



## CITY OF KETTERING

DONALD E. PATTERSON, MAYOR • BILL LAUTAR, VICE MAYOR  
BRUCE E. DUKE • JACQUE FISHER • TONY KLEPACZ • ROB SCOTT • JOSEPH D. WANAMAKER

### KETTERING COUNCIL AGENDA

January 22, 2019

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

January 8, 2019 - Council Meeting & Workshop Minutes

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

Presentation      State of the City Address

#### PUBLIC HEARINGS

#### PUBLIC COMMENT ON LEGISLATION

(5 Minute Limit per Speaker)

#### ORDINANCES IN SECOND READING

#### RESOLUTIONS

1. Authorizing the City Manager to purchase television, radio, newspaper, billboard and internet advertising for the 2019 Frazee Pavilion performance season from various sources.
2. Authorizing the City Manager to negotiate and enter into contracts for entertainment for the Frazee Pavilion 2019 performance season.
3. Authorizing payment of music licensing fees for concerts at Frazee Pavilion during 2019.
4. Authorizing the City Manager to enter into agreements for discounts, complimentary tickets and complimentary program participation to benefit the advertising and promotion of calendar year 2019 Parks, Recreation and Cultural Arts programs and the 2019 Frazee Pavilion performance season.
5. Authorizing the City Manager to enter into an agreement for the purchase and installation of emergency lighting and equipment for police vehicles.
6. Authorizing the City Manager to renew an agreement for the purchase of fire uniforms and station wear.
7. Authorizing the City Manager to enter into and implement a collective bargaining agreement with the Kettering Association of Dispatchers, which is consistent with a tentative agreement reached by the bargaining teams.
8. Authorizing the City Manager to advertise for bids and to contract for the 2019 Curb, Sidewalk and Drive Approach Repair Program (Project No. 05-119).
9. Authorizing the City Manager to advertise for bids and to contract for the Hilton Drive Improvements Project, City Project No. 02-240B.
10. To amend Resolution No. 10090-18.
11. Authorizing the City Manager to apply for an Electronic Tablet Grant from the Ohio Department of Public Safety, Division of EMS.

12. Authorizing the City Manager to purchase tasers and related equipment.
13. Authorizing the City Manager to enter into a maintenance agreement for the Cisco computer-aided dispatch/records management system.
14. Adopting a Credit Card Policy.
15. Authorizing the City Manager to use competitive bargaining and negotiated quotes to contract for replacement of existing water lines at Polen Farm.
16. Authorizing the City Manager to purchase equipment through sealed bids, negotiated quotes, or a cooperative purchasing program.
17. Declaring as "surplus" and approving an agreement to sell city-owned property located in Kettering Business Park.
18. To make supplemental appropriations for current expenses and other expenditures of the City of Kettering, State of Ohio, during the fiscal year ending December 31, 2019.

## **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** **2019**

January 21	All Day	Government Center Closed- Martin Luther King Jr. Day
January 22	6:00 p.m. 7:30 p.m.	Council Workshop City Council Meeting
January 28	7:00 p.m. 7:30 p.m.	Board of Zoning Appeals Sister Cities
February 4	7:00 p.m.	Planning Commission
February 7	4:00 p.m.	Parks, Recreation and Cultural Arts Advisory Board
February 11	7:00 p.m. 7:00 p.m.	Board of Zoning Appeals Board of Community Relations
February 12	4:00 p.m. 6:00 p.m. 7:30 p.m.	Partners for Healthy Youth Council Workshop City Council Meeting
February 18	All Day	Government Center Closed- Presidents' Day

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO PURCHASE  
TELEVISION, RADIO, NEWSPAPER, BILLBOARD AND  
INTERNET ADVERTISING FOR THE 2019 FRAZE PAVILION  
PERFORMANCE SEASON FROM VARIOUS SOURCES**

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

Section 1. Pursuant to Subsection "I" of Section 152.02 of the Codified Ordinances of the City of Kettering, the City Manager is authorized to purchase, as necessary and under the terms and in the form the City Manager determines is in the best interest of the City, television, radio, newspaper, billboard and internet advertising from various sources for the 2019 Frazee Pavilion performance season, without sealed bidding and without competitive bargaining.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

Estimated cost: \$277,500.00  
Amount Budgeted: \$277,500.00  
Acct. No. 2200-72740

(Requested by: Parks, Recreation and Cultural Arts Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND  
ENTER INTO CONTRACTS FOR ENTERTAINMENT FOR THE  
FRAZE PAVILION 2019 PERFORMANCE SEASON**

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

Section 1. The City Manager is hereby authorized to negotiate and enter into contracts for entertainment for the Frazee Pavilion 2019 performance season. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

Estimated Cost: \$2,900,000.00  
Amount Budgeted: \$2,900,000.00  
Acct. No. 2200-72550

(Requested by: Parks, Recreation and Cultural Arts Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING PAYMENT OF MUSIC LICENSING FEES FOR  
CONCERTS AT FRAZE PAVILION DURING 2019**

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

Section 1. This Council hereby authorizes expenditures of funds in payment of music licensing fees for 2019 concerts at Frazee Pavilion to each of the following organizations:

- |    |  |             |
|----|--|-------------|
| a. | American Society of Composers, Authors<br>and Publishers (ASCAP) | \$40,000.00 |
| b. | Broadcast Music Incorporated (BMI)                               | \$40,000.00 |

The City Manager is also authorized to enter into any related agreements and amendments or extensions thereto.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

Estimated Cost: \$80,000.00  
Amount Budgeted: \$80,000.00  
Acct. No. 2200-72210

(Requested by: Parks, Recreation & Cultural Arts Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO ENTER INTO  
AGREEMENTS FOR DISCOUNTS, COMPLIMENTARY  
TICKETS AND COMPLIMENTARY PROGRAM  
PARTICIPATION TO BENEFIT THE ADVERTISING AND  
PROMOTION OF CALENDAR YEAR 2019 PARKS,  
RECREATION AND CULTURAL ARTS PROGRAMS AND THE  
2019 FRAZE PAVILION PERFORMANCE SEASON**

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

Section 1. The City Manager is hereby authorized to enter into written agreements and amendments or extensions thereto with persons, businesses, or other entities for performance discounts and/or free complimentary tickets that, in the opinion of the City Manager, benefit the promotion and advertising of the 2019 Frazee Pavilion performance season.

Section 2. The City Manager is further authorized to enter into written agreements and amendments or extensions thereto with persons, businesses, or other entities for program discounts and/or free program admittance or participation that, in the opinion of the City Manager, benefit the promotion and advertising of programs offered by the City of Kettering Parks, Recreation and Cultural Arts Department during calendar year 2019.

Section 3. As provided in Section 4-8 of the City Charter, this Resolution shall take full force and effect immediately upon its adoption.

Passed by Council this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

(Requested by: Parks, Recreation and Cultural Arts Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO ENTER INTO  
AN AGREEMENT FOR THE PURCHASE AND  
INSTALLATION OF EMERGENCY LIGHTING AND  
EQUIPMENT FOR POLICE VEHICLES**

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 KE Rose Company for the purchase and installation of emergency lighting and equipment for police vehicles. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

Estimated Cost: \$59,999.00  
Amount Budgeted: \$60,000.00  
Acct.: 0600-72220

(Requested by: Police Department)

**CITY OF KETTERING, OHIO**

**A RESOLUTION**

**By:**

**No.**

**AUTHORIZING THE CITY MANAGER TO RENEW AN  
AGREEMENT FOR THE PURCHASE OF FIRE UNIFORMS  
AND STATION WEAR**

WHEREAS, the City of Kettering entered into an agreement in 2018 for the purchase of fire uniforms and station wear in 2018 ("Agreement") with options to renew the Agreement;

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

Section 1. The City Manager, on behalf of the City, is authorized to renew the Agreement. The City Manager is further authorized to sign any additional amendments or extensions thereto that the City Manager deems appropriate.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

Estimated Cost:       \$71,000  
Amount Budgeted:     \$71,000.00  
Acct. No:               0700-72240

(Requested by: Fire Department)



CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO ENTER INTO  
AND IMPLEMENT A COLLECTIVE BARGAINING  
AGREEMENT WITH THE KETTERING ASSOCIATION OF  
DISPATCHERS, WHICH IS CONSISTENT WITH A  
TENTATIVE AGREEMENT REACHED BY THE  
BARGAINING TEAMS**

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

Section 1. The City Manager is hereby authorized to enter into a collective bargaining agreement with the Kettering Association of Dispatchers, which is consistent with a Tentative Agreement reached by the bargaining teams. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

(Requested by: Human Resources Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO ADVERTISE FOR  
BIDS AND TO CONTRACT FOR THE 2019 CURB, SIDEWALK  
AND DRIVE APPROACH REPAIR PROGRAM (PROJECT NO. 05-  
119)**

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

Section 1. The City Manager is hereby authorized to advertise for bids and to enter into one or more contracts for the 2019 Curb, Sidewalk and Drive Approach Repair Program (Project No. 05-119), in accordance with Chapter 152 of the Kettering Administrative Code, entitled Purchases and Contracts. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

Section 2. Bids for such project shall be in accordance with the specifications on file in the Department of Finance, Office of the Purchasing Manager. Bidding may be conducted electronically. The bids shall be opened at the time and place named in the advertisement for bids, unless extended by the City; or unless, within seventy-two hours prior to the published time for the opening of bids, excluding Saturdays, Sundays, and legal holidays, any modification of the plans or specifications for the project for which bids are solicited is issued and mailed or otherwise furnished to persons who have obtained plans or specifications for the project in which event the time for opening of bids shall be extended one week, with no further advertising of bids required.

Section 3. The City of Kettering shall and does reserve the right (a) to reject any or all bids so received, (b) to waive any irregularities in a bid, (c) to hold any bid up to sixty (60) days unless the time for awarding the contract is extended by mutual consent of the City and the bidder whose bid the City subsequently accepts or, (d) to accept that bid which, in the judgment of the City Manager, is in the best interest of the City.

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 \_\_\_\_\_ 2018.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

Estimated Cost: \$450,000.00  
Amount Budgeted: \$450,000.00  
Acct. No.: 5212-77750

(Requested by: Engineering Department)

**CITY OF KETTERING, OHIO  
A RESOLUTION**

By:

No.

**AUTHORIZING THE CITY MANAGER TO ADVERTISE FOR  
BIDS AND TO CONTRACT FOR THE HILTON DRIVE  
IMPROVEMENTS PROJECT, CITY PROJECT NO. 02-240B**

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

Section 1. The City Manager is hereby authorized to advertise for bids and to enter into one or more contracts for the Hilton Drive Improvements Project, City Project No. 02-240B, in accordance with Chapter 152 of the Kettering Administrative Code, entitled Purchases and Contracts. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

Section 2. Bids for such project shall be in accordance with the specifications on file in the Department of Finance, office of the Purchasing Manager. Bidding may be conducted electronically. The bids shall be opened at the time and place named in the advertisement for bids, unless extended by the City; or unless, within seventy-two hours prior to the published time for the opening of bids, excluding Saturdays, Sundays, and legal holidays, any modification of the plans or specifications for the project for which bids are solicited is issued and mailed or otherwise furnished to persons who have obtained plans or specifications for the project in which event the time for opening of bids shall be extended one week, with no further advertising of bids required.

Section 3. The City of Kettering shall and does reserve the right (a) to reject any or all bids so received, (b) to waive any irregularities in a bid, (c) to hold any bid up to sixty (60) days unless the time for awarding the contract is extended by mutual consent of the City and the bidder whose bid the City subsequently accepts or, (d) to accept that bid which in the judgment of the City Manager is in the best interest of the City.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III  
Law Director

Estimated Cost:       \$1,251,000.00  
Amount Budgeted:     \$1,251,000.00  
Acct. No.:             5225-77750

(Requested by: Engineering Department)

**CITY OF KETTERING, OHIO**

**A RESOLUTION**

**By:**

**No.**

**TO AMEND RESOLUTION NO. 10090-18**

WHEREAS, Resolution No. 10090-18 authorized the City Manager to contract for street light replacement projects on Spaulding Road (City Project No. 07-205D) and Shroyer Road (City Project No. 07-207A); and

WHEREAS, the Shroyer Road project was delayed until 2019 due to scope and budget changes; and

WHEREAS, the Spaulding Road project experienced a \$13,000 cost overrun which was covered by under-spending on other projects; and

WHEREAS, the 2018 budgeted funds for the Shroyer Road project were carried over to 2019 but must be supplemented because of the scope change;

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

Section 1. Resolution No. 10090-18 is amended so that a total of \$243,000.00 may be spent for both projects (\$175,000.00 for Shroyer Road and \$68,000.00 for Spaulding Road).

Section 2. In all other respects, Resolution No. 10090-18 shall remain in full force and effect.

Section 3. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

Estimated Cost: \$243,000.00  
Amount Budgeted: \$243,000.00  
Acct. No.: 5706-77750

(Requested by: Engineering Department)

**CITY OF KETTERING, OHIO**

**A RESOLUTION**

**By:**

**No.**

**AUTHORIZING THE CITY MANAGER TO APPLY FOR AN  
ELECTRONIC TABLET GRANT FROM THE OHIO  
DEPARTMENT OF PUBLIC SAFETY, DIVISION OF EMS**

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

Section 1. The City Manager is authorized to apply for an Electronic Tablet Grant from the Ohio Department of Public Safety in the amount of \$4,000.00, to be used for the purchase of electronic tablets for the Fire Department. No matching funds are required.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

(Requested by: Fire Department)

**CITY OF KETTERING, OHIO**

**A RESOLUTION**

**By:**

**No.**

**AUTHORIZING THE CITY MANAGER TO PURCHASE TASERS  
AND RELATED EQUIPMENT**

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

Section 1. Pursuant to Subsection "I" of Section 152.02 of the Codified Ordinances of the City of Kettering, the City Manager is authorized to contract for the purchase of Tasers and related equipment. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

Estimated Cost:     \$54,520.00  
Amount Budgeted:   \$54,520.00  
Acct. No.             0600-72220

(Requested by: Police Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO ENTER INTO A  
MAINTENANCE AGREEMENT FOR THE CISCO COMPUTER-  
AIDED DISPATCH/RECORDS MANAGEMENT SYSTEM**

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

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 for maintenance of the Cisco computer-aided dispatch/records management system. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

Estimated Cost:       \$26,190.00  
Amount Budgeted:     \$26,200.00  
Acct. No.               0600-72350

(Requested by: Police Department)

**CITY OF KETTERING, OHIO**

**A RESOLUTION**

**By:**

**No.**

**ADOPTING A CREDIT CARD POLICY**

WHEREAS, House Bill 312 of the 132<sup>nd</sup> Ohio General Assembly requires legislative authorities of political subdivisions holding credit card accounts to adopt a written policy for use of credit card accounts; and

WHEREAS, City Council intends to comply with House Bill 312 and adopt a credit card policy; and

WHEREAS, City staff have drafted a policy for use of credit card accounts;

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

Section 1. City Council intends for the City of Kettering to have a written credit card policy. The Credit Card Policy attached hereto as Exhibit A is adopted. The City Manager shall have authority to effectuate and enforce the Credit Card Policy and to amend the Credit Card Policy to comply with applicable law, facilitate City operations, and follow government accounting standards. Further, the City Manager shall have authority to adopt, promulgate, enforce, amend, and rescind rules and regulations and other guidelines to effectuate the purpose of this Resolution.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

(Requested by: Finance Department)



**EXHIBIT A**

(3 total pages, including this page)

**City of Kettering, Ohio**  
**Credit Card Policy**

1. This policy applies to all (i) payment cards, checks or other payment instruments associated with a credit account issued by a financial institution or a retailer, (ii) gift cards, and (iii) payment cards related to the receipt of grant funds. All such cards and instruments are referred to herein as "credit cards".
2. This policy does not apply to procurement cards (P-cards), or to gas cards or other payment cards that are capable of use only for the purchase of certain limited types of goods.
3. The City will not obtain or maintain any debit cards.
4. Credit cards will be established in the name of the City of Kettering with credit limits to be determined by the Finance Director with a maximum credit limit per card not to exceed \$25,000.
5. The Finance Director will work with the appropriate financial institutions that issue credit cards to determine the best type of credit card accounts for the City, and also to determine which store credit card accounts the City will utilize.
  - a. The Finance Director is responsible for working with the issuing financial institution to determine the dates when credit cards expire and the re-issuance of replacement cards.
  - b. The Finance Director is responsible for determining, when necessary, the need to cancel a credit card account and any adjustment to credit limits on the credit cards.
  - c. The Finance Director is responsible for notifying the issuing financial institution of a lost or stolen card. City personnel using a credit card must notify the Finance Director when they become aware that a card is lost or stolen.
6. Credit cards will be kept in the office of the Finance Director and may be signed out to authorized City personnel from time to time as necessary. The credit card shall be promptly returned to the office of the Finance Director once the transactions for which it was checked out have been made. In all cases a credit card must be returned to the Finance Director within a maximum of twenty-four (24) hours.
7. Credit cards may be signed out by Department Directors or their designees.
8. A credit card may not be used by anyone other than the individual to whom it is signed out.
9. Prior to initial receipt of a credit card, each individual must agree to and sign the Credit Card Responsibility and Use Procedures.
10. City credit cards are authorized for use in connection with expenditures that serve a valid and proper public purpose and are within the applicable budget and departmental guidelines. Purchases are to be made according to the guidelines in this policy along with the City's Purchasing Policies and Procedures.
11. For each transaction made using a credit card, an original approved itemized receipt indicating the amount paid, the vendor, and the goods/services purchased must be submitted to the Finance Director within twenty-four (24) hours following the transaction.

12. The Finance Department will provide a copy of the monthly credit card statement and the related receipts to Department Directors or their designees for final approval of the statement total. The approved statement and receipts shall be returned to the Finance Department within twenty-four (24) hours.
13. Use of a credit card for unauthorized transactions, personal expenditures, or otherwise in violation of this policy constitutes a misuse of the credit card. Please note that unauthorized transactions exclude those not made by the card user that are fraudulent. Any City personnel engaging in misuse of a credit card will be responsible to reimburse the City for any unauthorized expenditures and may be subject to disciplinary action.
14. An employee who misuses a credit card or does not provide receipts to the Finance Director will be personally liable for the total dollar amount of the transactions, plus any administrative fees charged by the issuer in connection with the misuse. The user of a City credit card agrees to immediately reimburse the City for any such transactions made with the City credit card. The credit card user also consents to the City's use of payroll deduction to make reimbursement if necessary.
15. If a credit card is lost or stolen, or if any City personnel become aware of unauthorized or fraudulent use of any of the City's credit card accounts, the same must be reported immediately to the Finance Director.

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO USE COMPETITIVE  
BARGAINING AND NEGOTIATED QUOTES TO CONTRACT  
FOR REPLACEMENT OF EXISTING WATER LINES AT POLEN  
FARM**

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

Section 1. On the basis that the City can often obtain lower prices and more favorable purchasing conditions through competitive bargaining and negotiated quotations than through sealed bids, the City Manager is hereby authorized to use such bargaining and negotiation procedures and to enter into one or more contracts for the replacement of existing water lines at Polen Farm. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

Estimated Cost: \$65,000.00  
Amount Budgeted: \$65,000.00  
Acct. No.: 6103-77750

(Requested by: Public Service Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO PURCHASE  
EQUIPMENT THROUGH SEALED BIDS, NEGOTIATED QUOTES,  
OR A COOPERATIVE PURCHASING PROGRAM**

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

Section 1. The City Manager is hereby authorized to use sealed bids, competitive bargaining and negotiated quotes, or an approved cooperative purchasing program, to purchase the following listed vehicles and equipment needed for City use. For each purchase, the City Manager may use whichever method the City Manager deems appropriate.

	<u>Equipment</u>	<u>Department</u>	<u>Est. Cost</u>
a.	4 Marked Vehicles	Police Department	\$ 140,000
b.	1 Unmarked Vehicle	Police Department	\$ 23,000
c.	1 Medic	Fire Department	\$ 304,000
d.	1 Heavy Dump Truck	Public Service Department	\$ 185,000
e.	1 Tandem Heavy Dump	Public Service Department	\$ 230,000
f.	1 Skid Steer	Public Service Department	\$ 95,000
g.	1 One Ton Pick-up	Public Service Department	\$ 75,000
h.	2 Asphalt Hot Box Replacements	Public Service Department	\$ 50,000
i.	1 Pick-up Truck	Public Service Department	\$ 55,000
j.	2 Crew Cab Pick-up Trucks	Parks	\$ 110,000
k.	2 4x4 Dump Trucks	Parks	\$ 200,000
l.	1 Service Truck	Vehicle Maintenance Center	\$ 75,000

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III  
Law Director

Estimated Cost: \$1,542,000  
Amount Budgeted: \$1,542,000  
Acct. No.: Various-77740

(Requested by: Finance Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**DECLARING AS "SURPLUS" AND APPROVING AN  
AGREEMENT TO SELL CITY-OWNED PROPERTY  
LOCATED IN KETTERING BUSINESS PARK**

WHEREAS, the City seeks to increase employment opportunities and to encourage establishment of new jobs within the corporate boundaries of the City, in order to improve the economic welfare of the City and its citizens, in furtherance of the public purposes enunciated in Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, TW Development Group, LLC has offered to purchase three lots in Kettering Business Park for redevelopment purposes;

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 as Exhibit "A." The City Manager is hereby authorized to enter into that agreement on behalf of the City of Kettering and to dispose of the real estate described in Exhibit A, and to take any and all additional action necessary and proper to do so. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

Section 2. The real property described in Exhibit A is hereby declared as surplus property and no longer required for municipal purposes effective as of the date of closing.

Section 3. This Resolution shall take full force and effect immediately upon its adoption.

Passed by Council this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III,  
Law Director

(Requested by: City Manager's Office)

EXHIBIT A

(18 total pages, including this page)

## **ECONOMIC DEVELOPMENT AND REAL ESTATE PURCHASE AGREEMENT**

**THIS ECONOMIC DEVELOPMENT AND REAL ESTATE PURCHASE AGREEMENT** (this "**Agreement**") is made and entered into between **TW Development Group, LLC**, an Ohio limited liability company (the "**Company**"), whose mailing address is 5533 Fair Lane, Cincinnati, OH 45227, 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 (the "**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**"). The Company and the City may hereinafter be referred to individually as a "**Party**", or collectively as the "**Parties**".

### **RECITALS**

**WHEREAS**, the City desires to promote the 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**, the City owns a warehouse building containing approximately 200,000 square feet located at 907 Forrer Boulevard in the Kettering Business Park Section Five (the "**Building**"). The Building has exceeded its useful life and needs to be demolished. The Building is situated on Lot 5 of Kettering Business Park Section 5 and contains approximately 8.261 acres ("**Lot 5**"); and

**WHEREAS**, the City owns certain real property adjacent to Lot 5 identified as Lot 3 of Kettering Business Park Section Five, containing approximately 2.781 acres ("**Lot 3**") and Lot 1 of Kettering Business Park Section Four, containing approximately 3.129 acres ("**Lot 1**") (collectively Lot 1, Lot 3, and Lot 5 are referred to as the "**Sale Property**") ; and

**WHEREAS**, the Sale Property is located in Economic Development Overlay District No. 15 ("**EDO No. 15**"); and

**WHEREAS**, the Company owns Lots 1 and 2 of Kettering Business Park Section five ("**Company Property**") and desires to purchase Sale Property for redevelopment in conjunction with the property it already owns in the Kettering Business Park; and

**WHEREAS**, to facilitate the Company's redevelopment, to promote economic development, and redevelopment, to promote the retention and/or potential creation of employment opportunities within the City, the City has agreed to (i) offer the economic development incentives to the Company as described in Article I of this Agreement, and (ii) to sell, transfer and convey to the Company the Sale Property on the terms and conditions set forth herein.

### **STATEMENT OF AGREEMENT**

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

### **ARTICLE I** **ECONOMIC DEVELOPMENT**

1. **Company's Agreement.** In consideration of the economic development incentives to be provided by the City as described in Article I, Section 2, the Company agrees as follows:



- 1.1 Promptly following the Closing (as defined below), the Company shall proceed in good faith and with all reasonable dispatch to demolish the Building and redevelop the Sale Property. The demolition shall be completed within 270 days after the Closing. The redevelopment shall be completed on or before such date that is 365 days after the Closing (the "Redevelopment Date").
  - 1.2 The Company further agrees that promptly following Closing, it will proceed in good faith and with all reasonable dispatch to locate and attract a major tenant to the Company Property and the Sale Property and that there will be a minimum of 300 full-time equivalent jobs located on the Company Property on or before December 31, 2021 (the "Development Commitment"). The Company acknowledges and agrees that the intent of this Article I, Section 1.2 is for any new tenant(s) to create new jobs within the City, rather than the relocation of existing jobs within the City. Notwithstanding anything in this Agreement to the contrary, if the Company is unable to execute a lease with a major tenant, satisfactory to the Company, in the Company's sole discretion, on or before the Closing, the Company may terminate this Agreement upon written notice to the City and the Earnest Money shall be returned to the Company promptly.
2. **City's Agreement.** In consideration for the Company's agreement as set forth in Article I, Section 1 above, and provided the Company is not in default of this Agreement, the City agrees to provide economic development incentives to the Company as follows:
  - 2.1 The City agrees to reimburse Company for its direct cost to demolish the Building up to a maximum of \$1,100,000.00 (the "Grant Amount"), subject to all the terms and conditions herein.
    - 2.1.1 Company shall obtain and submit to City firm quotes from at least two qualified contractors for the total cost to complete the demolition. Part of the demolition will include breaking up the Building's concrete floor slab. Quotes for the demolition must include as alternate separate line items (i) the cost to truck the broken concrete floor slab off site and (ii) the cost to crush the broken concrete floor slab on site for reuse as base/fill material; the City will only reimburse Company for the least costly alternate line item.
    - 2.1.2 Company and its contractors and agents shall comply with all laws, rules, and regulations applicable to the demolition.
      - 2.1.2.1 Payment of Grant Amount. Provided Company is not in material breach of this Agreement, City will reimburse Company up to the Grant Amount. Payment of the Grant Amount shall be in the following manner and subject to the following conditions:
      - 2.1.2.2 City shall make payment to the Company for the completed demolition services required under this Agreement on the basis of thirty (30) day statement periods. No sooner than every thirty (30) days, the Company shall submit to the City a statement indicating costs and expenses for completed demolition services during the previous thirty (30) days, along with the documents required in the following Section of this Agreement. All approved statement amounts shall be paid by the City within thirty (30) days following the date of approval of the statement. The City will not unreasonably withhold approval. The final payment of the Grant Amount shall be paid upon satisfactory completion of the demolition of the Building. Demolition will be complete when the Building has been demolished and all demolition debris has been removed from Lot 5 and Lot 5 has been graded, seeded, and covered with straw; if it is being actively redeveloped, the northern half of Lot 5 does not need to be seeded and covered with straw. In no event shall the total compensation to the Company exceed the Grant Amount. The Company is not entitled to any additional fees, costs, expenses, labor, reimbursements, or payments of any kind for the demolition of the

### **Building.**

Process for Payment of the Grant Amount. To be eligible for any payment of the Grant Amount, Company must provide City with the following:

- i. written assurance, confirming that Company has completed the demolition in accordance with this Agreement, by completing and properly executing a Performance Affidavit, a copy of which is attached as **Exhibit B**;
- ii. a copy of all contracts Company entered into related to the demolition;
- iii. a copy of all invoices, receipts, and checks Company distributed or received related to the demolition; and
- iv. a copy of all permits or notices related to the demolition.

- 2.2 The Company agrees and acknowledges that the economic development incentives provided for in this Article I, Section 2 are being made by the City to the Company in consideration of the Company's timely fulfillment of its obligations in this Agreement. The City and Company further agree that if any requirement is not met as set forth in this Article I, Section 2, or the Company is otherwise in default of this Agreement, the City may terminate any economic development incentives provided to the Company under this Agreement.

### **3. Events of Default Under Article I and Remedies.**

- 3.1 The Parties acknowledge and agree that upon the occurrence of any or all of the following events, the City or the Company, as the case may be, will be considered in default of Article I of this Agreement: (a) the failure by the Company to file an application for a demolition permit 30 days after Closing; (b) the failure by the Company to complete the demolition of the Building within 270 days after Closing; (c) the Company's breach of the Development Commitment; (d) any statement, certificate or representation given in or pursuant to this Agreement shall be untrue in any material respect; (e) any other breach or failure of the Company to perform any term or condition of Article I of this Agreement; (f) the Company becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors, or consenting to the appointment of a trustee, receiver or liquidator; (g) a trustee, receiver or liquidator is appointed for the Company or for a substantial part of its properties without its consent and which is not dismissed within sixty (60) days after filing; or (h) bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings are instituted by or against the Company and which is not dismissed within sixty (60) days after filing.
- 3.2 Except as otherwise provided in this Agreement, in the event of any default in or breach of Article I of this Agreement, or any of the terms or conditions of Article I, by either Party hereto, such Party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach under Article I of this Agreement is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the Party shall upon written notice from the other commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach under Article I of this Agreement shall not be cured or remedied within a reasonable time, the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations.

- 3.3 Notwithstanding the foregoing, the City's remedy for breach of the Development Commitment is as follows. If the Company breaches the Development Commitment, then upon the City's demand, Company will, at the City's sole option, convey Lots 1, 3, and 5 back to the City on the same terms and conditions as contained in Article II and for the same sales price. This Section 3 shall survive any Closing.

## ARTICLE II

### REAL ESTATE PURCHASE

#### **1. Sale and Conveyance of Property.**

- 1.1 The City hereby agrees to sell, transfer and convey to the Company, and the Company hereby agrees to purchase and receive from the City, upon the terms and conditions of Article II of this Agreement, Lot 5, Lot 3, and Lot 1.
- 1.2 The sale of Lot 1 is subject to a Right of First Refusal held by another entity. If the entity exercises its right, then Lot 1 is excluded from the sale and conveyance and this exclusion will not constitute a breach or default of the City.
- 1.3 As used in this Agreement, the term "Sale Property" includes:
- (a) Lot 5, Lot 3, and Lot 1;
  - (b) the Building and all other improvements, facilities and fixtures located on Lot 5;
  - (c) All furniture, furnishings, fixtures, equipment and other tangible personal property affixed to and/or located at the Building as of the Closing and used in connection with the Lot 5 (collectively, the "Lot 5 Personal Property").

#### **2. Purchase Price.**

- 2.1 The purchase price ("Purchase Price") for the Property shall be as follows:
- 2.1.1 \$1.00 for Lot 5;
  - 2.1.2 \$100,000 for Lot 3; and
  - 2.1.3 \$110,000 for Lot 1.
- 2.2 The Purchase Price will be payable to the City as follows:
- 2.2.1 The Company will deposit the sum of \$10,000.00 (the "Earnest Money") with Chicago Title Insurance Company ("Escrow Agent") within three (3) business days after the Effective Date, which will be held by Escrow Agent in accordance with the terms and conditions of this Agreement, including the provisions set forth on the attached Exhibit A. The Earnest Money will be credited against the Purchase Price at Closing, and will otherwise be disbursed as provided in this Agreement.
  - 2.2.2 Except as specified otherwise in this Agreement, the Purchase Price shall be paid by cash, check, or wire transfer acceptable to City upon delivery of the deed at closing.

#### **3. Due Diligence.**

- 3.1 The deadline for the Company to complete due diligence ("Due Diligence Date") is February 28<sup>th</sup>,

2019.

- 3.2 The City agrees to provide the Company, within ten (10) business days after the Effective Date, with copies of the following documents and records in the possession of the City: (i) all surveys, title commitments and policies, (ii) soil tests, (iii) Building plans and specifications, (iv) reports regarding Hazardous Substances (as defined below), and (v) reports or studies regarding the physical, mechanical or structural condition of the Sale Property.
- 3.3 The Company will have until 5:00 p.m. (prevailing Eastern Time) on the Due Diligence Date by which 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 a physical, mechanical and structural condition acceptable; (iv) inspect the Sale Property for building 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 for the Party's proposed use of the Sale Property; and (vii) perform such other inspections, tests or studies as the Company deems appropriate. The inspections, tests, studies and approvals described in this Section performed will be at Company's sole expense. Company and its agents and designees will be entitled to access the Sale Property at reasonable times to undertake such inspections, tests and studies. After completion of such inspections, tests and studies, the Company will promptly and diligently restore the Sale Property to as good a condition as existed immediately prior to any such inspections, tests and studies to the extent reasonably practicable. The Company agrees to indemnify and hold the City harmless from all loss, liability, claim and expense (including reasonable attorneys' fees) arising out of the acts or omissions of the Company, its agents or designees on the Sale Property in the performance of such inspections, tests and studies, including, but not limited to, mechanics' liens, damage to persons or property, and third party claims.
- 3.4 Each Party agrees to reasonably cooperate with the other in the completion of the inspections, tests, studies and approvals described in this Article II, Section 3.
- 3.5 The Company 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 and a title insurance commitment reporting the state of title to the Sale Property. If the Company 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) which do not adversely affect Company's intended use of the Sale Property, then Company may notify the City in writing on or before the Due Diligence Date specifying such title and survey matters to which Company objects. City agrees to remove any mortgage, or other lien securing the payment of money at or prior to Closing, and the Parties need not object to any such matters prior to the Due Diligence Date. If the Company fails to notify the City on or before the Due Diligence Date of any such objection to title, then Company will be deemed to have waived any such objection. If the Company gives the City timely notice of a title objection, then, within ten (10) days after receipt of notice of the objection, the City will either (i) promptly notify the Company that it does not intend to remedy such title objection or (ii) attempt to cure such objection to the Company's reasonable satisfaction by the date of Closing. If the City elects not to cure the title objection or is unable to cure or remove such title objection made under this provision to the Company's reasonable satisfaction by the date of Closing, then the Company may elect to (i) terminate this Agreement, and the Parties 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 effected Sale Property subject to such objection. Without limiting the foregoing, in the event that the Company makes a title objection with respect to the Sale Property and the City elects not to cure the title objection or is unable to cure or remove such title objection to the Company's reasonable satisfaction by the date of Closing, and the Company terminates this Agreement in accordance with this Section, then the Earnest Money will immediately be returned to the Company, as the Company's sole remedy.

- 3.6 Any survey of a Sale Property and title commitment will be obtained at the Company's sole expense.
- 3.7 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.
4. **Termination Notice.** If at any time prior to 5:00 p.m. (prevailing Eastern Time) on the Due Diligence Date, the Company is not satisfied with the results of the matters described in Article II, Section 3 above with respect to the Sale Property, then the Company may deliver notice to the City stating that it has decided not to consummate the transactions hereunder (the "Termination Notice") and the Parties will have no further obligations pursuant to this Agreement except those that are expressly stated to survive. In the event the Company timely delivers such Termination Notice in accordance with this Section, then the Company shall be entitled to the immediate return of the Earnest Money. Unless the Company objects to title and/or survey matters in accordance with Article II, Section 3.5 above, if Company fails to deliver the Termination Notice to the City by the prescribed time on the Due Diligence Date, then it will be deemed to have elected to proceed to purchase the respective Sale Property pursuant to this Agreement.
5. **Representations and Warranties.** The City represents and warrants to the Company that the following statements are true as of the Effective Date and will be true at the Closing:
- 5.1 Subject to obtaining approval from the Kettering, Ohio City Council as set forth in Article II, Section 11.1, 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.
- 5.2 At the Closing, the City 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 Article II, Section 8).
- 5.3 The City has terminated all licenses and leases to the Building. 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, excluding Lot 1 as previously described above.
- 5.4 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.
6. **Condition of the Sale Property; Assumption of Risk.**
- 6.1 Company acknowledges and agrees that, without any limitation, the City has not made, did not make, and specifically disclaims any representations regarding the following with respect to the Sale Property: (i) value of the Sale Property, (ii) compliance with Americans with Disabilities Act or with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, as defined by the Environmental Laws applicable to the Sale Property, or (iii) the disposal or existence, in or on the Sale Property or any adjacent or nearby property, of any Hazardous Substances.
- 6.2 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, CITY IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES REGARDING THE SALE PROPERTY, EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, COMPANY ACKNOWLEDGES THAT THE SALE PROPERTY IS BEING CONVEYED "AS IS," "WHERE IS" AND "WITH ALL

FAULTS," WITHOUT REPRESENTATION, RECOURSE, OR WARRANTY, AND THAT ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. FURTHERMORE COMPANY ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE CITY HAS MADE NO REPRESENTATION OR WARRANTY CONCERNING (AND NO PARTY IS RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, MADE BY THE OTHER PARTY, ITS AGENTS OR BROKERS AS TO ANY MATTER CONCERNING) THE SALE PROPERTY OR ANY OF THE DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING: (1) ANY USE TO WHICH THE SALE PROPERTY MAY BE PUT, (2) ANY FUTURE REVENUES, COSTS, EXPENDITURES, CASH FLOW, RESULTS OF OPERATIONS, FINANCIAL CONDITION OR PROSPECTS THAT MAY RESULT FROM THE OWNERSHIP, USE OR SALE OF THE SALE PROPERTY OR THE ASSUMPTION OF THE ASSUMED LIABILITIES, (3) ANY OTHER INFORMATION OR DOCUMENTS MADE AVAILABLE TO THE PARTY ACQUIRING THE SALE PROPERTY OR THEIR AFFILIATES OR RELATED PERSONS, (4) THE QUALITY, NATURE AND ADEQUACY OF THE PHYSICAL CONDITION OF THE SALE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE STRUCTURAL AND SEISMIC ASPECTS OF THE SALE PROPERTY, THE FOUNDATION, ROOF, APPURTENANCES, ACCESS, LANDSCAPING, PARKING FACILITIES OF THE SALE PROPERTY, THE ELECTRICAL, MECHANICAL, HVAC, PLUMBING, SEWAGE, UTILITY SYSTEMS, FACILITIES AND APPLIANCES OF THE SALE PROPERTY, THE SQUARE FOOTAGE WITHIN THE IMPROVEMENTS AND WITHIN EACH SPACE THEREIN, AND, OTHERWISE, THE CONDITION OF THE SALE PROPERTY, (5) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF THE SOILS, GEOLOGY AND ANY GROUNDWATER ON OR IN THE VICINITY OF THE SALE PROPERTY, (6) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE SALE PROPERTY, (7) THE POTENTIAL OPERATION OR TENANTABILITY OF THE SALE PROPERTY AND THE SALE PROPERTY'S USES, HABITABILITY, MERCHANTABILITY, OR THE FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE SALE PROPERTY FOR ANY PARTICULAR PURPOSE, (8) THE ZONING OR OTHER LEGAL STATUS OF THE SALE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS AFFECTING THE SALE PROPERTY, (9) COMPLIANCE OF THE SALE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND/OR RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (10) THE PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE SALE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTIES, AND (11) THE QUALITY OF ANY LABOR AND MATERIALS USED TO CONSTRUCT ANY IMPROVEMENTS. UPON CLOSING, EACH PARTY SHALL ASSUME THE RISK OF ADVERSE MATTERS WITH RESPECT TO THE RESPECTIVE SALE PROPERTY BEING ACQUIRED BY SUCH PARTY, INCLUDING, BUT NOT LIMITED TO ADVERSE FINANCIAL, PHYSICAL AND ENVIRONMENTAL CONDITIONS WHICH MAY NOT HAVE BEEN REVEALED BY SUCH PARTY'S INSPECTIONS AND INVESTIGATIONS. THE TERMS OF THIS ARTICLE II, SECTION 6 SHALL SPECIFICALLY SURVIVE THE CLOSING.

- 6.3 To the fullest extent permitted by law, Company does hereby unconditionally waive and release City, and its elected officials, officers, employees, and volunteers from any present or future claims and liabilities of any nature arising from or relating to the presence or alleged presence of Hazardous Substances in, on, at, from, under or about the Sale Property or any adjacent property, including, without limitation, any claims under or on account of any environmental law, regardless of whether such Hazardous Substances are located in, on, at, from, under or about the Sale Property or any adjacent property prior to or after the date hereof, unless such claims or liabilities arise from the negligent or fraudulent activity of City, or activity of City in violation of any environmental law. In addition, Company does hereby covenant and agree to defend, indemnify,

and hold harmless City and elected officials, officers, employees, and volunteers from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, existing and future, including any action or proceeding brought or threatened, or ordered by governmental authorities, relating to any Hazardous Substances which may be placed or located on the Sale Property after the date of closing, unless such claims or liabilities arise from City's acts or omissions. The terms and provisions of this paragraph shall survive the closing hereunder.

7. **Closing.**

- 7.1 The time and place for conveyance of title to Sale Property, payment of the Purchase Price and the closing of the transactions under this Article II (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 thirty 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, the City will cause to be delivered to the Company, 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 Company's title insurer; (iii) title affidavit, mechanics' lien affidavit and/or parties in possession affidavit in form required by the Company's title insurer; (iv) information necessary for reporting the sale of the Sale Property to any tax authorities; (v) limited warranty deed; (vi) any bill of sale or similar document necessary to transfer title to the Lot 5 Personal Property; (vii) keys in the City's possession to any door or lock on the Sale Property; and (viii) such other agreements and documents as the Company or its title insurer reasonably may request in order to effectuate the consummation of the transaction contemplated in this Article II consistent with the terms hereof.

8. **Conveyance of Title.** The City will convey good and marketable fee simple title to all of its interest in the Sale Property to the Company at the Closing by deed of limited warranty, free, clear and unencumbered except for the "Permitted Encumbrances" listed below:

- 8.1 liens for real property taxes and assessments due and payable in the year of closing;
- 8.2 easements, restrictions, covenants, and conditions of record;
- 8.3 non-delinquent real estate taxes and assessments;
- 8.4 coal, oil, gas, and other mineral rights and interests previously transferred or reserved of record;
- 8.5 legal highways;
- 8.6 zoning, environmental, building, and other governmental regulations and ordinances including, without limitation, Economic Development Overlay District #15 and the Site & Architectural Design Standards of that overlay district; and
- 8.7 The Sale Property is located in what is currently referred to as Kettering Business Park (the "Park"). The City anticipates establishment of mechanisms to provide and pay for maintenance ("Maintenance Mechanisms") of common areas and facilities in the Park (collectively, the "Common Areas") through assessments paid by the owners of the properties within the Park. The Maintenance Mechanisms may include special assessments and/or the formation of an owner's association (the "Association"). City shall provide to Company for review the drafts of the Association documents and accompanying Declaration of Covenants, Conditions and Restrictions, which will encumber the properties, in electronic format. Company agrees that it will cooperate with City in the formation of the Maintenance Mechanisms and/or the Association and will execute the documents as are reasonably required to form the Maintenance Mechanisms and/or the Association and the Declaration of Covenants, Conditions and Restrictions, provided the Company approves of the terms set forth in such documents, in the Company's reasonable discretion. The deed from City will set forth the foregoing agreement. The foregoing agreement

shall run with the land and be binding upon Company and its successors and assigns as owners of the Sale Property. This section will survive closing.

Further, the City will convey the Lot 5 Personal Property to the Company at the Closing, free, clear and unencumbered, by bill of sale. The City will deliver exclusive possession of the Sale Property to the Company at Closing.

**9. Closing Prorations; Expenses.**

- 9.1 There will be no proration of non-delinquent real estate taxes, assessments, or other benefit charges levied on an annual or periodic basis ("Taxes and Assessments"). Company will pay all Taxes and Assessments due after Closing. Any delinquent Taxes and Assessments and any penalties or interest thereon outstanding as of the Closing will be satisfied by the City. The provisions of this Section shall survive the Closing.
- 9.2 The Company will pay the costs of any survey(s) obtained by the Company relating to the Sale Property, the costs associated with any title examination, title commitment and title policy relating to the Sale Property, the costs associated with the deed preparation and deed recording costs relating to the Sale Property, Mortgage recording costs, and the Company's other expenses incurred in connection with the transactions under this Agreement (except such expenses that are otherwise set forth in this Agreement as being the responsibility of the City).
- 9.3 Company will pay the conveyance fees or transfer fees relating to the transfer of the Sale Property and Company's other expenses incurred in connection with the transactions under this Agreement (except such expenses that are otherwise set forth in this Agreement as being the responsibility of the Company or the City).
- 9.4 Company will pay all closing, recording, and escrow fees.
- 9.5 Each Party will be responsible for its own legal fees.
- 9.6 The City and the Company will transfer all utilities to the Sale Property to the account of the Company as of the Closing, and the City will pay any utility charges which accrue through the Closing.
- 9.7 The City will be responsible for any real estate commission owed to Mark Fornes Realty related to the Sale Property.

**10. Casualty.**

- 10.1 The City agrees that the Sale Property it is transferring hereunder 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. The City will provide written notice to Company of any material damage to or destruction of the Sale Property. Risk of loss from fire or other casualty will be borne by the City 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 Company may (i) proceed with this Agreement and receive the Sale Property in its then existing condition, in which event, upon Closing, the Company will be entitled to the net insurance proceeds paid or payable to the City, or (ii) terminate this Agreement, and all Parties hereto will be released from all liability hereunder (provided, however, the Earnest Money shall be returned to the Company). If Company elects to terminate the Agreement pursuant to this Section, Company will so notify City 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 by Company to proceed with this Agreement and to accept the Sale Property as described in (i) above.
- 10.2 Notwithstanding the foregoing, any damage or destruction which does not unreasonably interfere with the Company's intended use of the Sale Property will not give rise to the option to terminate this Agreement and the Company agrees to proceed under this Agreement without adjustment



except that Company will be entitled to receive the proceeds of the insurance award covering the Sale Property.

**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 60 days after the Effective Date, then this Agreement will be null and void, the Parties will be relieved from any further obligation hereunder, and the Earnest Money will be returned to the Company.
- 11.2 To the extent the conditions set forth in Section 11.1 of Article II 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, in which event the Earnest Money shall be returned to the Company and all Parties hereto will be released from all liability hereunder. If any Party elects to terminate this Agreement pursuant to this Section, the Party will so notify the other Parties in writing at least five (5) business days prior to the then scheduled date of the Closing.
- 11.3 Further, for the avoidance of doubt, each Party's obligation to close on the transaction described herein is subject to the satisfaction of the terms and conditions set forth in Section 8 of Article II, and the transferring Party's conveyance of good and marketable fee simple title to all of its interest in the Sale Property to the acquiring Party, free clear and unencumbered except for Permitted Encumbrances.

**12. Events of Default Under Article II and Remedies.**

- 12.1 If the Company fails to consummate the purchase of the Sale Property or otherwise defaults in the performance of any of its obligations under Article II of this Agreement, then the City will, as its sole and exclusive right and remedy, be entitled to terminate this Agreement and receive the Earnest Money, as liquidated damages and not as a penalty (the Parties hereby acknowledging and agreeing that it is not possible otherwise to measure the City's damages from the Company's default, including the City's costs, expenses and fees in connection therewith), and none of the Parties will have any further rights, obligations or liabilities under this Agreement.
- 12.2 Notwithstanding the foregoing, if this Agreement is terminated or cancelled by the Company as provided in Sections 3, 4 or 10 of Article II or by any Party as provided in Section 11 of Article II, then this Agreement will be null and void, and the Parties will be relieved from any further obligation hereunder, except those that are expressly stated to survive, and the Earnest Money will be returned to the Company.

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.

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 upon the business day received by

the Party to whom such notice is sent if receipt occurs by 5:00 p.m. (prevailing Eastern Time) or, if received later, by the next such business day. Notice may be given by (i) personal delivery, (ii) overnight courier service, postage prepaid, (iii) U.S. certified mail, return receipt requested, postage prepaid, or (iv) electronic mail.

16.2 Notice to the City will be delivered to:

Mark W. Schwieterman  
City Manager  
City of Kettering  
3600 Shroyer Road  
Kettering, Ohio 45429  
Email: mark.schwieterman@ketteringoh.org

with a copy to:  
Theodore A. Hamer, III, Esq.  
Law Director  
City of Kettering  
Law Department  
3600 Shroyer Road  
Kettering, Ohio 45429  
Email: theodore.hamer@ketteringoh.org

Notice to the Company will be delivered to:

TW Development Group, LLC  
5533 Fair Lane  
Cincinnati, OH 45227  
Attention: Jim McCarthy  
Email: jmccarthy@twdevgroup.com

with a copy to:

Michael R. Yeazell, Esq.  
Robbins Kelly Patterson & Tucker  
7 West 7<sup>th</sup> Street, Suite 1400  
Cincinnati, Ohio 45202  
Email: myeazell@rkpt.com

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 Forrer Sale Property, other than Mark Fornes Realty, Inc. represented by Mark Fornes ("Broker"). The City shall solely be responsible for the payment of any commission(s) and/or fee(s) to Broker in connection with the transfer of the Sale Property hereunder.

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 the Company 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. **Economic Development Assistance Certification.** The Company has made no false statements to the City in the process of obtaining approval of the incentives described in Article I of this Agreement. If any representative of the Company has knowingly made a false statement to the City to obtain the incentives described in Article I of this Agreement, the Company as the case may be shall be required to immediately return all benefits received under Article I of this Agreement pursuant to Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to Ohio Revised Code Section 9.66(C)(1). The Company acknowledges that any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.
22. **Not an Offer.** This Agreement will not become effective until counterparts have been fully executed and delivered by all Parties named herein.
23. **Miscellaneous.**
- 23.1 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.
- 23.2 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.
- 23.3 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.
- 23.4 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.
- 23.5 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.
- 23.6 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.

23.7 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.

23.8 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.

23.9 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.

24. **Force Majeure.** All time periods set forth herein shall be subject to extension due to a Force Majeure Event. "**Force Majeure Event**" shall mean a strike, lockout, Act of God, enemy action, war, national emergency, riot, fire or other similar exigency which is unforeseeable, not brought about by the lack of diligence of the non-performing party, and beyond the reasonable control of the non-performing party; *provided, however*, that the non-performing party shall exercise reasonable diligence in eliminating and overcoming the Force Majeure Event. If a Force Majeure Event occurs, the time period in question shall be extended one day for each day such event delays the project.

25. **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.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]

SIGNATURE PAGE TO IMMEDIATELY FOLLOW.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the date first set forth above.

**COMPANY:**

**TW Development Group, LLC**  
an Ohio limited liability company

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2019

**CITY:**

**CITY OF KETTERING, OHIO**

By: \_\_\_\_\_  
Mark W. Schwieterman, City Manager

Date: \_\_\_\_\_, 2019

**Approved as to form:**

By: \_\_\_\_\_  
Theodore A. Hamer, III, Law Director

Date: \_\_\_\_\_, 2019

**Funds Certified By:**

By: \_\_\_\_\_  
Nancy Gregory, Finance Director

Date: \_\_\_\_\_, 2019

**ESCROW AGENT ACKNOWLEDGEMENT**

Escrow Agent acknowledges receipt of the Earnest Money (in the amount of \$10,000.00) from the Company. Escrow Agent joins in the execution of this Agreement for the sole purpose of accepting the appointment as Escrow Agent, and agrees to handle and disburse the Earnest Money in accordance with the Agreement, including the provisions set forth on Exhibit A.

ESCROW AGENT:

**CHICAGO TITLE INSURANCE COMPANY**

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT A**

**EARNEST MONEY ESCROW PROVISIONS**

Within three (3) business days after the Effective Date of this Agreement, Purchaser shall deliver the sum of \$10,000.00 (the "Earnest Money") to Escrow Agent. Escrow Agent is instructed to deposit the Earnest Money in an interest bearing account, subject to immediate withdrawal, at an FDIC-insured banking institution. All interest earned on the Earnest Money shall be added to, and deemed a part of, the Earnest Money. If Company defaults, City may cancel this Agreement and receive the Earnest Money [as liquidated damages]. Upon closing, the Earnest Money shall be credited against the purchase price. If Company is entitled to a return of the Earnest Money because any of the contingencies identified in this Agreement are not satisfied or otherwise, the Earnest Money shall be returned to Company. If either party demands the release of the Earnest Money, Escrow Agent shall give prompt written notice to the other party. If the release is not disputed by written notice to the Escrow Agent within 12 days after receipt of the Escrow Agent's notice, Escrow Agent shall release the Earnest Money to the party making the demand. If the release is disputed by written notice to the Escrow Agent within the 12-day period, Escrow Agent shall continue to hold the funds and shall release the same only pursuant to (a) joint written instructions from Company and City or (b) a court order of any court having jurisdiction. The parties agree to give the Escrow Agent instructions consistent with the terms of this Agreement.

## PERFORMANCE AFFIDAVIT



CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**TO MAKE SUPPLEMENTAL APPROPRIATIONS FOR  
CURRENT EXPENSES AND OTHER EXPENDITURES OF  
THE CITY OF KETTERING, STATE OF OHIO, DURING  
THE FISCAL YEAR ENDING DECEMBER 31, 2019**

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

Section 1. To provide for the current expenses and other expenditures of the City of Kettering during the fiscal year ending December 31, 2019, the following supplemental sums are set aside and appropriated:

A. From the General Fund:

ECONOMIC DEVELOPMENT

Operating Expenses

\$ 1,100,000.00

Section 2. The Director of Finance is authorized to adjust appropriations within any fund or department as long as the adjustments made do not exceed the total appropriation authorized within that fund or department.

Section 3. The Clerk of Council is authorized and directed to forward a copy of this Resolution to the Montgomery County Auditor.

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 \_\_\_\_\_ 2019.

\_\_\_\_\_  
DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

\_\_\_\_\_  
LASHAUNAH D. KACZYNSKI,  
Clerk of Council

\_\_\_\_\_  
THEODORE A. HAMER, III  
Law Director

(Requested by: Finance Department)