ORDINANCE NO. 2017-16

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT FOR THE PURCHASE AND SALE OF REAL ESTATE BETWEEN THE CITY OF KENT AND JOHN FLYNN TO SELL THE REAL PROPERTY KNOWN AS 214 SOUTH WATER STREET, KENT, OHIO FOR $435,000.00, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent wishes to enter into an agreement with John Flynn to sell the real property known as 214 South Water Street, Kent, Ohio; and

WHEREAS, John Flynn has agreed to said purchase in the amount of $435,000.00; and

WHEREAS, time is of the essence to let Mr. Flynn begin the remodeling of the building as soon as possible.

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 an Agreement for the Purchase and Sale of Real Estate with John Flynn to purchase 214 South Water Street, Kent, Ohio in the amount of $435,000.00 in conformity with 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: March 15, 2017

Date

Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: March 15, 2017

Date

Tara Grimm, CMC
Clerk of Council

I, TARA GRIMM, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF ORDINANCE No. __________, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON __________, 20________.

TARA GRIMM, CMC
CLERK OF COUNCIL
(SEAL)
AGREEMENT FOR THE PURCHASE AND SALE OF REAL ESTATE

This Agreement is made and entered into by and between the CITY OF KENT, OHIO, a municipal corporation, whose address is 319 South Water Street, Kent, Ohio 44240, hereinafter referred to as ("SELLER"), and KENT LAW & COMMERCE, LLC, whose address is 250 South Water Street, Kent, Ohio 44240, hereinafter referred to as ("BUYER"). In consideration of the mutual promises of SELLER and BUYER herein contained, and subject to the terms and conditions hereinafter set forth, SELLER and BUYER agree as follows:

1. THE PREMISES: SELLER agrees to sell and convey to BUYER, and BUYER agrees to purchase from SELLER the real property known as 214 South Water Street, Kent, Ohio and described on Exhibit "A" hereto, (Parcel numbers 17-025-40-00-034-000, 17-025-40-00-035-000, 17-025-40-00-036-000, 17-025-40-00-037-000, and 17-025-40-00-038-000) together with all improvements thereon, all appurtenant rights, privileges, easements and fixtures with respect thereto all as is and in their present condition, all of the foregoing being hereinafter referred to as the Premises.

2. PURCHASE PRICE: BUYER agrees to pay for the Premises the amount of Four Hundred Thirty Five Thousand ($435,000.00) in cash at closing.

3. DEED: At closing SELLER shall deliver or cause to be delivered to BUYER or BUYER'S nominee a good and sufficient Limited Warranty Deed conveying marketable title to the Premises, with dower rights, if any, released, free and clear of all liens and encumbrances whatsoever except:

(i) All legal highways; and
(ii) Zoning and building rules, regulations, and ordinances of any governmental authority; and
(iii) Undetermined taxes and assessments for the current calendar year; and
(iv) Restrictions, conditions, and easements of record, shown in the commitment and accepted or waived by BUYER in accordance with paragraph 10 hereof.

4. REAL ESTATE TAXES AND ASSESSMENTS: All delinquent real estate taxes, assessment installments, and all interest and penalties thereon, shall be paid by SELLER. Taxes shall be prorated between SELLER and BUYER on a calendar year basis as of the date of the recording of the Deed and shall be based upon the last available tax rate and valuation. Special assessments, if any, certified to the County Auditor shall likewise be prorated on a calendar year...
basis as of the date of the recording of the Deed. BUYER shall assume and pay all special assessments certified to the County Auditor from and after the date of the recording of the Deed.

5. UTILITIES: Utilities shall be the responsibility of the SELLER up to and until the date of closing. BUYER shall be responsible for utilities after the date of closing.

6. SURVEY: In the event that a survey is required to transfer title to the Premises to BUYER, SELLER shall, at its cost, provide such survey prior to the closing so that title may be transferred to BUYER at closing. Surveys requested by BUYER shall be at BUYER’S expense.

7. POSSESSION: BUYER shall be entitled to possession of the Premises immediately upon the closing of this transaction.

8. RISK OF LOSS: Risk of loss by damage or destruction to a Property prior to Closing shall be borne by the present owner of said Property. If any damage to or destruction of a Property occurs prior to the date of Closing hereunder, the BUYER shall have the option in its sole and absolute discretion, to either terminate this Agreement or accept the Property in its then current physical condition, receive the proceeds or an assignment of the proceeds of any insurance settlement, or the right to adjust such loss with the then current insurance carrier, and proceed to Closing.

9. TITLE AND TITLE INSURANCE: Within seven (7) days after this Agreement is approved by the SELLER, the Escrow Agent shall do a title search of the Premises and issue a commitment to BUYER for an Owner’s Policy of Title Insurance (“Commitment”). The Commitment shall have no exceptions to coverage for labor, mechanics, or materialman’s liens or for encroachments or other encumbrances that would be revealed by allocation survey. The Escrow Agent shall cause a copy of the Commitment together with all documents referred to in the Commitment to be delivered to both BUYER and SELLER. If such Commitment shows exceptions, conditions, restrictions, easements, liens, or encumbrances which BUYER deems objectionable, BUYER may, within five (5) days after receipt of the Commitment notify SELLER of BUYER’S objections. SELLER shall have a reasonable time, not to exceed thirty (30) days, to cure the objections. If SELLER cannot, or will not, correct such objections within such period of time, SELLER shall notify BUYER within said thirty (30) day period that it cannot or will not correct such objection. If SELLER cannot or will not correct such objection BUYER may waive its objections and accept the Premises subject to the conditions disclosed by the Inspections without reduction in the Purchase Price. BUYER shall make its election to waive its objections within five (5) days after SELLER notifies BUYER that it cannot, or will not, correct such conditions. If BUYER fails to waive its objections within said period of time, this Agreement shall automatically terminate. At closing the Escrow Agent shall issue a final Owner’s Title Insurance Policy to BUYER in the amount of the purchase price subject only to those items shown in the Commitment and agreed to or waived by the BUYER as provided above. If the Escrow Agent is unable to issue the Policy, BUYER may terminate this Agreement.
10. SELLER'S REPRESENTATION AND WARRANTIES: SELLER has no representations to BUYER except:

A. The Premises are not subject to any unrecorded leases, easements, licenses, or rights except those identified herein; and

B. No persons other than SELLER have any right to possess or occupy the Premises; and

C. To the best of SELLER'S knowledge no conditions exist on the Premises which would constitute a health, building or zoning code violation, or a public nuisance; and

D. To the best of SELLER'S knowledge there are not now any underground tanks on the Premises. If any tanks are discovered after closing, SELLER shall be responsible for the costs of removal, provided they are required to be removed under the Ohio Administrative Code 1301:7; and

E. To the best of SELLER'S knowledge, no hazardous or toxic substance or material has been discharged, released, or existed in, on, at, or from the Premises in a quantity or condition which would violate any environmental law, rule, regulation, require any clean up, removal, disposal or remediation; and

F. SELLER is a municipal corporation duly organized and validly existing under the laws of the State of Ohio; and

G. SELLER has the full power and authority to enter into this Agreement and perform its obligations hereunder; and

H. All actions necessary to authorize SELLER to enter into Agreement and perform its obligations hereunder have been duly taken; and

I. The person(s) signing this Agreement on behalf of SELLER are the persons duly authorized to do so, and when so signed this Agreement shall be a valid and binding obligation of SELLER; and

J. SELLER shall immediately inform BUYER upon becoming aware of any information which would make any warranty, representation or covenant of SELLER contained herein false or misleading in any material respect.

K. SELLER will leave the building in broom clean condition, with all tangible property removed, including the carpet stored in the basement.
L. The SELLER has no plans to vacate the alleys on the south and west sides of said parcels, and will not do so without reasonable accommodations to the BUYER to maintain comparable access and parking spaces for said parcels. Should the alleys abutting these parcels be abandoned by the City, the one-half (1/2) of the alley(s) abutting these parcels shall be transferred to the then current owner of the parcels subject to this agreement.

M. The SELLER will conduct a survey of the property for asbestos and shall provide BUYER a report of said survey. If there is asbestos in said building in an amount or form that is unsatisfactory to BUYER, BUYER has the option of voiding this agreement, or they may ask the SELLER to correct the problem to the satisfaction of BUYER. If the SELLER does not remediate the problem, BUYER can void the agreement.

The foregoing representations and warranties shall expire thirty-six (36) months after the date of closing.

11. BUYER'S WARRANTIES:

A. BUYER is a Limited Liability Company duly organized and validly existing under the laws of the State of Ohio; and

B. BUYER has the full power and authority to enter into this Agreement and perform its obligations hereunder; and

C. All actions necessary to authorize BUYER to enter into Agreement and perform its obligations hereunder have been duly taken; and

D. The person(s) signing this Agreement on behalf of BUYER are the persons duly authorized to do so, and when so signed this Agreement shall be a valid and binding obligation of BUYER; and

E. BUYER shall immediately inform SELLER upon becoming aware of any information which would make any warranty, representation or covenant of BUYER contained herein false or misleading in any material respect.

F. BUYER warrants that they will retain the historic character of the building on the site. BUYER warrants that the exterior of the building shall not be materially altered, so that the character and integrity of the façade remains the same. BUYER agrees to a deed restriction stating this condition of ownership. The deed restriction maybe removed or modified at any time in
the future by a majority vote of City Council upon application and consent of the current owner of the premises and for good cause shown.

G. BUYER warrants that remodeling of the interior will begin within two (2) years of the date of closing. Should the remodeling not begin within said two (2) year period, SELLER will have the right to purchase the real property back at the sale price negotiated for this agreement - $435,000.00.

12. PROPERTY “AS IS”: Other than the warranties listed in Section 10, this property is being purchased “as is”. BUYER has the right to inspect the premises within thirty (30) days of execution of this Agreement. SELLER shall make the property available to whomever BUYER wants to inspect the property. Any inspections shall be done at BUYER’S expense. Should an inspection uncover a condition that is unacceptable to BUYER, BUYER shall report the condition to SELLER. SELLER can choose to correct the condition or can choose not to correct this condition. If no repairs are made by SELLER, BUYER may void this Agreement. If the City has any reports on asbestos in the building, the reports shall be provided to BUYER as soon as possible.

13. CONDITIONS TO BUYER’S OBLIGATION TO CLOSE: BUYER’S obligation to purchase the Premises pursuant to this Agreement is conditioned upon and subject to each of the following:

A. City of Kent Approval: BUYER has until March 15, 2017 to obtain approval of this Agreement by Kent City Council or waive this condition to notify SELLER in writing of such approval or waiver. If BUYER fails to obtain such approval or waive this condition and to notify SELLER of such fact within the time period set forth above, this Agreement maybe modified by the parties.

B. BUYER’S Financing: BUYER has until April 30, 2017 to obtain a commitment for a loan from a source other than SELLER upon such terms and conditions as are acceptable to BUYER, or waive this condition and to notify SELLER in writing of such loan commitment or waiver. If BUYER fails to obtain a loan commitment or waive this condition and notify SELLER of such fact within the time period set forth above, this Agreement shall automatically terminate.

C. Title Insurance: SELLER has accepted the Commitment or waived its objection to the Commitment and at closing the Escrow Agent is in a position to issue an Owner’s Policy of Title Insurance to BUYER in accordance with this Agreement.

D. SELLER’S Warranties: SELLER warranties are true as of the date of closing.
E. SELLER’S Performance: SELLER delivers title to and possession of the Premises to BUYER at closing in accordance with the terms of this Agreement.

14. CLOSING: Unless this Agreement has been terminated as provided herein, this transaction shall be fully closed on or before April 30, 2017. All funds and documents relating to this transaction shall be deposited with the Escrow Agent not later than the aforesaid closing date.

15. SELLER’S CLOSING COSTS: From the funds due SELLER there shall be deducted and paid:

A. Legal fees incurred for SELLER, if any; and
B. Liens and taxes not assumed by BUYER; and
C. Pro-ration due BUYER; and
D. Recording fees for the cancellation of mortgages and liens not assumed by BUYER; and
E. The cost of any survey necessary to transfer title to the Premises to BUYER; and
F. The cost of the title search and title insurance premium; and
G. One half (1/2) of the escrow fee; and
H. Other costs to be paid by SELLER under this Agreement; and
I. Deed preparation fee; and
J. One-half (1/2) of the Auditor’s conveyance fee.

16. BUYER’S CLOSING COSTS: At or before the closing, BUYER shall pay or cause to be paid the following:

A. One half (1/2) the cost of the escrow fee; and
B. One-half (1/2) of the Auditor’s conveyance fee (transfer tax); and
C. Recording fees to record the deed and any mortgage; and
D. Costs of any survey not necessitated by the Portage County Tax Map Department; and
E. Other costs to be paid by BUYER under this Agreement.

17. ESCROW AGENT: The Escrow Agent shall be selected by BUYER. Each of the parties agrees to execute the Escrow Agent’s standard letter of escrow, provided said agreement does not alter the terms of this Agreement, and each party agrees to provide to the Escrow Agent all information and documentation requested by the Escrow Agent to close the transaction.

18. TIME OF THE ESSENCE: Time is of the essence concerning all matters to be performed by SELLER and BUYER hereunder and if either fails to perform its obligations under
this Agreement within the time required by the terms hereof, the other shall be entitled to damages occasioned by the failure to perform and/or specific performance.

19. **APPLICABLE LAW:** This Agreement is made and entered into in the State of Ohio and shall be construed and enforced in accordance with the laws of the State of Ohio.

20. **NOTICES:** All notices required hereunder or by applicable law shall be in writing and shall be deemed delivered when either personally delivered to the party to whom it is directed or when mailed by certified mail return receipt requested postage prepaid to the person and address set forth at the beginning of this Agreement or to such other address as a party hereto may designate in writing as provided herein. SELLER and BUYER shall provide the Escrow Agent with copies of all notices or other communications by notifying the Escrow Agent in accordance with the terms hereof.

21. **NO BROKERS:** SELLER and BUYER each warrant and covenant unto one and other that no real estate broker or agent was involved in this transaction and that each covenants to indemnify and hold the other absolutely harmless from any claim or demand by any person for any real estate fee or commission.

22. **REMEDIES:** In the event that SELLER or BUYER defaults in the performance of the terms and conditions of this Agreement, the non-defaulting party shall have all rights and remedies available to it at law or in equity under the laws of the State of Ohio with respect to such default, specifically including but not limited to the right to recover from the defaulting party all costs and expenses, including reasonable attorney’s fees to the extent permitted by law, incurred by the non-defaulting party as a result of such default. All rights and remedies of the parties are cumulative and may be exercised concurrently or consecutively and as often as the occasion therefore arises. This provision shall survive the termination of this Agreement and the consummation of the transactions contemplated herein.

23. **WAIVER AND AMENDMENT:** The terms and conditions of this Agreement may be amended with, and only with, the express written consent of both SELLER and BUYER. No provision of this Agreement shall be waived, or deemed to be waived, unless such waiver is in writing and signed by the party entitled to waive such provision. The mere failure or delay of any party to enforce any term or provision of this Agreement, or to exercise any right or remedy with respect thereto shall not be deemed to be a waiver of such provision or any such right or remedy.

24. **BINDING EFFECT:** This Agreement shall be binding upon and shall inure to the benefit of SELLER and BUYER and their respective heirs, executors, administrators, successors, and assigns.

25. **DATE OF THIS AGREEMENT.** For all purposes the date of this Agreement shall be the date of the last signature to this Agreement by SELLER or BUYER.
BUYER
KENT LAW & COMMERCE, LLC

By: John Flynn, Its: Managing Member
Date: __________________________

SELLER
CITY OF KENT, OHIO

By: David Ruller, Its: City Manager
Date: __________________________

APPROVED AS TO FORM:

James R. Silver, Law Director
City of Kent