

**CITY COUNCIL**  
**AGENDA FOR MEETING OF September 10, 2018**  
**7:00 P.M. – COUNCIL CHAMBERS – 209 S. MAIN STREET**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

INVOCATION:

ROLL CALL:

APPROVAL OF MINUTES: Minutes from August 27, 2018 and the September 4, 2018 Work Session.

ADMINISTRATIVE REPORT:

REPORT OF CLERK OF COUNCIL:

REPORT OF ECONOMIC DEVELOPMENT DIRECTOR:

HEARING OF CITIZENS:

**RESOLUTIONS:**

1<sup>st</sup> Reading RESOLUTION TO APPROVE THE CONTINUANCE OF ENTERPRISE ZONE TAX INCENTIVE AGREEMENTS  
Title Only WITH VARIOUS COMPANIES AND TO REPORT SUCH FINDINGS TO THE OHIO DEVELOPMENT  
SERVICES AGENCY

One Reading RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET  
Only COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE  
COUNTY AUDITOR

3<sup>rd</sup> Reading A RESOLUTION TO APPROVE THE FIRST AMENDMENT TO THE AGREEMENT TO PURCHASE  
Title Only UNIMPROVED REAL ESTATE

**ORDINANCES:**

COMMENTS OF THE CITY MANAGER AND COUNCIL PERSONS AND GENERAL DISCUSSION:

ADJOURN:

## CITY COUNCIL MINUTES

August 27, 2018

The meeting was called to order by Mayor Rausch at 7:00 p.m.

**PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was led by Mayor Rausch.

**INVOCATION:** The Invocation was given by Mayor Rausch.

**MEMBERS PRESENT:** Nevin Taylor, Deb Groat, JR Rausch, Alan Seymour, Mark Reams, and Henk Berbee. Tracy Richardson excused.

**OTHERS PRESENT:** City Manager Terry Emery, Finance Director Justin Nahvi, Law Director Tim Aslaner, Police Chief Floyd Golden, Fire Chief Jay Riley, Public Service Director Mike Andrako, City Engineer Jeremy Hoyt, IT Director Aaron Story, Economic Development Director Eric Phillips and Clerk of Council Rebecca Dible.

**REPORTERS PRESENT:** Will Channel- Journal Tribune

**CITIZENS PRESENT:** Ericka Fiten, Matilde Pozzato, Kathy Young, Adam Johanson, Tim Schacht, Steve Dutton, Robin Myers, and Nicolas Rudhard.

**APPROVAL OF MINUTES:** The minutes from August 13, 2018 were approved as presented.

### **ADMINISTRATIVE REPORT:**

*Mr. Emery reported the following:*

#### Municipal Pool Hours

The Municipal Pool will be open this coming weekend through Labor Day from noon – 6:00 pm.

#### City Offices Closed

City offices will be closed on Monday, September 3, in observance of the Labor Day holiday.

#### Dog Swim

The annual Dog Swim will be held on Tuesday, September 4 from 5:00-7:00 pm at the Marysville Municipal Pool. Admission is \$5.00 per dog. Half of the proceeds will benefit the Union County Humane Society.

#### 9/11 Remembrance Ceremony

The 9/11 Remembrance Ceremony will be held on Tuesday, September 11, at Decker Fire Station beginning at 9:50 am. Mr. Rausch announced that Mr. Berbee will be the speaker this year at the ceremony.

*Mr. Andrako reported the following:*

#### Paving Work

Street crews will be paving the path leading to MacIvor Woods from Kroger's parking lot and also prepping a section of the path at Eljer Park near the ball fields for paving.

### Aldersgate Park Tree House

The work to refurbish the Aldersgate Tree House will begin next week and be complete by 10/12, weather permitting.

### Reading Garden

The concrete pad for the reading garden at Partners Park will be poured in the next two weeks. Chairs are ordered and expected to arrive in September. We are looking into a Scotts Community Grant to purchase the plantings for the landscaping. We hope to have the work complete by the October FNU.

*Mr. Hoyt reported the following:*

### Construction Updates

SR 31 Widening - the roadway paving was completed last week and the sidewalk and path installation starts this week. This project remains on schedule and under budget.

### Cook's Pointe

The storm sewer will be completed this week and the placement of roadway base is expected to start this week. This project remains on schedule and under budget.

### 2018 Paving Program

The roadway striping, which is the last major task for this project, will be completed this week.

Mr. Berbee asked Mr. Hoyt for an update on the RT 38 paving that ODOT was to complete. Mr. Hoyt stated the work was expected to begin next week and a section of the road would stay open for the entirety of the project, which was anticipated to be two weeks. Mr. Berbee also asked if the work out by Buerger Road was completed. Mr. Hoyt stated it was and they were going to have ODOT mill out about another 100 feet at the lip to hopefully enhance sight distance even more. Mr. Seymour stated that residents had been concerned with the humps left on 38 due to the paving project. He confirmed with Mr. Hoyt these would be remedied.

Mr. Taylor stated a citizen was concerned about the signage at 5-points, as all the signs were on one pole. The citizen made a point that if the Delaware sign was moved to another pole, it would be more consumer friendly. Mr. Andrako stated he would look into this. Mr. Taylor also stated this citizen asked if they had to put branches out the night before trash was picked up in order for the branches to be taken. Mr. Andrako stated if the branches were out before 6 a.m. the day their trash is picked up, they should be safe.

### **REPORT OF CLERK OF COUNCIL:**

Mrs. Dible reported that she received a D5 liquor permit transfer request from Marysville Lanes LTD & Patio to Dragons Danes LLC & Patio, at 1189 Columbus Avenue. Chief Golden had no objections. Council had no objections.

### **APPOINTMENT:**

Mr. Reams moved to remove the "Interim" from Mrs. Dible's title, thus making the title Clerk of Council. The appointment was unanimously affirmed by Council voice vote. Mr. Taylor asked if a Liaison to Council would be appointed, to which Mr. Rausch stated there would not be at this point.

### **PARKS & RECREATION REPORT:**

Mr. Reams stated that the Parks & Recreation Commission had met the previous week and the Marysville Parks 5-Year Capital Improvement Plan was approved and will soon be sent to Council for their review.

**PLANNING COMMISSION:** Cancelled due to lack of business.

**DESIGN REVIEW BOARD:** Mr. Schacht reported that the Board reviewed the three following items:

An application for a proposed mural at 231 N Main Street (Route 33 Fitness) in the U-C (Uptown Commercial) Zoning District. This application was tabled and will be on the September agenda.

An application for signage at 210 E 4th Street (CrossFit 184) in the U-C (Uptown Commercial) Zoning District. This application was approved with the condition it was temporary and allowed until the end of 2018.

An application for a new parish life center, parish commons, and religious education classrooms at 1033 W 5th Street (Our Lady of Lourdes Catholic Church) in the B-1 (Service Business) Zoning District. This application was approved.

**PUBLIC SAFETY/SERVICE COMMITTEE REPORT:**

Cancelled due to lack of quorum.

**FINANCE COMMITTEE REPORT:** Mr. Berbee stated as of July 18<sup>th</sup>, 2018, 14,550 City income tax returns had been filed. He explained there were three major types of returns filed which the City deals with: 1) Those who live here and earn wages here, 2) Those who live elsewhere yet earn wages here, and 3) Those who live here yet earn wages elsewhere. He pointed out that although many work at Honda, they are not included in the “earn here” segment. Mr. Berbee stated as many as 5,800 residents work somewhere else. He explained that initial studies had shown that if a .25% income tax credit were given, it would cost the City \$206,000 and if a .5% income tax credit were given, it would cost the City 1.2 million. Mr. Berbee explained the struggle was that although people work other places, City Police and Firefighters are not sent home during the day because “no one is home,” conveying that City funding to secure 24-7 City safety. Because of this, he mentioned Union County had one of the lowest fee rates when it came to license tag fees. He stated it may be prudent to look at the rates and directly associate any possible increases with City infrastructure. Data was being gathered in those regards.

**HEARING OF CITIZENS:** Mr. Steve Dutton of 310 W. 6<sup>th</sup> Street spoke to Council regarding the waterline issue he had outside his home. He explained he understood things needed dug up to get to the waterline and he has tried to be a calm, patient citizen. However, after his apron deteriorated from being exposed for two years, he was quite concerned since the repair and work was “complete,” his drive/apron was not restored to original condition when repairs began. He stated he had previously spoken with Mr. Hoyt, Mr. Dilsaver and Mr. Tracy regarding his concerns. Mr. Seymour asked if the valve was in the apron to which was responded it was. Mr. Hoyt stated it will be looked into the following morning and it would be restored to the condition it was in before the waterline work began.

Mr. Rausch stated the City enjoyed hosting the 10 Japanese exchange students who recently returned home last week. He stated they were also happy to have three foreign exchange students attend the meeting that evening and invited them to introduce themselves to Council. The three students were Nicolas Rudhard from Germany, Adam Johanson from Sweeden and Matilde Pozzato from Italy.

**RESOLUTIONS:**

One Reading RESOLUTION TO AMEND THE QUALITY OF LIFE AWARD FOR THE CITIZENS OF MARYSVILLE  
Only AND TO REPEAL RESOLUTION NUMBER 14-17

**Administration Comments:**

**Council Comments:**

**Citizen Comments:**

Mr. Taylor moved to pass the legislation and the question, put stood:

Mrs. Groat YES ; Mr. Rausch YES; Mr. Seymour YES; Mr. Reams YES;  
Mr. Berbee YES; Mr. Taylor YES

2<sup>nd</sup> Reading A RESOLUTION TO APPROVE THE FIRST AMENDMENT TO THE AGREEMENT TO PURCHASE  
Public Hearing UNIMPROVED REAL ESTATE

**Administration Comments:**

**Council Comments:**

**Citizen Comments:**

**ORDINANCES:**

3<sup>rd</sup> Reading AUTHORIZING SUPPLEMENTAL APPROPRIATIONS FOR THE SEWER REPLACEMENT AND  
Title Only IMPROVEMENT FUND (FUND 536) AND MODIFYING THE 2018 ANNUAL BUDGET

**Administration Comments:**

**Council Comments:**

Mr. Taylor moved to pass the legislation and the question, put stood:

Mr. Rausch YES; Mr. Seymour YES; Mr. Reams YES; Mr. Berbee YES;  
Mr. Taylor YES; Mrs. Groat YES

3<sup>rd</sup> Reading AUTHORIZING SUPPLEMENTAL APPROPRIATIONS FOR THE STORMWATER ASSESSMENT  
Title Only FUND (FUND 570) AND MODIFYING THE 2018 ANNUAL BUDGET

**Administration Comments:**

**Council Comments:**

Mrs. Groat moved to pass the legislation and the question, put stood:

Mr. Seymour YES; Mr. Reams YES; Mr. Berbee YES; Mr. Taylor YES;  
Mrs. Groat YES; Mr. Rausch YES

**Administration Comments:**

**Council Comments:**

Mrs. Groat moved to pass the legislation and the question, put stood:

Mr. Reams YES; Mr. Berbee YES; Mr. Taylor YES; Mrs. Groat YES;  
Mr. Rausch YES; Mr. Seymour YES

**COMMENTS OF THE CITY MANAGER AND COUNCIL PERSONS AND GENERAL DISCUSSION:**

Mrs. Groat announced that the September Ward 3 Meeting (which was typically held on the first Tuesday of each month at the library) would join the General Council Work Session at the Police Department at 6:00 pm, September 4<sup>th</sup>. Any who would like to meet with Mrs. Groat personally may attend the session and she will meet with them after.

Mr. Berbee welcomed the foreign exchange students. He stated that he was originally from the Netherlands and he did an internship in New York in 1969 and fell in love with the United States. He then returned to the States in 1972 and was able to move his family over in 1982. He also gave a funny anecdote to the students regarding the pronunciation of English words, explaining how he earned his unfavorable nickname.

Mr. Taylor told the exchange students he was proud they had the courage to take a year out of their lives to travel and learn in the USA. He also encouraged them to not to be afraid of asking questions. Mr. Taylor then stated that soon, citizens would be gathering in remembrance of 9-11 and in doing some research, he found that 12% of those lost to 9-11 were not U.S. Citizens. He encouraged everyone to slow down and think about those affected.

Mr. Rausch mentioned that Mr. Phillips would be an excellent resource for the foreign exchange students, explaining that Marysville was a global economy. He specifically mentioned Marysville was the world headquarters of Scotts, Honda of America which was the largest U.S. car manufacturer, as well as home to the Swiss company Nestle Research & Development, and that about 25% of the City workforce, worked for Japanese owned businesses.

Mr. Emery had Mr. Phillips announce to Council that Karen Eylon had accepted the Tourism and Marketing Director position for the CVB and would begin on September 10<sup>th</sup>. They will bring Karen to a future Council Meeting. Mr. Emery also stated that he, Mr. Phillips and Mr. Rausch would not be at the September 10<sup>th</sup> Council Meeting, as they would be at the Midwest Japan Conference in Omaha, Nebraska at the time. Mr. Emery and Mr. Nahvi will not be at the September 24<sup>th</sup> Council Meeting as they would be at the International City Manager Conference in Baltimore, Massachusetts.

ADJOURNMENT: There being no further business to come before Council at 7:42 pm,

Mrs. Groat moved to adjourn to executive session to discuss imminent or pending litigation and the motion was seconded by Mr. Taylor:

Mr. Berbee YES;      Mr. Taylor YES;      Mrs. Groat YES;      Mr. Rausch YES;  
Mr. Seymour YES;      Mr. Reams YES

There being no further business to discuss, the meeting adjourned to open session at 8:03 pm.  
The meeting was adjourned at 8:04 pm.

## CITY COUNCIL WORK SESSION MINUTES

September 4, 2018

The meeting was called to order by Mayor Rausch at 7:00 p.m.

**PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was led by Mayor Rausch.

**INVOCATION:** The Invocation was given by Mayor Rausch.

**MEMBERS PRESENT:** Deb Groat, Tracy Richardson, JR Rausch, Alan Seymour, Mark Reams, and Henk Berbee. Nevin Taylor excused.

**OTHERS PRESENT:** City Manager Terry Emery, Anna Krutowskis, Finance Director Justin Nahvi, Income Tax Administrator Jackie Ward, Law Director Tim Aslaner, Police Chief Floyd Golden, Deputy Chief Tony Brooks, Fire Chief Jay Riley, Public Service Director Mike Andrako, City Engineer Jeremy Hoyt, IT Director Aaron Story, Phillips and Clerk of Council Rebecca Dible.

**REPORTERS PRESENT:** Will Channel- Journal Tribune

**CITIZENS PRESENT:**

**APPROVAL OF MINUTES:**

**AGENDA ITEMS:**

1) **Renaming of Fire Station 272**

Mr. Rausch explained the item was more of a “rededication” rather than “renaming.” He stated Bob Parrot had created a packet which was distributed to Council, overviewing why the original downtown fire station had been dedicated to Chief Hyland in October of 1976. When the original fire station was torn down and a new one built in its place 2013, it was not rededicated. Mr. Rausch stated that he had been approached by the Hyland Family, Barb Timmons and Bob Parrot, asking why the new station was not rededicated. He had spoken with Chief Riley, firefighters and some retired firefighters and no one had strong opinions either way. Chief Riley explained the firefighters reference their stations by station number, so not much would change. He did state the Hyland family had lived in original fire station. Mr. Rausch stated he was for the rededication and asked for other’s opinions. Mr. Seymour was in favor of the idea as Mr. Hyland had served the City for 29 years, although he also stated he was probably biased. Mrs. Groat questioned what new information had surfaced to bring up this request again, as it had originally gone to the Public Affairs Committee 5 years ago and failed with a 2-1 vote. Mr. Reams stated that he supported the rededication. Mrs. Richardson stated that it was an historic event and “It speaks a lot to preserve our past, as it validates our future,” therefore she was in favor. Mr. Berbee asked if anything physical would happen to the station if it were rededicated. Mr. Rausch said a plaque was placed on the old fire station, so perhaps a plaque on the pillar facing the street with a ceremony would be appropriate. It was questioned if a Resolution had ever passed to this effect or if it had been a proclamation. Ms. Dible will research to see what historic information can be found. Mr. Rausch proposed a Resolution would be created and placed on the September 24<sup>th</sup> agenda.

2) **MOU with the Ohio Attorney General’s Office for the Collection of Delinquent Income Taxes**

Mr. Nahvi explained the Finance Department recommended using this newer program that had surfaced over the last few years. The OAG would attempt to collect City income tax debt on certified cases for 150 days and charge 10% above the City certified amount in order to pay for their services. He explained

that Mr. Aslaner had looked at the MOU and didn't see any issues. Mr. Aslaner stated the service would be for cases that were stalled out in court because the City could not get service. Mrs. Richardson confirmed this service would not alleviate the workload, rather it was another opportunity to obtain monies due. Mr. Nahvi stated that the Municipal Court used this service and it had worked well. He also stated Ms. Ward had researched the program extensively. Mr. Nahvi stated the plan would be to certify judgement amounts in late fall to turn over to the OAG. Mr. Reams asked the success rates of other cities, to which Ms. Ward replied that Pickerington had 20-30%. Mr. Reams confirmed he did not see a down side to using these collection services. Mr. Berbee asked if everything would be turned over at once, or if it would go to the OAG in batches. Mr. Nahvi explained that batches of judgements would be sent, once cases were stalled out in court. Mrs. Richardson confirmed with Ms. Ward that the income tax cases were for individual returns only, not businesses. Mr. Seymour asked what happened after the 150 day period, to which Ms. Ward replied that the OAG still attempted to collect the debt, however their thought process would change. She also explained the 3 year statute of limitations, stating that uncollected debts had to be written off at a certain point. Mr. Nahvi stated after the 150 days, typically the OAG would turn cases over to a third party for collection, however the OAG had agreed to would work with the City, as they had specifically requested that all collection efforts be handled by public employees for continuity of care.

### **3) Capital Reserve Fund – Adoption of Legislation Outlining the use of Funds**

Mr. Nahvi stated that in the City's Strategic Plan, a financial priority had been adopted to accumulate 4 million in the Capital Reserve Fund (Fund 440). There was currently 1.5 million in the fund and it was anticipated to be at 2 million by the end of 2018. He explained, due to ORC 5705.13(c), legislation needed to be adopted as to the intended use of the 4 million. He mentioned possibilities such as City vehicles, an additional police/fire station, and moving ballfields to the joint recreation center; He encouraged Council to generate ideas of how they believed the monies should be spent. Mrs. Richardson asked if the funds could be designated for infrastructure, to which Mr. Nahvi replied they could. Mr. Reams stated that the original purpose of the fund was to make sure the City had funds needed when grant matching opportunities were available. Mrs. Richardson agreed, as she didn't want the City to miss an opportunity to obtain funds because there was a lack of money. She stated that she would like future legislators to understand the original intent of the fund. Mr. Berbee explained that most financial advisors recommend having 50% of an annual budget on hand as a capital insurance fund. The reason it had been built as it was, was due to the former Finance Director's recommendation. Mr. Rausch asked what would happen if funds were designated for a specific purpose, then it was realized it was more needed for another purpose. Mr. Nahvi explained that fund designations could be amended with legislation, as the intent of the OAG was to avoid slush funds. Mr. Reams asked if the fund could simply be made a part of the annual budgetary review process, to which Mr. Nahvi responded it could. Mrs. Richardson stated she was in favor of Mr. Reams' idea.

### **4) Initial Review of Income Tax Credit Feasibility Study**

Mr. Nahvi presented the same handout entitled "Income Tax Credit Analysis," which had been distributed at the previous Finance Committee meeting, explaining that Ms. Ward and Finance staff had worked tirelessly gathering the captured information from W-2s. He also explained that at the next Finance Committee Meeting, they would be presenting what credits were offered by the cities listed as well as the tax rates in each of the various cities. Mr. Nahvi reviewed the impact of the proposed income tax credit percentages. He recommended that Council take their time reviewing and allowing the Finance Department to continue to research, and if a credit were adopted, he would recommend it be in 2020. Mrs. Richardson thanked the Finance staff for the work put into gathering the data and conversed with Mr. Nahvi regarding the potential impact of House Bill 5. Mr. Rausch confirmed the data that the Finance Department would be compiling for the upcoming Finance Committee Meeting. Mrs. Richardson then asked if a credit were to be given, would it be collected and returned to citizens, or would it never be

collected initially. Mr. Nahvi stated it would depend on the tax tables, as the City would notify the State Department of changes and hopefully employers would update information in their systems for withholdings. Mr. Rausch asked if there was a good way to track the number of residents who work in other municipalities. Ms. Ward explained that because Marysville has not given a credit in the past, they were working with incomplete data. Mrs. Groat stated that the City had looked at giving a similar credit in 2009 as well. At that time it was entitled a "Commuter Tax Credit." She asked what new information had been presented or what had changed that would make this a better time to readdress a tax credit. Mr. Nahvi stated he was looking at this more as offering "partial relief" for residents. Mr. Rausch stated that Marysville did not have enough jobs to employ all Marysville residents, however they still wanted these residents. Mr. Reams stated he believed the true burden to be that people were being taxed in the cities in which they work. Mr. Rausch responded that half of Marysville's tax base is comprised of people who are not residents. Mr. Seymour stated he believed a tax credit would show citizens appreciation and show them recognition they were double hit by taxes. Mrs. Richardson stated that the citizen voice is with the City and they needed to do what they could literally. Mr. Rausch how a revolt had taken place in history due to taxation without representation. Mr. Reams stated there was another way in which the City could offer tax relief to all citizens; He recommended pulling back from services offered outside City limits, specifically Paris Township. He stated that everyone in the City payed for those services whether they worked in the City, outside of the City or they were retired. He said by pulling back, all citizens would be given relief. Mr. Nahvi also stated that at the Finance Committee Meeting the possibility of offering a rebate to homeowners had been introduced. After looking into the idea, he could see it was not feasible.

### **Strategic Priorities**

Mr. Emery announced that the following agenda items would be reviewed briefly and these were merely to update Council on where Administration was in the process of updating the Strategic Workforce Plan. The updates were specifically marked and included in the meeting packet sent to Council the previous week for review, suggestions and notes. Mr. Emery also asked Council to notify him directly if they had any questions or suggestions as they were in the drafting process. His goal was to have the final, compiled document to present at the November Work Session and to move forward with in legislation.

#### **5) Strategic Priority 1 – Finances (Update)**

Mr. Nahvi briefed Council on updates as provided in the Meeting Packet. The final draft will be presented in completed form at the November Work Session. Mrs. Richardson asked if the improved bond rating was a loan, to which Mr. Nahvi explained it would save the City long term if money was borrowed. Mr. Seymour asked if having more cash on hand improved the bond rating significantly to which Mr. Nahvi responded it was merely one of numerus things evaluated.

#### **6) Strategic Priority 9 – Community Safety (Fire Division Portion)**

Chief Riley briefed Council on updates as provided in the Meeting Packet. The final draft will be presented in completed form at the November Work Session. Mr. Rausch asked if the Community Paramedic Program had a significant impact since it was implemented. Chief Riley gave several examples of how it had positively impacted the community. Mrs. Richardson stated she was enthusiastic about the program and it would be hard to refute; that being said, she stated the key action steps seemed very generic and nothing seemed tied to Council. Chief Riley stated they needed Council to continue to provide the tools needed in order for them to continue offering the referenced services.

#### **7) Strategic Priority 8 – Communication & Branding**

Mrs. Krutowskis briefed Council on updates as provided in the Meeting Packet. The final draft will be presented in completed form at the November Work Session. Key topics reviewed were a flag design

contest and review of the City slogan. It was discussed how some citizens believed the tree city flag was the City's flag at one point. Ideas on how to promote and structure the City flag contest were discussed, focusing on City history and community engagement. The motto was also discussed, questioning if it should remain as is, if anything should be added, or if it should be replaced altogether. The historical origin, promoted message, significance and encompassing values were discussed.

**8) Strategic Priority 4 – Parks & Recreation (Master Parks & Recreation Plan Update)**

Mr. Andrako briefed Council on updates as provided in the Meeting Packet. The final draft will be presented in completed form at the November Work Session. He explained how the majority of the document was taken directly from the Parks & Recreation Master Plan.

ADJOURNMENT: There being no further business to come before Council, the meeting was adjourned at 7:28pm.



J.R. Rausch  
Terry Emery

RESOLUTION \_\_\_\_\_

RESOLUTION TO APPROVE THE CONTINUANCE OF ENTERPRISE ZONE TAX  
INCENTIVE AGREEMENTS WITH VARIOUS COMPANIES AND TO REPORT SUCH  
FINDINGS TO THE OHIO DEVELOPMENT SERVICES AGENCY

WHEREAS, the Union County, Ohio Enterprise Zone No. 178 and No. 190 Tax  
Incentive Review Council (TIRC) met on August 13, 2018 and reviewed each of the  
following tax incentive agreements for the following companies:

The Scotts Miracle-Gro Company (COIR) #178-09-01  
Sumitomo Electric Wiring Systems #178-13-01  
Heritage Cooperative #178-14-01, and,

WHEREAS, the TIRC analyzed each of these agreements for compliance with their  
terms and conditions, specifically the number of jobs created and/or retained, the payroll  
generated by the jobs created and/or retained, and the amount of real and personnel property  
investment, and,

WHEREAS, that from this review, the TIRC recommended on August 13, 2018 to the  
City of Marysville and the Union County Commissioners that each of the agreements listed  
above be continued as originally approved, now therefore;

BE IT RESOLVED, BY THE CITY COUNCIL OF MARYSVILLE, OHIO, THAT:

SECTION I. In accordance with the TIRC recommendation, the City of Marysville City  
Council has determined that each of the tax incentive agreements listed above in this resolution  
meet the intent of the respective Enterprise Zone Agreement or are in compliance with the terms  
and conditions of their original approvals.

SECTION II. The City of Marysville approves the continuance of the tax incentives listed  
above.

SECTION III. The Marysville City Council directs the Union County Enterprise Zone  
#178 and #190 Enterprise Zone Manager, who also serves as the Union County Economic  
Development Director, to notify the Ohio Development Services Agency of this approval by  
March 31, 2019.

1<sup>st</sup> Reading \_\_\_\_\_

\_\_\_\_\_  
MAYOR/PRESIDENT OF COUNCIL

2<sup>nd</sup> Reading \_\_\_\_\_

3<sup>rd</sup> Reading \_\_\_\_\_

ATTEST:

Passed: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CLERK OF COUNCIL

\_\_\_\_\_  
LAW DIRECTOR                      DATE



# MEMO

To: Marysville City Council, Mayor J.R. Rausch

From: Eric S. Phillips, Economic Development Director

Date: August 27, 2018

Re: A RESOLUTION TO APPROVE THE CONTINUANCE OF ENTERPRISE ZONE TAX INCENTIVE AGREEMENTS WITH VARIOUS COMPANIES

The Ohio Development Services Agency (DSA) requires municipalities, townships and counties with active Enterprise Zone Agreements to approve continuance of each agreement on an annual basis.

The Union County Tax Incentive Review Council (TIRC) met on August 13, 2018 to review active agreements in Union County, including those in Enterprise Zone #178 (City of Marysville). As indicated by the minutes attached to this memo, the TIRC has recommended the continuance of the following Enterprise Zone agreements within the City of Marysville:

- The Scotts Miracle-Gro Company (COIR) #178-09-01
- Sumitomo Electric Wiring Systems #178-13-01
- Heritage Cooperative #178-14-01

The resolution before you seeks the approval of the continuation of all active agreements in the City of Marysville as recommended by the TIRC. We are also seeking similar resolutions from the Village of Richwood, Jerome and Millcreek Townships, and the Union County Commissioners.

The resolutions must be approved in calendar year 2018 with official reporting to DSA occurring in March 2019.

Enclosed with this memo you will find the following documents:

1. Minutes of the August 13, 2018 TIRC Meeting
2. Tax Year 2017 (EZ) Report
3. Sample Resolution Approving the Continuance of the EZ Abatement

Thank you for your consideration of this matter. Please do not hesitate to reach out to me with questions or comments.

# MEETING MINUTES

Marysville and Richwood Tax Incentive Review Councils  
August 13, 2018  
8:00 AM

Union County-Marysville Economic Development Partnership  
227 East Fifth Street  
Marysville, Ohio

## Welcome

The meeting was called to order at 8:03 AM by County Auditor Andrea Weaver.

## I. Roll Call

Council Members Present: Tammy Woods, Aaron Johnson, Scott Maruniak, Justin Nahvi, Todd Johnson, Andrea Weaver, Dave Cook, Terry Emery, Keith Conroy, Ron Rhodes, Eric Adelsberger, Steve Stolte, Diane Mankins

Staff Present: Jason Stanford, Union County-Marysville Economic Development

## II. Approval of Minutes

The minutes of August 25, 2017 were provided in advance of the meeting. The minutes were reviewed by the Council.

- ◆ Motion to accept the August 25, 2017 minutes made by Terry Emery; seconded by Todd Johnson.
- ◆ Motion passed by a unanimous vote.

## III. Election of Vice Chair

Andrea Weaver opened nominations for Vice-Chair. It was reminded that the ORC requires that the County Auditor serve as the Chair.

- ◆ Motion to appoint Nevin Taylor as Vice-Chair made by Terry Emery; seconded by Dave Cook.
- ◆ Motion passed by a unanimous vote.

## IV. Overview TIRC By-Laws

Andrea Weaver directed anyone with questions regarding the TIRC By-Laws to contact her or Jason Stanford.

## V. Review of Enterprise Zone Agreements – Marysville Zone #178

### 1. The Scotts Miracle-Gro Company - #178-09-01

Jason Stanford said the recommendation is to continue the abatement. The company has satisfied or exceeded all thresholds.

- Motion to continue the Abatement by Ron Rhodes; seconded by Scott Maruniak.
- Motion passed by a unanimous vote.

### 2. AutoTool, Inc. – #TBD

Jason Stanford said the recommendation is to continue the abatement. The company has satisfied or exceeded all thresholds.

- Motion to continue the Abatement by Steve Stolte; seconded by Terry Emery.
- Motion passed by a unanimous vote.

3. AutoTool, Inc. - #178-17-01

Jason Stanford reported that AutoTool, Inc. entered into a new Enterprise Zone Tax Abatement in 2017. As of 12/31/2017, the project is still in the 36-month job creation phase. As such, the company has not yet satisfied its pledged investment, jobs created, and new job payroll thresholds. In speaking with the company owner, Mr. Stanford reported that the company is struggling with finding employees. The recommendation is to continue the abatement.

- Motion to continue the Abatement by Dave Cook; seconded by Steve Stolte.
- Motion passed by a unanimous vote.

4. Sumitomo Electric Wiring Systems – #178-13-01

Jason Stanford said the recommendation is to continue the abatement. The company has satisfied or exceeded all thresholds except for jobs created payroll.

- Motion to continue the Abatement by Todd Johnson; seconded by Keith Conroy.
- Motion passed by a unanimous vote.

5. Evolution AG – #178-13-02

Jason Stanford said the recommendation is to continue the abatement. The company has satisfied or exceeded all thresholds. Mr. Stanford reminded attendees that Evolution AG is a new company to Union County but that DSA considers it a retention project since the company relocated from a neighboring county.

- Motion to continue the Abatement by Steve Stolte; seconded by Dave Cook.
- Motion passed by a unanimous vote.

6. Heritage Cooperative – #178-14-01

Jason Stanford said the recommendation is to continue the abatement. The company has satisfied or exceeded the pledged investment threshold but has not satisfied the pledged jobs created or pledged jobs created payroll. Mr. Stanford will monitor this and report back with any potential concerns.

- Motion to continue the Abatement by Dave Cook; seconded by Keith Conroy.
- Motion passed by majority vote.

7. KTH Parts Industries – #178-14-100

Jason Stanford said the recommendation is to continue the abatement. The company has satisfied or exceeded the pledged investment threshold but has not satisfied the pledged jobs created, pledged jobs created payroll, or pledged jobs retained.

Keith Conroy asked when the TIRC be concerned about a company's ability to meet various thresholds. Mr. Stanford reported that this particular company employs a number of highly-skilled engineers, which may be the reason they are having difficulty meeting their employment thresholds. Mr. Stolte echoed the sentiment and said that KTH is a project that Union County should support due to their significant engineering operation. Mr. Stanford will reach out to the company and inquire about the cause of

their low employment totals.

- Motion to continue the Abatement by Ron Rhodes; seconded by Steve Stolte.
- Motion passed by a unanimous vote.

## **VI. Overview of Enterprise Zone Agreements – Richwood Zone #190**

### **1. Richwood Banking Company - #190-13-01**

Jason Stanford recommended the continuation of the abatement. The company has significantly exceeded all thresholds.

- Motion to continue the Abatement by Ron Rhodes; seconded by Scott Maruniak.
- Motion passed by a unanimous vote.

## **VII. Tax Increment Financing Review / Approval**

Andrea Weaver discussed the status of the TIFs in Marysville, Dublin (Union County), and Union County (unincorporated). The status of the TIFs are very positive with 98% to 99% of collection due satisfied during tax year 2017.

- Motion to approve the TIF Report by Terry Emery; seconded by Keith Conroy.
- Motion passed by a unanimous vote.

## **VIII. Next Steps**

Jason Stanford indicated that reports will be presented to the Marysville and Richwood Councils, the County Commissioners, and the Millcreek and Jerome Township Trustees to be approved by December 31, 2018 and then filed with the Ohio Development Services Agency in March 2019.

## **IX. Comments from TIRC Members**

- None

## **X. Adjournment**

- Motion to adjourn made by Todd Johnson; seconded by Terry Emery.
- Motion passed by a unanimous vote. Meeting adjourned at 8:23 AM.



# MEMO

To: Marysville & Richwood Tax Incentive Review Council (TIRC)

From: Eric S. Phillips, Executive Director and Enterprise Zone Manager  
Union County – Marysville Economic Development

Date: August 13, 2018

Re: Review of Active Enterprise Zone Agreements

As the designated Enterprise Zone Manager for the Marysville and Richwood Enterprise Zones, we are providing you with a review of each of the existing Enterprise Zone Agreements (tax abatements). The reviews and staff recommendations are as follows:

## I. Review of Enterprise Zone Agreements – Marysville Zone 178

### 1. **The Scotts Miracle-Gro Company - #178-09-01**

Total RP Investment Pledged:	\$23,000,000	RP Investment Reported:	\$32,425,922
New Jobs Pledged:	33	Jobs Created Reported:	153
New Job Payroll Pledged:	\$3,000,000	Payroll Reported:	\$8,803,488
Retained Jobs Pledged:	15	Jobs Retained Reported:	33
Retained Job Payroll Pledged:	\$1,300,000	Retained Payroll Reported:	\$2,754,833
		Verified RP Tax Paid:	\$135,560

**Recommendation: CONTINUE ABATEMENT**

### 2. **AutoTool, Inc.**

Total RP Investment Pledged:	\$4,000,000	RP Investment Reported:	\$5,654,777 *
New Jobs Pledged:	30	Jobs Created Reported:	40
New Job Payroll Pledged:	\$1,300,000	Payroll Reported:	\$1,924,098
Retained Jobs Pledged:	27	Jobs Retained Reported:	27
Retained Job Payroll Pledged:	\$1,500,000	Retained Payroll Reported:	\$1,500,000
		Verified RP Tax Paid:	\$14,436

\* The company reported an additional \$642,993 investment in M&E and FF.

**Recommendation: CONTINUE ABATEMENT**

### 3. **AutoTool, Inc. – #178-17-01 \***

Total RP Investment Pledged:	\$2,500,000	RP Investment Reported:	\$2,195,650
New Jobs Pledged:	35	Jobs Created Reported:	6
New Job Payroll Pledged:	\$1,800,000	Payroll Reported:	\$624,098
Retained Jobs Pledged:	61	Jobs Retained Reported:	61
Retained Job Payroll Pledged:	\$2,800,000	Retained Payroll Reported:	\$2,800,000
		Verified RP Tax Paid:	\$14,436

\* The abatement was established in 2017 for an expansion project. As such, the company is still in its 36-month job creation phase. The company reported an additional \$82,900 investment in M&E. It was also noted that securing employees has been difficult due to low unemployment.

**Recommendation: CONTINUE ABATEMENT**

4. **Sumitomo Electric Wiring Systems - #178-13-01**

Total RP Investment Pledged:	\$10,000,000	RP Investment Reported:	\$10,000,000 *
New Jobs Pledged:	15	Jobs Created Reported:	21
New Job Payroll Pledged:	\$675,000	Payroll Reported:	\$598,900
Retained Jobs Pledged:	123	Jobs Retained Reported:	123
Retained Job Payroll Pledged:	\$6,200,000	Retained Payroll Reported:	\$9,067,195
		Verified RP Tax Paid:	\$90,771

\* The company reported an additional \$6,854,038 in non-EZ Investment.

**Staff Recommendation: CONTINUE ABATEMENT**

5. **Evolution AG - #178-13-02 \***

Total RP Investment Pledged:	\$7,300,000	RP Investment Reported:	\$4,000,000
New Jobs Pledged:	29	Jobs Created Reported:	8
New Job Payroll Pledged:	\$1,702,750	New Payroll Reported:	\$460,000
Retained Jobs Pledged:	0	Jobs Retained Reported:	21
Retained Job Payroll Pledged:	0	Retained Payroll Reported:	\$1,220,000
		Verified RP Tax Paid:	\$7,537

\* This project was a relocation from a neighboring county. All jobs are considered "jobs created" for Union County. As such, the company has brought 29 new jobs to Union County, accounting for new payroll of \$1,680,000. The company reported total investment of \$8,090,330.

**Staff Recommendation: CONTINUE ABATEMENT**

6. **Heritage Cooperative - #178-14-01**

Total Investment Pledged:	\$34,900,000	RP Investment Reported:	\$10,638,760 *
New Jobs Pledged:	35	Jobs Created Reported:	23
New Job Payroll Pledged:	\$1,125,000	New Payroll Reported:	\$946,838
Retained Jobs Pledged:	0	Retained Reported:	0
Retained Job Payroll Pledged:	0	Jobs Retained Payroll Reported:	0
		Verified RP Tax Paid:	\$114,791

\* The enterprise reported total project investment of \$10,638,760 in real estate, \$15,929,537 in inventory, and \$29,133,310 in M&E.

**Staff Recommendation: CONTINUE ABATEMENT**

7. **KTH Parts Industries - #178-14-100**

Total RP Investment Pledged:	\$4,363,000	RP Investment Reported:	\$4,502,148
New Jobs Pledged:	26	Jobs Created Reported:	15
New Job Payroll Pledged:	\$1,415,000	New Payroll Reported:	\$721,951
Retained Jobs Pledged:	7	Jobs Retained Reported:	6
Retained Job Payroll Pledged:	\$385,000	Retained Payroll Reported:	\$408,048
		Verified RP Tax Paid:	\$29,954

**Staff Recommendation: CONTINUE ABATEMENT**

**II. Review of Enterprise Zone Agreements – Richwood Zone 190**

**1. Richwood Banking Company - #190-13-01**

Total RP Investment Pledged:	\$1,850,000	RP Investment Reported:	\$2,492,333
New Jobs Pledged:	14	Jobs Created Reported:	33
New Job Payroll Pledged:	\$690,000	New Payroll Reported:	\$1,352,986
Retained Jobs Pledged:	19	Jobs Retained Reported:	19
Retained Job Payroll Pledged:	\$926,000	Retained Payroll Reported:	\$1,500,060
		Verified RP Tax Paid:	\$5,250

**Staff Recommendation: CONTINUE ABATEMENT**



RESOLUTION \_\_\_\_\_

RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR

Rev. Code. Secs. 5705.34, 5705.35

WHEREAS, City Council, in accordance with the provisions of law, has previously adopted a Tax Budget for the next succeeding fiscal year commencing January 1, 2019, and,

WHEREAS, The Budget Commission of Union County, Ohio, has certified its action thereon to City Council together with an estimate by the County Auditor of the rate of each tax necessary to be levied by City Council, and what part thereof is without, and what part within the ten mill tax limitation, now therefore;

BE IT RESOLVED, BY THE CITY COUNCIL OF MARYSVILLE, OHIO, That:

SECTION I. That the amounts and rates, as determined by the Budget Commission in its certification, be and the same are hereby accepted.

SECTION II. That there be and is hereby levied on the tax duplication of said City the rate of each tax necessary to be levied within and without the ten mill limitation as per attached Exhibit A (Summary of Amounts Required from General Property Tax Approved by Budget Commission and County Auditor's Estimated Tax Rates) and Exhibit B (Levies Outside 10 Mill Limitation, Exclusive of Debt Levies).

SECTION III. That the Clerk of Council be, and is hereby directed to certify a copy of this Resolution to the County Auditor of said County.

One Reading Only \_\_\_\_\_

\_\_\_\_\_  
MAYOR/PRESIDENT OF COUNCIL

Passed: \_\_\_\_\_

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
LAW DIRECTOR

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CLERK OF COUNCIL



# EXHIBIT B

## Marysville Corporation - 2018

### SCHEDULE B LEVIES OUTSIDE 10 MILL LIMITATION, EXCLUSIVE OF DEBT LEVIES

FUND	Maximum Rate Authorized to Be Levied	County Auditor's Estimate of Yield of Levy (Carry to Schedule A, Column II)
<b>General Fund:</b>		
Current Expense Levy authorized by voters on for not to exceed        years.	0	0
Current Expense Levy authorized by voters on for not to exceed        years.	0	0
<b>Total General Fund outside 10 m. Limitation.</b>	-	
<b>Park Fund:</b> Levy authorized by voters on for not to exceed        years.	0	0
<b>Recreation Fund:</b> Levy authorized by voters on for not to exceed        years.	0	0
<b>Fireman's Fund:</b> Levy authorized by voters on for not to exceed        years.	0	0
<b>Fund:</b> Levy authorized by voters on for not to exceed        years.	0	0
<b>Fund:</b> Levy authorized by voters on for not to exceed        years.	0	0



**RESOLUTION \_\_\_\_\_**

**A RESOLUTION TO APPROVE THE FIRST AMENDMENT TO THE  
AGREEMENT TO PURCHASE UNIMPROVED REAL ESTATE**

WHEREAS, on March 12, 2018, Council took action to pass Resolution No. 7-18 to authorize the sale of certain city-owned real property in order to promote economic development as part of the 33 Innovation Park Development, and

WHEREAS, since that time, it has become necessary to amend the document as set forth and attached hereto as Exhibit A, now therefore;

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MARYSVILLE, OHIO, That:

SECTION I. The City hereby approves the amendment

1<sup>st</sup> Reading \_\_\_\_\_

\_\_\_\_\_  
MAYOR/PRESIDENT OF COUNCIL

2<sup>nd</sup> Reading \_\_\_\_\_

3<sup>rd</sup> Reading \_\_\_\_\_

ATTEST:

Passed: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CLERK OF COUNCIL

\_\_\_\_\_  
Law Director    Date \_\_\_\_\_

# EXHIBIT A

## AGREEMENT TO PURCHASE UNIMPROVED REAL ESTATE

This Agreement to Purchase Unimproved Real Estate ("Agreement") is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date"), by and between **ECP ACQUISITIONS, LLC**, an Ohio limited liability company, its successors and/or assigns, with a mailing address of c/o Elford Development, LLC, 1220 Dublin Road, Columbus, Ohio 43215, Attn. David Sheidlower, Esq. (email: dsheidlower@elforddevelopment.com) ("Purchaser") and **COMMUNITY IMPROVEMENT CORPORATION OF UNION COUNTY** with a mailing address of 227 East Fifth Street, Marysville, Ohio 43040, Attn. Eric Phillips, Executive Director; Email: ephillips@unioncounty.org, Fax: (937) 644-0422, as "Authorized Agent" for the City of Marysville, Ohio ("Seller").

### RECITALS

A. The City of Marysville, Ohio (the "City") is the owner of an approximately 20.07+/- acre parcel of undeveloped real property located in an industrial and commercial park developed by the City and known as 33 Innovation Park, situated along Innovation Way, in the City of Marysville, Union County, State of Ohio, and more particularly identified as a portion of Permanent Parcel Number 201611040009148 in the Union County tax records and shown on the attached Exhibit A, (together with all appurtenant rights thereto, the "Property");

B. The Seller is a duly organized Ohio not-for-profit corporation formed pursuant to Chapter 1724 of the Ohio Revised Code (the "Act");

C. The Seller and the City have entered into an Agreement (the "CIC Agreement") as authorized by Resolution No.65-17 adopted by the City Council on December 11, 2017 and as further authorized by the Act, pursuant to which CIC Agreement the City has appointed the Seller as the economic development agency for the City to permit the Seller to sell or to lease any lands or interests in lands owned by the City that are determined by the City to be no longer required by the City for its purposes, for uses determined by the City as those that will promote the welfare of the people of the City;

D. The City has determined, pursuant to Resolution No. \_\_\_\_\_, that the Property is no longer required by the City for its purposes, and has requested that the Seller, acting as Authorized Agent of the City pursuant to the Agreement, enter into this Agreement with respect to the Property;

E. Purchaser desires to acquire and develop the Property in phases on the terms set out herein, which development is intended to result in the construction of approximately 339,000 aggregate square feet of Class A industrial manufacturing, technology, and/or general office, and distribution space, although distribution space is not intended to be the primary use with respect to any tenant within the Property (the "Project"); provided, however, that the foregoing Project description is not intended to be a covenant or warranty of any kind by Purchaser;

F. The City has determined that the sale of the Property and the Project, if developed as currently proposed, will meet economic development objectives of the City as set out in the City's Economic Development Incentive Policy, help achieve job creation and investment objectives for 33 Innovation Park, and promote the welfare of the people of the City;

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Seller and the Purchaser agree as follows:

## **ARTICLE 1. PROPERTY**

**A. Phase 1 Tract.** On the terms set forth herein, Purchaser agrees to purchase from Seller, and Seller agrees to sell to Purchaser, a portion of the Property generally as outlined on Exhibit B attached hereto, and being comprised of two parcels (collectively, the "Phase 1 Tract"):

- a. Parcel 1A is an approximately 9.36 acre parcel ("Parcel 1A"); and
- b. Parcel 1B is an approximately 1.51 acre parcel("Parcel 1B").

The exact legal description and acreage of Parcel 1A and Parcel 1B shall be determined by the ALTA survey obtained by Purchaser pursuant to Article 3 below.

**B. Phase 2 Tract.** As to the balance of the Property, being approximately 9.2 acres (the "Phase 2 Tract"), Seller hereby grants Purchaser the following rights:

1. **Option to Purchase Phase 2 Tract.** Subject to Article I, Section B.2 below, at any time after the Effective Date of this Agreement and extending until the date that is one (1) year following the date of Closing of the Phase 1 Tract (the "Option Period"), Purchaser shall have an option to purchase the Phase 2 Tract ("Option") on the same terms and conditions as set out herein with respect to the Phase 1 Tract, except that (x) the purchase price to be paid by Purchaser for the Phase 2 Tract shall be Seventy-Five Thousand Dollars (\$75,000.00) per acre, (y) all of Purchaser's Due Diligence conditions (as described in Article 3 hereof), shall be deemed to have been satisfied or waived by Purchaser as of the date Purchaser exercises the Option; and (z) the Closing on the Phase 2 Tract shall occur not later than ninety (90) days after the date Purchaser exercises the Option. Purchaser shall exercise this Option by delivering written notice of its intent to purchase to Seller. The exact legal description of the Phase 2 Tract shall be determined by the ALTA survey obtained by Purchaser pursuant to Article 3 below.
2. **Right of First Refusal.** During the Option Period, in the event that Seller receives a bona fide third party offer for all or part of the Phase 2 Tract that Seller desires to accept ("Third Party Offer"), the Option provided in Section B.1 above shall be of no force and effect and the provisions of this Section B.2 shall apply instead. Seller shall promptly deliver to Purchaser a complete copy of the Third Party Offer (the "ROFR Notice") and Purchaser shall have fifteen (15) business days from the date of receiving the ROFR Notice from the Seller to accept and match the terms and conditions of such Third Party Offer ("Right of First Refusal"), excluding only those portions of the Third Party Offer which by their nature cannot be met by Purchaser. In the event that Purchaser does elect to match the Third Party Offer, then Purchaser shall close on the Phase 2 Tract on or

before the date that is ninety (90) days after Purchaser's receipt of the ROFR Notice, which closing shall otherwise be subject to, and on the terms and conditions set out in the ROFR Notice. In the event that Purchaser does not exercise the Right of First Refusal or does not close on such Phase 2 Tract within such ninety (90) day period, then Seller may sell the tract to such third party offeror on the terms and conditions set forth in the Third Party Offer. In the event that Purchaser elects not to exercise the Right of First Refusal and the Seller does not close the sale with the prospective third party purchaser within the time period set forth on such Third Party Offer, and on the terms and conditions set forth in the ROFR Notice, then Purchaser's Option as set out in B.1 above shall be reinstated through the Option Period. In the event the Third Party Offer pertains to only a portion of the Phase 2 Tract then the Purchaser's Option shall continue to apply at all times during the Option Period to the balance of the Phase 2 Tract not covered by the Third Party Offer.

Notwithstanding anything to the contrary herein, in the event Purchaser has closed on the Phase 1 Tract, Seller agrees to use commercially reasonable efforts during the Option Period to first promote other available land owned by Seller within the Innovation Park to potential third party offerors.

In no event shall the Option and Right of First Refusal granted herein extend past the one (1) year anniversary of the Phase 1 Tract Closing.

- C. Defined Terms.** Defined/capitalized terms used herein, such as "Property," "Closing," "Initial Due Diligence Period," "Initial Deposit" and the like, shall apply as to the Phase 1 Tract and the Phase 2 Tract, as applicable, unless otherwise specified.

## **ARTICLE 2. PURCHASE PRICE AND EARNEST MONEY**

- A. Purchase Price, Phase 1.** Parcels within the 33 Innovation Way development that front along US Route 33 are or will be available for purchase from the Seller for a price per acre of not less than \$75,000. The Seller and Purchaser recognize, however, that Parcel 1B, although it enjoys frontage along US Route 33, cannot be developed separately from Parcel 1A given its location and topography. Therefore, Purchaser shall pay Seller: (i) a purchase price calculated at \$75,000 per acre for Parcel 1A ("Parcel 1A Purchase Price"); and (ii) a purchase price for Parcel 1B calculated at a price per acre equal to that amount necessary to cause the aggregate price per acre of both Parcel 1A and Parcel 1B to average \$65,000 per acre ("Parcel 1B Purchase Price")(collectively, the "Purchase Price").
- B. Earnest Money.** Within three (3) business days from the Effective Date, Purchaser shall deliver an initial earnest money deposit in the amount of Twenty-five thousand dollars (\$25,000.00) ("Initial Deposit") to the Escrow Agent (defined below) to be held by the Escrow Agent and disbursed in the manner described in this Agreement. The Initial Deposit, together with any Additional Deposit made pursuant to Article 3 below (collectively, the "Deposit"), shall become applied to the Purchase Price at Closing of the Phase 1 Tract, but except as otherwise expressly set forth in this Agreement shall be non-refundable to the Purchaser unless Purchaser provides written notification to the Seller of the termination of this Agreement prior to the expiration of the Initial Due Diligence Period (defined in Article 3 below), or in the event

of Seller's Default hereunder or Seller's inability to deliver title to the Phase 1 Tract in the condition required hereunder. The Initial Deposit shall be held in an interest bearing account, separate from other accounts by Union County Title Ltd. as escrow agent. The Escrow Agent will be Union County Title Ltd., 233 West 5<sup>th</sup> Street, Marysville, Ohio 43040, Attn: Stephen Yurasek, (937) 642-1070 ("the Escrow Agent").

At the Closing of the Phase 1 Tract, if Purchaser has not exercised the Option as to the Phase II Tract and elected to close simultaneously on both the Phase 1 Tract and the Phase 2 Tract, Purchaser shall restore an earnest money deposit as to the Phase 2 Tract in the amount of Twenty-five thousand dollars (\$25,000.00) ("Option Deposit"). The Option Deposit shall immediately be paid to Seller by the Escrow Agent and such amounts shall be nonrefundable (except in the event of Seller's Default hereunder, Seller's inability to deliver title to the Phase 2 Tract in the condition required hereunder, or the sale of the Phase 2 Tract by Seller to a third party pursuant to Section 1.B.2 above) but shall be credited against the Purchase Price at Closing for the Phase 2 Tract.

### ARTICLE 3. CONDITIONS PRECEDENT

#### A. Due Diligence Period(s).

- 1. Timing and Deposits.** Purchaser shall have from the Effective Date through and including December 31, 2018 (such period being referred to here as the "Initial Due Diligence Period") to inspect the Property (the "Due Diligence Investigations") and its suitability (as determined by Purchaser in its sole and absolute discretion) for Purchaser's intended development of the Property for the Project. In the event that Purchaser determines that additional Due Diligence Investigations are required beyond the Initial Due Diligence Period and so long as Purchaser has satisfied the Minimum Performance Standards set out below prior to the end of the Initial Due Diligence Period, then Purchaser shall have the right to extend the Initial Due Diligence Period one (1) additional period of ninety (90) days (herein, the "Extended Due Diligence Period" and together with the Initial Due Diligence Period, the "Due Diligence Period") by giving written notice to Seller prior to expiration of the Initial Due Diligence Period; provided, however, that with respect to the such Extended Due Diligence Period, Purchaser shall be obligated to deposit an additional fifty thousand dollars (\$50,000.00) with the Escrow Agent (the "Additional Deposit"). The Additional Deposit shall immediately be paid to Seller by the Escrow Agent and such amount shall be nonrefundable (except in the event of Seller's Default hereunder or Seller's inability to deliver title to the Property in the condition required hereunder), but shall be credited against the Purchase Price at Closing. ~~shall have until one hundred twenty (120) days after the later of (i) the Effective Date; and (ii) the date Seller notifies Purchaser of Seller's satisfaction of the conditions set forth in Article 3, Section D.1 and D.2 below of this Agreement (the "Initial Due Diligence Period") to inspect the Property (the "Due Diligence Investigations") and its suitability (as determined by Purchaser in its sole and absolute discretion) for Purchaser's intended development of the Property for the Project. In the event that Purchaser determines that additional Due Diligence Investigations are required beyond the Initial Due Diligence Period and so long as Purchaser has satisfied the Minimum Performance~~

~~Standards set out below prior to the end of the Initial Due Diligence Period, then Purchaser shall have the right to extend the Initial Due Diligence Period for two (2) separate, consecutive additional periods of ninety (90) days each (herein each, an "Extended Due Diligence Period" and together with the Initial Due Diligence Period, the "Due Diligence Period") by giving written notice to Seller; provided, however, that with each such extension, Purchaser shall be obligated to deposit an additional Twenty five thousand dollars (\$25,000.00) with the Escrow Agent (individually, an "Additional Deposit" and collectively, the "Additional Deposits"). The Additional Deposits each shall immediately be paid to Seller by the Escrow Agent and such amounts shall be nonrefundable (except in the event of Seller's Default hereunder or Seller's inability to deliver title to the Property in the condition required hereunder) but shall be credited against the Purchase Price at Closing.~~

2. **Scope of Due Diligence.** During the Due Diligence Period, Purchaser, its agents, employees, and engineers shall have the right to enter onto the Property to conduct its Due Diligence Investigations. The right to conduct Due Diligence Investigations includes the right of Purchaser and Purchaser's employees, agents and contractors to enter upon any portion of the Property to take measurements, make inspections, conduct test borings, make boundary and topographical survey maps, and to conduct geotechnical, soil, environmental, groundwater, wetland and other studies required by Purchaser in its sole discretion and to determine the existence and adequacy of utilities serving the Property, zoning and compliance with laws. Purchaser agrees to provide Seller and the City with copies of all due diligence reports procured by Purchaser as related to the Property.
  3. **Seller Deliveries.** Within fifteen (15) days following the Effective Date, at no cost to Purchaser, City shall deliver copies of the following to the extent such are in the possession of or available to Seller: existing soil and groundwater tests, surveys, title policies, environmental reports, underground storage tank test results, waste disposal records, permit records, code violation notices and records, traffic studies and other engineering tests and studies pertaining to the Property.
  4. **Termination.** In the event the Property is not satisfactory to purchase in Purchaser's sole and absolute discretion, Purchaser shall have the right to terminate the Agreement prior to the end of the Due Diligence Period by providing written notice of termination to Seller on or before the expiration of the Due Diligence Period. If Purchaser terminates this Agreement prior to the expiration of the Initial Due Diligence Period, the Escrow Agent shall return the Initial Deposit to Purchaser. Upon termination of this Agreement by Purchaser pursuant to this Section 3.A, neither party shall have any further rights or obligations under this Agreement whatsoever.
- B. Title and Survey.** During the Initial Due Diligence Period, Purchaser shall, at Purchaser's expense, obtain from Union County Title Ltd., 233 West 5<sup>th</sup> Street, Marysville, Ohio 43040, Attn: Stephen Yurasek, (937) 642-1070 ("Title Company") a commitment (the "Commitment") for an ALTA Owner's Policy of Title Insurance (the "Title Policy"), covering the entire Property. Purchaser shall provide any title objections to Seller on or before December 31, 2018. Purchaser shall also obtain during the Initial Due Diligence Period, at Purchaser's expense, an ALTA/ACSM Survey of the entire Property and shall provide a copy thereof to

the Seller and the City (the "Survey"). Purchaser shall provide the ALTA/ACSM Survey to the Seller and City on or before December 31, 2018. The Survey may, if applicable, depict the Phase 1 Tract (separately describing Parcel 1A and Parcel 1B) and Phase 2 Tract separately. If the Commitment or the Survey is not satisfactory to Purchaser, then Purchaser shall give Seller notice of those items that Purchaser finds unacceptable prior to the expiration of the Initial Due Diligence Period. Seller shall have ten (10) days after notice from Purchaser to either agree to cure the defect at or prior to Closing or to advise Purchaser that it will not cure the defect at or prior to Closing. If Seller does not agree to cure the defect (and Seller's failure to respond in writing shall not be deemed to be an agreement to cure the defect), Purchaser may either (i) accept title to the Property subject to the defect without a reduction in the purchase price or (ii) terminate this Agreement by written notice to Seller and receive a return of the Initial Deposit, and neither party shall have any further rights or obligations under this Agreement whatsoever. Notwithstanding any other provision of this Agreement to the contrary, Seller agrees that monetary liens encumbering the Property shall be released by Seller as of Closing. In addition, Purchaser acknowledges that the Property is subject to the terms of that certain Contract dated February 3, 2017 between the City and Darrison W. Cook/CCFC LLC relating to the agricultural use of the Property, a copy of which is attached hereto as Exhibit C (the "Farming Contract"). Purchaser shall be responsible to pay to the tenant under the Farming Contract, any damages that may be due under the Farming Contract as a result of Purchaser's access to the Property during the term of this Agreement or following the Closing. With regard to the Farming Contract, Seller covenants that it will not, without the prior written consent of Purchaser, which consent Purchaser may grant or withhold in its sole discretion: (i) amend or modify any term, condition or provision of the Farming Contract that relate to or impact the Property; (ii) extend the term of the Farming Contract as to the Property beyond November 30, 2018, whether pursuant to Section 4.C.3. thereof or otherwise by mutual agreement of the parties thereto; and (iii) indemnify, defend and hold Purchaser and Purchaser's successors and assigns harmless from and against any payments or other liabilities due from the City, its successors and assigns, under the Farming Contract, which payments or other liabilities first arose prior to the date of Closing, except for amounts due as a result of Purchaser's exercise of its right of access to the Property during the term of this Agreement.

**C. Other Purchaser Conditions.** It shall be a condition precedent to Purchaser's obligations to close on the purchase of the Property that:

1. **Representations and Warranties:** All of the representations and warranties of Seller shall be true as of Closing;
2. **Utility Availability:** Prior to the expiration of the Due Diligence Period, Purchaser obtains utility will-serve letters confirming that all necessary utilities are available in sufficient capacity to service the Project without unusual or extraordinary expense to Purchaser other than standard utility capacity fees;
3. **Permit Approval:** Prior to the expiration of the Due Diligence Period, Purchaser obtains, at Purchaser's cost, all necessary and customary permits, licenses and approvals from any and all applicable governmental authorities and third parties in order for Purchaser to develop and operate the Phase 1 Tract of the Project, including those for all necessary

utilities, zoning, special use permits, building construction and site construction improvements; and

4. **Lot Split:** Prior to the expiration of the Due Diligence Period, the Property shall be subdivided from the larger parcel at Purchaser's cost, and the Title Company shall be in a position to provide Purchaser with a subdivision endorsement to the Title Policy.
5. **Incentive Agreement.** Prior to September 14, 2018, the Purchaser shall have reached final agreement with the Seller, for submittal and approval by the City, and the County with respect to the terms and conditions of an incentive agreement (the "Incentive Agreement"), setting out the conditions on which the Project will qualify for a 75%, 10-year tax abatement on the improvements to the Property (the "Tax Abatement").~~Prior to the expiration of the Due Diligence Period, the Purchaser shall have reached agreement with the Seller, the City and the County with respect to the terms and conditions of an incentive agreement (the "Incentive Agreement"), setting out the conditions on which the Project will qualify for a 75%, 10-year tax abatement on the improvements to the Property (the "Tax Abatement").~~ Purchaser acknowledges that the Incentive Agreement will require the Purchaser or its successors to file, on an annual basis as part of the incentive review and from time to time, as reasonably requested by City, certain economic information to the City as Purchaser procures tenants for the Property, including total number of employees, anticipated payroll, and total investment in their space. The Incentive Agreement shall provide, *inter alia*, that for purposes of satisfaction of the requirements therein, such requirements may be satisfied in whole or in part by either the Phase 1 Tract or the Phase 2 Tract, with respect to the other tract, so long as the requirements for the original tract are first satisfied solely with respect thereto.

In the event that any condition precedent in this Section 3.C is not satisfied by date specified in this Section 3.C, Purchaser shall have the right to terminate this Agreement, and, in the event of a termination of the Agreement due to a failure of any condition set forth in this Section 3.C prior to the expiration of the Initial Due Diligence Period, Purchaser may receive a full refund of the Initial Deposit and neither party shall have any further rights or obligations under the Agreement whatsoever.

**D. Seller's Conditions Precedent.** The satisfaction or waiver of the following conditions shall be conditions precedent to Seller's obligations to close this transaction:

1. **City Council and CIC Board Approval:** Prior to the date that is forty-five (45) days after the Effective Date, this Agreement shall have been approved by both the City Council of the City and Board of the Seller.
2. **Design Plan Adoption:** Prior to the date that is forty-five (45) days after the Effective Date, the City shall have formally adopted the 33 Innovation Park Design Guidelines (the "Design Guidelines").
3. **Plan Approvals:** Prior to the expiration of the Due Diligence Period as to the Phase I Tract, and prior to the exercise of the Option as to the Phase 2 Tract, as applicable, the City shall have granted its approval by all necessary action, of the Purchaser's proposed

development plan for such Property, as to the proposed use of the Project and confirming that the plans comply with the Design Guidelines and all other applicable zoning, building and engineering requirements necessary under the applicable zoning and building regulations for preliminary and final plan approval for the improvements to be made upon the Property, as the same may be from time to time adopted or amended by the City. In order to facilitate the timely review and approval by the City prior to the end of the Due Diligence Period, Purchaser agrees to meet the following minimum performance standards (the "Minimum Performance Standards") by fulfilling and or submitting the following to the City by December 31, 2018~~In order to facilitate the timely review and approval by the City prior to the end of the Due Diligence Period, Purchaser agrees to meet the following minimum performance standards (the "Minimum Performance Standards")~~: (a) Purchaser shall retain an architect and civil engineer for preliminary design of the site and improvements; (b) Purchaser shall prepare preliminary design for the site including, but not limited to, building elevations for all four sides, material selections and a color rendering/perspective, site plan, composite utility plan, and landscape plan; and (c) Purchaser shall provide to Seller property dimensions/survey showing the building site dimensions and acreage for each Phase. Notwithstanding anything in the foregoing to the contrary, the Seller agrees that the Plan approvals required in this subsection shall not apply as to the Phase 2 Tract if the Purchaser has exercised the Right of First Refusal as to the Phase 2 Tract, unless the terms of the Right of First Refusal likewise make plan approval a condition precedent to Seller's obligations to close.

In the event that any of the foregoing conditions cannot be satisfied to Seller's satisfaction on or prior to the dates specified with this Section 3.D, then Seller shall provide written notice to Purchaser of such failure within ten (10) days after the latest date for satisfaction of same, and either party thereafter may terminate this Agreement by providing written notice of termination to the other party within thirty (30) days after delivery of such notice, failing which such Seller conditions shall be deemed waived by Seller for all purposes of this Agreement. In the event of any termination of the Agreement pursuant to this Section 3.D, the Initial Deposit shall be returned to Purchaser and the parties shall be released of all further rights and obligations hereunder.

#### ARTICLE 4. CLOSING

**A. Delivery of Documents.** Closing as to the Phase 1 Tract ("Phase 1 Tract Closing") shall occur on or before thirty (30) days after expiration of the Due Diligence Period, in escrow if agreed to by the parties, at the offices of Escrow Agent. Following exercise of the Option by Purchaser, Closing as to the Phase 2 Tract ("Phase 2 Tract Closing") shall occur on or before thirty (30) days following the exercise of the Option. Notwithstanding the foregoing, Purchaser may elect to close at any time on either the Phase 1 Tract or the Phase 2 Tract upon ten (10) business days' written notice to Seller. As used herein, "Closing" shall refer to the Phase 1 Tract Closing or the Phase 2 Tract Closing, as applicable. Seller shall deliver at Closing: (a) limited warranty deed(s) conveying the applicable portion(s) of the Property to Purchaser (or its designee) subject to those exceptions approved by Purchaser pursuant to Section 3.B (the "Deed"); (b) lien affidavit acceptable to the title insurer; (c) an affidavit of

non-foreign status and any other affidavit or document required by Title Company to delete the so-called standard exceptions to the title policy; (d) the Incentive Agreement executed by the City and the County (unless Buyer, in its sole discretion, elects to waive such condition); and (e) such other customary documents, instruments, certifications and confirmations as may be reasonably required to fully effect and consummate the transactions contemplated hereby and for Title Company to issue the Title Policy in form as required by this Agreement. Purchaser shall deliver at Closing: (x) the remaining balance of the applicable Purchase Price as provided by this Agreement; (y) the Incentive Agreement (unless Buyer, in its sole discretion, elects to waive such condition); and (z) the Right of Repurchase Agreement defined in Article 7, Section D hereof and such other documents, instruments, certifications and confirmations as may be reasonably required to fully effect and consummate the transaction contemplated hereby. At the applicable Closing, Seller shall also convey to Purchaser such appurtenant easements over adjoining property owned by Seller as Purchaser may reasonably require in connection with its proposed development of the Phase 1 Tract or the Phase 2 Tract, as applicable. For purposes of the preceding sentence, for purposes of the Phase 1 Tract closing "adjacent property" shall include, but not be limited to, the Phase 2 Tract and properties adjacent thereto.

- B. Possession.** Possession of the applicable portion of the Property, free of all tenancies, leases and occupants shall be delivered to Purchaser at Closing.
- C. Prorations.** Purchaser and Seller shall prorate all real property taxes and assessments related to the applicable portion of the Property as of the date of Closing, with the day of Closing being treated as a day of ownership by Purchaser. If the final tax bill is not available at Closing, the real estate taxes and assessments shall be prorated based upon the latest available tax duplicate for applicable portion of the Property using the method customary in Union County, Ohio. If the Property was recently subdivided from a larger tax parcel and a separate tax bill is unavailable at Closing, the parties agree to enter into a Tax Proration Agreement whereby they agree to reconcile their respective obligations at such future dates as the tax bills for the Property are issued. If there are any improvements on the tax parcel that are separately valued or assessed, the value of such improvements shall be assigned to the Purchaser only if such improvements are located upon the Property. Seller shall be responsible for any CAUV recoupment charge which will be imposed as a lien against the Premises when the Premises are converted from agricultural use to any other non-qualifying use an estimated amount for which shall be calculated at Closing and included as a credit against the Purchase Price.
- D. Costs.** Seller shall pay for the title commitment, standard owner's policy of title insurance, conveyance fee, one-half of the title company's escrow/closing fees, taxes which are due and payable, and Seller's legal fees. In addition, Seller shall retain from the proceeds to be remitted to the City at each Closing, an amount equal to one and one-half percent (1.50%) of the Purchase Price applicable to such Phase. Purchaser to pay for the lender's policy of title insurance, any endorsements to the owner's or lender's policies of title insurance, one-half of the title company's escrow/closing fees, and Purchaser's legal fees and due diligence costs. All

other costs and expenses shall be apportioned in accordance with community custom for Union County, Ohio.

- E. Post-Closing Obligations; Permitting and Approval.** Purchaser agrees to submit applications for all building permits and final plan approvals required under all applicable state and local laws, rules and regulations in order permit construction of the Phase I Tract or the Phase II Tract, as applicable, within one-hundred eighty (180) days from the applicable Closing for such Tract. This covenant shall survive each respective Closing.
- F. Post-Closing Obligations: Construction Start.** Purchaser agrees to promptly commence construction on the Property upon receipt of all appropriate permits and as reasonable, subject to weather and soil conditions, and end user requirements, and to continue to diligently pursue construction to completion. This covenant shall survive the Closing.
- G. Brokerage Fee.** Purchaser is self-represented in this transaction, and Seller shall not be bound to pay any commission or finder's fee to the Purchaser, Purchaser's representative, or to any other claiming through them. Seller is represented by, and Seller shall be responsible for compensation of Lee & Associates in this transaction. Purchaser shall not be bound to pay any commission or finder's fee to Seller's representative, or to any other claiming through them. Purchaser hereby informs Seller that Alex Vulic, Andy Mills and Mike Fitzpatrick, associates of Purchaser, are licensed real estate agents.

## **ARTICLE 5. DEFAULTS AND REMEDIES**

In the event the sale of the Property is not closed pursuant to this Agreement due to a default hereunder by Seller or failure of performance hereunder by Seller, then Purchaser shall give Seller written notice specifying Seller's default or failure of performance, and Seller shall have ten (10) business days to cure the default or failure of performance. In the event that Seller fails to cure Seller's default or failure of performance within the ten (10) day period, then Purchaser may elect to terminate this Agreement, whereupon the Deposit shall be immediately refunded and returned to Purchaser, or Purchaser may elect to enforce the terms and conditions of this Agreement and exercise its rights and remedies available at law or in equity, including without limitation an action for specific performance of this Agreement. In the event the sale of the Property is not closed pursuant to this Agreement due to a default hereunder by Purchaser or failure of performance by Purchaser, then Seller shall give Purchaser written notice specifying Purchaser's default or failure of performance, and Purchaser shall have ten (10) business days to cure the default or failure of performance. In the event that Purchaser fails to cure Purchaser's default or failure of performance within the ten (10) day period, then the Deposit shall be immediately forfeited by Purchaser, and retained by Seller as and for liquidated damages and not as a penalty, and as Seller's sole and exclusive remedy; and thence the parties shall have no further rights, duties or obligations hereunder. Seller acknowledges and agrees that the Deposit is fair and equitable and expressly waives the right to exercise any and all other rights available at law or in equity, including, but not limited to, the right to sue Purchaser for additional damages or specific performance.

## **ARTICLE 6. SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller represents and warrants to Purchaser that, as of the Effective Date and as of Closing:

- A. Fee Simple Title.** Seller has good and marketable fee simple title in and to the Property.
- B. Seller's Authority.** Seller has the authority to execute this Agreement and perform the obligations of Seller under this Agreement. This Agreement constitutes a legal and valid binding obligation of Seller, enforceable in accordance with its terms. Except as set forth in Article 3, Section E.1., all action necessary to authorize the execution, delivery and performance of this Agreement by Seller has been taken and such action has not been rescinded or modified.
- C. Seller's Obligations.** Seller has completed, at Seller's sole cost and expense and without reimbursement from Purchaser, the initial Innovation Way roadway and utility extensions described in drawings dated June 2, 2017, as such drawings are summarized on Exhibit D to this Agreement, attached hereto and made a part hereof. Seller shall further complete similar extension of the roadway, sewer, and other utilities to service the Property prior to the date of Closing for each applicable Phase (up to and including the truck court ingress/egress depicted in Exhibit D for Phase 1). If any such work is not complete as of the applicable Closing, then Seller and Purchaser shall enter into a mutually-acceptable escrow agreement at such Closing, which agreement shall provide for, *inter alia*, Seller escrowing out of the Purchase Price an amount equal to 125% of the estimated costs to complete any such work, which amounts shall be held in escrow and disbursed to the Purchaser only upon completion by the City of the extension work. If any such work is not complete as of the applicable Closing, then Seller and Purchaser shall enter into a mutually-acceptable escrow agreement which will provide for, *inter alia*, (i) Seller escrowing out of the Purchase Price an amount equal to 125% of the estimated costs to complete any such work; and (ii) the right of Purchaser to assume construction of such work and utilize the escrowed funds in payment therefor in the event Seller does not complete the construction within an agreed-upon timeframe.
- D. Existing Leases.** There are no outstanding written leases in any way affecting the Property, and no person or entity has any right with respect to all or any portion of the Property (whether by option to purchase, right of first refusal, contract, or otherwise) that would prevent or interfere with Purchaser taking title to, and exclusive possession of, all of the Property at Closing, except for the Farming Contract described in Section 3.B hereof.
- E. Future Assessments.** Seller has not received any notice of, and to the best of its knowledge, there are no (i) proposed special assessments, condemnation, or changes in the roads adjacent to the Property; (ii) pending public improvements which will result in any charge being levied or assessed against, or a lien being created upon, the Property; or (iii) pending or threatened eminent domain or condemnation proceedings against or involving the Property or any adjacent parcel. Nothing herein shall prevent, preclude or limit the ability of the City to

undertake public improvements to the development in which the Property is situated in the future utilizing special assessments or tax increment financing.

- F. Change in Property.** Seller shall fully disclose to Purchaser, immediately upon its occurrence, any change in facts, assumptions or circumstances of which Seller becomes aware prior to the Closing Date that may affect the representations and warranties set forth above. So long as this Agreement is in effect, Seller shall not grant any interests in the Property (including, but not limited to, any easements, leases, licenses or mortgages), nor shall Seller change the physical characteristics of the Property, without obtaining in each instance the prior written consent of Purchaser, which consent Purchaser may grant or withhold in its sole unfettered discretion. The warranties and representations of Seller contained herein shall survive for one (1) year beyond the Closing and delivery of the Deed.

Purchaser acknowledges that it is making its own inspections and Due Diligence Investigations of the Property and as of Closing, is deemed to be fully aware of the condition, age and size of the same. PURCHASER IS PURCHASING THE PROPERTY IN ITS "AS IS" AND PRESENT CONDITION, AND EXCEPT AS SET FORTH HEREIN, IS RELYING SOLELY UPON ITS OWN EXAMINATION OF THE PROPERTY. NO REPRESENTATIONS, PROMISES, WARRANTIES, EXPRESS OR IMPLIED, SHALL BE BINDING UPON THE SELLER EXCEPT AS THE SAME ARE EXPRESSLY CONTAINED HEREIN

#### **ARTICLE 7. MISCELLANEOUS**

- A. Access.** Seller will allow Purchaser and its agents continuing access at reasonable times to the Property, for the purpose of conducting inspections. Following any such investigations or inspections contemplated by this Agreement, Purchaser shall, at Purchaser's expense, promptly restore the Property to its condition prior to such inspection or investigation, and Purchaser shall defend, indemnify and hold harmless Seller from all costs or expense of every type and description (including reasonable attorney's fees) arising out of any personal injury or property damage caused by any agent, servant, employee or contractor of Purchaser during any such investigation or inspection.

**B. Notices; Dates.** Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing or by email and shall be delivered personally or sent by United States registered or certified mail, return receipt requested or email transmission, postage prepaid, or by overnight express courier, postage prepaid and addressed to the parties at their respective addresses set forth above, and the same shall be deemed given and effective upon (i) receipt if delivered personally or by overnight courier (ii) three (3) business days after deposit in the mails if mailed or (iii) upon transmission by email during normal business hours without rejection notice received by the sender and with independent telephone or voice message notification of electronic delivery. Until changed, notice shall be addressed to the following:

If to Seller: COMMUNITY IMPROVEMENT  
CORPORATION OF UNION COUNTY  
227 East Fifth Street,  
Marysville, Ohio 43040,  
Attn. Eric Phillips, Executive Director  
Email: ephillips@unioncounty.org  
Fax: (937) 644-0422

Copy to: City of Marysville, Ohio  
Attn: Tim M. Aslaner, City Law Director  
209 South Main Street  
Marysville, Ohio 43040

Copy to: Lee & Associates  
Attn: Mike Spencer, Principal  
5100 Parkcenter Ave. #100  
Dublin, Ohio 43017

If to Purchaser: ECP Acquisitions, LLC  
c/o Elford Development, LLC  
1220 Dublin Road  
Columbus, Ohio 43215  
Attn: David Sheidlower, Esq.

A party may change its address for receipt of notices by service of a notice of such change in accordance herewith. If any deadline under this Agreement falls on a Saturday, Sunday, or legal holiday (which, for purposes of this Agreement shall not be considered a "business day"), the deadline shall be extended to the next business day.

**C. Attorneys' Fees.** In the event either party hereto brings against any other party an action at law or other proceeding permitted under the terms of this Agreement in order to enforce or interpret any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement or by reason of any breach or default hereunder or thereunder, the party

prevailing in any such action or proceeding shall be paid all reasonable costs associated with the enforcement or defense thereof, including reasonable attorneys' fees.

- D. Seller's Right to Repurchase.** In the event that Purchaser closes on the Phase 1 Tract and does not commence construction of Purchaser's proposed improvements within twelve (12) months after the date of Phase 1 Tract Closing, then Seller shall have the one-time right, but not the obligation, to repurchase such tract at ninety-five percent (95%) of the original purchase price as set forth herein. In the event that Seller does exercise such Right to Repurchase, Seller shall provide written notice thereof to Purchaser no less than thirty (30) days before the one (1) year anniversary date of Closing, and shall be obligated to close within sixty (60) days after delivering such notice to Purchaser. Seller shall be obligated to execute and file for record a release of its repurchase rights upon the earlier of (i) the date Purchaser commences construction on the Phase I Tract, and (ii) the last date Seller may exercise such repurchase right, in the event Seller has not invoked such right. Seller agrees to execute such documents as reasonably necessary to subordinate its right to repurchase to the extent necessary for Purchaser to obtain financing related to the Property. At the Closing of the Phase I Tract, the parties shall execute a Right of Repurchase Agreement in mutually agreeable form suitable for recording in the Union County, Ohio Records (the "Right of Repurchase Agreement"). The obligations set out herein shall survive the Closing.
- E. Assignment.** Purchaser shall not assign or transfer any of its rights, obligations, or interests in this Agreement without the prior written consent of Seller, which consent may be granted or withheld in the absolute sole discretion of Seller. Notwithstanding the foregoing, Buyer may, without the consent of, but with notice to, Seller, assign its rights and obligations under this Agreement to any entity in which both Michael B. Fitzpatrick and Jeffrey E. Meacham have a direct or indirect beneficial interest.
- F. Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assignees. This Agreement shall be construed and interpreted according to the laws of the State where the Property is located. This Agreement constitutes the entire undertaking between the parties hereto, and supersedes any and all prior agreements, arrangements and understanding between the parties. This Agreement may be amended only by a written agreement executed by all of the parties hereto.
- G. Confidentiality.** Unless disclosure is required by law, the parties acknowledge and agree that all information contained in the Purchase and Sale Agreement shall remain confidential until such time as such public meetings or applications must be provided which must contain certain information herein. Notwithstanding the foregoing, Purchaser may disclose the existence of this Purchase and Sale Agreement and any and all information contained herein to any of its members, affiliates, attorneys, consultants and prospective lenders and investors as Purchaser deems necessary.
- H. Marketing Signage.** At all times while this Agreement is in effect Purchaser shall have the right to place on the Property, at Purchaser's sole cost and expense, marketing signage advertising, among other things, Purchaser's proposed development thereon and contact information for Purchaser's leasing agents. Purchaser shall be responsible for obtaining any

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governmental approvals and/or permits necessary for such signage, and Seller shall cooperate in such effort, at Purchaser's expense.

33 Innovation Park  
Agreement to Purchase Unimproved Real Estate

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Seller:  
COMMUNITY IMPROVEMENT CORPORATION  
OF UNION COUNTY, as Authorized Agent of the City  
of Marysville, Ohio

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

Approved as to Form:

By: \_\_\_\_\_  
Tim Aslaner, City of Marysville, Ohio  
Law Director

Purchaser:

ECP ACQUISITIONS, LLC  
an Ohio limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ [its Authorized Agent]

# EXHIBIT B

## FIRST AMENDMENT TO AGREEMENT TO PURCHASE UNIMPROVED REAL ESTATE

This First Amendment to Agreement to Purchase Unimproved Real Estate (this “Amendment”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between ECP ACQUISITIONS, LLC, an Ohio limited liability company (“Purchaser”), and COMMUNITY IMPROVEMENT CORPORATION OF UNION COUNTY, as “Authorized Agent” for the City of Marysville, Ohio (“Seller”).

### WITNESSETH:

WHEREAS, Seller and Purchaser entered into that certain Agreement to Purchase Unimproved Real Estate dated March 23, 2018 (the “Agreement”), whereby Seller agreed to sell and convey to Purchaser, and Purchaser agreed to purchase and acquire from Seller, subject to the terms set forth in the Agreement, approximately 20.07 acres +/- located in an industrial and commercial park developed by the City of Marysville, Ohio and known as 33 Innovation Park, as more particularly described in the Agreement (the “Property”); and

WHEREAS, Seller and Purchaser now wish to amend the Agreement;

NOW, THEREFORE, for and in consideration of the Agreement and the mutual benefits to be derived therefrom, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Seller and Purchaser, intending to be legally bound, hereby amend the Agreement as follows (capitalized terms not defined herein shall have the meaning attributed to them in the Agreement):

1. Article 3, Section A.1 is hereby modified in its entirety to read as follows:

“Purchaser shall have from the Effective Date through and including December 31, 2018 (such period being referred to here as the “Initial Due Diligence Period”) to inspect the Property (the “Due Diligence Investigations”) and its suitability (as determined by Purchaser in its sole and absolute discretion) for Purchaser’s intended development of the Property for the Project. In the event that Purchaser determines that additional Due Diligence Investigations are required beyond the Initial Due Diligence Period and so long as Purchaser has satisfied the Minimum Performance Standards set out below prior to the end of the Initial Due Diligence Period, then Purchaser shall have the right to extend the Initial Due Diligence Period one (1) additional period of ninety (90) days (herein, the “Extended Due Diligence Period” and together with the Initial Due Diligence Period, the “Due Diligence Period”) by giving written notice to Seller prior to expiration of the Initial

Due Diligence Period; provided, however, that with respect to the such Extended Due Diligence Period, Purchaser shall be obligated to deposit an additional fifty thousand dollars (\$50,000.00) with the Escrow Agent (the "Additional Deposit"). The Additional Deposit shall immediately be paid to Seller by the Escrow Agent and such amount shall be nonrefundable (except in the event of Seller's Default hereunder or Seller's inability to deliver title to the Property in the condition required hereunder), but shall be credited against the Purchase Price at Closing.”

2. The sentence below shall be added after the first sentence of Article 3, Section B:

“Purchaser shall provide any title objections to Seller on or before December 31, 2018.”

3. The sentence below shall be added after the second sentence of Article 3, Section B:

“Purchaser shall provide the ALTA/ACSM Survey to the Seller and City on or before December 31, 2018.”

4. The first sentence of Article 3, Section C.5 is hereby modified in its entirety to read as follows:

“Prior to September 14, 2018, the Purchaser shall have reached final agreement with the Seller, for submittal and approval by the City, and the County with respect to the terms and conditions of an incentive agreement (the “Incentive Agreement”), setting out the conditions on which the Project will qualify for a 75%, 10-year tax abatement on the improvements to the Property (the “Tax Abatement”).

5. The introduction to the second sentence in Article 3, Section D.3 is hereby modified to read as follows:

In order to facilitate the timely review and approval by the City prior to the end of the Due Diligence Period, Purchaser agrees to meet the following minimum performance standards (the “Minimum Performance Standards”) by fulfilling and or submitting the following to the City by December 31, 2018:...”

6. The Agreement shall be amended in no other manner except as expressly set forth herein. As so amended, the Agreement is hereby ratified and confirmed by Seller and Purchaser.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

Seller:

COMMUNITY IMPROVEMENT CORPORATION  
OF UNION COUNTY, as Authorized Agent of the City  
of Marysville, Ohio

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

Name: \_\_\_\_\_

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

Approved as to Form:

By: \_\_\_\_\_  
Tim Aslaner, City of Marysville, Ohio  
Law Director

Purchaser:

ECP ACQUISITIONS, LLC,  
an Ohio limited liability company

By: \_\_\_\_\_  
David Sheidlower, Vice President