ORDINANCE NO. 2017 - 92

AN ORDINANCE ACCEPTING AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A PURCHASE AGREEMENT WITH THE CITY OF KENT, OHIO, BUYING AN INTEREST IN 0.002 ACRES OF REAL PROPERTY FROM THOMAS L. AND BARBARA J. HERSHEYBERGER, FOR $640.00 AND AN AGREEMENT FOR A TEMPORARY EASEMENT OF 0.021 ACRES OF REAL PROPERTY, FOR $650.00 FOR RIGHT-OF-WAY PURPOSE, TO INSTALL, CONSTRUCT AND RECONSTRUCT THE ROADWAY AND SIDEWALKS FOR THE PROJECT POR-43-10.26 KNOWN AS SR 43 TRAFFIC IMPROVEMENT PROJECT; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent Council desires to purchase an interest in 0.002 acres of real property from Thomas L. and Barbara J. Hershberger; and

WHEREAS, Thomas L. and Barbara J. Hershberger are willing to sell said interest in said property for $640.00; and

WHEREAS, the City of Kent Council desires to obtain a temporary easement of 0.021 acres of real property from Thomas L. and Barbara J. Hershberger;

WHEREAS, Thomas L. and Barbara J. Hershberger are willing to grant a temporary easement in said property for $650.00; and

WHEREAS, the City needs the property for right-of-way purposes to install, construct and reconstruct the roadway and sidewalks for the project known as SR 43 Traffic Improvement Project; and

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

SECTION 1. That Council does hereby accepts and authorizes the City Manager or his designee to execute the purchase agreement for the City of Kent, buying an interest in 0.002 acres of real property from Thomas L. and Barbara J. Hershberger for $640.00 and an agreement for a temporary easement of 0.021 acres of real property from Thomas L. and Barbara J. Hershberger for $650.00 for right-of-way purposes, to install, construct and reconstruct for the project known as SR 43 Traffic Improvement Project in substantial conformity with the terms of the Contract for Sale/Purchase of Real Property and Temporary Easement, said Agreement marked as Exhibit "A", on file in the Council office.

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: August 16, 2017

Jerry T. Fiala
Mayor and President of Council

ATTEST: 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 WHOSOEVER 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"

CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY
WITHOUT BUILDING(S)

PARCEL(S): 11-WD, T
POR-43-10.26

This Agreement is by and between the City of Kent, Portage County, Ohio [“Purchaser”] and Thomas L. Hershberger and Barbara J. Hershberger, Husband and Wife [“Seller”; “Seller” includes all of the foregoing named persons or entities]. Purchaser and Seller are referred to collectively in this Agreement as “Parties.”

In consideration of the mutual promises, agreements and covenants herein contained the Parties contract as follows:

1. Price and Consideration

Purchaser shall pay to Seller the sum of $1,290.00, which 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; and (e) na.

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. Seller 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.

2. Estate Sold and Deed to Transfer

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all improvements now located thereon and all fixtures of every nature now attached to or used with said land and improvements including, but not limited to, driveways, signs, utility fixtures, shrubbery and trees.

If the rights, titles and estates described in Exhibit A constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in
Exhibit A constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

3. **Limited Access Parcels - Waiver of Abutters' Rights**
   If the property described in Exhibit A is designated by Purchaser as a limited access parcel, then Seller further agrees to release to Purchaser, its successors and assigns, any and all abutters’ rights, including access rights, appurtenant to any remaining lands of Seller (from which the property described in Exhibit A is being severed) in, over, on, from and to the property described in Exhibit A.

4. **Supplemental Instruments**
   Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A.

5. **Warranty of Title**
   Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.

6. **Elimination of Others' Interests**
   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 belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

   Seller and Purchaser agree that if a mortgagee of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee’s mortgage lien secured by the property described in Exhibit A, then and in that event this Agreement shall become null and void and the parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term “fails to cooperate” shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee’s mortgage lien that Purchaser, in its sole discretion, deems to be excessive.

7. **No Change in Character of Property**
   Seller shall not change the existing character of the land or alter, remove, destroy or change any improvement located on the property described in Exhibit A. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property suffers any damage, change, alteration or destruction then, and without regard to the cause thereof, Seller shall restore the subject
property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

8. Offer to Sell

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by Seller that shall remain open for acceptance by Purchaser for a period of 20 days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser’s acceptance and execution of this Agreement within said period of 20 days, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the Parties.

9. Designation of Escrow Agent

Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.

10. Closing Date

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than 10 days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event shall such consummation and closing occur more than 120 days after the last date on which one of the Parties executes this Agreement.

11. Physical Possession of Structures Occupied by Seller

Seller shall surrender physical possession of the land and improvements to Purchaser not later than the date on which Purchaser tenders the purchase price to Seller.

12. Control of Property Occupied by Seller’s Tenant(s)

Control of property occupied by Seller’s tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller’s tenant(s), then said prepaid rents shall be prorated to the date on which the purchase price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

13. Binding Agreement

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.
14. Multiple Originals

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

15. Entire Agreement

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either express or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

16. 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 hereto, namely the City of Kent, Portage County, Ohio and Thomas L. Hershberger and Barbara J. Hershberger, Husband and Wife, have executed this Agreement on the date(s) indicated immediately below their respective signatures.

Thomas L. Hershberger, Husband
Date: 7/25/2017

Barbara J. Hershberger, Wife
Date: 7/25/2017

STATE OF OHIO, COUNTY OF PORTAGE ss:

BE IT REMEMBERED, that on the 25th day of July, 2017, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Thomas L. Hershberger and Barbara J. Hershberger who acknowledged the foregoing instrument to be their voluntary acts and deeds.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

NOTARY PUBLIC
My Commission expires: 12/12/16
The City of Kent, Portage County, Ohio

James Bowling, P.E.  
Superintendent of Engineering / Deputy Service Director  
Date:  

State of Ohio, County of Portage ss:  

Be it remembered, that on the __ day of ____, 2017, before me the subscriber, a Notary Public in and for said state and county, personally came the above named James Bowling, P.E., the Superintendent of Engineering and Deputy Service Director and duly authorized representative of the City of Kent, Portage County, Ohio, who acknowledged the signing of the foregoing instrument to be the voluntary act and deed of the City of Kent, Portage County, Ohio.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

__________________________  
Notary Public  
My Commission expires:  

EXHIBIT A

PARCEL 11-WD
POR-43-10.26
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF KENT, PORTAGE COUNTY, OHIO

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression “Grantor/Owner” includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the City of Kent, County of Portage, State of Ohio, being part of Lot 6 in Franklin Township, and being part of lands described in the deed to THOMAS L. HERSHBERGER AND BARBARA J. HERSHBERGER (Grantor) as recorded in Instrument 200526994 on file in the Portage County Recorder's office and laying on the right side of the existing centerline of right-of-way of State Route 43 as recorded as Plat __________ and as shown on the POR-43-10.26 right-of-way plans prepared by Arcadis U.S., Inc. for the City of Kent, Ohio, and more fully described as follows:

Commencing at a 1 inch diameter pin found in a monument box at the intersection of the centerline of right of way of said State Route 43 and the centerline of right of way of Cherry Street as shown on said Plat and on said right-of-way plans being Station 565+45.34; said pin being South 89° 02' 36" East, a distance of 963.97 feet from a 1 inch pin found in a monument box found at intersection of the centerline of right of way of Cherry Street and the centerline of right of way of Franklin Avenue;

Thence South 20° 49' 49" East, along said centerline of right of way of State Route 43, a distance of 40.18 feet being Station 565+05.16;

Thence North 69° 10' 11" East, leaving said centerline of right of way, a distance of 30.00 feet to the existing easterly right of way line of said State Route 43 and to the Grantor's westerly line being 30.00 feet right of Station 565+05.16 where a capped rebar set being the Point of Beginning for the parcel described herein;
1. Thence North 20° 49' 49" West, along said existing easterly right of way line and along the Grantor's westerly line, a distance of 7.69 feet to a point of curvature being 30.00 feet right of Station 565+12.86;

2. Thence along the arc of a curve deflecting to the right, continuing along said existing easterly right of way line and continuing along the Grantor's westerly line, a distance of 15.71 feet to the existing southerly right of way line of Bowman Drive and being the Grantor's northerly line being 25.00 feet right of Bowman Drive Station 1+40.00; said curve having a radius of 10.00 feet, a central angle of 90° 00' 00", and a chord length of 14.14 feet which bears North 24° 10' 11" East;

3. Thence North 69° 10' 11" East, along said southerly right of way line of said Bowman Drive and along the Grantor's northerly line, a distance of 2.69 feet being 25.00 feet right of Bowman Drive Station 1+42.69 where a capped rebar set;

4. Thence South 20° 49' 49" East, leaving said southerly right of way line and leaving the Grantor's northerly line and through the Grantor, a distance of 4.00 feet to a capped rebar set being 29.00 feet right of Bowman Drive Station 1+42.69;

5. Thence South 69° 10' 11" West, continuing through the Grantor, a distance of 2.69 feet to a capped rebar set at a point of curvature being 29.00 feet right of Bowman Drive Station 1+40.00;

6. Thence along the arc of a curve deflecting to the left, continuing through the Grantor, a distance of 9.42 feet to a capped rebar set being 34.00 feet right of Station 565+12.86; said curve having a radius of 6.00 feet, a central angle of 90° 00' 00", and a chord length of 8.49 feet which bears South 24° 10' 11" West;

7. Thence South 20° 49' 49" East, continuing through the Grantor, a distance of 7.69 feet to a capped rebar set being 34.00 feet right of Station 563+05.16;

8. Thence South 69° 10' 11" West, continuing through the Grantor, a distance of 4.00 feet to the Point of Beginning.

The above described easement contains 0.002 acres (92 square feet, including 0.000 acres within the present road occupied), within Parcel Number 17-006-12-00-001-000 and subject to all legal highways and easements of record.

This description was prepared by Arcadis U.S., Inc. under the supervision of Robert G. Hoy, Ohio Professional Surveyor No. 8142, and is based on a field survey performed by Arcadis U.S.,
Inc. in September 2014 under the direction of Robert G. Hoy, Ohio Professional Surveyor No. 8142;

Bearings in this description are based on the Ohio State Plane Coordinate System, NAD83(2011), North Zone, Grid North;

Grantor claims title as recorded in Instrument 200526994 of Portage County Deed Records.

The stations referred are from the existing centerline of right-of-way of State Route 43 as shown on the POR-43-10.26 right-of-way plans unless noted otherwise.

Capped rebar set is a 5/8 inch diameter, 30 inches long rebar set with Ohio surveyor's identification cap.

Robert G. Hoy, Ohio Professional Surveyor No. 8142
EXHIBIT A

PARCEL 11-T
POR-43-10.26
TEMPORARY EASEMENT FOR THE PURPOSE OF PERFORMING THE WORK NECESSARY TO REGRADE AND BORING PIT FOR 12 MONTHS FROM DATE OF ENTRY BY THE CITY OF KENT, PORTAGE COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in the City of Kent, County of Portage, State of Ohio, being part of Lot 6 in Franklin Township, and being part of lands described in the deed to THOMAS L. HERSHBERGER AND BARBARA J. HERSHBERGER (Grantor) as recorded in Instrument 200526994 on file in the Portage County Recorder's office and laying on the right side of the existing centerline of right-of-way of State Route 43 as recorded as Plat __________ and as shown on the POR-43-10.26 right-of-way plans prepared by Arcadis U.S., Inc. for the City of Kent, Ohio, and more fully described as follows:

Beginning on the existing easterly right of way line of said State Route 43 at 30.00 feet right of Station 565+05.16;

1. Thence North 69° 10' 11" East, along the proposed easterly right of way line of said State Route 43, a distance of 4.00 feet being 34.00 feet right of Station 565+05.16;

2. Thence North 20° 49' 49" West, continuing along said proposed easterly right of way line, a distance of 7.69 feet being 34.00 feet right of Station 565+12.86;

3. Thence along the arc of a curve deflecting to the right, continuing along said proposed easterly right of way line, a distance of 7.39 feet being 38.00 feet right of Station 565+18.51; said curve having a radius of 6.00 feet, a central angle of 70° 31' 44", and a chord length of 6.93 feet which bears North 14° 26' 02" East;

4. Thence South 20° 49' 49" East, through the Grantor, a distance of 120.66 feet to the Grantor's southerly line being 38.00 feet right of Station 563+97.86;

5. Thence South 69° 10' 11" West, along said southerly line, a distance of 8.00 feet to said existing easterly right of way line of said State Route 43 being 30.00 feet right of Station 563+97.86;
6. Thence North 20° 49' 49" West, along said existing easterly right of way line, a distance of 107.31 feet to the Point of Beginning.

The above described easement contains 0.021 acres (906 square feet, including 0.000 acres within the present road occupied), within Parcel Number 17-006-12-00-001-000 and subject to all legal highways and easements of record.

This description was prepared by Arcadis U.S., Inc. under the supervision of Robert G. Hoy, Ohio Professional Surveyor No. 8142, and is based on a field survey performed by Arcadis U.S., Inc. in September 2014 under the direction of Robert G. Hoy, Ohio Professional Surveyor No. 8142;

Bearings in this description are based on the Ohio State Plane Coordinate System, NAD83(2011), North Zone, Grid North:

Grantor claims title as recorded in Instrument 200526994 of Portage County Deed Records.

The stations referred are from the existing centerline of right-of-way of State Route 43 as shown on the POR-43-10.26 right-of-way plans unless noted otherwise.

\[\text{[Signature]} \quad 3/20/17\]

Arcadis U.S., Inc.  Date

Robert G. Hoy, Ohio Professional Surveyor No. 8142