ORDINANCE NO. 2016-37

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT BETWEEN DIANE L. ROBERTS and GARY L. ROBERTS AND THE CITY OF KENT TO PURCHASE 0.162 ACRES OF LAND KNOWN AS A PORTION OF 327-333 TONKIN COURT, KENT, OHIO FOR $90,000.00 FOR THE CITY OF KENT TO USE FOR THE CONSTRUCTION OF A NEW PUBLIC STREET AND RIGHT OF WAY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent wishes to enter into an agreement with Diane L. Roberts and Gary L. Roberts to purchase 0.162 acres of land known as a portion of 327-333 Tonkin Court, Kent, Ohio, for City of Kent use for the construction of a new public street and right of way; and

WHEREAS, Diane L. Roberts and Gary L. Roberts have agreed to said sale in the amount of $90,000.00; and

WHEREAS, time is of the essence in order for the Sellers to act on the proposed agreement as soon as possible; and

WHEREAS, the City needs to purchase said parcel for the construction of a new public street and right of way to be known as Tonkin Street.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

SECTION 1. That Council does hereby authorize the City Manager, or his designee, to enter into a Purchase Agreement with Diane L. Roberts and Gary L. Roberts to purchase 0.162 acres of land known as a portion of 327-333 Tonkin Court, Kent, Ohio in the amount of $90,000.00 for City of Kent use for the construction of a new public street and right of way in substantial compliance with the agreement labeled as Exhibit “A” attached hereto and incorporated herein.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: __________ 04/20/2016 ________________________________  DATE  MAYOR AND PRESIDENT OF COUNCIL

ATTEST: ________________________________

CLERK OF COUNCIL

I hereby certify that Ordinance No. 2016- 37 was duly enacted this 20th day of April, 2016, by the Council of the City of Kent, Ohio

______________________________  CLERK OF COUNCIL
PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the “Agreement”) is made and is effective as of the date of the execution hereof by the last party to sign by and between the CITY OF KENT, Ohio, 319 South Water Street, Kent, Ohio 44240 (hereinafter referred to as “Purchaser”) and DIANE L. ROBERTS and GARY L. ROBERTS, with a mailing address of 1655 Woodway Road, Kent, Ohio 44240 (hereinafter referred to as “Seller”).

WITNESSETH:

WHEREAS, the Seller owns a certain strip of real property located at Tonkin Court, Kent, Portage County, Ohio, which is more fully described in Exhibit “A”, attached hereto and made a part hereof; and

WHEREAS, the Seller desires to sell to Purchaser and Purchaser desires to buy from Seller such real estate upon and subject to the terms, provisions and conditions set forth hereinbelow.

NOW, THEREFORE, in consideration of the above Recitals and covenants and promises hereinafter set forth, and for other good and sufficient consideration, the Seller and Purchaser covenant and agree as follows:

1. **AGREEMENT TO SELL.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller 0.162 acres of land, situated in Kent, County of Portage, Ohio, which is described in attached Exhibit “A”, which is incorporated hereby by reference (hereinafter referred to as “the Property”).

2. **PURCHASE PRICE.** The Purchaser agrees to pay to the Seller the sum of Ninety Thousand Dollars ($90,000) for the Property which sum shall be payable in full at the closing date with the funds to be delivered to the Escrow Agent, Diamond Title Company, Title Agency, 4030 State Route 43, #201, Brimfield, Ohio 44240, (hereinafter referred to as the “Escrow Agent”).

3. **CONVEYANCE.** The Property shall be conveyed to Purchaser by General Warranty Deed conveying marketable title to Purchaser free and clear of all encumbrances and liens whatsoever, except easements, restrictions, reservations and conditions of record that do not, in the Purchaser’s opinion, affect the use of the Property for Purchaser’s intended use. The Purchaser’s intended use is for a public roadway.

4. **TITLE COMMITMENT.** Within thirty (30) days after the date hereof, Seller shall obtain from the Escrow Agent and deliver to Purchaser a commitment to issue Purchaser an ALTA title insurance policy in the amount of the purchase price hereunder, together with a complete description of all easements, covenants, conditions, reservations and restriction of record. Purchaser shall have thirty (30) days after Purchaser’s receipt of said commitment to advise Seller in writing that Purchaser either accepts the condition of title as reflected in said commitment (except for liens, if any, to be discharged by Seller at Closing) or that the condition of title is unacceptable to
Purchaser. If Purchaser advises Seller that title is unacceptable due to identified exceptions to title, then Seller shall remove such exceptions from title within thirty (30) days, failing which Purchaser shall within fourteen (14) days thereafter either (a) elect to terminate the Purchase Agreement and receive the prompt return of all funds deposited hereunder by Purchaser and either party shall be liable for damages hereunder to the other, or (b) accept such title as Seller is able to convey, without any reduction in the purchase price hereunder.

5. **TITLE INSURANCE.** Seller shall furnish to Purchaser at Purchaser’s expense an owner’s title insurance policy in the amount of the purchase price, showing title to the Property to be good in Pu chaser and subject only to the approved exceptions set for in Articles 3 and 4 herein. Said title insurance shall be issued to the Escrow Agent.

6. **INSPECTION OF PREMISES.** Within thirty (30) days from the date hereof, Purchaser is granted the right to conduct inspections of the Property, including without limitation, an environmental assessment. If it should be determined by Purchaser, in Purchaser’s sole judgment, that the Property is not in satisfactory condition, Purchaser may terminate this Agreement by written notice to the Seller within sixty (60) days after the date hereof and this Agreement shall be null and void, and neither party shall be liable for damages hereunder to the other and all money therefore paid by the Purchaser shall be returned to the Purchaser. If such written notice from Purchaser to Seller is not given with sixty (60) days after date hereof, the condition of the Property shall have been accepted by the Purchaser and any objection thereto shall be deemed to have been waived.

7. **SELLER’S WARRANTIES.** Seller hereby represents and warrants to Purchaser as follows:

   (1) That it is the fee simple owner of the Property and is fully authorized and empowered to convey the Property as provided here;

   (2) That to the best of Seller’s knowledge, there are no claims or unpaid bills for labor or material furnished for repair or improvement of the Property.

8. **PURCHASER’S WARRANTIES.** Purchaser hereby represents and warrants to Seller that they are purchasing the Property based only upon their own inspections of the Property.

9. **POSSESSION OF PREMISES.** Purchaser shall be entitled to exclusive possession of the Property on the Closing Date.

10. **NON-MERGER AND RELEASE OF SELLER FROM WARRANTIES.** All the terms, agreements, covenants, warranties and representations contained in this Agreement shall be deemed to have been made on the date hereof and at Closing and shall survive the Closing and the filing of the General Warranty Deed.

11. **ESCROW AGENT.** An executed copy of this Agreement shall be delivered to the Escrow Agent to serve as its escrow instructions. The Escrow Agent is authorized to attach hereto its standard form of acceptance of escrow without further signatures, provided, however, that where said standard form is inconsistent with the provisions of this Agreement, this Agreement shall be paramount. All funds and documents pertaining to this Agreement shall be deposited with the
Escrow Agent not less than five (5) days prior to Closing.

12. **CLOSING.** Unless the parties or their respective counsel on their behalf, otherwise agree in writing, this transaction shall close in escrow:

(A) When the Escrow Agent has received all of the funds and documents to be deposited with it hereunder and the Escrow Agent can record the General Warranty Deed and can issue an owner’s title insurance policy in the full amount of the purchase price in favor of the Purchaser in accordance with provisions of Article 5 hereof, preferably on or after January 30, 2016.

Upon Closing, the Escrow Agent:

(A) File the Grantee Statement, pay the Ohio State property transfer tax on the conveyance fee and charge the cost thereof, if any, to Purchaser;

(B) File the General Warranty Deed for record, charge the cost of recording to Purchaser and deliver the General Warranty Deed to Purchaser when available;

(C) Cause the title insurance to be issued and charge the cost of such examination, title commitment and the premium to the Purchaser;

(D) Charge the cost of the survey, if any, to Purchaser;

(E) Charge the escrow fee to Purchaser;

(F) Pro-rate real estate taxes between the parties as of the date of closing;

(G) Disburse the balance of funds and documents in escrow to Seller and Purchaser as the respective interest appear.

(H) Purchaser shall be responsible for any costs associated with the preparation and filing of any mortgage deed.

13. **PLACE/TIME OF CLOSING.** The delivery of all papers and funds and the place of closing of this transaction shall be at the offices of the Escrow Agent, on or before May 15, 2016.

14. **BROKERAGE COMMISSION.** Each party represents and warrants to the other party that the warranting party has not had any contract or dealing regarding the Property, nor any communication in connection with the subject matter of this transaction, through or with any licensed real estate broker or other person who can claim a right to a commission or to a finder’s or similar fee as a procuring cause of the sale contemplated herein.

15. **ENTRY OF PURCHASER PRIOR TO CLOSING.** Prior to Closing, Purchaser, its agents and employees shall have the right to go upon the Property to make such inspections and surveys as Purchaser shall deem advisable upon reasonable advance notice to Seller.
16. **NOTICES.** The Parties may contact each other at the following addresses:

**TO SELLER:**
City Manager  
City of Kent  
319 South Water Street  
Kent, Ohio 44240

**Finance Director**  
City of Kent  
930 Overholt  
Kent, Ohio 44240

**WITH COPY TO:**
James R. Silver  
Law Director  
City of Kent  
319 South Water Street  
Kent, Ohio 44240

**PURCHASER:**
Gary L. Roberts & Diane L. Roberts  
1655 Woodway Road  
Kent, Ohio 44240

The above addresses may be changed from time to time by giving written notice thereof as herein provided.

17. **CONSTRUCTION.** This Agreement shall be interpreted under and in accordance with the laws of the State of Ohio.

18. **INTEGRATED AGREEMENT.** This Agreement represents the entire, complete and exclusive understanding by and between the parities and reduces to writing all prior oral agreements and negotiations of the parties and may not be altered, amended or otherwise changed unless in writing signed by both parties.

19. **HEADNOTES.** The headnotes are inserted only as a matter of convenience and as a matter of reference and in no way define, limit or describe the scope or intent of this Agreement nor in any manner affect this Agreement.

20. **BINDING EFFECT.** All covenants and conditions herein contained shall extend to and be binding upon the heirs, successors, assigns and legal representatives of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hand with the intent to be legally bound as of the date set below their respective signatures.

**SIGNED IN THE PRESENCE OF:**  

**SELLERS:**  
By:  
Gary L. Roberts
APPROVED AS TO FORM:

James R. Silver, Law Director
City of Kent

STATE OF OHIO )
     ) SS
PORTAGE COUNTY )

BEFORE ME, a Notary public in and for said County, personally appeared GARY L. ROBERTS and DIANE L. ROBERTS, who acknowledges that they did sign the foregoing Purchase Agreement and that the same is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Kent, Ohio, which ___ day of ___ , 2016.

JOHN J. FLYNN, Attorney at Law
Notary Public - State of Ohio
My Commission has no expiration date
Sec 147.03 R.C.
STATE OF OHIO  
PORTAGE COUNTY  
)
)

BEFORE ME, a Notary public in and for said County, personally appeared DAVID RULLER, as City Manager, respectively, of the City of Kent, Ohio, who acknowledged that he did sign the foregoing Purchase Agreement and that the same is his free act and deed and the free act and deed of the City of Kent.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Kent, Ohio, which 11th day of April, 2016.

[Signature]
Notary Public

PATRICIA D. LONG, NOTARY PUBLIC  
STATE OF OHIO  
My Commission Expires 7-16-2023

CERTIFICATE OF DIRECTOR OF BUDGET AND FINANCE

It is hereby certified that the amount of ($100,000.00) required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purposes and is in the City Treasury or in the process of collection to the credit of ST 303 - POLICE FACILITY Fund free from any obligation or certificates now outstanding.

4-11-2016  
Date  

David Coffee  
Budget and Finance Director
EXHIBIT A

LEGAL DESCRIPTION OF THE
LOT SPLIT OF PARCEL NO. 17-024-40-00-106-000
CITY OF KENT, OHIO

Situated in the City of Kent and being known as a part of Lot 24 of Franklin Township, County of Portage, State of Ohio, and more particularly bounded and described as follows:

Commencing for reference at a monument box with a 1 inch iron pin at the intersection of DePeyster Street (66 feet wide) centerline of right of way with Summit Street (60 feet wide) centerline of right of way; thence, along Summit Street centerline of right of way North 89 degrees 37 minutes 28 seconds East a distance of 341.00 feet to the intersection with the extension of the eastern line of a parcel of land conveyed to the City of Kent (known as being Parcel “B” on the Plat of Lot Split and Consolidation of 345 Flats as shown by the plat recorded in Plat Book 2015, Page 33 of the Portage County Records) by deed dated August 18, 2015 and recorded as Instrument No. 201512794 of the Portage County Records; thence, along said extension North 00 degrees 16 minutes 48 seconds West a distance of 30.00 feet to a point on the northern right of way of Summit Street, said point being the southeast corner of said parcel conveyed to the City of Kent, and the TRUE POINT OF BEGINNING of the parcel herein;

1. thence, parallel with DePeyster Street centerline of right of way, along the eastern line of said parcel so conveyed to the City of Kent, North 00 degrees 16 minutes 48 seconds West a distance of 249.54 feet to the southeast corner of a parcel of land conveyed to the City of Kent by deed dated January 27, 2015 and recorded as Instrument No. 201501234 of the Portage County Records, said corner referenced by a 1 inch O.D. pinched iron pipe found South 89 degrees 37 minutes 28 seconds West at a distance of 0.10 feet;

2. thence, continuing parallel with DePeyster Street centerline of right of way, along the eastern line of said parcels conveyed to the City of Kent, North 00 degrees 16 minutes 48 seconds West (passing a 1 inch O.D. iron pipe found 0.03 feet left at a distance of 52.41 feet) a distance of 102.41 feet to the southern line of a parcel of land conveyed to the City of Kent by deed dated August 5, 2014 and recorded as Instrument No. 201411633 of the Portage County Records;

3. thence, parallel with East College Avenue centerline of right of way, along the southern line of said parcel conveyed to the City of Kent, North 89 degrees 19 minutes 06 seconds East a distance of 20.00 feet to an iron pin set;
4. thence, parallel with DePeyster Street centerline of right of way, South 00 degrees 16 minutes 48 seconds East a distance of 212.06 feet to the northwest corner of a parcel of land conveyed to Steven R. Fisher by deed dated August 21, 1989 and recorded as Volume 1083, Page 736 of the Portage County Recorders;

5. thence, continuing parallel with DePeyster Street centerline of right of way, along the western line of said parcel so conveyed to Steven R. Fisher, South 00 degrees 16 minutes 48 seconds East a distance of 140.00 feet to a point on the northern right of way of Summit Street, said point being the southwest corner of said parcel of land conveyed to Steven R. Fisher, said point referenced by a 1.5 inch O.D. iron pipe found South 83 degrees 33 minutes 43 seconds East at a distance 4.47 feet;

6. thence, along the northern right of way of Summit Street, South 89 degrees 37 minutes 28 seconds West a distance of 20.00 feet to the TRUE POINT OF BEGINNING and enclosing an area of 0.1616 acres, more or less, and is from Portage County Auditors Parcel No. 17-024-40-00-106-000.

An ingress and egress easement as described in Volume 1085, Page 422 of the Portage County Records shall remain on the above described parcel, known as Tonkin Court, for lands abutting on said Court.

Grantor claims title by deed date October 3, 1989 and recorded as Volume 1085, Page 422 of the Portage County Records.

"Iron pin set" in the above description is a 5/8 inch diameter by 30 inch long reinforcing bar with a plastic cap marked “Horan” and “S8678”.

The bearings referred to herein are relative to an assumed meridian and are shown to denote angles only.

The description was prepared by Scott A. Horan, P.S., Registered Surveyor No. 8678, and is based on a survey made by Euthenics, Inc. between December 2015 and February 2016 for the City of Kent, Ohio.