

ORDINANCE NO. 2016-17

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT BETWEEN SHIRLEY A. AND JOSEPH A. BETKOSKI AND THE CITY OF KENT TO PURCHASE 7.0679 ACRES OF REAL PROPERTY, KNOWN AS 745 LONGCOY AVENUE, KENT, OHIO FOR \$170,000.00 FOR THE CITY OF KENT PARKS & RECREATION DEPARTMENT USE, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent wishes to enter into an agreement with Shirley A. and Joseph A. Betkoski to purchase 7.0679 acres of real property, known as 745 Longcoy Avenue, Kent, Ohio, for City of Kent Parks & Recreation Department use; and

WHEREAS, Shirley A. and Joseph A. Betkoski have agreed to said sale in the amount of \$170,000.00; 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 Shirley A. and Joseph A. Betkoski to purchase 7.0679 acres of real property, known as 745 Longcoy Avenue, Kent, Ohio in the amount of \$170,000.00 for City of Kent Parks & Recreation Department use 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: 02/17/2016  
DATE

\_\_\_\_\_  
MAYOR AND PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2016- 17 was duly enacted this 17 day of Feb, 2016, by the Council of the City of Kent, Ohio

\_\_\_\_\_  
CLERK OF COUNCIL

**EXHIBIT "A"**

**PURCHASE AGREEMENT**

THIS AGREEMENT (the "Agreement") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF KENT, Ohio, an Ohio Municipal Corporation, 319 South Water Street, Kent, Ohio 44240 (hereinafter referred to as "Purchaser") and SHIRLEY A. BETKOSKI and JOSEPH A. BETKOSKI, with a mailing address of 745 Longcoy Avenue, Kent, Ohio 44240 (hereinafter referred to as "Seller").

**WITNESSETH:**

WHEREAS, the Seller owns a certain real property located at 745 Longcoy Avenue, 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 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 745 Longcoy Avenue, situated in Kent, County of Portage, Ohio, which is described in attached Exhibit "A", which is incorporated hereby by reference (hereinafter PPN#17-030-10-00-122-000 referred to as "the Property").

**2. PURCHASE PRICE.** The Purchaser agrees to pay to the Seller the sum of One Hundred Seventy Thousand Dollars 00/100 (\$170,000.00) 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, Suite 201, Brimfield, Ohio 44240 (hereinafter referred to as the "Escrow Agent").

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.

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.

**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.

**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.** The sale is further contingent upon Kent City Council authorizing the expenditure of funds required to purchase this property.

**8. 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) 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.
- (d) 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.

**9. 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.

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

**11. 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.

**12. 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 fifteen (15) days immediately subsequent to the date on which Purchaser receives such executed Agreement. Upon Purchaser's acceptance and execution of this Agreement within said period, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the parties.

**13. ESCROW AGENT.**

- (a) The Escrow Agent for this transaction shall be the Diamond Title Company, attention Amy Edwards, 4030 State Route 43, Suite 201, Brimfield, Ohio 44240, phone #330-673-4900.

(b) 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 two (2) days prior to Closing.

**14. CLOSING.** Unless the parties or their respective counsel on their behalf, otherwise agree in writing, this transaction shall close in escrow on or before April 15, 2016:

- (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 the cost of the survey, if any, to Purchaser;
- (e) Split its escrow fee equally between Purchaser and Seller;
- (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.

**15. 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 April 15, 2016.

**16. 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.

**17. 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.

**18. NOTICES.** The Parties may contact each other at the following addresses:

TO PURCHASER:

City Manager	Finance Director
City of Kent	City of Kent
319 South Water Street	930 Overholt Road
Kent, Ohio 44240	Kent, Ohio 44240

WITH COPY TO:

Law Director  
City of Kent  
319 South Water Street  
Kent, Ohio 44240

SELLER:

Shirley A. & Josephy A. Betkoski  
745 Longcoy Avenue  
Kent, Ohio 44240

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

provided.

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

20. **INTEGRATED AGREEMENT.** This Agreement represents the entire, complete and exclusive understanding by and between the parties 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.

21. **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.

22. **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.

23. **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.

24. **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:

**SELLER:**

**SHIRLEY A. & JOSEPH A. BETKOSKI**

By: \_\_\_\_\_  
Shirley A. Betkoski

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joseph A. Betkoski

Date: \_\_\_\_\_

**PURCHASER: CITY OF KENT, OHIO**

By: \_\_\_\_\_  
John J. Idone, P & R Director  
Authorized by David Ruller,  
City Manager, to sign agreement

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
James R. Silver, Law Director  
City of Kent

STATE OF OHIO )  
 ) SS  
\_\_\_\_\_ COUNTY )

BEFORE ME, a Notary public in and for said County, personally appeared SHIRLEY A. & JOSEPH A. BETKOSKI, 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.

\_\_\_\_\_  
Notary Public

STATE OF OHIO )  
 ) SS  
PORTAGE COUNTY )

BEFORE ME, a Notary public in and for said County, personally appeared JOHN J. IDONE, as Parks & Recreation Director, 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 \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public