ORDINANCE NO. 2017-70

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT BETWEEN THOMAS F. AND SHARON A. HUNTER AND THE CITY OF KENT TO PURCHASE 500 MIDDLEBURY ROAD, KENT, OHIO FOR $115,000.00 PLUS CLOSING COSTS FOR THE CITY OF KENT, OHIO, FOR USE BY THE PARKS & RECREATION DEPARTMENT, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent wishes to enter into an agreement with Thomas F. and Sharon A. Hunter to purchase 500 Middlebury Road, Kent, Ohio, for City of Kent, Ohio, for use by the Parks & Recreation Department; and

WHEREAS, Thomas F. and Sharon A. Hunter have agreed to said sale in the amount of $115,000.00 plus closing costs; and

WHEREAS, time is of the essence in order for the Sellers to act on the proposed agreement 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 a Purchase Agreement with Thomas F. and Sharon A. Hunter for 500 Middlebury Road, Kent, Ohio, in the amount of $115,000.00 plus closing costs for City of Kent, Ohio, for use by the Parks & Recreation Department 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: July 26, 2017

__________________________
Date

Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: July 26, 2017

__________________________
Date

ATTEST: Tara Grimm, CMC
Clerk of Council

1, 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)
EXHIBIT "A"

PURCHASE AGREEMENT

THIS AGREEMENT (the “Agreement”) made and entered into this __________ day of __________, 2017, by and between the CITY OF KENT, Ohio, an Ohio Municipal Corporation, 930 Overholt Road, Kent, Ohio 44240 (hereinafter referred to as “Purchaser”) and THOMAS F. and SHARON A. HUNTER, with a mailing address of 500 Middlebury Road, Kent, Ohio 44240 (hereinafter referred to as “Seller”).

WITNESSETH:

WHEREAS, the Seller owns 0.39 acres of real property known as 500 Middlebury Road, Kent, Ohio, 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 for use by the Parks & Recreation Department, 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 500 Middlebury Road (Parcel #17-011-10-00-044-000), Kent, Ohio, County of Portage, Ohio, which is described in attached Exhibit “A”, which is incorporated hereby by reference (hereinafter referred to as “the Property”).

(a) The sale is contingent upon Kent City Council authorizing the expenditure of funds required to purchase this property.

2. PURCHASE PRICE. The Purchaser agrees to pay to the Seller the sum of One Hundred Fifteen Thousand Dollars ($115,000.00) 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, 4030 State Route 43, #201, Brimfield, Ohio 44240, (hereinafter referred to as the “Escrow Agent”).

(a) Said sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed, including all fixtures; (b) any and all damages to any residual lands of Seller; (c) Seller's covenants set forth herein; (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property.
(b) Purchaser will pay $5,000.00 on or before December 1, 2017 as a deposit. The deposit shall be given to the Escrow Agent and shall be applied to the purchase price. The balance of $110,000.00 will be due on or before the closing date. Should this sale not be completed for any reason, the deposit shall be returned to the Purchaser by the Escrow Agent as soon as possible.

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 parks and recreation.

(a) Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described in Exhibit “A”, such as, but not limited to, those belongings to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

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 an owner’s title insurance policy in the amount of the purchase price, showing title to the Property to be good in Purchaser 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:

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

(b) 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.

(c) Other than the above, the property is being purchased “AS IS”.

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 January 3, 2018. Closing and transfer of the property is scheduled for December 15, 2017. Between December 15, 2017 and January 3, 2018, Seller shall be responsible for all utilities and insurance for the property, plus any maintenance and repairs that the property may require between those dates.

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 on or before December 15, 2017:

(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.
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 Seller;

(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 Seller;

(d) Charge one-half (1/2) of its escrow fee to Seller and one-half (1/2) of its escrow fee to Purchaser;

(e) Pro-rate real estate taxes between the parties as of the date of closing; Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Buyer shall be responsible for any and all future installments of any special assessments levied and assessed against the real property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the subject real property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.

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

(g) 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.

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 PURCHASER:**
Manager  
Finance Director  
City of Kent  
319 South Water Street  
Overholt Road  
Kent, Ohio 44240  
Ohio 44240

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

**SELLER:**
Thomas F. & Sharon A. Hunter  
500 Middlebury 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.
21. **MULTIPLE ORIGINALS.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

22. **AMENDMENTS AND MODIFICATIONS.** No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

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:  

__________________________________________  
__________________________________________  

By: ____________________________________________  
Thomas F. Hunter  
By: ____________________________________________  
Sharon A. Hunter  

Date: ______________________________

SELLER:

PURCHASER: CITY OF KENT, OHIO

By: ____________________________________________  
David Ruller, City Manager  

Date: ______________________________
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 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 ____ day of ________________, 2017.

___________________________________________

Notary Public

STATE OF OHIO

) SS

PORTAGE COUNTY

BEFORE ME, a Notary public in and for said County, personally appeared THOMAS F. and SHARON A. HUNTER, who acknowledged 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 ________________, 2017.
EXHIBIT “A”

LEGAL DESCRIPTION

PARCEL #17-011-10-00-044-000

Situated in the City of Kent, County of Portage and State of Ohio: Being a part of Lots Nos. 11 and 26 of said City and further described as follows, beginning at an iron pipe at the intersection of the centerline of Middlebury Road with the centerline of Stow Street; Thence S 36° 50’ west along the centerline of Middlebury Road 525.26 feet to a point and the principle place of beginning for this tract of land; Thence N 53° 33’ 10” west at right angles to said centerline 225.55 feet to an iron pipe; (and passing over an iron pipe set 25.00 feet from the road centerline); Thence north 36° 26’ 50” east 75.00 feet to an iron pipe on H.A. Wearstler’s southerly line; Thence along H.A. Wearstler’s southerly line south 53° 33’ 10” east 225.22 feet to a point in the centerline of Middlebury Road, and passing over an iron pipe set 25.00 feet from the road centerline; Thence south 36° 26’ 50” west along said centerline of Middlebury Road 75.00 feet to a point and the principle place of beginning and containing 0.39 acres of land of which 0.08 acres are in Lot No. 26 and 0.31 acres are in Lot No. 11 as surveyed by P. Gray and P.H. Evans on February 19, 1955.