

RESOLUTION NO. 2012 - 32

A RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE A REAL PROPERTY EXCHANGE AGREEMENT BETWEEN THE CITY OF KENT, OHIO AND THE PORTAGE COUNTY, OHIO BOARD OF COMMISSIONERS TO BUILD A NEW COURTHOUSE IN KENT AND FURTHER REDEVELOP THE KENT DOWNTOWN AREA, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent and the Portage County, Ohio Board of Commissioners wish to exchange real estate parcels to continue the efforts to redevelop downtown Kent; and

WHEREAS, the parcels transferred to the City have less value, but the County will keep the parking lot of a new courthouse open for public use after 5:00 p.m. weekdays and on weekends which help equal the values; and

WHEREAS, the City of Kent will transfer to the Portage County, Ohio Board of Commissioners six (6) parcels containing approximately 2.01 acres of property (parcel numbers 17-024-34-00-086-000, 17-024-34-00-087-000, 17-024-34-00-088-000, 17-24-34-00-089-000, 17-024-34-00-090-000 and 17-024-340-00-091-000); and

WHEREAS, the Portage County, Ohio Board of Commissioners will transfer to the City of Kent permanent parcel numbers 17-025-40-00-027-000, 17-025-40-00-028-000, 17-025-40-00-029-000, 17-025-40-00-030-000, 17-025-40-00-031-000, 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 consisting of approximately .6585 acres; and

WHEREAS, the parcels are further described in the Exchange Agreement attached hereto as Exhibit "A"; and

WHEREAS, time is of the essence in order to complete the development projects by both parties.

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 concurring:

SECTION 1. That the Kent City Council does hereby authorize the City Manager, or his designee to execute a Real Property Exchange Agreement between the City of Kent and the Portage County, Ohio Board of Commissioners for the purpose of continuing their joint efforts for the construction of a new Courthouse and the redevelopment of the Kent Downtown area, said Exchange Agreement as described in Exhibit "A", attached hereto and incorporated herein, and to accept the parcels of real property from Portage County, Ohio Board of Commissioners.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution 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 resolution 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 resolution is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 03/28/2012
DATE _____ MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2012- 32 was duly enacted on this 28 day of
March, 2012 by the Council of the City of Kent, Ohio.

Clerk of Council

EXHIBIT "A"

✓ **REAL ESTATE EXCHANGE AGREEMENT**

This agreement (the "Agreement"), made and entered into this ____ day of ____, 2012, by and between the County of Portage, Ohio, a County and political subdivision organized and existing under the Constitution and laws of the State of Ohio, (the "County") and The City of Kent, County of Portage, State of Ohio, a municipal corporation duly organized under the laws of the State of Ohio and a duly adopted Charter (the "City").

WITNESSETH:

WHEREAS, County owns the real property described as Exhibit A hereto ("County Property"), and;

WHEREAS, City is acquiring the real property described as Exhibit B hereto ("City Property"), and;

WHEREAS, County desires to exchange the County Property for the City Property and City desires to exchange the City Property for the County Property in accordance the terms and conditions of this Agreement.

WHEREAS, the County, by Resolution No. 2012-_____, attached hereto as Exhibit "C", has accepted the agreement; and

WHEREAS, the City, by Ordinance No. 2012-_____, attached hereto as Exhibit "D", has accepted the agreement; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises, representations and undertakings of the parties set forth herein, the adequacy and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. PREMISES DEFINED:

1.1 The County Property consists of the real estate located in the City of Kent, County of Portage and State of Ohio, and more particularly described in Exhibit "A" attached hereto, together with all easements, rights and appurtenances thereto (hereinafter collectively call the "County Property").

1.2 The City Property consists of the real estate located in the City of Kent, County of Portage and State of Ohio, and more particularly described in Exhibit "B" attached hereto,

together with all easements, rights and appurtenances thereto (hereinafter collectively call the "City Property").

2. EXCHANGE OF OWNERSHIP:

2.1 The Parties agree to exchange title of the County Property for the City Property and to exchange title to the City Property for the County Property in accordance the terms and conditions of this Agreement.

2.2 This agreement is contingent on the City's fee simple acquisition of the City Property described in Exhibit "B" attached hereto, together with all easement, rights and appurtenances.

2.3 The County will not take title to the City Property nor will the County transfer title to the County Property unless and until SMJJ II, LLC (Jimmy John's Restaurant) has vacated the City Property ~~and unless and until the building occupied by SMJJ II, LLC (Jimmy John's Restaurant) has been demolished at no cost to the County.~~

2.4 The Parties agree if a new Courthouse is not completed three (3) years from the date the City Property is vacated by Jimmy John Restaurant and the site is made ready for construction by the City, the properties being exchanged by this agreement shall be returned to the original owners, such that the City will retake ownership of the East Main Street property and the County will retake ownership of the current Courthouse and the parking lot downtown.

3. CONSIDERATION:

3.1 Consideration for this Exchange shall be the mutual benefit derived by Portage County and the City of Kent for the public health, safety and welfare within their respective Communities.

3.2 As and for further consideration the Parties agree that the County will allow public use of the parking lot at the newly constructed Courthouse after 5pm on weekdays and on weekends and legal holidays.

3.3 The parties agree to equally share the cost of maintenance and repair of the parking lot. The County shall have full discretion as to the vendor providing the repairs and maintenance but will provide a copy of its repair plans and specifications upon request.

3.4 The City agrees to be responsible for snow removal in the new Courthouse parking lot. The City shall have full discretion as to the vendor providing this service.

3.5 The City will be responsible for the litter and trash control of the parking lot of the newly constructed Courthouse. The County acknowledges that the City may utilize the

services of Colman Professional Services consumers. The City acknowledges that the Municipal Court may assign individuals as a community work service project.

4. INSPECTION:

~~4.1 — The City shall provide to County a copy of Phase I Environmental Site Assessment for the City Property (the “Phase I Report”) that complies with: (i) the American Society for Testing and Materials (ASTM) Standard Designation: E-1527-00, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” and (ii) Ohio Administrative Code rule 3745-300-06. The cost of the Phase I Report shall be paid by the City.~~

~~4.2 — If the Phase I report indicates any environmental contamination or need for remediation, the County may terminate this agreement or may, at its election, take title as is.~~

5. TITLE:

5.1 At closing City's Title to the City Property shall be good and marketable and free and clear of all liens and encumbrances, except:

- (a) the lien of real estate taxes not then due and payable,
- (b) easements of record which do not interfere with County's ability to develop the property and
- (c) all applicable zoning and building laws, ordinances and regulations.

The County shall pay for a preliminary title insurance commitment, and after the date of closing, at County's option, an owner's title insurance policy with extended coverage issued Diamond Title Co. of Northeast Ohio in the amount of One Million Dollars (\$1,000,000). Said policy shall insure title to the Real Estate in County, free and clear of all liens and encumbrances, except as limited above. If title shall prove defective, City shall perfect the same promptly, but if title cannot be perfected by closing, County may terminate this agreement or may, at its election, take title as it then is, upon giving notice of such election to City.

5.2 At closing County's Title to the County Property shall be good and marketable and free and clear of all liens and encumbrances, except:

- (a) the lien of real estate taxes not then due and payable,
- (b) easements of record which do not interfere with City's ability to develop the property,
- (c) all applicable zoning and building laws, ordinances and regulations, and
- (d) subject only to occupancy by the Portage County Municipal Court/Kent Branch of a portion of the County Property in accordance with the lease agreement incorporated herein.

The City shall pay for a preliminary title insurance commitment, and after the date of closing, at the City's option, an owner's title insurance policy with extended coverage issued by Bennett Land Title Co. LLC. in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000). Said policy shall insure title to the Real Estate in City, free and clear of all liens and encumbrances, except as limited above. If title shall prove defective, the County shall perfect the same promptly, but if title cannot be perfected by closing, City may terminate this agreement or may, at its election, take title as it then is, upon giving notice of such election to County.

6. CLOSING.

6.1 The closing (the "Closing") of the grant of the Property contemplated hereby shall occur on or before Forty-five days from the date the City acquires a deed or deeds to all of the premises designated as the City Property.

7. PRORATIONS.

7.1 There shall be prorated between the City and the County, as of the date the Deed to the County Property is filed for record, on the basis of thirty (30)-day months, all real estate taxes and assessments, both general and special (the "real estate taxes"), levied or assessed against the Premises for the current year, based on the latest available tax bills.

7.2 There shall be prorated between the City and the County, as of the date the Deed to the City Property is filed for record, on the basis of thirty (30)-day months, all real estate taxes and assessments, both general and special (the "real estate taxes"), levied or assessed against the Premises for the current year, based on the latest available tax bills.

8. CLOSING PROCEDURES.

8.1 This Agreement shall be closed by placing all instruments, documents and funds necessary to the completion of the transaction contemplated herein in escrow with Bennett Land Title Co. LLC (the "Escrow Agent"). An executed copy of this Agreement shall be delivered to the Escrow Agent and shall constitute its instructions for the Closing.

8.2 The Closing shall proceed as follows:

- (a) Prior to the Closing Date, the County shall deposit with the Escrow Agent the Deed for the County Property.
- (b) Prior to the Closing Date, the City shall deposit with the Escrow Agent the Deed for the City Property.
- (c) Upon such deposits by the City and the County, the Escrow Agent shall confirm that it can and will, upon the filing of the Deeds for record, obtain from the Diamond Title Co. of Northeast Ohio the applicable Title Policies.

- (d) On the Closing Date, the Escrow Agent shall file the Deeds for record and shall deliver to each Party, as soon as practicable, their respective Deed, Title Policy, and the Escrow Agent's closing statement of account
- (e) County shall deposit with Escrow Agent:
 - (i) the cost of recording the Deed to the City Property, if applicable;
 - (ii) 1/2 the Escrow Agent's fee;
 - (iii) the amount of the Ohio transfer fee and Auditor's real property conveyance fee, if applicable to the City Property, if applicable; and
 - (iv) the County's share of real estate taxes due per Section 6 of this Agreement, if applicable.
- (f) City shall deposit with Escrow Agency:
 - (i) the cost of recording the Deed to the County Property;
 - (ii) 1/2 the Escrow Agent's fee;
 - (iii) the amount of the Ohio transfer fee and Auditor's real property conveyance fee, if applicable to the County Property; and
 - (iv) the City's share of real estate taxes due per Section 6 of this Agreement.

9. **NOTICES.**

9.1 Any notice or other communication required hereunder shall be in writing and deemed effective when hand delivered or when deposited in the United States mail, certified or registered, postage prepaid, addressed to the City and the County at the following addresses, or to such other address as either party hereto may designate to the other in the manner provided in this Section 8:

To the City:	City of Kent 215 E. Summit St. Kent, Ohio 44240 Attn: Dave Ruller, City Manager
To the County:	Portage County Board of Commissioners 449 S. Meridian Street Ravenna, OH 44266 Attn: Clerk

10. **WAIVER.** No waiver of any provision of this Agreement shall be valid unless the same is in writing and signed by the party against whom it is sought to be enforced. No waiver of any provision of this Agreement at any time will be deemed a waiver of any other provision of this Agreement at such time or will be deemed a waiver of such provision at any other time. No modification of this Agreement shall be binding unless in writing and signed by the party against whom sought to be enforced.

11. **ENTIRE AGREEMENT.** This Agreement embodies all representations, obligations, agreements and conditions in relation to the subject matter hereof, and no representations, obligations, understandings or agreements, oral or otherwise, in relation thereto exist between the parties except as herein expressly set forth.

12. **BINDING EFFECT.** This Agreement and the various rights and obligations arising hereunder shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

13. **MISCELLANEOUS**

13.1 No obligation in this Agreement shall constitute any personal obligation, whether jointly or severally, of members of the Board for the Portage County Commissioners and their respective officers, agents or employees of Portage County; or the City of Kent and their respective officers, agents or employees of the City Of Kent.

13.2 The captions and headings in this Agreement are solely for convenience of reference and shall in no way defer, limit or describe the scope or intent of any provision or sections of this Agreement.

13.3 This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio and any action to enforce the terms of this Agreement shall be brought in Portage County, Ohio.

13.4 The parties warrant and represent that no real estate agent on behalf of either party was utilized in this transaction.

IN WITNESS WHEREOF, the undersigned by their representatives duly authorized have executed this Agreement consisting of seven (7) pages.

**PORTAGE COUNTY
COUNTY BOARD OF COMMISSIONERS**

By

Maureen T. Frederick, Commr.

Approved as to Form:

Christopher Smeiles, Commr.

Assistant Prosecuting Atty.

Tommie Jo Marsilio, Commr.

CITY OF KENT

By: _____

Title: _____

Approved as to Form:

Law Director