed this 23rd day of May in the Year of our Lord, Two Thousand and Seventeen.

DONALD E. PATTERSON
Mayor of the City of Kettering, Ohio

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

ESTABLISHING THE SIGNATURE OF MARCY K. BARE AS AN AUTHORIZED SIGNATURE FOR ALL NEGOTIABLE INSTRUMENTS, CHECKING ACCOUNTS, CERTIFICATION OF FUNDS, ETC., REQUIRED OR MADE NECESSARY BY LAW AS RELATING TO HER DUTIES AND RESPONSIBILITIES WITH THE FINANCE DEPARTMENT OF THE CITY OF KETTERING; AND RESCINDING RESOLUTION NO. 5562-91

Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. The signature of Marcy K. Bare is hereby established as an authorized signature for all negotiable instruments, checking accounts, certification of funds, etc., required or made necessary by law as relating to her duties and responsibilities with the Finance Department of the City of Kettering.

Section 2. Resolution Number 5562-91 is rescinded effective August 1, 2017.

Section 3. The Clerk of this Council is hereby directed to forward a copy of this Resolution to all bank and financial institutions with whom the City is doing business.

Section 4. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2017.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER, III,
Law Director

(Requested by: Finance Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO PURCHASE THE
REAL PROPERTY COMMONLY KNOWN AS 3813
WILMINGTON PIKE**

Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. The City Manager is hereby authorized to purchase the real property commonly known as 3813 Wilmington Pike, Kettering, Ohio for an amount, excluding typical closing and transaction costs, not to exceed \$130,000.00. Additional terms and conditions that the City Manager deems appropriate may also be included. The City Manager is authorized to sign any necessary agreements and instruments, including amendments thereto, for this transaction.

Section 2. This Resolution shall take full force and effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2017.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER, III,
Law Director

Estimated Cost: \$130,000.00
Funds Available: \$130,000.00
Acct. No.: 0550-72550

(Requested by: City Manager's Office)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO ENTER INTO
AN AGREEMENT FOR THE PURCHASE OF LIGHT POLES
FOR THE GOVERNMENT CENTER CAMPUS LIGHTING
PROJECT**

Be It Resolved by the Council of the City of Kettering, State of Ohio:

Section 1. Pursuant to Subsection "I" of Section 152.02 of the Codified Ordinances of the City of Kettering, this Council hereby authorizes the City Manager to enter into an agreement with Vonville Leuin & Associates, LLC for the purchase of light poles for the Government Center Campus Lighting Project. The City Manager is further authorized to enter into any amendments to said agreement which, in the City Manager's opinion, are in the interests of the City.

Section 2. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2017.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER, III,
Law Director

Estimated Cost: \$85,000.00
Amount Budgeted: \$375,000.00
Acct.: 6614-77750

(Requested by: Public Service Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

AUTHORIZING THE CITY MANAGER TO ENTER INTO ONE OR MORE AGREEMENTS WITH MONTGOMERY COUNTY AND MILLAT INDUSTRIES FOR AN EDGE PROGRAM FUNDING AWARD

WHEREAS, Millat Industries ("Millat") desires to improve the building and infrastructure at their current location at 4901 Croftshire Drive, Kettering, Ohio (the "improvements"); and

WHEREAS, Millat represents completion of the project will help create 9 new FTE positions over the next 3 years and retain the existing 127 FTE employees; and

WHEREAS, the City of Kettering made application to the Montgomery County ED/GE Program for a \$70,000 grant for use by Millat for the improvements; and

WHEREAS, the City's ED/GE application has been approved by Montgomery County in the amount of \$70,000; and

WHEREAS, the local match for this ED/GE grant will be provided through an approved KIP grant estimated to be valued at \$160,000 over a five year grant period;

NOW, THEREFORE, Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. The City Manager is authorized to take all necessary and proper action to accept the ED/GE grant and to enter into one or more related agreements with the Board of County Commissioners of Montgomery County, Ohio and any amendments thereto. The City Manager is further authorized to take all necessary and proper action to appropriate, use, and distribute the ED/GE grant and local match and to enter into one or more related agreements with Millat and any amendments thereto.

Section 2. As provided in Section 4-8 of the City Charter, this resolution shall take effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2017.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER, III,
Law Director

Estimated Cost: \$70,000.00

Amount Budgeted: \$0

Acct. No.: N/A

(Requested by: City Manager's Office)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO PURCHASE ± 306
ACRES OF REAL PROPERTY LOCATED IN THE MIAMI VALLEY
RESEARCH PARK**

WHEREAS, the City desires to promote the general welfare of the residents of the City by promoting and fostering economic development in the City including, without limitation, development and redevelopment of the City, creation of jobs, expansion of the tax base, improvement of the quality of life, removal of blighting influences and the avoidance of blight, maintenance of property values, prevention of piecemeal development, and the discouragement of strip commercial development; and

WHEREAS, Miami Valley Research Foundation ("MVRF") owns ± 306 acres of undeveloped land ("Sale Property") in an area known as the Miami Valley Research Park within the City which MVRF acquired from the state of Ohio; and

WHEREAS, MVRF desires to sell the Sale Property to the City and the City desires to purchase the Sale Property from MVRF in order to foster economic development in the City through orderly growth and development;

NOW, THEREFORE, Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. Council hereby approves the Economic Development and Real Estate Purchase Agreement attached hereto, without exhibits, as Exhibit A. The City Manager is authorized to enter into that agreement on behalf of the City of Kettering, to purchase the Sale Property, and to take any additional action and sign any instruments necessary to do so. The City Manager is further authorized to approve and enter into any amendments to the agreement that the City Manager deems are appropriate and in the interest of the City.

Section 2. This Resolution shall take full force and effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2017.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER, III,
Law Director

Estimated Cost: \$3,000,000.00
Amount Budgeted: \$0
Acct. No.: N/A

(Requested by: City Manager's Office)

EXHIBIT "A"
(EXCLUDING EXHIBITS THERETO)

(25 total pages, including this page)

**ECONOMIC DEVELOPMENT AND
REAL ESTATE PURCHASE AGREEMENT**

THIS ECONOMIC DEVELOPMENT AND REAL ESTATE PURCHASE AGREEMENT ("Agreement") is made and entered into between **MIAMI VALLEY RESEARCH FOUNDATION** ("MVRF"), an Ohio non-profit corporation whose mailing address is 3155 Research Boulevard, Kettering, Ohio 45420, and the **CITY OF KETTERING, OHIO**, an Ohio municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio and its Charter ("City"), whose mailing address is 3600 Shroyer Road, Kettering, Ohio 45429 and is effective as of the date the last Party signs below (the "Effective Date"). MVRF and the City may be referred to individually as a "Party", or collectively as the "Parties".

RECITALS

WHEREAS, the City desires to promote the general welfare of the residents of the City by promoting and fostering economic development in the City including, without limitation, development and redevelopment of the City, creation of jobs, expansion of the tax base, improvement of the quality of life, removal of blighting influences and the avoidance of blight, maintenance of property values, prevention of piecemeal development, and the discouragement of strip commercial development; and

WHEREAS, MVRF owns certain tracts of undeveloped land in an area known as the Miami Valley Research Park within the City, which tracts are depicted and described on the attached Exhibit A (the "Sale Property") and which MVRF acquired from the state of Ohio; and

WHEREAS, the state of Ohio, in Amended House Bill 400, passed by the 114th General Assembly, placed restrictive covenants on the Sale Property concerning future uses along with a reverter clause ("Restrictive Covenants"); the Restrictive Covenants were later clarified in Substitute House Bill 691, passed by the 115th General Assembly; and

WHEREAS, MVRF desires to sell the Sale Property to the City and the City desires to purchase the Sale Property from MVRF in order to foster economic development in the City through orderly growth and development;

STATEMENT OF AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and MVRF covenant, agree and obligate themselves to the foregoing Recitals and as follows:

1. Sale and Conveyance of Property.

- 1.1 MVRF hereby agrees to sell, transfer and convey to City, and City hereby agrees to purchase and receive from MVRF, upon the terms and conditions of this Agreement, the Sale Property. Notwithstanding the foregoing, portions of the Sale Property lie within wetlands or water detention/retention areas and may not be developed (the "Reserved Land"). The City, at its sole option, may require

that MVRF separate the Reserved Land from the Sale Property by means of a permanent easement (the “Easement”) and designate the Reserved Land as “Common Property” under Article IX, Section 9.1 of the First Amended and Restated Declaration of Covenants, Conditions and Restrictions For Miami Valley Research Park (the “CCR’s”) recorded at Deed 91-0213C02 of the Montgomery County Ohio Recorder’s Office. The terms of the Easement shall be acceptable to the City in its reasonable judgment and shall include (i) an acceptance by Miami Valley Research Park Association (the “Association”) of full responsibility for the maintenance, repair and replacement of any areas and facilities located within the Reserved Land, and any liabilities arising from the use and operation thereof, and (ii) an indemnity in favor of the City for any liabilities, losses, damages, costs or expenses relating to the use, operation, maintenance, repair and replacement of the Reserved Land and any facilities located within the Reserved Land, except to the extent arising from the negligence or willful misconduct of the City, its agents, employees or contractors. If the City desires that the legal title to the Reserved Land be conveyed to the Association, MVRF shall cause the Association to accommodate that request, provided that the City shall be responsible for any survey or plat required to create the separate parcel(s) of the Reserved Land, and the City shall assume the obligation to pay any CAUV recoupment resulting from the conveyance of the Reserved Land. In the event that the separation of the Reserved Land is desired by the City but cannot be accomplished prior to the Closing, then (a) the City and Purchaser at Closing shall mutually identify the Reserved Land (by designation on an aerial photograph or other appropriate means), (b) the City shall grant to the Association, and the Association shall accept, the Easement, until such time as the separate conveyance of the Reserved Land can be completed, and (c) MVRF shall obtain the written agreement (within the terms of the Easement or otherwise) of the Association to accept ownership of the Reserved Land at such time as the separate conveyance of the Reserved Land can be completed, and to designate the Reserved Land as Common Property under the CCR’s.

- 1.2 As used in this Agreement, the term “Sale Property” includes all appurtenances, easements, rights, licenses, privileges, and benefits owned by the MVRF which relate to the Sale Property, of every kind, character and description, now existing or existing at Closing. If the Reserved Land is separated from the Sale Property, the Purchase Price and other terms of this Agreement shall not be affected.

2. Purchase Price.

- 2.1 The purchase price (“Purchase Price”) for the Sale Property shall be as follows: THREE MILLION AND 00/100 DOLLARS (\$3,000,000).
- 2.2 The portion of the Purchase Price payable to MVRF at Closing will be as follows:
 - 2.2.1 ONE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,500,000) shall be paid by the City at Closing and upon delivery of the deed to the Sale Property. The full amount of such funds

will be used to pay PNC Bank the payment due under that certain Asset Transfer and Turnover Agreement between MVRF and PNC Bank (the "PNC Agreement").

2.2.2 At Closing, and in accordance with the terms and conditions set forth in this Agreement, MVRF will convey to the City, good and marketable fee simple title in the Sale Property.

2.3 The parties will make post-Closing contingent payments as follows:

2.3.1 ONE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,500,000) shall be paid by the City to MVRF contingent on the following conditions: before January 1, 2021, MVRF, without cost to City, will cause the Restrictive Covenants to be removed, to the City's reasonable satisfaction, to allow the Sale Property to be used for any use allowed under the City of Kettering Zoning Code without reverting to the State of Ohio. Payment will be made within 90 days after the contingency is met.

2.3.2 If the City closes on the sale of any of the Sale Property after Closing but before January 1, 2021, then the City will make a payment to MVRF as follows. The amount of each payment will be calculated by multiplying the number of acres of Sale Property sold by the per acre sale price received by the City. For purposes of this calculation only, the per acre sale price may never be less than \$10,000 nor more than \$40,000. (For example only, if the City sells one acre of Sale Property for \$9,000, then the City would pay MVRF \$10,000. If the City sells one acre of Sale Property for \$19,000, then the City would pay MVRF \$19,000. If the City sells one acre of Sale Property for \$49,000, then the City would pay MVRF \$40,000.) Payments under this paragraph, if any, will be due within 90 days after receipt of sale proceeds by the City. Amounts paid pursuant to this Section 2.3.2 shall be credited against the payment due under Section 2.3.1, when and if such payment becomes due.

2.3.3 MVRF currently owns other parcels of land, excluding the Sale Property, in Greene County ("MVRF Holdings"). MVRF intends to sell the MVRF Holdings, If the total of (i) the payments by the City to MVRF under Section 2.3.1 and 2.3.2, (ii) the net proceeds of cumulative sales of the MVRF Holdings, after deducting the costs of sale as well as all costs and expenses incurred by MVRF in continuing its operations throughout the period that the MVRF Holdings are offered for sale (including, but not limited to, operating costs, real estate taxes and assessments, insurance costs, legal fees and administration costs relating to the operation of MVRF, the amendment of the CCR's, the sale of MVRF Holdings and the winding up of MVRF's affairs, and all other obligations of MVRF), and (iii) income and or payments received by MVRF from all other sources exceed \$2,550,000, then MVRF will pay all funds in excess of \$2,550,000

to a qualified 501(c)(3) corporation or other qualified entity (which may include the City) approved by the Board of Trustees of MVRF which must use the funds for the benefit of the Miami Valley Research Park.

2.3.4 For avoidance of doubt, the obligations contained in Section 2.3 will survive Closing.

2.4 Notwithstanding anything else to the contrary, total payments by City to MVRF under Sections 2.2.1, 2.3.1 and 2.3.2 must not exceed \$3,000,000 and the total amount received and retained by MVRF under Sections 2.2.1, 2.3.1, 2.3.2 and 2.3.3 (after payment of the expenses referenced in Section 2.3.3) shall not exceed \$4,050,000.

3. **Due Diligence.**

3.1 The “Due Diligence Date” will be that date which is thirty (30) days following the Effective Date. The Due Diligence Date may be extended for one or more thirty day periods by written agreement of both parties.

3.2 MVRF agrees to provide the City, within ten (10) business days after the Effective Date, with true, correct and complete copies of the following documents and records in the possession of MVRF or its agents relating to the Sale Property: (i) all surveys, title commitments and policies, (ii) soil tests, (iii) building plans and specifications, (iv) reports regarding Hazardous Substances (as defined below), (v) any easements, licenses and parking agreements, or other such encumbrances, and (vi) copies of all leases, guarantees, any amendments and letter agreements relating thereto existing as of the Effective Date; (vii) an aged tenant receivable report, if any, regarding income from the tenants; (viii) copies of any commission agreement(s) for the Sale Property.

3.3 Within ten (10) days after the Effective Date, and when requested by the City thereafter, MVRF will provide the City with full access to review and copy the financial records of both MVRF and Miami Valley Research Park Association. The obligations of MVRF under this paragraph will survive Closing and remain in effect until this Agreement is fully performed by both parties.

3.4 The City will have until 5:00 p.m. (prevailing Eastern Time) on the Due Diligence Date by which, as City deems necessary in its sole and absolute discretion, to: (i) obtain and review a soil analysis of the Sale Property; (ii) obtain and review reports, perform analyses, and otherwise inspect the Sale Property related to the existence of Hazardous Substances and wetlands and compliance with Environmental Laws (as defined below); (iii) confirm that the Sale Property is in an acceptable condition; (iv) inspect the Sale Property for code violations; (v) review all agreements and other information related to the Sale Property; (vi) confirm that utilities are available to the Sale Property in the quantities necessary or desirable; and (vii) perform such other inspections, tests or studies as the City deems appropriate. The inspections, tests, studies and approvals described in this

Section will be at the City's sole expense. The City and its agents and designees will be entitled to access the respective Sale Property at reasonable times to undertake such inspections, tests and studies. After completion of such inspections, tests and studies, the City or its agents or designees will promptly and diligently restore the respective Sale Property to as good a condition as existed immediately prior to any such inspections, tests and studies to the extent reasonably practicable.

- 3.5 Each Party agrees to reasonably cooperate with the other in the completion of the inspections, tests, studies and approvals described in this section.
- 3.6 The Closing is further conditioned upon MVRF's closing with PNC Bank under the PNC Agreement, the funding for which is based on MVRF's receipt of payment of the portion of the Purchase Price under Section 2.2.1.
- 3.7 The City will also have until 5:00 p.m. (prevailing Eastern Time) on the Due Diligence Date by which to obtain and review a survey of the Sale Property (in addition to the Boundary Survey as defined below), and a title insurance commitment reporting the state of title to the Sale Property. If the City determines from the title commitment and/or the survey that title to the Sale Property is not marketable and free from encumbrances except for the Permitted Encumbrances (as defined below), then the City may notify MVRF in writing on or before the Due Diligence Date specifying such title and survey matters to which it objects. Subject to completion of the contemporaneous closing under the PNC Agreement, MVRF agrees to remove any mortgage or other lien securing the payment of money at or prior to Closing, and the City need not object to any such matters prior to the Due Diligence Date. If the City fails to notify MVRF on or before the Due Diligence Date of any such objection to title, then the City will be deemed to have waived any such objection. If the City gives MVRF timely notice of a title objection, then, within ten (10) days after receipt of notice of the objection, MVRF will either (i) promptly notify the City that it does not intend to remedy such title objection or (ii) attempt to cure such objection to the City's reasonable satisfaction by the date of Closing. If MVRF elects not to cure the title objection or is unable to cure or remove such title objection made under this provision to the City's satisfaction by the date of Closing, then the City may elect to (i) terminate this Agreement, and the City will be relieved from any further obligation hereunder, or (ii) proceed to close pursuant to the terms of this Agreement and accept title to the affected Sale Property subject to such objection.
- 3.8 Any survey of a Sale Property (with the exception of the Boundary Survey) and title commitment will be obtained by the City at the City's sole expense.
- 3.9 As used in this Agreement, the term "Hazardous Substances" means all chemicals, substances and/or materials listed under or otherwise governed or regulated by any Environmental Laws including, but not limited to, hazardous or toxic substances, wastes or products, petroleum products or any constituents thereof. As used in this Agreement, the term "Environmental Laws" means any

local, state or federal law, regulation, ordinance, order or policy pertaining to regulation of the environment or health and safety, or contamination or cleanup of the environment.

- 3.10 MVRF, without cost to City and prior to the Due Diligence Date, shall use commercially reasonable efforts to cause Section 5.1 of the CCR's to be amended to allow the Sale Property, as defined in the CCR's, to be used for any use allowed under the City of Kettering Zoning Code and all other applicable laws, rules, and regulations. If such amendment is not approved and finalized prior to Closing, MVRF agrees to continue such efforts post-closing.
4. **Termination Notice.** If at any time prior to 5:00 p.m. (prevailing Eastern Time) on the Due Diligence Date, the City is not satisfied, in its sole and arbitrary discretion, with the results of the matters described in Section 3 above with respect to the Sale Property, then the City may deliver notice to MVRF stating that it has decided not to consummate the transaction hereunder (the "Termination Notice") and the Parties will have no further obligations pursuant to this Agreement except those that are expressly stated to survive. Unless the City objects to title and/or survey matters in accordance with Section 3 above and fails to deliver the Termination Notice to MVRF by the prescribed time on the Due Diligence Date, then it will be deemed to have elected to proceed to purchase the Sale Property pursuant to this Agreement.
5. **Representations and Warranties.** The City represents and warrants to MVRF that the following statements are true as of the Effective Date and will be true at the Closing:
- 5.1 Subject to obtaining approval by the Kettering, Ohio City Council as set forth in Section 11, below, the City possesses full right, power and authority to execute, deliver and perform this Agreement, and no legal or administrative proceeding is in effect which would prohibit the City's execution of this Agreement.

MVRF represents, warrants, and covenants to the City that the following statements are true as of the Effective Date and will be true at the Closing:

- 5.2 Subject to compliance with Ohio Revised Code Section 1702.39(B)(1)(b), MVRF possesses full right, power, and authority to execute, deliver, and perform this Agreement and no legal or administrative proceeding is in effect which would prohibit MVRF's execution of this Agreement or materially and adversely affect the financial condition of MVRF.
- 5.3 At the Closing, MVRF shall have good, marketable, and indefeasible fee simple absolute title to the Sale Property, free, clear and unencumbered, with the exception of any Permitted Encumbrances (as defined in Section 8). Notwithstanding the foregoing, if title is subject to matters to which the City objects, the City's remedies shall be as set forth in Section 3.7.
- 5.4 Except for an existing farm lease, there are no adverse or other parties in possession of the Sale Property, and no party has been granted any license, lease,

right of first refusal or other right relating to the use, possession or ownership of the Sale Property.

- 5.5 There are no improvements in, to or about the Sale Property for which any labor and/or materials provided with respect thereto remain unpaid and that might form the basis of a mechanic's lien against the Sale Property.
- 5.6 MVRF, without cost to City, shall terminate at Closing all operating agreements to the extent any relates to the Sale Property, except for those operating agreements, if any, that City agrees, prior to Closing, to assume.
- 5.7 At no time, has MVRF severed or separately conveyed any oil, gas, mineral, or water rights in the Sale Property.
- 5.8 Except for an existing farm lease, there are no leases, licenses, or other occupancy agreements affecting any portion of the Sale Property.
- 5.9 To MVRF's knowledge, (i) there are no lease brokerage agreements, leasing commission agreements or other agreements providing for payments of any amounts for leasing activities or procuring tenants with respect to the Sale Property or any portion or portions thereof.
- 5.10 During the pendency of this Agreement, MVRF will not enter into any lease or license affecting the Sale Property.
- 5.11 During the pendency of this Agreement, MVRF shall continue to operate the Sale Property in a good and businesslike fashion consistent with MVRF's past practices.
- 5.12 There are no leases, licenses, or other occupancy agreements affecting any portion of the Sale Property other than the leases identified on Exhibit B. There are no lease term letters or leases delivered for execution to prospective tenants of the Sale Property except for prospective lease transactions that, although at one time actively pursued, are not currently being pursued by MVRF. The information contained in Exhibit B is true and correct. The copies of the leases furnished by MVRF to the City are true and complete copies. Other than items included in MVRF's lease files which MVRF has made available to City, MVRF has executed no side letters or other understandings concerning the leases. The leases are in full force and effect, without any material default by MVRF or, to MVRF's knowledge, by any tenant thereunder. Except as set forth in Exhibit B, all tenants required to pay rent or additional rent as of the Effective Date have paid such sums in full without set-off or counterclaim. MVRF has not given or received any notice of default which remains uncured or unsatisfied with respect to any lease. MVRF has not granted to any tenant under a lease or any other person or entity an option, right of first refusal, or right to purchase the Sale Property or any part thereof or interest therein which is not contained in a recorded document listed as a Permitted Exception or in a lease. All security deposits are set forth on

Exhibit B. There are no tenant inducement costs other than as set forth in Exhibit B.

- 5.13 To MVRF's knowledge, (i) there are no lease brokerage agreements, leasing commission agreements or other agreements providing for payments of any amounts for leasing activities or procuring tenants with respect to the Sale Property or any portion or portions thereof other than as disclosed in Exhibit B attached hereto (the "Commission Agreements"), and (ii) there are no agreements currently in effect relating to the management and leasing of the Sale Property other than as disclosed on said Exhibit B; and that all leasing commissions, brokerage fees and management fees accrued or due and payable under any commission agreement or management agreement, as of the date hereof and at the Closing have been or shall be paid in full; and that MVRF shall deliver termination notices with regard to any management agreement at Closing (unless City elects to assume such management agreement) at no cost to City.
- 5.14 During the pendency of this Agreement, MVRF will not enter into any lease affecting the Sale Property, or modify or amend in any material respect, or terminate, any of the existing lease(s) without City's prior written consent in each instance, which consent shall not be unreasonably withheld, delayed or conditioned and which shall be deemed given unless denied by written notice to MVRF given within ten (10) business days after City's receipt of MVRF's written request therefor, each of which requests shall be accompanied by a copy of any proposed modification or amendment of an existing lease or of any new lease that MVRF wishes to execute between the Effective Date and the Closing Date, including, without limitation, a description of any tenant inducement costs and leasing commissions associated with any proposed renewal or expansion of an existing lease or with any such new lease. If City fails to notify MVRF in writing of its approval or disapproval within said ten (10) business day period, such failure by City shall be deemed to be the approval of City.
- 5.15 MVRF shall endeavor in good faith (but without obligation to incur any cost or expense, except as set forth in the leases) to obtain and deliver to City prior to Closing a written Tenant Estoppel Certificate in the form attached hereto as Exhibit C signed by each tenant under each of the leases.
- 5.16 MVRF is or will upon Closing be current with all payments due under the most current version of the Covenants, Conditions and Restrictions for Miami Valley Research Park including, without limitation, payment of all assessments, charges, fees, costs and the like which are currently estimated to be \$299,999.

The foregoing representations and warranties shall survive the Closing for a period of two (2) years. Notwithstanding the foregoing, if prior to the Closing the City becomes aware of a condition that is a violation of a representation or warranty, excluding section 5.16, and elects to close regardless of the violation, such election shall be deemed a waiver of the breach.

6. **Boundary Survey.**

- 6.1 MVRF shall cause a professional land surveyor (the "Surveyor") to complete and prepare: (i) a boundary survey of the Sale Property; (ii) one or more plat(s) of survey of the Sale Property as may be required by the Montgomery County Engineer's Office; (iii) legal descriptions of the Sale Property; and legal descriptions of the Reserved Land if the City requires the Reserved Land to be separated from the Sale Property; and (iv) any other necessary documentation to be prepared by the Surveyor in connection with the sale of real property contemplated by this Agreement. Items (i), (ii), (iii) and (iv) set forth in the preceding sentence, are collectively referred to as the "Boundary Survey". The Parties agree that the Boundary Survey shall: (i) depict the number of acres of land contained within the boundaries of the Sale Property (and Reserved Land) to the nearest one-thousandth (1/1000) of an acre; (ii) bear the certification of the Surveyor to MVRF that the acreage calculation for the Sale Property (and Reserved Land) is true and correct; and (iii) be prepared in accordance with Montgomery County, Ohio conveyancing standards and be approved by the Montgomery County, Ohio Engineer's Office and any other necessary governmental authority.
- 6.2 Within 30 calendar days after the Effective Date, or as soon as reasonably practical thereafter, MVRF shall deliver a copy of the Boundary Survey to the City. Within fifteen (15) business days after receipt of said copy, the City shall notify MVRF in writing if the Boundary Survey is not acceptable to the City. Otherwise, the Boundary Survey shall be deemed acceptable, and the City shall have waived any right to contest the same. In the event that the City disapproves the Boundary Survey, MVRF and the City shall use good faith efforts to mutually agree upon the matters objected to by the City. In the event the Boundary Survey is not completed prior to Closing, MVRF will develop one or more legal descriptions of the Sale Property (and Reserved Land) acceptable to the City, the City's title insurance company, and the Montgomery County, Ohio Engineer's Office, to be used in the deed conveying title to the Sale Property. Any associated cost to prepare the legal descriptions will be born solely by MVRF.
- 6.3 The cost of the Boundary Survey will be split between the Parties with MVRF paying 50% and the City paying 50%. Notwithstanding the foregoing, the City's cost for the Boundary Survey shall not exceed \$15,000. The City's portion of the Boundary Survey cost will be paid to MVRF outside of and contingent on closing and after MVRF presents paid invoices documenting the cost, subject to the City's review and approval. Any additional survey work required to establish the Reserved Land as separate parcels that may be conveyed to the Miami Valley Research Park Association shall be borne by the City at its sole expense.

7. **Closing.**

- 7.1 The time and place for conveyance of title to the Sale Property, payment of the Purchase Price and the closing of the transactions (the "Closing") will be on or

before 5:00 p.m. (prevailing Eastern Time) on such date to be mutually agreed upon by the Parties no later than ten (10) calendar days following the Due Diligence Date (as such date may be shortened or extended under this Agreement), at such place as may be designated by mutual agreement of the Parties.

- 7.2 At the Closing, MVRF will cause to be delivered to the City, in connection with the sale, transfer and conveyance of the Sale Property, as applicable, (i) a Foreign Investment in Real Property Tax Act ("FIRPTA") certification in conformance with the requirements of FIRPTA ("FIRPTA Certification"); (ii) such documents or other evidence needed to satisfy the City's title insurer; (iii) title affidavit, mechanics' lien affidavit and/or parties in possession affidavit in form required by the City's title insurer; (iv) information necessary for reporting the sale of the Sale Property to any tax authorities; (v) limited warranty deed; (vi) such other agreements and documents as the City or its title insurer reasonably may request in order to effectuate the consummation of the transaction contemplated in this Agreement consistent with the terms hereof; (vii) an Assignment and Assumption of Leases and Security Deposits for the Sale Property approved by City and, to the extent required elsewhere in this Agreement, the obligations of MVRF under the commission agreements in the form approved by the City, executed, acknowledged and sealed by MVRF; (viii) An update of the rent roll (with modifications as appropriate), certified by MVRF to be accurate in all material respects as of the date of Closing; (ix) an assignment and assumption of operating agreements in the form approved by the City, executed, acknowledged and sealed by MVRF; (x) original executed Leases and the contents of all lease files, including original tenant correspondence, guarantees, and similar documents; (xi) all originally executed Tenant Estoppel Certificates as may be in MVRF's possession; (xii) MVRF will join with City in executing a notice, in form and content reasonably satisfactory to MVRF and City (the "Tenant Notices of Sale"), which City shall send to each tenant under the leases informing such tenant of the sale of the Sale Property and of the assignment to and assumption by City of MVRF's interest in the leases and the security deposits and directing that all rent and other sums payable for periods after the Closing under such lease to the extent applicable to the Sale Property shall be paid as set forth in said notices; (xiii) MVRF will join with City in executing notices, in form and content reasonably satisfactory to MVRF and City (the "Other Notices of Sale"), which City shall send to each service provider and leasing agent under the operating contracts and commission agreements (as the case may be) assumed by City at Closing informing such service provider or leasing agent (as the case may be) of the sale of the Sale Property and of the assignment to and assumption by City of MVRF's obligations under the operating agreements and commission agreements arising after the Closing date and directing that all future statements or invoices for services under such operating agreements and/or commission agreements for periods after the Closing be directed to MVRF or City as set forth in said notices.

8. **Conveyance of Title to Property.** MVRF will convey good and marketable fee simple title to all of its interest in the Sale Property (including the Reserved Land if the City

determines to take title to it) to the City at the Closing by deed of limited warranty, using the legal description from the Boundary Survey accepted by the City pursuant to Section 6 and approved in writing by the Montgomery County, Ohio Engineer's Office and any other necessary governmental authority, free, clear and unencumbered except for the "Permitted Encumbrances" which are defined as:

- 8.1 easements of record;
- 8.2 non-delinquent real estate taxes and assessments;
- 8.3 legal highways;
- 8.4 zoning, environmental, building, and other governmental regulations and ordinances;
- 8.5 the Lease described in Exhibit B;
- 8.6 matters waived by the City pursuant to Section 3.7;
- 8.7 the Restrictive Covenants; and
- 8.8 the CCR's.

9. **Closing Prorations; Expenses.**

- 9.1 All non-delinquent real estate taxes, assessments, or other benefit charges levied on an annual or periodic basis ("Taxes and Assessments") shall be prorated between the respective Parties with respect to the Sale Property at the Closing, in accordance with the Montgomery County Short Form Method. any delinquent Taxes and Assessments and any penalties or interest thereon with respect to the Sale Property outstanding as of the Closing will be satisfied by MVRF. All prorations in accordance with the provisions of this Section 9 shall be final. All provisions of this section shall survive the Closing.
- 9.2 If the Sale Property, or any part of the Sale Property, is currently valued for real estate tax purposes at current agricultural use valuation, then the City, at Closing, shall assume liability for any potential agricultural recoupment.
- 9.3 The City will pay the costs associated with any title examination, title commitment, and title policy relating to the Sale Property.
- 9.4 MVRF will pay the costs associated with the deed preparation and deed recording costs, the conveyance fees or transfer fees relating to the transfer of the Sale Property.
- 9.5 The City and MVRF will share equally in any Closing or escrow fees.
- 9.6 Each Party will be responsible for its own legal fees.

- 9.7 MVRF will transfer all utilities to Sale Property, if any, to the account of the City as of the Closing.
- 9.8 Personal property taxes, water and sewer charges, utility charges, and normally prorated operating expenses actually paid or payable as of the Closing date shall be prorated as of the Closing date and MVRF's portion of such charges and expenses shall be paid to the City at Closing.
- 9.9 The Parties represent to each other that no real estate commission is owed to any realtor or broker for sale of the Sale Property.
- 9.10 Rents and any other amounts actually received from tenants shall be prorated as of the Closing Date and be adjusted against the purchase price on the basis of a schedule which shall be prepared by MVRF and delivered to City for City's review and approval prior to Closing. City shall receive at Closing a payment for City's pro rata share of the rents, additional rent, tenant reimbursements and escalations, and all other payments received for the month of Closing and for all other rents and other amounts that apply to periods from and after the Closing, but which are received by MVRF prior to Closing. If any tenant under any such lease shall become entitled at any time after Closing to a refund of tenant reimbursements actually paid by such tenant prior to Closing, then, MVRF shall, within thirty (30) days following City's demand therefor, pay to City any amount equal to MVRF's pro rata share of such reimbursement refund obligations, said proration to be calculated on the same basis as hereinabove set forth. MVRF hereby retains its right to pursue any tenant under the Leases for sums due MVRF for periods attributable to MVRF's ownership of the Sale Property; provided, however, that MVRF (i) shall be required to notify City in writing of its intention to commence or pursue such legal proceedings; (ii) shall only be permitted to commence or pursue any legal proceedings after the date which is three (3) months after Closing, except that MVRF shall be entitled to continue to pursue any legal proceedings commenced prior to Closing; and (iii) shall not be permitted to commence or pursue any legal proceedings against any tenant seeking eviction of such tenant or the termination of the applicable lease. The provisions of this Section shall survive the Closing.
- 9.11 Percentage rents, if any, collected by City from any tenant under such tenant's lease for the percentage rent accounting period in which the Closing occurs shall be prorated between MVRF and City as of the Closing date, as, if, and when received by City, such that MVRF's pro rata share shall be an amount equal to the total percentage rentals paid for such percentage rent accounting period under the applicable lease multiplied by a fraction, the numerator of which shall be the number of days in such accounting period prior to Closing and the denominator of which shall be the total number of days in such accounting period; provided, however, that such proration shall be made only at such time as such tenant is current or, after application of a portion of such payment, will be current in the payment of all rental and other charges under such tenant's lease that accrue and

become due and payable from and after the Closing. The provisions of this Section shall survive the Closing.

9.12 Set forth on Exhibit D is a list of tenants at the Sale Property with respect to which tenant inducement costs and/or leasing commissions have not been paid in full as of the Effective Date. MVRF shall pay all such tenant inducement costs and leasing commissions set forth in Exhibit D as and when the same are due and payable. If said amounts have not been paid in full on or before Closing, City shall receive a payment from MVRF at Closing in the aggregate amount of all such tenant inducement costs and leasing commissions remaining unpaid at Closing, and City shall assume the obligation to pay amounts payable after Closing up to the amount of such credit received at Closing. Except as may be specifically provided to the contrary elsewhere in this Agreement, MVRF shall be responsible for the payment of all tenant inducement costs and leasing commissions. The provisions of this Section shall survive the Closing.

9.13 City shall receive at Closing payment equal to the amount of all security deposits required to be held by MVRF under the Sale Property leases (except to the extent that a tenant has certified in a tenant estoppel certificate that it has not deposited, in whole or part, its security deposit with MVRF) together with a detailed inventory of such security deposits certified by MVRF in the updated rent roll to be delivered by MVRF at Closing.

10. **Casualty.** MVRF agrees that the Sale Property will be in the same condition at Closing as at the Effective Date of this Agreement, reasonable wear and tear excepted and subject to the provisions of this Section, and MVRF will provide written notice to the City of any material damage to or destruction of the Sale Property. Risk of loss from fire or other casualty will be borne by MVRF until Closing, provided that if the Sale Property is materially damaged or destroyed by fire or other casualty and not repaired and restored to a condition as good as that existing prior to such casualty, then the City may (i) proceed with this Agreement and receive the Sale Property in its then existing condition, in which event, upon Closing, the City will be entitled to the net insurance proceeds paid or payable to MVRF, or (ii) terminate this Agreement, and all Parties hereto will be released from all liability hereunder. If the City elects to terminate the Agreement pursuant to this Section, the City will so notify MVRF in writing within ten (10) days after written notice of the casualty. Failure to give timely notice of election to terminate will constitute an election to proceed with this Agreement and to accept the Sale Property as described in (i) above.

11. **Conditions to Closing.**

11.1 Notwithstanding anything to the contrary in this Agreement, it is expressly understood, acknowledged, and agreed by the Parties that any obligation of the City to close on or otherwise perform the transactions described herein is contingent and conditioned upon approval of this Agreement from the Kettering, Ohio City Council. If the Kettering, Ohio City Council fails to approve this

Agreement within 30 days after the Effective Date, then this Agreement will be null and void, the Parties will be relieved from any further obligation hereunder.

- 11.2 The City's obligation to close is also subject to the satisfaction of the terms and conditions set forth in Sections 3 and 6 and obtaining all requisite approvals from the Montgomery County, Ohio Engineer's Office and any other applicable governmental authority relating to the legal descriptions for the Sale Property and Reserved Land in accordance with the terms of this Agreement.
 - 11.3 To the extent the conditions set forth in Section 11 have not been satisfied by the scheduled date of the Closing, as such date may have been extended pursuant to the terms of this Agreement, then any Party at its option may terminate this Agreement and all Parties hereto will be released from all liability hereunder. If any Party elects to terminate this Agreement pursuant to this Section 11.3, the Party will so notify the other Parties in writing prior to the then scheduled date of the Closing.
 - 11.4 Further, for the avoidance of doubt, the obligation to close on the transaction described herein is subject to the satisfaction of the terms and conditions set forth in Section 8, and MVRF's conveyance of good and marketable fee simple title to all of its interest in the Sale Property to the City, free, clear, and unencumbered except for Permitted Encumbrances.
12. **Events of Default and Remedies.** Notwithstanding the foregoing, if this Agreement is terminated or cancelled as expressly permitted, then this Agreement will be null and void, and the Parties will be relieved from any further obligation, except those that are expressly stated to survive.
 13. **Limitation of Liability.** The Parties agree that in no event shall any Party be liable under this Agreement to another Party for punitive, special, consequential, or indirect damages of any type and regardless of whether such damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law. Notwithstanding the foregoing, MVRF and its heirs, successors, and assigns, shall defend, indemnify, and hold the City harmless from and against all claims brought against the City for alleged breach of the Restrictive Covenants found in Section 1(B) of Substitute House Bill 691 (the "Indemnification Requirement"). The Indemnification Requirement is excluded from the limitation of liability and will survive Closing.
 14. **Time of Essence.** Time is of the essence in this Agreement.
 15. **Day of Performance.** Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

16. **Notices.**

16.1 All notices, elections or other communications authorized, required or permitted under this Agreement will be made in writing and will be deemed given at the time or date set forth in Section 16.3. Notice may be given by (i) personal delivery, (ii) overnight courier service, postage prepaid or (iii) U.S. certified mail, return receipt requested, postage prepaid.

16.2 Notice to the City will be delivered to:

Mark W. Schwieterman
City Manager
City of Kettering
3600 Shroyer Road
Kettering, Ohio 45429

with a copy to:

Theodore A. Hamer, III, Esq.
Law Director
City of Kettering
Law Department
3600 Shroyer Road
Kettering, Ohio 45429

Notice to MVRF will be delivered to:

Miami Valley Research Foundation
3155 Research Blvd.
Dayton, Ohio 45420
Attention: Charlie Giles, President and CEO

with a copy to:

Thompson Hine LLP
10050 Innovation Drive, Suite 400
Miamisburg, Ohio 45342
Attention: J. Michael Herr

16.3 All such communications, if personally delivered, will be conclusively deemed to have been received by a Party hereto and to be effective when so delivered; if given by certified mail, on the third business day after such communication is deposited in the mail; or if sent by overnight courier service, on the day after deposit thereof with such service.

17. **Brokers.** Each Party represents to the other Parties that no real estate broker, consultant, finder or like agent has any interest in this transaction with respect to the sale, conveyance and transfer of the Sale Property.

18. **Entire Agreement; Assignability.** The Parties hereto acknowledge and agree that this Agreement constitutes their entire agreement and supersedes all prior negotiations regarding the subject matter hereof. This Agreement may not be modified except by an instrument in writing executed by all Parties hereto. This Agreement will be binding upon the successors and assigns of the Parties hereto; *provided, however*, that MVRF will not assign its rights and obligations under this Agreement without the prior written consent of the City.
19. **Governing Authority.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio. The state and federal courts located in Montgomery County, Ohio shall be the proper forums for any legal controversy between the Parties arising in connection with this Agreement, which courts shall be the exclusive forums for all such suits, actions or proceedings.
20. **OFAC.** The Parties each represent and warrant to the other that they are not persons or entities with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) or under any statute, executive order (including without limitation, Executive Order 13224 signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Person Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental action.
21. **Not an Offer.** This Agreement will not become effective until counterparts have been fully executed and delivered by all Parties named herein.
22. **Miscellaneous.**
- 22.1 The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part hereof.
- 22.2 This Agreement may be executed by the Parties hereto in counterparts, each of which shall be deemed an original, but all of such counterparts taken together will constitute one and the same Agreement. Copies of duly executed counterparts shall have the same legal effect as an original. Facsimile signatures or signatures transmitted by email or other electronic means shall be sufficient to bind the Parties.
- 22.3 If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be

effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

- 22.4 All warranties, representations, covenants, obligations and agreements contained in this Agreement will survive the Closing and the conveyance of the Sale Property and all performances hereunder, subject to the limitations set forth in Section 5.
- 22.5 No provisions of this Agreement shall be construed by any court or other judicial authority against any Party hereto by reason of such Party's being deemed to have drafted or structured such provisions.
- 22.6 All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent or employee of the any Party other than in his or her official capacity, and neither the members of the legislative body of the City nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations, or agreements of any Party contained in this Agreement.
- 22.7 The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference. Further, the Parties acknowledge and agree that the Exhibits hereto are an integral part of this Agreement and as such are incorporated herein by reference.
- 22.8 Except as otherwise provided in this Agreement, no waiver of any of the provisions of this Agreement shall be deemed, nor shall the same constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing waiver. No waiver shall be binding, unless executed, in writing, by the Party making the waiver.
- 22.9 Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
23. **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IT IS MUTUALLY AGREED BETWEEN EACH OF THE PARTIES TO THIS AGREEMENT THAT THE RESPECTIVE PARTIES HERETO DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES HERETO AGAINST THE OTHERS ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREUNDER. EACH PARTY ACKNOWLEDGES THAT IT

HAS READ AND UNDERSTANDS THIS WAIVER AND HAS BEEN ADVISED BY COUNSEL AS NECESSARY OR APPROPRIATE. THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY BY THE PARTIES HERETO.

[Signature page to follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

MIAMI VALLEY RESEARCH FOUNDATION,
an Ohio non-profit corporation

By: _____

Printed: _____

Title: _____

Date: _____, 2017

CITY:

CITY OF KETTERING, OHIO

By: _____
Mark W. Schwieterman, City Manager

Date: _____, 2017

Approved as to form:

By: _____
Theodore A. Hamer, III, Law Director

Funds Certified By:

By: _____
Nancy Gregory, Finance Director

EXHIBIT A

LAND DEPICTION

EXHIBIT B

PROPERTY LEASES & RELATED INFORMATION

1. Farm Lease with Dan Robinette dated December 15, 2015, effective until the crops are harvested in the Fall of 2017 (no later than December 1, 2017).

EXHIBIT C

TENANT ESTOPPEL CERTIFICATE(S)

TENANT ESTOPPEL CERTIFICATE

_____, 2017

TO: City of Kettering, Ohio
3600 Shroyer Road
Kettering, Ohio 45429

The undersigned, Dan Robinette ("Tenant"), confirms that as of the date of this letter, he is the tenant in possession under the lease (the "Lease") between Tenant and Miami Valley Research Foundation ("Landlord") dated December 11, 2015, a true and accurate copy of which is attached to this letter as Exhibit A, pertaining to the premises located in the City of Kettering, Montgomery County, Ohio, and the City of Beavercreek, Greene County, Ohio, consisting of approximately 336 acres of cropland owned by Landlord (the "Premises").

Tenant confirms and represents that:

1. The Lease is in full force and effect and has not been assigned, sublet, modified or amended, and Tenant is in possession of all the Premises.

2. The Lease is for a term of two crop years, commencing on April 1, 2016 and expiring after the crops are harvested in the Fall of 2017 (no later than December 1, 2017).

3. Based Rent payable under the Lease is \$73,920.00 (\$220.00 per acre) per year. The Base Rent for 2016 has been paid in full; the Base Rent for 2017 is not yet due. The Flex Rent under the Lease is 22% of Average Corn Yield, and 30% of Average Soybean Yield, times the crop insurance price average of the spring and fall prices, less the Base Rent paid. The Flex Rent for 2016 has been paid. The Flex Rent for 2017 is not yet due.

4. There is no security deposit under the Lease.

5. Landlord has performed all of the obligations on Landlord's part to be performed, as of the date of this letter, and there are no defaults on the Landlord's part which may entitle Tenant to cancel or terminate the Lease. Tenant has no claims, counterclaims or defenses against Landlord arising from the Lease.

6. In the event that you succeed to the interests of Landlord as to the cropland located in the City of Kettering, Tenant will recognize you as landlord under the Lease (as to the Kettering land) upon notice of your succession to the interests of Landlord.

7. Landlord has not provided and is not required to provide any allowances, abatements, free rent or other concessions of an inducement nature.

8. There are no actions pending or threatened by any governmental agencies or others against Tenant with regard to the Premises.

9. No brokers were involved in negotiating or procuring the Lease.

Tenant acknowledges that this letter is being executed and will be delivered in connection with your purchase of the Kettering land from Landlord and shall be relied upon by you for such purposes.

Very truly yours,

Dan Robinette

EXHIBIT D

TENANT INDUCEMENT COSTS

None.