

FAIRFIELD TOWNSHIP
RESOLUTION NO. 19-145

RESOLUTION AUTHORIZING THE ADMINISTRATOR TO ENTER INTO A PURCHASE AGREEMENT WITH BUTLER DEVELOPMENTS, LLC, IN THE AMOUNT OF \$400,000.00, FOR THE SALE OF FAIRFIELD TOWNSHIP PROPERTY LOCATED AT GILMORE ROAD AND HAMILTON MASON ROAD TO BUTLER DEVELOPMENTS, LLC.

WHEREAS: The property is owned by Fairfield Township and is located at Gilmore Road & Hamilton Mason Road, in Fairfield Township, OH, 45011; and

WHEREAS: The property is 3.71+/- acres of land and the Parcel #s are A0300025000091; A0300012000037 and A0300021000042;

WHEREAS: Butler Developments, LLC is a Limited Liability Corporation wholly owned by Kettering Health Network.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Trustees of Fairfield Township, Butler County, Ohio, as follows;

SECTION 1: The Board hereby authorizes the Administrator to enter into a purchase agreement with Butler Developments, LLC for the total amount of \$400,000.00, for the sale of Fairfield Township property located at Gilmore Road and Hamilton Mason Road. A true and accurate copy of the Purchase Agreement is attached hereto as Exhibit "A".

SECTION 2: The Board hereby dispenses with the requirement that this resolution be read on two separate days, pursuant to RC 504.10, and authorizes the adoption of this resolution upon its first reading.

SECTION 3 This resolution is the subject of the general authority granted to the Board of Trustees through the Ohio Revised Code and not the specific authority granted to the Board of Trustees through the status as a Limited Home Rule Township.

SECTION 4: That it is hereby found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were taken in meetings open to the public, in compliance with all legal requirements including §121.22 of the Ohio Revised Code.

SECTION 5: This resolution shall take effect at the earliest period allowed by law.

Adopted: November 13, 2019

Board of Trustees

Vote of Trustees

Shannon Hartkemeyer: Shannon Hartkemeyer

Joe McAbee: Joe McAbee

Susan Berding: Susan Berding

yes
yes
yes

AUTHENTICATION

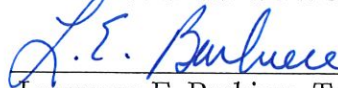
This is to certify that this is a resolution which was duly passed, and filed with the Fairfield Township Fiscal Officer this 13th day of November, 2019.

ATTEST:



Shelly Schultz, Fairfield Township Fiscal Officer

APPROVED AS TO FORM:



Lawrence E. Barbieri, Township Law Director

PURCHASE AGREEMENT

Property Located at:

**3.71+/- acres of land
Gilmore Rd and Hamilton-Mason Rd
Fairfield Township, OH 45011**

**Parcel #s A0300025000091; A0300012000037; and
A0300021000042**

PURCHASE AGREEMENT

Section 1: General Information and Terms. Throughout this Purchase Agreement (this "Agreement"), the following capitalized terms and phrases have the meanings described below:

- A. Contract Date: The date upon which all of the parties have signed this Agreement.
- B. Owner: Fairfield Township Butler County
- C. Owner's Address: 6032 Morris Road
Fairfield Township, Ohio 45011
- D. Buyer: Butler Developments, LLC
- E. Buyer's Address: 1 Prestige Place
Miamisburg, Ohio 45342
- F. Parcel Numbers: A0300025000091; A0300012000037; and A0300021000042
- G. Property: Approximately 3.71 acres of land.
- H. Building: Residence
- I. Purchase Price: The Purchase Price shall be \$400,000.00.
- J. Closing Date: _____, 2019
- K. Closing Agent: Chicago Title Company
1 South Main St., Suite 250
Dayton, Ohio 45402

Section 2: Property. Subject to the terms and conditions of this Agreement, Owner agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Owner, together with all appurtenant rights, privileges and easements thereto to the extent assignable or transferrable, and all buildings, improvements and fixtures, including, but not limited to, such of the following as are now on the Property: all electrical, plumbing, heating and air conditioning and humidifying equipment and their control apparatus, and all of Owner's right, title, and interest in and to the Property.

Section 3: Purchase Price. The purchase price shall be \$400,000.00. Within 5 business days after execution of this Agreement, Buyer shall deposit the sum of \$10,000.00 with Chicago Title Company as Earnest Money to be deposited in the trust or escrow account of the party holding the Earnest Money. The balance of the purchase price shall be paid by cash at time of closing.

Section 4: Closing. Closing of the purchase and sale of the Property and payment of the Purchase Price to Owner shall occur 30 days after conclusion of buyer's inspection period, unless

extended in writing signed by both parties. Buyer's obligations under this Contract are subject to and contingent upon the occurrence of the following on or before the date of Closing: (a) all of Owner's representations and warranties hereunder shall remain true and correct; (b) no moratorium, statute, order, regulation, ordinance or judgment of any court or governmental agency shall have been enacted, adopted, issued or initiated that would materially and adversely affect the Property or Buyer's use thereof as contemplated herein; and (c) the parties shall have delivered all other documents and other deliveries listed in this agreement.

Section 5. Possession. Buyer shall be entitled to immediate possession of the Property at Closing.

Section 6: Costs and Prorations. Owner shall pay the costs of preparing the deed, preparing and recording all documents necessary to release any existing mortgages and unpermitted encumbrances of record, the auditor's conveyance fee, and any real estate fees or commissions that Owner is otherwise contractually obligated to pay. Buyer shall pay all other closing costs, including without limitation all costs and expenses relating to any Buyer's financing. Each party shall be responsible for their own attorney and other professional fees incurred by such party in connection with this transaction. All real estate taxes and governmental assessments shall be prorated at Closing using the "long" method of proration. The proration shall be based upon the most recent available tax rates, assessments and valuations, and the payment made at closing shall be final. The Settlement Fee shall be split equally between the Parties.

Section 7: Contingencies. Buyer's obligation to purchase the Property is contingent upon the satisfaction or waiver by Buyer of the contingencies described below ("Contingencies"). All Contingencies are solely for Buyer's benefit, and may be waived only by Buyer in writing. Owner shall cooperate with Buyer to allow Buyer to satisfy or waive all Contingencies, and Buyer shall have 45 days from the full execution of the contract (the "Closing Date Contingency Period") to waive or satisfy the following contingencies:

- a. **Title.** Owner shall convey to Buyer marketable title to the Property by general warranty deed, free, clear and unencumbered except for easements and restrictions of record. Buyer shall be satisfied that Owner owns good, marketable and insurable title to the Property and shall determine that any covenants, easements, restrictions, agreements and other matters of record relating to the Property do not materially affect the use or marketability of the Property. If title to all or part of the Property is unmarketable or is subject to matters not excepted as provided above, Owner at Owner's sole cost shall cure any title defects and/or remove such matters within 10 days after receipt of written notice from Buyer, and if necessary the closing date shall be extended to permit Owner the full 10 days to clear title. Owner shall have the right at closing to pay for the removal of any encumbrances or liens out of the purchase price.
- b. **Environmental Condition.** Buyer, at its option and expense, may obtain such inspections, reports and tests of the environmental condition of the Property as Buyer deems necessary. No such reports shall reveal any conditions of the Property which present environmental risk to Buyer, or Hazardous Materials illegally present on, under

or about the Property. If the Environmental Reports reveal any environmental matters adversely affecting the Property (the "Environmental Conditions"), Buyer may notify Owner of such Environmental Conditions (the "Environmental Notice"). Upon receipt of an Environmental Notice, Owner shall have the obligation to cure any disapproved Environmental Conditions. If the Environmental Condition is not cured to Buyer's reasonable satisfaction within the Contingency Period, Buyer shall have the right to terminate this Contract.

- c. Inspections. Buyer shall have the right to diligently and thoroughly inspect the Property, and to hire such experts as purchaser may deem necessary to thoroughly evaluate and analyze the Property and Property conditions, including contactors, engineers, soils analysts, pest control specialists and the like, all at Buyer's expense. Buyer shall indemnify and hold harmless Owner on and against all liabilities, damages, claims, and lawsuits in connection with Buyer's inspections.
- d. Tenant. Seller shall provide the property free and clear of any and all tenants.
- e. Owner's Production. To the extent in Owner's possession or control, Owner shall furnish to Buyer copies of the following, each of which will be a true, correct and complete copy of the document it purports to be:
 - (i) All Warranties which are still in effect to which Owner maybe entitle to make a claim;
 - (ii) All Licenses and Permits;
 - (iii) The most recent real estate tax statements with respect to the Property and improvements;
 - (iv) The surveys, engineering and architectural plans, drawings and specifications relating to the Property and improvements, as applicable, including, without limitation, all building plans and specification;
 - (v) All contract affecting the Property and improvement in any material respect;
 - (vi) All other information and documentation that Buyer may reasonably request in writing regarding the Property.
- f. All of Owner's representations and warranties set forth in this Agreement being true and correct when made and at all times thereafter to and through the date of Closing.
- g. Owner's Obligations. Owner having performed all of its obligations under this Agreement required to be performed prior to or at Closing.

If the Contingencies described in this Section 7 have not been satisfied by Owner on or before the expiration of the contingency period, Buyer may terminate this Agreement by delivering to Owner written notice of such termination and describing which contingencies remain unsatisfied ("Termination Notice"). If Buyer fails to deliver a Termination Notice on or before the expiration of the contingency period, then the Contingencies described in this Section 7 shall be deemed

satisfied and waived by Buyer and the parties shall proceed to Closing. If Buyer timely delivers a Termination Notice to Owner, this Agreement shall terminate, and the parties shall have no further rights or obligations whatsoever hereunder.

Section 8: Buyer's Deliveries at Closing: On the date of Closing, Buyer shall: (i) deliver at the Closing the Purchase Price for the Property (plus any additional funds necessary to pay Buyers' share of closing costs and prorations, minus any credits granted to Buyer as set forth herein) in immediately available funds; and (ii) sign the Closing Statement.

Section 9: Owner's Deliveries at Closing: At Closing, Owner shall deliver the following documents and materials in a form reasonably acceptable to the parties: (i) the fee simple title to the Property by general warranty deed, free and clear of all liens, with the exception of all covenants, conditions, restrictions and easements of record, all legal highways, all zoning ordinances, all building regulations, taxes and assessments not yet due and payable, and any other encumbrances that Buyer approves in writing prior to delivery of the deed. The deed shall have a "no merger" clause, stating that the terms and conditions of the Lease shall not merge into the deed for the Property; (ii) estoppel certificates from every tenant of the property; (iii) a certificate duly executed by Owner that as of the date of Closing all representations and warranties by Owner set forth in this Agreement remain true and correct; (iv) a certification duly executed by Owner, certifying that Owner is not a "foreign person", pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended ("Section 1445"); (v) such affidavits and indemnities as the Title Company may reasonably require in order to omit from the Title Policy all exceptions for (1) parties in possession, (2) mechanic's liens, (3) unrecorded assessments and other matters an accurate survey of the Property would disclose, and (4) nondelinquent real estate taxes, water and sewer and other charges of municipal and governmental authorities and utility companies; and (vi) a closing statement showing documents, closing costs and prorations, calculated in accordance with Section 5 hereof, in form and substance satisfactory to Buyer and Owner (the "Closing Statement").

Section 10: Survey. Prior to closing, Buyer shall have the right to obtain, at Buyer's cost and expense, a survey of the Property, together with certification of the surveyor as may reasonably be required by Buyer (the "Survey"). The Survey shall satisfy, if required by Buyer, the most recent "Minimum Standard Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and ACSM, and shall meet the accuracy requirements of a Class A Survey as defined therein. If the Survey reveals any exceptions to title or any matters affecting the Property ("Survey Exceptions"), Buyer may notify Owner of such Survey Exceptions within twenty (20) days after Buyer's receipt of the last of the Title Commitment or Survey (the "Survey Notice"), whereupon Owner shall cure any disapproved Survey Exceptions. If Owner fails to cure any Survey Exceptions referenced in the Survey Notice within the Contingency Period, Buyer shall have the option to terminate this Contract by delivering written notice thereof to Owner.

Section 11: Environmental Conditions. Buyer shall have the right, and Owner shall provide Buyer access to the Property reasonably necessary, to obtain environmental reports regarding the soils, ground water, topography, geology and other conditions of the Property, together with reliance letters of the preparers of such reports as may be required by Buyer ("Environmental Reports")

Section 12: Inspections. Owner shall cooperate in making the Property reasonably available for inspection by Buyer pursuant to section 7.c., above. If Buyer is not, in good faith, satisfied with the condition of the Property as disclosed by any inspection thereof, Buyer may deliver to Owner a written request that the Owner remedy any unsatisfactory conditions. In the event that Buyer and Owner do not reach agreement regarding remedying the unsatisfactory conditions prior to the expiration of the Contingency Period, then Buyer shall have the right to terminate this Contract.

Section 13: Owner's Representations and Warranties. With respect to the Property as of the date of Closing, Owner represents, warrants, and agrees as follows, all of which shall survive the Closing for a period of one (1) year:

A. Mechanics' Liens. The Property shall be free from mechanic's liens or the possibility of the rightful filing of such liens by reason of work performed or contracted for by Owner. At Closing, Owner shall furnish evidence reasonably satisfactory to Buyer or Title Company that no payment is due for any material or labor provided on the Property by or under contract with Owner.

B. Compliance with Law. The Property and the Improvements will not be in violation of any ordinance, statute, regulation or requirement of any governmental authority having jurisdiction (including any environmental laws), and Owner shall not have received any notices from any governmental authority concerning any violation.

C. No Condemnation. To the best of Owner's knowledge, there shall not be any condemnation proceedings pending, threatened or contemplated which would affect any or all of the Property or the Improvements.

D. Zoning. The Property shall be zoned for commercial office purposes.

E. No Adverse Interests. No other person or entity shall have any written or oral contractual rights in or to the Property, whether or not recorded in the public records, including any contract to purchase, land installment contract, option, right of first refusal or similar right or interest.

F. "AS IS". Owner makes no other representations or warranties concerning this transaction except only as stated in writing in this Agreement and otherwise this transaction is "AS IS".

Section 14: Buyer's Representations and Warranties.

A. Compliance. The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transaction contemplated herein will not constitute a violation of, or be in conflict with (a) any judgment, decree or order of any court or governmental agency; or (b) any statute, law, rule, regulation, release or other official pronouncement.

B. Sufficient Funds. Buyer represents and warrants that it has sufficient financial resources to qualify for the financing of the Purchase Price pursuant to this Agreement.

Section 15: Default and Remedies.

A. Default by Owner. Buyer may declare Owner in default of this Agreement if Owner: (i) fails to fulfill any material term or condition of this Agreement within the required time and fails to take reasonable steps upon 10 days notice from Buyer to correct the default; or (ii) is named as a debtor under any chapter proceeding of the Bankruptcy Code and the case is not dismissed within 30 days; or (iii) has a receiver appointed over all or a substantial portion of its assets or makes a general or special assignment for the benefit of its creditors.

B. Default by Buyer. Owner may declare Buyer in default of this Agreement if Buyer: (i) fails or refuses to make any payment due to Owner within the time provided in this Agreement; or (ii) otherwise fails to fulfill any material term or condition of this Agreement within the required time and fails to take reasonable steps upon 10 days notice from Owner to correct the default; or (iii) is named a debtor under any chapter proceeding of the Bankruptcy Code and the case is not dismissed within 30 days; or (iv) has a receiver appointed over all or a substantial portion of its assets or makes a general or special assignment for the benefit of their creditors.

C. Remedies. If Owner defaults on this Agreement, the Buyer shall be entitled to pursue all legal or equitable remedies, available to Buyer under applicable law. If Buyer defaults, Owner shall be entitled to the earnest money as total liquidated damages.

Section 16: Miscellaneous Provisions. The following miscellaneous terms and conditions shall apply to this Agreement:

A. Relationship of Parties. The relationship of Owner to Buyer established by this Agreement shall be that of Owner and Buyer only, and in no event shall any of Owner's employees, agents or subcontractors be deemed an Owner, employee, servant or agent of Buyer.

B. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Owner and Buyer and their respective heirs, beneficiaries, executors, administrators, legal representatives, successors and permitted assigns.

C. No Third Party Beneficiaries. This Agreement is intended solely for the benefit of Owner and Buyer, and shall not be construed as vesting in any other person or entity any legal or equitable rights or interests, whether under a theory of third party beneficiary or otherwise.

D. Notices. Unless changed by a subsequent notice, all notices permitted or required under this Agreement shall be in writing and shall be delivered in person or mailed certified mail, return receipt requested, postage prepaid, or by express delivery service. Notices shall be deemed to have been delivered on the date the party to be notified first receives the notice. All notices shall be addressed to the parties at the addresses stated in Section 1 of this Agreement, which may be changed only by written notice given to the other party.

E. Complete Agreements. This Agreement and the Related Agreement are the complete and exclusive statements of the agreements between the parties and supersede all prior written, oral, express or implied proposals, negotiations, discussions, agreements, representations and other communications between the parties relating to the subject matters of such agreements. The parties expressly acknowledge and agree that this Agreement and the Related Agreement are both independent, binding agreements and neither one is intended (or shall be interpreted) as superseding the other. The breach of this Agreement shall be simultaneously deemed a breach of the Related Agreement, and the breach of the Related Agreement shall be simultaneously deemed a breach of this Agreement.

F. Amendments. This Agreement shall not be amended or modified, and no provision shall be waived, unless in writing and signed by both parties.

G. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

H. Validity. If any provision of this Agreement or its application to either party is to any extent held void or invalid, then the remainder of this Agreement shall not be affected, and each remaining provision shall be valid and enforced to the fullest extent permitted by law.

I. Construction and Interpretation. Neither party shall be deemed to be the draftsman of this Agreement, nor shall it be interpreted or construed in favor of or against either party. Words in the singular shall include the plural, and vice versa, and words in the masculine shall include the feminine and/or neuter, and vice versa, where the context so requires for a reasonable interpretation of this Agreement. All Exhibits referred to in and attached to this Agreement are incorporated by reference. The headings of each Section and paragraph are for convenience only and shall not be considered in interpreting or construing any term or condition of this Agreement.

J. Time of Essence. Time is of the essence in the performance of all obligations of both parties under this Agreement.

K. Counterparts; Copies. This Agreement may be executed by the parties in several counterparts, which when taken together shall be deemed to be one original, and/or may be executed in multiple sets, each of which shall be deemed an original. All true and accurate copies of this fully executed Agreement shall be valid and binding evidence of the agreement of the parties, whether the document and/or any or all of the signatures are reproductions of an original by photocopy, telecopier transmission, or other method commonly accepted as accurate.

L. Brokers. Buyer and Owner each hereby represent and warrant to the other that they have not entered into any agreements with any brokers, agents, finders or other individuals or entities entitled to any commission or fee as a result of being involved in the sale of the Property pursuant to this Agreement.

M. Confidentiality. Except as may be required by law or the pooling and/or servicing agreement governing Owner and its servicers with respect to the Property, and except as necessary by Buyer to its potential or actual investors, lenders, consultants and contractors as necessary to

close the acquisition of the Property, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed, neither party nor its agents or brokers shall: (i) disclose to any third party the terms of this Agreement (including, without limitation, the Purchase Price), or (ii) issue any press release or other media publicity of any kind with respect to this Agreement or the transactions contemplated hereby, provided that either party may issue a press release after Closing upon reasonable approval of the other party so long as the Purchase Price is not disclosed.

IN WITNESS WHEREOF, Owner and Buyer have signed this Agreement. The effective date of this agreement is the date this Agreement is fully executed by both Parties.

OWNER:
Fairfield Township Butler County

BUYER:
Butler Development, LLC

By: _____

By: _____

Title: _____

Title: _____

Date of Signature: _____

Date of Signature: _____